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Dear Sir,

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 Harrow 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. The BBPA welcomes the Council's positive approach to the licensing of the sale of alcohol and the provision of public entertainment and in particular its recognition of the cultural and social contribution that the trade has to make, and also its importance as a local employer. 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.

We welcome this opportunity to provide comments as part of this licensing policy review and this response is also supported by BII, the professional body for the licensed retail sector. We have not used your general response form as our comments are general in nature. Our main observations are as follows:

Conditions

The Association is pleased that the Council has recognised that blanket or standard conditions cannot be imposed under the Licensing Act, except where there are valid objections to a licence on the grounds of one of the licensing objectives or where an objection is upheld following a hearing. Your policy recognises that anything put forward on an Operating Schedule would normally become a condition on a licence, but we are concerned that your policy may lead to applicants providing more information than is necessary within their operating schedules. Applicants need to assess the risk in their own premises and then offer additional measures within their operating schedule in relation only to issues which have been identified. Any other information within the operating schedule will lead to more conditions being attached to the licence than is strictly necessary. If objectors believe the licensing objectives will not be met, it is always open for them to make relevant representations.

With regard to conditions generally para 2 refers to the wording of identical conditions being permitted in relation to "conforming to ACPO principles and other professional standards". We are concerned that these would be blanket conditions and therefore challengeable under the Act.

Prevention of Crime and Disorder

In this section you encourage applicants to seek advice about setting up a Pubwatch scheme where none exists – the contact details in the policy are no longer valid and should be replaced with www.nationalpubwatch.org.uk

The list of measures to consider when addressing the crime and disorder objectives includes a number of areas which we believe are beyond the remit of the Licensing Act. For example in 3(d) it is unrealistic to expect commercial competitors to form an agreement on hours of operation to prevent customers migrating between premises. In 3(g) the safety of staff and other persons working later shifts is not relevant to the Licensing Objectives. In 3(h) there should be no expectation that special arrangements will be made for seating in pubs, bars and nightclubs.

This section also includes an unrealistic "expectation" that applicants should be aware of local groups known to incite violence or hatred.

Public Safety

We welcome acknowledgement in your policy that capacity limits may only be considered subject to relevant representations being made. The vast majority of licensed premises do not currently have capacity limits and there is no reason for this to change.

Prevention of Public Nuisance

Applicants, who know their own premises best will carry out their own risk assessments and decide whether there is a particular issue to address.

Protection of Children from Harm

Your policy seeks to encourage licensees to inform appropriate agencies when children have tried to purchase alcohol illegally. This would place yet another burden on licensees and we would question the point of doing so in light of Ministerial statements that there is no intention of "criminalising" young people by prosecuting them for attempting to purchase alcohol".

With regard to access to the premises by children it should be adequate for licensees to state whether children are permitted or not within their premises without any requirement to define specific areas set aside for children and families.

Applications

Your policy states that Operating Schedules should be precise and clear about the measures proposed to promote each of the licensing objectives. We would remind you that the Government's Guidance makes it clear that it is entirely up to applicants to decide what steps (if any) they intend to take to meet the licensing objectives. Although relevant representations might be more likely if little information is provided, this in itself does not make an application invalid.

We would emphasise once again that even where representations are raised with the Licensing Authority that the Licensing Objectives cannot be met unless additional specific conditions are attached, the Licensing Authority can only attach a condition where an objection is upheld following a hearing.

The Licensing Authority should recognise that not all drinks promotions and "happy hours" are irresponsible and the Licensing Authority cannot prevent legitimate commercial activity.

Although sympathetic to the request for consultation about Temporary Event Notices at the earliest practical stage, your policy should also state in this section the current legal minimum requirement for notice of 10 working days.

Enforcement Policy

We 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

Smoke free premises

The Council's draft policy makes specific reference to the smoking ban which is enforced by separate legislation and therefore not within the scope of the Licensing Objectives. It is not unlawful for customers to smoke outside and we would hope that the Council would not wish to unnecessarily constrain a business which wished to accommodate smokers outside. In the event that customers outside a licensed premises gave rise to noise nuisance and

representations were made to the licensing authority on these grounds, then the matter can be dealt with via the processes contained in the Licensing Act 2003. Where customers are outside the premises because they are *smoking*, there should not be an automatic assumption that this will lead to unacceptable noise nuisance. If it does, then interested parties and responsible authorities are legitimately entitled to raise the issue as they would for any other cause of noise nuisance. Any conditions on a licence resulting from representations on noise nuisance should be evidence based and relate to the public nuisance objective and not smoking.

Designated Premises Supervisor

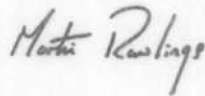
There can be no expectation on behalf of the Council that the DPS "will be available more frequently than not". There is no mechanism in the Licensing Act for licensing authorities to:

- Insist that the DPS be on the premises at all times
- To make a fit and proper judgement on individuals nominated as the DPS
- Insist on experience, training or qualifications in addition to the personal licence qualification
- Insist on more than one personal licence holder for the premises.

The law simply requires a DPS to be nominated for licensed premises where the sale of alcohol is to take place.

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,



Martin Rawlings