

## APPENDIX 2

Respondent	Does the policy promote the licensing objectives of preventing crime and disorder, preventing public nuisance, public safety and child protection arising from licensed premises?	Officer response
Councillor	Yes	<i>No response required</i>
Individual	Yes	<i>No response required</i>
Local Children Safeguarding Board	Thank you for sending your draft policy. I am delighted to see your inclusion in 8.11 of requirements in relation to sexual exploitation and linking to the Operation Makesafe activity. I will bring this helpful development to the attention of the Safeguarding Board and its dedicated CSE Sub-committee.	<i>No response required</i>

Respondent	If there is anything missing from the policy, please explain what it is and where possible provide evidence for your answer	Officer response
Councillor	There too many off licences opening up across the borough. This has resulted in street drinking in some areas particularly Wealdstone High Street	<p>This is a general comment and the licensing authority is aware that the “need” for more licensed premises is not a valid consideration to refuse to grant a licence.</p> <p>There is no current evidence in terms of alcohol-related crime, disorder and nuisance to support the introduction of a Cumulative Impact Policy within the SLP to limit the grant of premises licences, although the licensing authority will keep this position under close review.</p> <p>There are eight off-licences within High Street, Wealdstone, three of which are</p>

		national retailers such as ASDA and Sainsbury's. The licensing authority's officers will consider whether to develop informal schemes such as "Off-Watch" during the next financial year with businesses in the area to identify and manage identifiable problems.
Individual	Yes	<i>No response required</i>

NAME	Any further comments	OFFICER RESPONSE
Councillor	There also needs some policy regarding betting offices with limiting the number of fixed betting machines	<i>This is outside the scope of the Licensing Act 2003 as it is dealt with under the Gambling Act 2005</i>
Individual	<p>Feedback to people who have made complaints - currently, one makes a complaint and it seems to disappear into a void.</p> <p>The policy isn't credible - we make complaints about noise and nothing happens.</p> <p>I'm not sure that the policy supports British Values: please include an assessment condition about community integration.</p>	<p><i>This is not relevant to the statement of licensing policy, and the respondent will be contacted about their specific issue raised about the council's response to complaints. Dealing with noise from a licensed premises can be a complex issue, particularly if it involves statutory noise nuisance which is dealt with under other legislation. Residents always have the right to ask for a licence to be reviewed, and the approach to dealing with complaints is set out in section 12. Community integration is not a required consideration as such for the Statement of Licensing Policy but it is addressed in the accompanying Equalities Impact Assessment which found no negative impacts arose from the SLP.</i></p>
Public Health	<p>Insert after paragraph 2.2:</p> <p>Above recommended levels of intake, alcohol use is associated with various diseases including hypertension, haemorrhagic stroke, liver disease, epilepsy, mental health disorders and various cancers, as well as accidents, injuries and assaults.<sup>1-3</sup> 2013 Health Survey for England data suggest that 23% of men and 16% of women in the UK drink at levels associated with this risk,<sup>4</sup> and 2010 UK Global Burden of Disease data indicate that 4.2% of total disability-adjusted life years (a measure of the number of years lost due to ill-health, disability or early death), are attributable to alcohol use.<sup>5</sup> Numbers of alcohol-related hospital admissions continue to increase, and alcohol is</p>	<p><i>Whilst public health is not a specific licensing objective in its own right it is recognised that it falls at least within the remit of the public safety objective. Public Health is a statutory consultee (responsible authority) under the Licensing Act 2003 and see <a href="http://www.nta.nhs.uk/uploads/phe-licensing-guidance-2014.pdf">http://www.nta.nhs.uk/uploads/phe-licensing-guidance-2014.pdf</a>. Officers agree that this information in an edited form specific to Harrow provides a</i></p>

