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Janet Elliott,
Licensing and Service Improvement Officer,
Dudley Metropolitan Borough Council,
Ednam Road,
DUDLEY
DY1 1HL

22.10.07

Dear licensing officer,

RE: LICENSING ACT 2003 - REVIEW OF LICENSING POLICY

The British Beer & Pub Association (BBPA) represents brewing companies and their pub interests, and pub owning companies, accounting for 98% of beer production and around two thirds of the 60,000 pubs in the UK. Many of our members own and run pubs in the Dudley area. The Association promotes the responsible sale of alcohol and management of licensed premises. It has a range of good practice information and guidance for member companies, which includes security in design, drugs, drinks promotions, noise control and health and safety.

The BBPA believes that the implementation of the Licensing Act 2003 has been successful to date and is encouraged by reports of decreased levels of disorder associated with licensed premises. We welcome this opportunity to provide comments as part of this licensing policy review. This response is also supported by BII, the professional body for the licensed retail sector. Our main observations are as follows.

The BBPA welcomes the Council's positive approach to the licensing of the sale of alcohol and the provision of public entertainment and its recognition of the contribution that the trade has to make to the borough (page 2). The draft policy has also recognised one of the key principles of the Licensing Act 2003, namely that each application must be treated on its own merits(page 3).

Sadly though at 36 pages plus appendices the revised Statement of Licensing Policy is one of the longest the Association has come across. While appreciating that much of the information is intended to be helpful, some of it will be available elsewhere and is not required in such detail in the Licensing Policy.

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Duplication

Paragraph 2.2 strays into the area of duplication with existing regulation which cannot be justified in the context of the Licensing Act.

The policy refers to the "considerable overlap between the licensing regime and wider health and safety regimes."

In our view rather than an overlap the presence of existing legislation should take those matters outside the licensing regime as businesses will already have to comply with these separate pieces of legislation.

We suggest this section is reworded to reflect the latter part of the section which states, "The Licensing Authority will not seek to duplicate responsibilities already held under other statutes."

The Association is very much in favour of the use of risk assessments, but the provision of a risk assessment to support an application is not a requirement under the Licensing Act 2003 so we believe where risk assessments are expected this should be amended to as to be a recommended practice rather than a requirement.

We would also challenge the wording where it states "The Licensing Authority will have particular regard to representations from its environmental health officers as well as the Fire Service and the Police". We would remind you hear that any representations from responsible authorities should be given equal weight.

Planning

In 2.3 applicants for licences are reminded that they require planning permission and while we would agree that it would be helpful that planning permission is resolved before an application is made there may be circumstances where it may be necessary to make a licence application before the planning process has been completed. We believe this section should reflect that situation.

Government's Drinking Strategy

Section 2.9 is need of further clarification. While it would obviously be useful for an applicant to be aware of and consider the Government's Alcohol Harm Reduction Strategy and have a policy to deal with under 18s it is not for the Licensing Authority "to ensure that all Operating Schedules agreed with licensee are suitable and sufficient to address these issues."

The applicant is required to draw up a schedule which address the four licensing objectives and obviously their Operating Schedules will reflect this situation.

The sale of alcohol to under 18s is already against the law and while this Association is extremely supportive of Challenge 21 and PASS it would not be appropriate for such a measure to be translated into a licence condition as it would undermine the "due diligence" process to securing compliance with the law.

Safer Clubbing (2.11)

Our comments in the paragraph above are also true here. It would be wrong of the Licensing Authority to "expect" applicants to use these strategies but it could recommend they might consider it. This section also refers to premises which may have problems with drugs and crime and disorder. This amounts to a subjective view on behalf of the authority. Obviously there are legislative mechanisms to deal with premises that have problems with drugs and crime and disorder. The reference to premises that are open late smacks of a blanket condition which would obviously be unlawful under the Act

Licence applications/conditions

In 3.5 there are some very specific expectations from the Licensing Authority which we believe could give rise to the same complaint as was dealt with by the Judicial Review of the Canterbury City Council policy. The judgement in that case clearly stated that licensing authorities should not mislead applicants into believing that they must meet certain requirements. The expectations listed in the draft policy could be construed as the licensing authority requiring applicants to offer a significant number of restrictions in their operating schedules.

It certainly isn't appropriate for the council to be expecting applicants to address matters which are clearly outside of the control of those running the premises and would go beyond the requirements of the Licensing Act.

Many of these duplicate existing regulatory regimes i.e. means of escape, prevention of drugs, sanitary accommodation, electrical installation.

CCTV, door supervisors and plastic glasses may be suitable for some premises but not all and we would like to refer you to the following approach outlined in the National Alcohol Strategy on alternatives to glass, namely a risk based, per premises approach.

"The Government believes that a risk-based, rather than blanket, approach to requiring licensed premises to use safer alternatives is the best way to tackle the problem of glass-related injuries."

The BBPA has consolidated good practice on combating violence in licensed premises into a guide to risk assessment, which has recently been published. This is available on our website at www.beerandpub.com and a reference to it here would be useful.

Regarding the reference to dispersal procedures we would draw your attention to the document, Social Responsibility for the Production and Sale of Alcoholic Drinks in the UK to which the BBPA is a signatory which includes an extract from the Bar, Entertainment and Dance Association's Dispersal Policy. This document also can be found on the www.beerandpub.com website.

Generally though we believe the wording of 3.5 should be changed to reflect that fact that this list "contains examples of measures that might be considered in certain circumstances or where appropriate" and it would not be necessary for applicants to address all these issues.

While the authority recognises in 4.2 that it cannot attach conditions unless they are either volunteered by the applicant or are determined by the licensing authority following representations being upheld from responsible authorities or interested parties, we suggest it is also stated in the first paragraph of 3.5 to clear up any misunderstanding.

You state yourself about the penalties for not complying with licensing conditions which is why we feel conditions should be meaningful and within the control of the licensee.

4.3 Conditions

Here again the authority talks about imposing conditions but as we stated above conditions cannot be attached unless they are either volunteered by the applicant or are determined by the licensing authority following representations being upheld from responsible authorities or interested

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parties. In the absence of relevant representations the application must be granted.

4.4 Door supervisors

The requirement for door supervisors to be registered with the Security Industry Authority is a legislative matter rather than the implication here that it is for the Licensing Authority to impose a condition.

8.10 Proof of Age Schemes

We would draw your attention here to the fact that the Portman Group has decided to discontinue its Prove-It ID Card scheme although obviously the cards will still be in circulation.

9.2 Operating Schedule

The policy should not request additional information over and above that required by the Regulations.

For instance the expectation of a thorough risk assessment is not a requirement but it might be desirable. Applicants are simply required to describe the steps they intend to take to promote the licensing objectives.

As described earlier conditions could only be attached if they were volunteered or when there were relevant representations but certainly not added on advice. There is no requirement to submit maximum occupancy figures unless an applicant volunteers the information.

16. Enforcement

We note the enforcement procedure described in this section but would welcome a recognition of the Hampton principles of inspection and enforcement in this section, which include the following:

- No inspection should take place without a reason
- Regulators should recognise that a key element of their activity will be to allow or even encourage, economic progress and only to intervene when there is a clear case for protection

We trust that you will find these comments helpful and look forward to any response you may have. We would also appreciate being listed as a consultee in any further licensing related consultations.

Yours sincerely,



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