

**23rd DECEMBER 2004**

**REPORT OF DIRECTOR OF  
NEIGHBOURHOOD  
SERVICES**

**PORTFOLIO – Environment**

**LICENSING ACT 2003 STATEMENT OF LICENSING POLICY**

**RECOMMENDATION**

That the draft Statement of Licensing Policy subject to any further amendments be forwarded to Council for approval.

**KEY CONTENT**

The Licensing Act 2003 requires the Licensing Authority to prepare and publish a Licensing Policy every 3 years.

A Draft Licensing Policy was therefore considered by Cabinet on the 28th October 2004 when it was resolved that a further report would be submitted following the end of the statutory consultation period.

The Policy must be approved by Council and be published by the 7th January 2005.

**RESOURCE IMPLICATIONS**

The licence fees have still not been set by Government although information with regard to the Governments proposals is currently undergoing a public consultation exercise.

**CONSULTATION**

Appendix 1 lists those persons and organisations who were consulted during the 8 week consultation period which ended on 29th November 2004. Over 500 policy documents were distributed prior to the commencement of the consultation process. Written comments relating to the policy were received from the following persons/organisations:

- Durham Constabulary
- County Durham and Darlington Fire and Rescue Service
- Company Secretary/Solicitor Jennings Brothers PLC
- Durham County Council Area Child Protection Committee
- Bishop Middleham Parish Council
- Equity – North East Office
- Royal Society for the Prevention of Cruelty to Animals
- Chairman of the Live Music Forum
- Durham County Council Trading Standards Service

- Director of Public Health and Health Improvement. Sedgefield Primary Care Trust
- Co-ordinator/Unit Manager Drug and Alcohol Action Team
- Association of Licence Multiple Retailers
- British Institute of Innkeeping
- Head of Neighbourhood Services Sedgefield Borough Council
- Building Control Section Sedgefield Borough Council

These comments have been summarised in Appendix 2 and the Policy has been amended where necessary to reflect them.

Amendments to the policy are highlighted in **bold type**

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Ward(s)  
 All wards in the Borough

Key Decision Validation  
 Affects 2 or more wards.

Background Papers  
 The Licensing Act 2003  
 Guidance issued under section 182 of the Licensing Act 2003.

**Examination by Statutory Officers**

	Yes	Not Applicable
1. The report has been examined by the Councils Head of the Paid Service or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Councils S.151 Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council's Monitoring Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**LIST OF CONSULTEES**

- Chief Constable of Durham Constabulary
- Chief Fire Officer County Durham and Darlington Fire and Rescue Service.
- All businesses throughout the Borough holding a current licence or likely to require a licence including pubs, clubs, off licences, supermarkets, take aways, restaurants and mobile food vendors.
- Durham Area Child Protection Committee
- Durham County Council Trading Standards
- All elected members of Sedgefield Borough Council
- Departments in Sedgefield Borough Council
- Clerks of Sedgefield Town Council, Spennymoor Town Council, Great Aycliffe Town Council, Ferryhill Town Council, Shildon Town Council.
- Parish Councils of Bishop Middleham, Chilton, Cornforth, Eldon, Fishburn, Trimdon Windlestone Middridge.
- Crime and Disorder Reduction Partnership
- Durham CIU.
- The British Institute of Innkeeping
- The British Beer and Pub Association
- The Federation of Licensed Victuallers
- New Century Inns, Wolverhampton and Dudley Breweries PLC, Spirit Group PLC,, Punch Pub Company, Enterprise Inns PLC, Inspired Pubs and Taverns, Jennings Brothers PLC, Dorbiere Ltd, Pub Estate Company Limited, Tadcaster Pub Company.
- The Association of Licensed Multiple Retailers
- Equity
- Sedgefield Primary Care Trust
- North East Musicians Union
- Hammonds Solicitors
- Poppleston and Allan Solicitors

**APPENDIX 2**

**SCHEDULE OF RESPONSES TO DRAFT STATEMENT OF LICENSING POLICY**

Reference	<b>Respondent</b>	Comments	Appraisal	Response
000/001	Assistant Fire Safety Manager Projects County Durham and Darlington Fire and Rescue Service Framwellgate Moor Durham	For information purposes include internet web site address.		Web site address <a href="http://www.ddfire.gov.uk">www.ddfire .gov.uk</a> included
000/002	Co-ordinator/Unit Manager Drug and Alcohol Action Team	Rather than consideration of plastic glasses, wording should reflect active encouragement.	The reference to plastic glasses on page 31 of the policy is taken from the model conditions outlined in Government Guidance.	No change to policy
000/003	Company Secretary / Solicitor Jennings Brothers PLC, Castle Brewery, Cockermouth, Cumbria CA13 9NE.	Paragraph 2.6 Reference to section 177 should be to Section 182.	This paragraph is now 2.7 in re-drafted policy	Reference amended to Section 182
000/004	Jennings Brothers PLC	The Draft refers throughout to "the Council". The problem with this is that the Act of 2003 refers specifically to the "Licensing Authority". Whilst the Council is		Where necessary references to Council

