

Public Document Pack

Date of meeting Thursday, 21st January, 2016
Time 7.00 pm
Venue Civic Offices, Merril Street, Newcastle Under
Lyme, Staffordshire ST5 2AG
Contact Geoff Durham

Licensing Committee

AGENDA

PART 1 – OPEN AGENDA

1 DECLARATIONS OF INTEREST

To receive declarations of interest from Members on items contained within the agenda.

2 MINUTES OF SUB COMMITTEE MEETINGS (Pages 3 - 10)

To consider the minutes of the Licensing Sub-Committees which have met since the previous Licensing Committee.

3 Application for a Premise Licence: Embassy Grind (Pages 11 - 18)

4 Report on the Immigration Bill and New Licensing Powers (Pages 19 - 20)

5 Relaxation of Late Night Refreshment Licensing (Pages 21 - 30)

6 Update Regarding Temporary Event Notices (Pages 31 - 32)

7 URGENT BUSINESS

To consider any business which is urgent within the meaning of Section 100B (4) of the Local Government Act 1972

Members: Councillors Bailey, Eastwood, Frankish, Hambleton (Chair), Harper, Johnson, Mancey, Parker, Simpson, Tagg, Welsh, Wemyss, White (Vice-Chair), Williams and Winfield

PLEASE NOTE: The Council Chamber and Committee Room 1 are fitted with a loop system. In addition, there is a volume button on the base of the microphones. A portable loop system is available for all other rooms. Should you require this service, please contact Member Services during the afternoon prior to the meeting.

Members of the Council: If you identify any personal training/development requirements from any of the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Democratic Services Officer at the close of the meeting.

Meeting Quorums :- 16+= 5 Members; 10-15=4 Members; 5-9=3 Members; 5 or less = 2 Members.

FIELD_TITLE

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

LICENSING SUB-COMMITTEE

Monday, 23rd November, 2015

Present:- Cllr Hambleton in the Chair
Councillors Eastwood, Hambleton and Winfield

1. APPLICATION FOR A PREMISE LICENCE - LAMB STORES

Having taken into account the Licensing Act 2003 and the guidance issued under Section 182 of the Act, the Council's Statement of Licensing Policy and also the fact that representations had been received from Staffordshire Police, Trading Standards and a number of residents from the area on the basis that to grant the application would undermine the licensing objectives relating to crime and disorder, public nuisance and the protection of children from harm.

The Committee considered those licensing objectives in the light of what had been said and took into account that both Staffordshire Police and Trading Standards had entered into negotiations with the applicant and were both prepared to withdraw their objections to the granting of the premises licence on the basis of an agreement that had been reached regarding the imposition of the conditions referred to in the report.

With regard to the petition, the Committee considered that the proposed conditions submitted by both the Police and Trading Standards should be sufficient to meet the objections set out in the petition.

On the basis of such agreement and having considered the petition the Committee were persuaded that it would not offend the licensing objectives to grant the application subject to the agreed conditions.

The Committee were, therefore, disposed to grant the application and a Notice would be issued to that effect.

The conditions which the Committee were disposed to impose in addition to the relevant mandatory conditions and also conditions that were consistent with those listed by the applicant in the operating schedule were those conditions set out in Agenda Item 4 on pages 15 and 17 of the Agenda.

2. APPLICATION TO VARY A PREMISE LICENCE - THE ALBION

Having taken into account the Licensing Act 2003 and the guidance issued under Section 182 of the Act, the Council's Statement of Licensing Policy and also the fact that objections to the application have been received from both the Police and the Council on the basis that to grant the application would undermine the licensing objectives relating to the prevention of crime and disorder, the prevention of public nuisance and public safety.

The Committee have considered those licensing objectives in the light of what has been said and have listened to the arguments and are persuaded that having regard specifically to Guidance 13.29 and having heard the evidence of the Police referring to the information which had been before the Licensing Authority when it developed its Statement of Licensing Policy, the Committee consider that it may lawfully

consider giving effect to its Special Policy there has been no objections to this, the Committee then considered whether it would be justified in departing from its Special Policy in the light of individual circumstances.

In the light of evidence given the Committee are not however convinced that the proposals will warrant such a departure from its Policy.

The Policy states that where representations are received, applications for variations that are likely to add to the existing cumulative impact, including applications for later hours will normally be refused unless it can be demonstrated that the operation of the premises involved will not add to the cumulative impact already being experienced. Applicants need to clearly demonstrate in their operating schedule measured to address identified problems of drink related violence in the town centre and in particular will need to demonstrate measures to prevent binge drinking on the premises.

No such evidence appears in the premises operating schedule. The Committee were referred to the case of Portsmouth City Council v 3rd Entertainment Group (GC) Ltd and atmosphere bars and clubs and the judgement of the High Court on 18 February 2011. It was concluded that the Police did not have to provide hard evidence or to investigate the cumulative impact. The burden is on the applicant to persuade the Licensing Authority that its operating schedule was such that there would be no cumulative impact.

Further, in the Daniel Thwartes Case 2008 to which the Committee were referred, the Court made it very clear that the views of the Police concerning issues of Crime and Disorder should weigh heavily.

