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Southend-on-Sea Borough Council

Department of Enterprise, Tourism & the Environment

Robert Tinlin Chief Executive & Town Clerk



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 Date: 29 January, 2007

Mr Simon Richardson
 Licensing Guidance Review Team
 Tourism Division
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 Department for Culture, Media and Sport
 2-4 Cockspur Street
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Dear Sir

Re: Consultation on Revised Guidance Made Under Section 182 of the Licensing Act 2003

I refer to the above consultation document, and am pleased to submit responses to the numbered questions, as set out below.

I would advise that this is the response of Officers of the Licensing Authority. It is based upon my own experience as both a licensing specialist and an Environmental Health Officer over many years. This has involved work with Health and Safety enforcement, Environmental Protection and (from 1983) Public Entertainment Licensing administration and enforcement. Experience has also been gained in attending Licensing Justices transfer sessions (under the Licensing Act 1964) and making representations. Southend-on-Sea is an important regional entertainment centre, with numerous licensed venues.

In preparing this response, consultation has taken place with the Chairman and Vice Chairman of the Council's Licensing Committee. Where the views of those elected Members differ from those of Officers, this is indicated.

- Q1. It is agreed that the current guidance on "vicinity" should remain unchanged. The scale of individual applications differs considerably, and some large scale or intrusive uses would have an impact over a wider geographical area. Any attempt to further define "vicinity" runs the risk of undermining flexibility.
- Q2. Not applicable.
- Q3. The proposed amendment is agreed.
- Q4. Not applicable.



- Q5. It is agreed that the current guidance on Cumulative Impact policies should remain unchanged. This Licensing Authority has such a policy in respect of its town centre and central seafront area, which has been utilised both in respect of new premises seeking to sell alcohol for consumption on the premises and in respect of variations for existing venues of this type (including variations of operating hours). It is felt that deletion of the guidance runs the risk of undermining current Cumulative Impact policies. Contrary to the comments in your paragraph 4.15, however, there is evidence from our local Club Watch group (which covers any town centre venues) that there is significant concern on the part of the licensed trade that such policies have an adverse commercial effect. Their concerns will inform our forthcoming review of policy.
- Q6. Not applicable.
- Q7. Option 1 is recommended. This option is suggested as removal of the annexes could allow for quicker development of best practice procedures, without the constraints of the existing statutory guidance.
- Q8. Not applicable.
- Q9. There is no local evidence of pools of conditions creating any limitation. Indeed, there are several instances of innovative conditions being developed jointly between applicants and the Police.
- Q10. Pools of potential conditions do have a value, but have not been utilised extensively in this Authority. Given that such conditions should not duplicate the requirements of other legislation, their use is necessarily limited.
- Q11. The text of proposed new paragraphs 8.8, 8.9 and the first sentence of 8.10 is agreed.

Present practice, following concerns about the legality of the process, has been to avoid issuing specific information on applications to Ward Members. Notwithstanding the proposed guidance, there is still concern that the practice could be seen as soliciting representations.

Perhaps a compromise arrangement in the proposed text would be helpful, suggesting that a simplified list of applications (based upon the statutory register) could be prepared, to which all interested parties could gain access. The proposed guidance is also silent as to the rights of Parish Council or Town Council Members.

Any such list should not be seen as a means of "calling in" applications for hearing, as used in the Town Planning process.

- Q12. Please see above.
- Q13. The proposed amendments are agreed.
- Q14. Not applicable.
- Q15. See response to Q16.

- Q16. The proposed new text is broadly acceptable, but it is felt that it would be beneficial to provide guidance on the meaning of substantial variations, as mentioned in Section 36(6)(b).
- Q17. It is recommended that the guidance should be unchanged in this area. Any proposal to provide supporting evidence, particularly in the case of new premises, would weight hearings unfairly against those making representations.
- Q18. Not applicable.
- Q19. The proposed amendments to the guidance are not agreed.
- Q20. Whilst it is recognised that questions of intimidation can arise, local experience indicates that this is very rare.

The proposed amendments are unworkable, because representations which seek to maintain anonymity may be received too late to enter into correspondence, given the strict timetables involved. Further, Responsible Authorities (such as the Environmental Health Service or Police) may have already indicated their intention not to make representations, and thus may be unwilling to support those of third parties.

A further factor in relating to local experience is that the Environmental Health Service is cautious about making representations in the absence of a history of complaints, or in relation to noise and disturbance in the streets (rather than emanating directly from licensed venues).

Local practice has been, where time permits, to refer such potential objectors to other bodies, such as Parish/Town Council where relevant, but (for the reasons stated) this is not always possible.

Given the requirement in the Licensing Act 2003 (Hearings) Regulations 2005 that any applicant must be provided with copies of relevant representations, it is felt that the proposed guidance in paragraph 9.17 would conflict with the specific requirements of the law.

Should such a situation be accepted, however, difficulties are foreseen should an application be refused on the basis of an anonymised objection, where an appeal is subsequently lodged. In such a case, the Licensing Authority may be in an invidious position in seeking to defend its decision.

Situations can arise whereby those seeking to make representations have some ulterior motive which will only become clear to the applicant once full details are released. The situation should also be contrasted with the application procedure before the Licensing Justices under the 1964 Act, when little weight was given to anonymous objections.

For all of the reasons given, it is strongly felt that the present guidance should be left unchanged.

- Q21. The proposed amendments are agreed.
- Q22. Not applicable.

- Q23. The proposed wording is agreed.
- Q24. Not applicable.
- Q25. Removal of the guidance in chapter 11 is agreed.
- Q26. Not applicable.
- Q27. Deletion of chapters 12 and 14 is agreed.
- Q28. Not applicable.
- Q29. The format of the proposed revised guidance represents a considerable improvement upon the original document.
- Q30. Not applicable.
- Q31. Suggestions for further areas to be addressed in the revised guidance relate to the Temporary Event Notice procedure.

Despite guidance material from DCMS and LACORS, some confusion remains among premises users about periods of notice. Specific guidance would be helpful on the following areas:-

- 1) Whether the Interpretation Act is relevant for calculating the date of receipt of TEN's. If this is the case, it would appear to negate the powers of the Police to respond to notifications within 48 hours. In practice, considerable difficulties arise where notices are received without evidence of date of postage or delivery.
- 2) Further guidance would be beneficial in respect of TEN's covering parts of premises, and interpretation in specific areas. For example, can TEN's operate simultaneously in separate parts of the same premises?

I trust the above information is of assistance.

Yours faithfully



For Interim Corporate Director of
Enterprise, Tourism & the Environment

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