000/004		<p>charged with dealing with licensing matters as a licensing authority, other Council Officers can object to, or make representations about, licensing applications submitted by prospective licensees. That being the case, it is important that members of the licensing authority, who have to act in a quasi-judicial manner in that capacity, think of themselves not as “the Council” but as “the Licensing Authority.” Perhaps more importantly, other Council officers, and members of the public should also see them in that light- justice should not only be done, but manifestly be seen to be done.</p>		<p>changed to Licensing Authority</p>
000/005	Jennings Brothers PLC	<p>The policy document repeatedly uses the word “expects” in terms of the Council’s (Licensing Authority’s) view of applications (eg paras 5.2,5.4,5.5,7.2,7.4,8.11,– 9.6 there may be others). In my respectful submission, this is not a helpful word in this context, being rather vague. The Authority might “expect something, but that is different from “requiring” it. A disappointed applicant might well have grounds for appeal when told his application is refused because he did not meet the Council’s expectation (as opposed to failing to meet a stated requirement).</p>		<p>Where necessary references to “expects” amended to “requires”</p>

000/006 000/006	Jennings Brothers PLC Jennings Brothers PLC	Paragraph 11 mirrors similar paragraphs in a number of draft policy statements adopted by Councils up and down the country (to which I have also raised this same objection). However, whilst having every sympathy with the desire to stress the existence of the Disability and Discrimination Act, and the need to behave consistently with it, it is in my submission inconsistent with the section 182 guidance to raise the DDA to this level of prominence. In the first place, why is discrimination considered more important than any other inappropriate behaviour rendered unlawful by statute? And why is it appropriate to elevate disability discrimination as an issue above, eg sex or race discrimination? Secondly, I would remind you that the s182 guidance stresses that the opportunity should not be taken to duplicate other legislation, with its own enforcement regimes.	DDA is an important issue which applicants must consider. This was the intention in the policy. It was not intended to be any more prominent than any other piece of legislation nor was it intended to use licensing legislation to achieve the objectives of DDA.	Policy amended Applicants required to consider DDA in any application.  The wording in para 5.3 which relates to public safety reflects this.
000/007	Head of Neighbourhood Services Sedgefield Borough Council	No reference in the document to commencement dates for the various sections of within the legislation.		Policy amended at Para.2.4
000/008	Ditto	Section 3.3 refers to the proposed Alcohol Harm Reduction Strategy – state whose strategy it is.		Inclusion at Para 3.4
000/009	Secretary	The expectations of the policy in relation to	In the absence of any	See para

	Durham Area Child Protection Committee Durham County Council Durham.	the Responsible Authority for protecting children from harm appear to have enormous resource implications. There appears to be an explicit expectation that ACPC/Social Services will vet every application for a licence and renewal. Not only does this have resource implications but I doubt if Social Services possess the expertise/knowledge to carry out this task.	other organisation accepting responsibility as a responsible authority the ACPC will be named within the Policy as the Responsible Authority	7.16
000/010	Bishop Middleham Parish Council	There will be an obligation to protect the quality of life for residents in close proximity to pubs, clubs and fast food outlets. Can you therefore ensure that people so affected are consulted in the same way as planning applications are managed?	Only responsible Authorities will be formally consulted. Applications for variations will be advertised at premises and in press to allow interested parties to make representations.	Reference to interested parties in the policy relates to residents in close proximity to pubs etc.
000/011	Equity - North East Office	We are pleased to note on page 15 of your statement of licensing policy that the Council policy “ recognises the need to encourage and promote live music dance and theatre...” But this seems to be the only direct reference to the arts. There is no reference to circus (an area potentially hit hardest by the new regime if touring circuses are to require 40-70 premises		New reference included in policy at 12.4

