Newcastle City Council

S.P. Savage, Head of Public Health & Environmental Protection
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Our Reference: PHEP/DCE/21/2

Your Reference

This matter is being dealt with by Mr D.C.Ellerington

5th March 2007

Simon Richardson
Licensing Guidance Review Team
Tourism Division
6th Floor
Department for Culture, Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH

Dear Simon,

Consultation On Revised Guidance Made Under Section 182 of the Licensing Act 2003

In response to the publication of the Consultation on the Revised Guidance Made under Section 182 of the Licensing Act 2003, on behalf of the City of Newcastle upon Tyne as a Licensing Authority I would like to make the following comments:

Question 1: Do you agree that the current Guidance on vicinity should remain unchanged?

I am very aware, from a number of the contested Applications for Premises Licences and Variations for Premises Licences, that have gone to Hearings before the Authority's Licensing Sub Committee, one of the most contentious issues has been over the definition of 'in the vicinity'. Typically the debate between the Solicitor acting for the Applicant and the interested parties making representations is that those persons do not live in the vicinity and the Licensing Authority has 'erred in law' in it's validation of the representations as received. Often this debate within the Hearing process by all parties, has led to a close examination of street maps of the area surrounding the premises.

From my knowledge of when the issue has been raised, we have carefully looked towards the case law and especially around the Local Government (Miscellaneous Provisions) Act 1982 and in particular the case law around the applications for sex establishments. In terms of viewing the location of both intended premises and also the location of interested parties I am happy to confirm that a great deal of common sense has been used by Members of the Licensing Sub Committee.

Whilst it would be useful in some ways to provide some clarification on the definition, I am of the opinion that due to the wide variations to be experienced nationally, in terms of the locality of premises in both urban and rural areas; and where interested parties may live or indeed work, then I would agree that to retain local flexibility there should be no further attempt to define 'in the vicinity', but rather leave it to the Courts at a future date to provide some guidance through case law.

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

See Answer to Question 1.

Question 3: Do you agree with the proposed amendment?

Again the definition and interpretation of 'incidental music' has tasked myself and my Licensing colleagues on a number of occasions. I am pleased to report and also confident that on each of the occasions we have been presented with issues involving an interpretation of 'incidental music' we have adopted a very pragmatic and commonsense approach to the issue.

I am agreeable to the proposed terms and outline of the factors as set down in the revised Guidance at paragraph 3.21. All of these factors will provide a great deal of clarification on when we are looking at issues surrounding 'incidental music'.

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

See Answer to Question 3.

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

Having reflecting very closely on the implementation and monitoring of the City Council's Licensing Policy 2005 – 2007 one of the agreed 'successes' in Newcastle, has been in the implementation of the three areas of Cumulative Impact, which are the City Centre, Jesmond and Gosforth. Especially in the two major residential areas of the City, which are Jesmond and Gosforth, it is true to say that local residents supported very much by their Ward Councillors have 'held the line' with new Applications and also Variations on existing Premises Licences. Within the City Centre it is also the case, unless specific representations call for a Hearing to determine then the Application will go through on delegated Authority.

I am acutely aware that in rewriting the City Council Licensing Policy for the term of 2008 – 2010, which is currently being undertaken, it may well be the case that the Licensing Authority will need to reconsider changes to the boundaries and scope of the existing areas designated as Cumulative Impact zones.

I was aware, when formulating these particular policies, based on very real and identifiable concerns expressed by local residents, that there was a real possibility that a legal challenge would be mounted on behalf of some of the operators of premises located in the designated areas. This proved not to be the case but any continued guidance that can be offered on a statutory footing to the Licensing Authority to rebuff any future legal challenges will be greatly appreciated.
I am therefore more than happy to ask for the current arrangements within the Section 182 Guidance to remain.

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

See my answer to Question 5.

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

In respect of the value or otherwise of the information contained in Annexes D-H from the Guidance, I can confirm that when the City Council Licensing Policy 2005 -2007 was initially drafted, a great deal of thought and indeed reliance was placed on the Model Conditions in the Annexes and many of these were indeed incorporated within the Final Document when agreed and published. I am therefore confident that the information contained within the Annexes provides a good base for any future dealings and amendments to the City Council's Licensing Policy for 2008 – 2010.