The applicant gave evidence that the Committee should more importantly give consideration to how the premises had been operated since it had been taken over by the current licensees in July 2014.

The Police in turn gave evidence of a number of incidents that had occurred in and around the premises between 28 September 2014 and 1 November 2015 half of which had occurred during later hours whilst TEN's were in operation. It was, however, accepted that this was only a proportion of cases where TEN's had been applied for. The Committee however took a serious view of the fact that a Mr Banks who the Committee were advised still has controlling influence in the premises, was convicted of assaulting a male customer whilst acting as a Doorman at the premises. The Police also gave evidence to the effect that the premises were in breach of Licence conditions relating to CCTV, Pubwatch and failure to use the radio.

The applicant referred to statistics which implied that crime and disorder had actually reduced in the vicinity of the premises but the Committee took the view that this was as a result of its Special Policy.

The Committee were also concerned as secondary issues about the possibility of migration of people from neighbouring areas if the Licence were granted and also the Police ability to Police the area in such circumstances to promote the objective. The Committee were not convinced that the application could be beneficially approved by the imposition of these conditions so as to promote the Licencing objectives.

Having taken the information into account, all the evidence given and the Authorities referred to the Committee are disposed to refuse the application and a Notice will be issued to that effect.

Chair

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LICENSING SUB-COMMITTEE

Wednesday, 16th December, 2015

Present:- Cllr Hambleton in the Chair
Councillors Eastwood, Hambleton and Welsh

1. APPLICATION FOR A PREMISE LICENCE - WHITMORE HALL ESTATE REPORT

Having taken into account the Licensing Act 2003 and the guidance issued under Section 182 of the Act, the Council's Statement of Licensing Policy and also the fact that objections to the application have been received from other persons on the basis that to grant the application would undermine the licensing objectives relating to the prevention of public nuisance, public safety, the prevention of crime and disorder and the protection of children from harm.

The sub-committee have considered those licensing objectives in the light of what has been said and have listened to the arguments and have taken into account the agreement that has been reached between Staffordshire Police, Environmental Health and the applicant as to appropriate conditions that basically required the provision of management plans and procedures following the grant of the proposed licence, but before the commencement of the festival that could promote the licensing objectives.

The sub-committee took into account the extensive evidence before them and also the evidence given by the Police that despite the agreement, they still had a number of reservations.

The sub-committee also noted that the application itself was defective in that it failed to specify the term of the event or over what period it was proposed and were persuaded that there had been inadequate consultations with the residents regarding the proposals, which had resulted in a petition and some 100 written objections to the proposal. It was however, accepted that the applicant had complied with the law in relation to notice provisions. The residents of the surrounding area however, made persuasive arguments that to grant the licence would undermine the licensing objectives.

The sub-committee were advised that residents would suffer public nuisance mainly in the form of noise and light intrusion from music generators, revellers and floodlights in connection with the licensable activity and also from people and vehicles coming to and going from the festival.

The sub-committee did not feel that the conditions proposed by the applicant could be adequately enforced during the festival having received evidence of the noise nuisance at a similar venue in the area.

Public safety concerns included the serious risk posed by traffic coming to and going from the site using the A53 highway adjacent to the site, which was known to be the second most dangerous road in Staffordshire, which unlit in the vicinity of the site and had no pavement on the roadside closest to the site. Evidence showed that traffic management issues would occur throughout the day. It was not considered that

conditions would be useful in this respect, and a traffic management policy would not solve the problem.

Concern was also expressed at the inadequacy of the entrance and exits to the site which posed danger and to the pedestrian traffic conflict on the A53, which had resulted in a number of accidents in the vicinity. The road carried at present some 12,000 vehicles per day and the increase in traffic if the application were granted, as the Police agreed, would cause significant delays to transport and increase the likelihood of further accidents, which emergency vehicles would find it difficult to respond to, involving people trying to cross the road to the inadequate pavement on the other side.

There was no fencing to the site at the roadside and concern was expressed at people forcing access through boundary hedges. There was no indication that fences would be put in place at that location.

At present, only a four foot high chicken wire fence divided the site from the well-used railway, which posed a positive danger to members of the public. Whilst the committee received and assurance that a higher fence with security patrols would be put in place on the site, the committee were not convinced that there was adequate protection for people trying to cross the railway to access the site. Further, the Committee was not convinced that the fencing on the site would go around the site sufficient to deter children from gaining access to the railway land.

Site plans suggested that there would be inadequate provision for parking on the site and festival goers would be at risk by the movement of traffic, which may not be able to park. There would be no Police presence during the proposed festival, although the applicant stated that the festival would be marshalled. The committee were concerned about this.

Concern was expressed generally for the safety of the public whilst on the site and the committee were not convinced that there had been a risk assessment carried that identified the measures necessary to protect the public. Specifically, there were no current search proposals which, in the present climate, were deemed essential.

The Police confirmed that the majority of crime and disorder would probably be confined to the site during the period of the festival, by having regard to the expected numbers attending the festival, it was considered that this would spill out to the outlying areas having an adverse effect on local businesses and the surrounding community following the proposed entertainment termination time.