	<p>associated with thousands of UK deaths per year.<sup>4</sup> Costs to the NHS were estimated at £3.3-£3.5 billion per year between 2006-07 and 2009-10.<sup>6,7</sup> In 2012, the government estimated an annual cost to society of £21 billion.<sup>8</sup> In Harrow, it is estimated that approximately 50,000 residents drink at harmful or hazardous levels (= levels of non-dependent alcohol use above recommended limits, associated with harm or risk of harm, respectively). Rates of alcohol use are lower in some ethnic groups, but otherwise hazardous and harmful use is an issue relevant to a wide range of population subgroups based on age, sex and deprivation level.<sup>4,9</sup></p> <p>Harrow's Health and Wellbeing Strategy 2016-20 makes a commitment to 'Start well, Live well, Work well, Age well' and responsible alcohol consumption and sales are relevant to all these objectives. Healthier high streets are a key component to making Harrow a healthier and happier borough.</p>	<p><i>further useful context to the SLP and is included at paragraph 3.3.</i></p>
Public Health	<p>Add to the table on page 9 under "Public safety":  "Identifiable high levels of alcohol consumption in the vicinity of the premises that might be increased by the grant of an authorisation"</p>	<p>This will allow other data available in the future that points to high levels of harm around a premises or that points to drinking at a premises or in an area (such as police data, or ambulance/hospital data) to be able to be considered and so would be included within the SLP.</p>
Licensing agent 1	<ol style="list-style-type: none"> <li>1. On 19<sup>th</sup> September 2016 LBH sent a letter explaining it is reviewing its policy. It gave just two weeks for consultation responses.</li> <li>2. The letter set out 15 main changes. These included a proposal that where a licensee does not have prior planning permission, the authority would consider imposing a condition that the licence cannot be used in full until planning permission has been obtained.</li> <li>3. The draft policy itself runs to 22 pages. There is a web consultation portal which basically allows general comments without asking about any particular changes.</li> </ol>	

	<p>4. The existing policy runs, with appendices, to 75 pages. In paragraph 1.12 it actually says that the policy is to cover the period 3<sup>rd</sup> December 2015 to 2<sup>nd</sup> December 2020. To all intents and purposes the draft policy is a new policy.</p> <p>5. On 20th September 2016, Compliance Direct wrote to the Council complaining about the change in policy regarding planning permission. The paragraph in question, which is in fact para 7.6 and not 2.6 as stated by LBH, reads:</p> <p style="padding-left: 40px;">“Planning and licensing are distinct regimes and will be properly separated to avoid duplication and inefficiency. Where planning permission has not yet been granted and there appears likely to be a clear conflict between licensing and planning permissions (eg a difference in permitted hours) a condition may be imposed prohibiting the use of the licence in full until appropriate planning permission has been obtained.”</p> <p>6. Compliance Direct Ltd stated that it considered the proposal to be for a disproportionate, standardised condition, that obtaining planning permission was not a licensing objective and in any case trying to control planning legislation by licensing conditions would be ultra vires.</p> <p>7. LBH’s reply to that was that there is a recognition that planning is a separate regime, but that the planning authority was a responsible authority and that if it made a representation about breach of a planning condition then a licence condition might be appropriate to restrain a criminal breach of a planning condition.</p> <p>8. With all due respect to the writer of the reply, this represents faulty analysis.</p> <p>9. The function of the Licensing Sub-Committee is to establish in licensing</p>	<p><u>Planning permission</u> The proposal to replace a condition with an informative to the premises licence holder has merit and officers recommend that this be included instead within paragraph 7.6 of the draft policy.</p>
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terms what steps are appropriate for the promotion of the licensing objectives. These might be the same as, greater than or less than steps which have been or might yet be imposed on a planning permission. If the licensing conditions are more stringent than steps required by planning, then the licence conditions will be the main control on the operation. If they are less stringent, then it will fall to the applicant to procure a revision of the planning control on the operation before the licence can be fully utilised.

10. If the licensee operates in breach of planning control, **this is not a crime**. It would only become a crime if (which is not a given) the planning authority deems it appropriate to serve an enforcement notice and the notice remains unappealed or any appeal against that enforcement notice fails. Even at that point, the planning system is perfectly adequate to enforce the control. It certainly does not need the system of licensing to duplicate the control.
11. All of this is tolerably clear on the face of the section 182 Guidance, whose provisions have either been **ignored or misunderstood**:
12. First, paragraph 1.16 provides that licence conditions should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation.
13. Second, paragraphs 13.57 and 13.58 provide as follows:
  - “Planning and building control
  - 13.57 The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa.
  - 13.58 There are circumstances when as a condition of planning permission, a terminal hour has been set for the use

of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.”