I therefore of the opinion that Option 2 with the information contained within Annexes D –H in the Guidance should be retained.

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

No as in my answer to Question 7, I am reasonably satisfied that if indeed the information is retained but updated the this provides a good basis for information that can be placed within the City Council Licensing Policy for 2008 - 2010.

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 from the experiences of myself and my Licensing colleagues, it is clear that although the pools of conditions have been utilised as a good base for Applicants to put together 'Schedules of Conditions' when making Applications; and as experience has shown, as events have unfolded, there has been a great deal of positive responses from Solicitors acting for Applicants who have developed over time their own Operating Schedules, which have certainly became more sophisticated in their approaches.

I am aware that in the rewriting of the current Licensing Policy changes will need to be made which realistically should be fairly minor in respect of recognising changes in details of organisations and even addresses.

Notwithstanding these positive messages, on the role played within the process of the information contained in Annexes D – G, my officers have already expressed concerns through to the Tyne and Wear Fire and Rescue Service of the approach now adopted by the Service over the setting of capacity limits on certain premises following the implementation of The Regulatory Reform (Fire Safety) Order 2005, SI 2005 No 1541.
For your information I have enclosed correspondence which has passed between the Tyne and Wear Fire and Rescue Service and in respect of this particular issue over the last few months.
Therefore I would ask for the legislative changes within the Regulatory Reform (Fire Safety) Order 2005 to be reflected within the Annexes, especially Annex E on Public Safety.

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

Yes, in general this Authority 'prides itself' in many ways on its forward thinking approach and the manner in which it embraces new tactics and adopts new approaches. The Licensing Authority has developed excellent working relationships at all operational and strategic levels with a range of partners including Northumbria Police and the Tyne and Wear Fire and Rescue Service I would specifically mention the key recognition adopted around the Conditions within Condition D, relating to the prevention of crime and disorder and in particular the development of schemes utilising radio pagers, door supervisors and proof of age cards and also Annex G on the Conditions relating to the prevention of public nuisance, in particular around noise and vibration and also within Annex H on the Conditions relating to the protection of children from harm, in particular around proof of age cards.

These are the consistent messages which the Licensing Authority has been able to utilise when 'challenges' are mounted within Hearings of determination of Licence Applications on the overall standard of Operating Conditions attached to various Applications.

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

On the first point, with the potential for prejudice with the Membership of Licensing Sub Committees, I am confident that in all the Hearings that have been conducted in a fair and equitable manner and certainly it is the case that all the Members of the Licensing Committee have been trained and conducted themselves in an appropriate manner as a result.

On the second point, through this Authority's involvement with the Scrutiny Council initiative, having consulted closely with Members of the Council, the issue of the Licensing Authority in formally notifying Ward Members over the receipt of Applications for new Premises Licences and also Variations and also on the issue of their individual right to speak at Hearings with 'proper authorisation' have proved to be very contentious indeed for

quite a few of them, especially with those Members representing residents in the City Centre.
In terms of notifications, we have as a matter of policy sent out notifications by E-mail or hard copy to Ward Councillors, where the Application for a Premises Licence or Variation for a Premises Licence, is for a Premises located in that Ward.
Indeed where the premises are close to a boundary with a neighbouring Ward, a notification may well also be sent by the Licensing Authority to the Members representing that Ward as well.

It has been the case that some concerns have been expressed from Solicitors representing Applicants, over the Licensing Authority's approach, in that perhaps we been too proactive. However I am satisfied that myself and my colleagues have always taken a balanced approach in our role without becoming too 'proactive'. For myself I am more than happy with this response and this has been reflected in feedback I have received from Members who welcome our notification role, where the issue of Licensing is very important to large numbers of the residents of the City.