		licences a year) and street entertainment ( other than the reference to ISAN on page31) which we would urge you to incorporate and consider facilitating by taking out licences on regularly used spaces in the Council's name.		
000/012	Royal Society for the Prevention of Cruelty to Animals	The RSPCA's view is that circuses fall within the definition of regulated entertainment as defined within the Act. "Regulated entertainment" includes the performance of dance and music (live or recorded) and any entertainment of a similar description. Music and dancing are likely to be main attractions in a circus' programme. The RSPCA therefore advises that all circuses should be required to apply for a premises or a temporary event notice to hold an event in your area.	Every application will be considered on its merits.	No change to policy.
000/013	Chairman Live Music Forum 2-4 Cockspur Street London SW1 5DH	Tessa Jowell in her letter accompanying the section 182 Guidance spoke of the very important and often underated role that Local Authorities have to play in the country's musical and broader cultural life. Her letter drew particular attention to how local authorities can use new opportunities provided by the 2003 Act for the development of a range of cultural activities, including the performance of live	This comment was received without reference to the Policy. The comments included a suggested form of words for inclusion	This has been covered in Para 12 of the Policy

000/013	Chairman Live Music Forum 2-4 Cockspur Street London SW1 5DH	music, in local communities. The Forum is very keen to encourage local authorities to adopt as many of the recommendations contained within the S.182 Guidance in relation to live music as possible.		
000/014	Durham County Council Trading Standards Service	The words "and Trading Standards" be added after the word police on line 2 paragraph 8.5		Policy changed
000/015	Trading Standards Service	The Conditions in Appendix 5 be extended to include several other measures that could be taken to prevent under age sales of alcohol.	Appendix 5 is Government guidance which cannot be altered	These matters have been included in Para. 7.6
000/017	Director of Public Health and Health Improvement Sedgefield Primary Care Trust	It is unclear what level of evidentiary proof is required to prevent the issuing of a licence.	Only evidence relating to the licensing objectives can be taken into account when committees make decisions.	See para 14 relating to functions of committee.
000/018	Director of Public Health	In relation to drinks promotions can adherence to Industry guidelines be a licensing condition	Licensing committee could consider such a condition	No policy change
000/019	Director of Public Health	Paragraph 9.1 " longer licensing hours could reduce the potential for disturbance" Can 9.1 be rephrased to acknowledge that it is unclear what impact longer licensing hours could have on levels of disturbance.	The effect will only become clear after the legislation comes into force. In the meantime the effects	Para 8.1 reworded to reflect this

			are just speculation	comment
000/020	Durham Constabulary	Policy should make it clear policy is about regulating licensing activities within terms of 2003 Act and conditions will be focussed on matters under the control of individual licencees.		See para 3.3
000/021	Durham Constabulary	Policy should make it clear licensing law is not the primary mechanism for general control of nuisance and anti social behaviour by those once away from the premises. Nonetheless licensing law is a key aspect of control and will be a part of a holistic approach to the management of the evening and nighttime economy in town and city centres		Policy amended at 3.6
000/022	Durham Constabulary	Policy should indicate which body is responsible for the protection of children from harm in their area, to which applications will need to be copied		Policy amended at 7.16
000/023	Durham Constabulary	Where the classification (film) is by a local authority, the policy should indicate where information will be published and made available		Policy amended at 7.10 and 7.11
000/024	Durham Constabulary	Policy should recognise account to be taken of the need to encourage and promote a broad range of entertainment		See para 12.4
000/026	Durham Constabulary	Policy should be specific in terms of Local Authorities view of, and therefore guidance surrounding opening hours particularly in	Provision of hours in policy is specific to the Guidance	Rewording to Para 8. Licensing

		relation to the location of licensed premises		hours
000/027	Durham Constabulary	More guidance requiring Door Supervisors and their numbers at particular premises, providing particular facilities, operating at particular hours.	Reference to door supervision is considered to be sufficient	No change to policy
000/028	Durham Constabulary	CCTV installations should be police approved. Consideration should be made to making such provision mandatory	This is not a mandatory condition under the Act. It can only become a condition following representations	No change to policy
000/029	Durham Constabulary	Pubwatch schemes should be encouraged		Addition to policy at 4.1
000/030	Durham Constabulary	Matrix of type of premises, licensable activity etc is recommended	Unable to provide this information.	No change to policy
000/031	Durham Constabulary	Policy should include an outline of the scope of the policy		Addition to policy at 2.20
000/032	Association of Licensed Multiple Retailers	We are concerned that references in the draft policy to the issues which the Council will expect applicants to address may not be appropriate for all types or size of premises.	All applications will be dealt with on their merits	No change to policy
000/033 000/033	Association of Licensed Multiple Retailers	Include additional information on number and type of licensed premises to give a feel for the economic and social importance of the sector.		References included in policy at 1.2 and 2.20,