13. The idea of licensing being used to enforce the planning regime is therefore **not supported by national guidance. Nor is it necessary.**
14. We also note that LBH have used an analogy of premises licences being used to restrain statutory nuisance. The analogy is not a true one. Licences are not used to replace the statutory nuisance regime under the Environmental Protection Act 1990 but to promote the licensing objective of the prevention of public nuisance. A closer analogy would be a licence condition requiring a licensee to comply with the terms of an abatement notice. Even that is not exact, because breach of such a notice is an offence. But in any case nobody would consider such a licence condition to be sensible or necessary.
16. In our view, therefore, the proposal is completely misguided and should not be carried forward into the new proposed policy.
17. What might properly be done is for a licensing authority granting a licence to cover it with a letter carrying an informative that the licence does not grant any consent required any other regime, so as to place the recipient on notice that the regulatory requirements are separate.
18. So far as the time permitted for the consultation is concerned, LBH have justified this on the basis that the Cabinet Office guidelines have no statutory binding force, and do not recommend a 12 week consultation in any event. The reason actually given for the two week consultation period was that any longer and it would not be possible for the policy to be introduced from 1<sup>st</sup> January 2017.

19. However, the principles governing a lawful consultation are now well understood. A lawful consultation must (a) take place at a time when proposals are still at a formative stage, (b) give reasons for any proposal so as to permit intelligent consideration and response, (c) give adequate time for consideration and response and (d) give the product of the consultation conscientious consideration: see R v Brent London Borough Council, Ex p Gunning (1985) 84 LGR 168.

20. What is at stake here is the wholesale revision of a licensing policy, including a new set of guidelines for compliance with the licensing objective and a new enforcement protocol. It is absolutely obvious, in our view, that two weeks is a wholly insufficient time to permit proper consideration, and so the third principle is clearly breached. We do not in frankness think that there could be very much debate about that.

21. Furthermore, we consider it to be an inadequate reason for an unlawfully short consultation period that the policy has to be adopted by x date. If that was the case, then the consultation should have been planned to start earlier to enable a proper period for consultation.

22. Finally, LBH's statement that it is "not appropriate" that the new policy would not be adopted until 1<sup>st</sup> May 2017 is not a rational reason to afford less time than is necessary for consultation. The existing policy was only adopted 9 months ago and is valid on its face until 2020.

It is in all parties' interest, that a reasonable period is provided for consultation replies and the Planning condition is removed from the final draft.

Consultation period

*The initial consultation period ran from 16 September 2016 to 9 October 2016 but in light of this comment the consultation was extended until 9 December 2016.*

<p>Licensing agent 2</p>	<p>Paragraph 9.2 – Please clarify what does non-binding comment mean when used in the context of on the veracity of the evidence presented to sub-committee?</p> <p>Paragraph 2.6 -. This proposal in part appears to go against generally accepted good practice. It is known that planning should not influence whether an application for a premises licence can be submitted to the licensing authority and vice versa. If planning has not been granted for a proposal then it is up to the planning legislation and council planning enforcement offices to deal with any breach of planning. Taking these comments into account our professional view is that the licensing authority should not seek to impose a condition that is likely to be ultra virus as it attempts to extend the licensing act to restrict the use of a premises licence on matters of planning which are outside the scope of the act. In the home office guidance Para 10.10 states. Licensing Authorities should ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objective. It is suggested that any planning issues could be placed as an informative on a premises licence that is granted but does not have planning in place.</p> <p>Paragraph 10.7 - Please clarify if a petition would have to be a “relevant representation” as defined by the Act?</p> <p>Paragraph 10.8 - Same comment as 10.7 above.</p> <p>Section 11 – Please clarify how the officer dealing with a licensing application will be demarcated and separated from the officer who may make a representation against an application. At present the wording of the draft policy in this section does not appear to follow the licensing act legislation or</p>	<p><i>It is for a Licensing Panel alone to determine an application, based on the evidence before it, for the promotion of the licensing objectives. In any event this paragraph has been removed.</i></p> <p><i>See above comments relating to paragraph 7.6</i></p> <p><i>A petition would still have to qualify as a relevant representation in order to be considered.</i></p> <p><i>As above.</i></p> <p><i>The authority has withdrawn this proposal and will ensure the separation of responsibilities is applied.</i></p>
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	<p>Home Office guidance March 2015.</p> <p>Section 13 - Guidelines to ensure consistency on review. It is understood that each premises is an individual as is each case and should be determined on its own merits. Can the licensing authority clarify will guidelines be provided as advice to members or a requirement to follow this advice?</p>	<p><i>Each application would be considered on its own merits and the guidelines will be published to provide a degree of consistency when considering each application at the Panel's discretion.</i></p>
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