The main issue surrounding the role of Ward Councillors is their individual right to speak on behalf of the residents that they represent, when they have been given no specific right by a resident as an interested party to do so. This has been a very contentious issue at Hearings before Licensing Sub Committee, where the Solicitor for the Applicant has often successfully challenged Ward Councillors the right to speak on behalf of their constituents before Licensing Sub Committee. Having spoken to members involved in these situations I recommend a broadening out the role of Members as 'Interested Party's' as outlined in terms of Section 158 of the Gambling Act 2005.

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

See my answer to question 11.

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

Certainly from conversations, I have had with my Trading Standards colleagues, who obviously are responsible for the investigation of age restricted sales of alcohol and also Northumbria Police officers I am aware that the issue of the authorisation of sale has been a very difficult one to contend with. Generally my colleagues have taken a pragmatic view in terms of their interpretation of the legislative provisions.

I am aware that many Licensed premises, mainly those operated by national retailers are now conducting formal authorisation procedures for staff which are being utilised to demonstrate due diligence defences, when challenges are made following underage sales of alcohol takes place.

I am therefore more than happy to accept that the proposed amendments will provide clarification on the issue of authorisation of sale.

Question 14: If not, please explain why.

See my answer to Question 13.

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

The issue on when a Variation is a Variation in terms of the Application process for Premises Licence is another important issue which has vexed this Licensing Authority, and which I understand has also been the situation elsewhere. From what I understand of the process we have undergone in Newcastle, we have generally taken a very pragmatic approach to when a Variation for a Premises Licence is required.
For instance the movement of a dance stage within a premises and also structural changes within the premises such as staff toilets, where myself and my colleagues are satisfied that either fire safety or health and safety of the premises are not compromised; the Applicant has been advised that no variation is required and only that new plans should be forwarded to the Licensing Authority in order to be placed on the Premises Licence and also for the attention of Responsible Authorities of note, such as the Fire and Rescue Service.

From this position, any guidance on Variations that can be offered, perhaps also with illustrations of where and when the trigger points should be applicable would be very useful to my officers and also allow for a more consistent approach to be taken to this issue at a national level.

Question 16: If not, explain why.

See my answer to Question 16.

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

From the experiences in Newcastle at Hearings before Licensing Sub Committee, certainly the evidence of the City Council's Environmental Pollution Service responsible for representations on noise has come to the forefront. I agree fully with the notion that it's often difficult for those officers making these representations to provide evidential support and indeed provide a 'crystal ball', on what may happen in the future if a new Premises Licence is granted. However I am confident that in our interpretation of paragraph 5.68C the Licensing Sub Committee has applied the necessary gravity to the evidence provided by my Environmental Health colleagues, responsible for the enforcement of Environmental Pollution issues and offered in evidence as 'projections'.

I would therefore agree that the Guidance on evidence to support representations should remain unchanged.

Question 18: If not, please explain why?

See my answer to Question 17.

Question 19: Do you agree that the Guidance on representations should be amended?

Having carefully considered the issue of the proposed changes to the Guidance on representations as detailed within paragraphs 9.13 – 9.17 although I can see some sense in what has been proposed for the underlying reasons I am of the opinion that the Guidance should not be amended.

Question 20: If you would prefer the alternative outlined in paragraph 4.40, please explain why.

Once again as the Licensing Authority has gone through the evolutionary process with the development of its interpretation and policies around various issues; one of the major issues of concern has been the nature of disclosure of representations. The view we have developed has once again been a pragmatic one, which has involved the full disclosure of copies of representations to Solicitors representing the Applicant, who obviously have a right to the information, in order to perhaps reach some accommodation with those interested parties making particular representations. In terms of Applicants representing themselves myself and my colleagues have taken a more cautious view and have deleted references to names, street numbers and other personal details such as E-mail addresses from correspondence before copies are forwarded onto Applicants.

Certainly due to the fact that Committee reports are public documents available on the City Council's internet site and also normally to the press, we have also taken the decision to remove personal details from all correspondence received from interested parties including copies of petitions and these personal details have typically included names, street numbers, telephone numbers and E-mail addresses.