000/035	Association of Licensed Multiple Retailers	Reference to importance of licensing objectives in applications and setting conditions	Policy aims to achieve this.	No change to policy
000/036	Association of Licensed Multiple Retailers	Paragraph 4.1 goes beyond Government Guidance.		Paragraph reworded at 3.8
000/037	Association of Licensed Multiple Retailers	Policy must reflect that conditions are necessary, proportionate and necessary	Conditions will be tailored to suit style and characteristics of premises	See para 18.2 of policy.
000/038	Association of Licensed Multiple Retailers	Clarification required regarding presence of personal licence holder on site.		See Paras 4.6-4.8
000/039	Association of Licensed Multiple Retailers	Paragraph 5.6 implies that safe capacities will be applied as a matter of policy		See para 4.9
000/040	Association of Licensed Multiple Retailers	Licensing Authority cannot require greater control measures at certain premises	The policy does not reflect this	No policy change.
000/041	Association of Licensed Multiple Retailers	Not helpful to categorise premises exclusively supplying alcohol as an area that gives rise to concerns regarding children.	These premises may without consideration be totally unsuitable for children	No policy change.
000/042	Association of Licensed Multiple Retailers	Clarification required that 28 days notice with regard to temporary event notices refers to calendar or working time.	Reference should be to calendar days.	Policy amended
000/043	Association of Licensed Multiple Retailers	Clarification on whether policy applies to transfer of permits for AWP machines during transitional period.	This is not a licensing function under 2003 Act.	See para 13
000/044	Association of Licensed Multiple Retailers	Include in delegation of functions section procedures for handling conflicts of interest and guidelines for processing of		Reference included at Para.14.10

		applications		
000/045	Association of Licensed Multiple Retailers	In definition section exemption for incidental music should be reflected		List of exemptions included in definition section.
000/046	British Institute of Innkeeping	Reflect importance of training in promotion of licensing objectives.		Addition to policy at 4.8
000/047	British Institute of Innkeeping	Para 4.1 "no requirement to submit evidence of measures intended to promote licensing objectives	Applicants must support the measures	See 3.8
000/048	British Institute of Innkeeping	Para 5.3 Onus on Council not applicants to ensure integration of various strategies.	It is only a recommendation that applicants take these matters into account..	No change to policy
000/049	British Institute of Innkeeping	Para 5.5,5.7 No indication given as to circumstances that in which capacity may be viewed as a relevant factor. Capacity limit should only be imposed where is a clear and justifiable need in respect of premises based on nature and style of premises.		Addition to policy at 5.6
000/049				
000/050	British Institute of Innkeeping	Paras 6.4, 7.4, 8.13 Policy should recognise the constraints the Act places on the Council when setting conditions.		Addition to policy at 8.14, 6.6,7.4
000/051	British Institute of Innkeeping	Para 9.6 Council's intention to discourage applications for 24 hour opening.	This is not the intention of the	Licensing hours

	British Institute of Innkeeping	Para 9.6 Council's intention to discourage applications for 24 hour opening.	licensing authority This is not the intention of the licensing authority	section reworded following police comments.
000/052	British Institute of Innkeeping	Para 11.1 The provisions of Disability and Discrimination Act are not relevant to the determination of applications.		Addition to policy at 5.3
000/053	British Institute of Innkeeping	Para 16.7 Concern that officers might determine conditions on licences	This was not the intention of the paragraph although understandable concern.	Paragraph deleted
000/054	Building Control Section Sedgefield Borough Council	General comment re: childrens certificates.	Existing certificates will transfer across. New applications /variations will have to take conditions re: protection of children into account	No change to policy
000/055	Building Control Section Sedgefield Borough Council	5.6 The issue of the maximum number of persons that can attend the premises or an event, i.e. occupancy capacity that can be safely accommodated in the premises, or parts of the premises will be considered by the Council		Reference at Para 4.9
000/056	Building Control Section Sedgefield Borough Council	6.3 The structural condition of the building adequate access and egress, especially means of escape and including satisfactory		Reference at Para 5.2. 5.3.

		layout.		
000/057	Building Control Section Sedgefield Borough Council	Licence only granted once new premises or alterations are complete and passed for occupation.		Reference at Para 11.4 -11.5
000/058	Building Control Section Sedgefield Borough Council	Current concern re: occupancy limits in pubs, clubs without entertainment licences		See Para 4.9

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