Based on how this Licensing Authority has developed its policy around this very 'sensitive' issue without any real legal challenge in the manner we have managed the process I am of the opinion that the Government should allow Licensing Authorities the widest possible discretion to operate in common sense way as it seems fit in the best interests of the community.

Question 21: Do you agree that the Guidance should be amended as proposed?

Again as I think most Licensing Authority's recognise the issue of crime and disorder and also public nuisance outside the curtilage of Premises Licences is a major concern to both the Responsible Authorities such as the Police and also interested parties such as residents. These issues have been very much highlighted in areas of substantial residential properties where there have also been profound developments with new Licensed Premises changing from substantially hotel based Licenses transforming into bars. The area of concern has been an area known as Jesmond which lies north of the City Centre. The concerns of local residents, supported by Ward Councillors led largely to the development of specific areas of Cumulative Impact in order to manage these areas.

The emergence of the 'café culture' in the outside areas of premises, with the full utilisation of patio heaters has led to many concerns expressed by local residents on the development of these particular Licensed premises. Certainly in Jesmond, two separate attempts by operators to develop one particular site have led to somewhat protracted legal arguments which have resulted in both Applications been refused by various Courts. The main arguments brought forward by local residents have been supported by evidence of public nuisance and indeed crime and disorder.

As all Licensing Authority's will now realise the applicable nature of 'vicinity' has been a major issue in terms of Hearings before Licensing Sub Committees.

I am also acutely aware that whilst the Authority has very much embraced the development of Designated Public Places Order and has in place such Orders in the City Centre and areas across the City; the banning of smoking in public places from the 1st July 2007 has already led to acceleration in the development of pavement café areas. Although the City Council largely welcomes the development of this café culture in the City Centre I can envisage that the problems associated with such outside areas may well indeed lead to a growth of complaints received by Responsible Authorities especially my colleagues from the Authority's Environmental Pollution Service, with it's responsibility for the enforcement of the statutory controls around noise nuisance and indeed the Licensing Authority around crime and disorder/public nuisance in the immediate future.

In conclusion I am acutely aware that this whole process will have to be carefully managed in order to prevent a deteriotion in the quality of life for residents in many areas of the City. Therefore I would welcome any guidance that could be provided on the issues involved and also I am of the opinion in order to encapsulate the Governments views on the issue, that specific mention could be made to the proposals identified around in the Violent Crime Reduction Act 2006 around the management of the licensed premises.

Question 22: If not, explain why?

Please see my answer to Question 21.

Question 23: Do you agree that the Guidance on longer hours should be amended as outlined above?

Again based on the evolutionary process that this Licensing Authority has gone through since the implementation of the Licensing Act 2003, I am obviously aware of the implications of the Secretary of States letter dated the 30th September 2006 and I can confirm that it has been utilised, mainly by residents as interested parties, at various Hearings of Applications of Premises Licences before Licensing Sub Committee.

On this evidence I would welcome the fact that the contents of this letter would become formalised within the revised Section 182 Guidance.

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

Please see my answer to question 23.

Question 25: Do you agree that Chapter 11 of the Guidance should be removed?

Having carefully considered the contents of Chapter 11 'Police Powers to Close Premises' I am of the opinion that Chapter 11 should be retained within the Guidance.

Question 26: If you do not agree, please explain why?

I have in general terms found the information contained quite useful in terms of it sets down in clear terms many of the related issues around licensing, such as noise nuisance which affect both the Police and also the Authority's Environmental Pollution Service. Therefore although as I envisage the Guidance within Chapter 11, if retained will require significant amendment to reflect the proposed changes contained in the Violent Crime Reduction Act 2006; on the whole my officers together I believe with those of Northumbria Police have largely found the information useful and therefore I believe Chapter 11 should remain.

Question 27: Do you agree that Chapters 12 and 14 should be deleted from the Guidance.

Having carefully considered the contents of Chapter 12 and 14 and having discussed the issue of deleting the two Chapters with my officers, I am of the opinion that the information contained in the two chapters should be retained.

Question 28: If you do not agree, please explain why.

My reasoning behind the view I have taken, is that the information contained within both Chapters provides a good background to both the Licensing Authority and also Northumbria Police on the legal provisions surrounding a range of alcohol related licensing issues. In particular I would comment very favourably on the contents on Chapter 12 on the 'Sale and Supply of Alcohol to Children' especially in terms of my Trading Standards Service's involvement with all the issues around age restricted sales of alcohol. In practical terms my Trading Standards colleagues have utilised certain paragraphs within Chapter 12 when justifying the nature of a representation made in their capacity as a Responsible Authority to Solicitors for a particular Applicant.

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

Having carefully the contents of the Revised Guidance, and subject to the various comments made I am happy with the format of the proposed document. Generally I would comment that from reports I have received that the Section 182 Guidance has very much become a practical working document on which a great deal of emphasis has been placed by Solicitors representing both Applicants, Responsible Authorities and Interested Parties and indeed also the Licensing Authority.

Question 30: If not, please explain why and what format you would prefer instead.

See my answer to Question 29.

Question 31: Are there any other issues that you would like to see addressed in the revised Guidance? Please specify.

Although I fully accept that the Guidance cannot be used to amend the primary or indeed subordinate legislation made under the Licensing Act 2003, I still of the opinion that three major issues of concern that have arisen during the development of the processes around Licensing could be 'referred to' somewhere in the Guidance. These three critical issues are the 'restricted nature' of the advertising of Applications, also the perceived 'abuse' of Temporary Event Notices (TENS) and also the continued failure to implement a national database of Personal Licence holders.

Advertising of Applications. One of the key criticisms that have been levelled at the Licensing Authority by residents within a local area is that they have not been formally notified of any proposal as would be the case in the Planning process. This criticism has been highlighted as an acute issue, especially where it is the case that the Authority's Planning Service as well as that for the Licensing Service is the responsibility of the same Directorate within the City Council.

Temporary Event Notices. Although I clearly recognise the true value of Temporary Event Notices to community groups and smaller organisations my officers continue to express concerns over the 'abuse' over the use of TENS by Applicants and their Solicitors. Abuse of this nature has included the following:

i. An off-licence on been advised that they had failed to convert their existing Premises Licence, continued to open for business on TENS.
ii. A particular controversial Premises, situated within one of our Areas of Cumulative Impact, which was refused a Premises Licence by the Licensing Sub Committee and which during their Appeal Process continued to open on TENS.
iii. A number of Takeaways either having been refused certain hours or indeed Premises Licences during the Appeal Process have employed TENS for special events including on several occasions, events identified on the Application forms as 'coffee evenings'.

I would also mention my officers concern over the limitation that only the Police can make representations on the application for TENS. We would certainly prefer from a public nuisance angle for the Authority's Environmental Pollution Service to have a legal right to comment on applications for TENS.

National Database of Holders of Personal Licences. Tactically and operationally, in the management of holders of Personal Licences within the local area, the region and also nationally, I and my colleagues continue to experience real difficulties with the whole process. In particular concerns have been expressed over the manner in which the system fails to 'track' individuals holding Personal Licences, especially when criminal convictions are secured against such individuals in the Courts and unfortunately if there is a failure to notify/record this conviction with the relevant Licensing Authority then I fear relevant offences are not been recorded; and such individuals continue to hold Personal Licences, which is obviously a worry to all of us.

Hopefully this response is of some assistance to you in your deliberations over this issue.

Yours faithfully

David Ellerington

Licensing Team Manager

Encl:

Newcastle City Council

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Our Reference: PHEP/LIC/DCE/21/2

Your Reference

Please address any correspondence regarding this matter to:
Licensing Office,
Public Health & Environmental Protection,
Newington Road East,
Newcastle upon Tyne NE6 5BD

This matter is being dealt with by Mr. D.C. Ellerington

24 October 2006

Mr D. Boddy
Group Manager
North Tyneside Fire Safety Department
Tyne and Wear Fire and Rescue Service
Tynemouth Fire Station
Preston North Road
North Shields
NE29 9PY

Dear Mr Boddy,

Licensing Act 2003
Licensing Authority Protocol

Further to our recent discussions over the Licensing Authority Protocol, drafted between this Authority and the Tyne and Wear Fire and Rescue Service; I would like to take this opportunity to confirm the stance that this Authority takes in respect of a number of aspects of the Service's proposed Protocol.

1. The Newcastle Licensing Authority has no problem at all, in sending an electronic prompt on Applications for Premises Licences or indeed Variations to existing Premises Licences to any E-mail address that the Fire Service utilises. It is my understanding that the system currently operates successfully and will obviously not require any real change to accommodate your requirements.

2. In terms of the failure of the Applicant to provide you with plans with an Application, then if the Fire Service informs the responsible Licensing Authority of these omissions, then in terms of the provisions of the legislation, this is a fundamental breach and the Licensing Authority as a result, can inform the Applicant that the Application is invalid until this omission is remedied. It is also the case that the 28 Day period, for representations can only be restarted, once this remedial action has taken place.

3. In terms of the Fire Service's role as a Responsible Body under the Licensing Act 2003, the Licensing Authority do need a positive response from the Fire Service that no representations are to be made otherwise one of my Licensing colleagues will definitely make contact with one of your Fire Safety Officers to confirm the Fire Service's position with respect to an individual Application. This positive response, as with the responses received from Northumbria Police, can take the form of a one line in an E-mail.

4. In terms of our involvement with Temporary Event Notices and the new development of Permits being granted to use the Premises Licences granted for public land by the Licensing Authority to the City Council, Licensing Officers, as is custom and practice, contact Fire Safety Officers for their input on any proposed events which are planned in Newcastle to be held on public land. Some of these events may or may not already be the subject of Safety Advisory Groups, which your I understand Fire Safety Officers often attend.

5. Most importantly, on behalf of the Licensing Authority for Newcastle, I must fundamentally disagree that 'the responsibility form issuing maximum occupancy figures for licensed premises will lie with the Licensing Authority issuing the Licence for that Premise'

   Although recognising the importance of the reforms introduced by the Government for the Fire Service's nationally, as encapsulated in the Regulatory Reform (Fire Safety) Order 2005, and the movement away from your traditional role. The Licensing Authority at the same time also recognises that the Fire Service's role within the Licensing Act 2003 is an exceptionally critical one. This role is recognised in a number of documents, including the City Council's Licensing Policy 2005 – 2007 (copy enclosed) and the Section 182 Guidance from the DCMS

   From my experience, over the last eighteen months, this role has indeed been critical In Newcastle, with the concentration of venues from restaurants, takeaways, pubs And 'nightclubs' opening into the early mornings and mixing with residential and other Commercial operations. Your officers have successfully set capacity figures on large Scale venues such as the "Newcastle Academy" and at the same time making assessments on the public safety or otherwise of licensed premises such as takeaways located in buildings, where significant numbers of residents also live. Indeed, when matters have not been resolved to the satisfaction of Fire Safety Officers and Hearings of Licensing Sub Committees have been arranged to determine such Representations, Members of the Licensing Sub Committee have as proper in my opinion 'backed' the professional judgement and expertise of your officers.

   To now move away from this position would be in the opinion of this Licensing Authority a totally retrograde step and would also create a 'two tier' system of Licensed premises in Newcastle, some with 'validated' and indeed realistic capacity figures and those with capacity figures that are not.

PREVENTING PROTECTING RESPONDING

Tyne and Wear Fire and Rescue Service

Chief Fire Officer Richard Bull CBE QFSM FIFireE

This matter is being dealt with by:
T/Assistant Chief Officer Simpson

Direct Dial: [redacted]
E-mail:

Your Ref:

Our Ref: DRS/LT/20/1

Date: 07 December 2006

Mr D C Ellerington
Licencing Office
Public Health and Environmental Protection
Newington Road East
Newcastle upon Tyne
NE6 5BD

RECEIVED
- 8 DEC 2006
PHEP

Dear Mr Ellerington

LICENCING ACT 2003 – LICENCING AUTHORITY PROTOCOL

I refer to your letter in relation to the above dated 24 October 2006.

The main points in which you required clarification relate to points numbered three and five.

In relation to point three I agree you will receive a positive response from the fire Service that no representations will be made.

Relating to point five I believe the following system will meet both our needs:-

1. The Fire Authority will require the applicant to submit, (ideally with their application) a written fire risk assessment which will detail the proposed maximum occupancy numbers and how they will safely manage those numbers.

2. In relation to occupancy numbers, the Fire Authority will check the proposed maximum occupancy numbers and if in our view the proposed numbers are safe we will not make representation in terms of those numbers.

3. However, if the Fire Authority believes that the proposed numbers exceed the appropriate level we will make representation in terms of the maximum occupancy number appropriate to that application.

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I would appreciate your views of the above, as we intend to incorporate the above in our Lincencing Policy.

Yours sincerely

D R Simpson MA MSc CEng FIFireE
T/Assistant Chief Officer

Newcastle City Council

S.P. Savage, Head of Public Health & Environmental Protection
Regeneration Directorate
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Our Reference: PHEP/LIC/DCE/
Your Reference DRS/LT/20/1

Please address any correspondence regarding this matter to:
Licensing Office,
Public Health & Environmental Protection,
Newington Road East,
Newcastle upon Tyne NE6 5BD

This matter is being dealt with by Mr. D.C. Ellerington

22 February 2007

Mr D.R. Simpson
T/Assistant Chief Officer
Tyne and Wear Fire and Rescue Service
Service Headquarters
PO Box 1196
Nissan Way
Barmston Mere
Sunderland
SR5 9BL

Dear Mr Simpson,

Licensing Act 2003 - Licensing Authority Protocol

I acknowledge receipt of your letters dated the 7th December 2006 and the 13th February 2007 and which were written in response to my letter of the 24th October 2006.

Thank you for your consideration of the points as I raised in my letter and the response as provided. On behalf of the Tyne and Wear Fire and Rescue Service, you would appear to recognise the concerns of myself and my colleagues over the position taken by your Service since the implementation of the provisions of the Regulatory Reform (Fire Safety) Order 2005 back in 2006 and I am obviously grateful for this.

In respect of point 5 of my letter, I am now reasonably satisfied that the three proposed steps 1. The requirement by the Applicant to submit a written fire risk assessment which will detail the proposed maximum occupancy numbers and how they will manage those numbers; 2. The Checking by the Fire Authority of the proposed maximum occupancy figures and 3. The submission of representations by the Fire Authority based on any concerns, in terms of the proposed maximum occupancy numbers, will be a 'positive' plan for the Applicant for a Premises Licence to provide a response and to assist the Licensing Authority in determining that the correct and necessary steps to ensure that the Licensing Objective of Public Safety has been met to the total satisfaction of your Service, before new Premises Licences or indeed Variations to Premises are granted by this Authority.

My concerns have now largely been satisfied with your response and I will now be happy enough to consider any Licensing Authority Protocol that you may wish to forward through to this Authority.

My only remaining reservation that I have is that in terms of the operational process, you are placing a great reliance on the capability or indeed willingness of Applicants and indeed their legal representatives to comply with your requests and provide Capacity figures on Premises to the Fire Service. That is perhaps appears a somewhat cynical judgement, but I feel in practical terms that is indeed may what happen. If this situation does indeed occur then I feel that all the excellent work that your officers have carried out in the past in setting capacities in licensed premises across the City will become eroded with a resultant reduction in the levels of Public Safety in certain premises.

Incidentally as you may also be aware, the City Council as a Licensing Authority, like all other Licensing Authorities, is currently undertaking a review of it's current Licensing Policy for a new Licensing Policy for 2008 - 2010 to be underwritten by full Council in January 2008 and it will be the case that the Fire Service will be asked for its comments in the near future on this particular Policy and any revisions that you may consider necessary.

Thanking you for your assistance in this matter.
Yours faithfully

Licensing Team Manager