The sub-committee were not persuaded that adequate measures (despite the proposed conditions) would be in place regarding the protection of children from harm and were specifically concerned about underage drinking, child exploitation and the exclusion of unaccompanied children from relevant licensed areas.

Members of the committee took the opportunity to visit the site but in general they were not convinced that this was an appropriate site for the proposed undertaking either in terms of size, nature or location. Neither was the committee convinced that the plans required by the applicant's conditions would be fully adhered to.

Having taken all of the matters into account, the committee have concluded that insufficient evidence has been provided by the applicant to show that the licensing objectives will not be undermined.

The committee are therefore disposed to refuse the application and a notice will be issued to that effect.

Chair

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Application to/for: Premise Licence

Submitted by: Democratic Services Manager

Portfolio: Safer Communities

Ward(s) affected: Town

Purpose of the Report

An application for a new premise licence has been received for Embassy Grind Ltd, 46 King Street, Newcastle under Lyme, Staffs, ST5 1HX.

The premise offers a coffee bar and food service that seats 12.

Representations have been received from Staffordshire Police on the basis that to grant the application would undermine the licensing objective relating to Crime and Disorder.

Conditions have been agreed between the applicant and Staffordshire Police which would prevent the undermining of the licensing objective listed above, a copy of these conditions is attached as an appendix to this report.

Recommendations

The Sub-Committee must take such of the following steps as it considers appropriate for the promotion of the licensing objectives:

- (a) To grant the application as requested.
- (b) To reject or amend the application.

1. Details of Application

Applicants: Keith George Greenhill

Premises: Embassy Grind, 46 King Street, Newcastle under Lyme, ST5 1HX.

Application for: New Premise Licence.

Details of Requested Application:

RECORDED MUSIC (Indoors) – Current	RECORDED MUSIC (Indoors) – Requested
NONE	Monday to Sunday: 07.30 to 22.00
SUPPLY OF ALCOHOL (on and off the premises) – Current	SUPPLY OF ALCOHOL (on and off the premises) – Requested
NONE	Monday to Sunday: 12.00 to 22.00
OPENING HOURS OF THE PREMISE – Current	OPENING HOURS OF THE PREMISE (Indoors) – Requested
	Monday to Sunday: 07.30 to 22.30

2. Consultation

Representations have been received from Staffordshire Police and conditions agreed with the applicant which are attached as an appendix to this report.

3. Policy Considerations

Licensing Objectives

The Licensing Act 2003 requires the Council to carry out its various licensing functions so as to promote the following four licensing objectives:

- i. the prevention of crime and disorder
- ii. public safety
- iii. the prevention of public nuisance
- iv. the protection of children from harm

Policy Statement

The Licensing Act 2003

The Licensing Act 2003 require the Council to publish a "Statement of Licensing Policy" that sets out the policies the Council will generally apply to promote the licensing objectives when making decisions on applications made under the Act.

The Council made a number of policy decisions in its Statement of Licensing Policy. The following policy decisions are relevant to the application:

- i. the prevention of crime and disorder – (paragraph 2.12 and 4.4)
- ii. public safety - (paragraph 2.15 and 4.1)
- iii. the prevention of public nuisance – (paragraph 4.2)
- iv. the protection of children from harm – (paragraph 2.10 and 4.3)

Statutory Guidance relating to the Licensing Objectives relevant to the application:

- (i) Crime and disorder - (paragraphs 2.1 to 2.7)
- (ii) Public safety - (paragraphs 2.8 to 2.17).
- (iii) Public nuisance - (paragraphs 2.18 to 2.24).
- (iv) Protection of children from harm – (paragraphs 2.25 to 2.35).

Copies of the Council's Statement of Licensing Policy and the Governments Statutory Guidance will be available at the Sub-Committee meeting.

4. Comments.

In making their decision on the application, the Sub-Committee are also obliged to have regard to Statutory Guidance and the Council's own statement of Licensing Policy. The Sub-Committee must also have regard to all the representations made and the evidence they hear. However, the Sub-Committee must disregard any objections that do not relate to the promotion of any of the four licensing objectives.

The Sub-Committee must take such of the following steps as they consider appropriate for the promotion of the licensing objectives as set out in the paragraph above:

- i. grant the application as requested.
- ii. to reject or amend the application.

The Sub-Committee are asked to note that they may not reject the application merely because they consider it desirable to do so. It must actually be appropriate in order to promote the licensing objectives

Date of hearing: Thursday 21st January 2015

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Robinson, Lynne

From: Kevin.Sherratt@staffordshire.pnn.police.uk
Sent: 16 November 2015 14:17
To: Robinson, Lynne
Subject: Fw: New Premise Licence

Hello Lynne,
Please find attached an email from the applicant agreeing to the conditions listed on in the emails.
These conditions will form part of the premise licence upon grant.

Embassy Grind Ltd
46, King Street
Newcastle.

Regards
Kevin

Kevin Sherratt - Licensing Officer
Northern Licensing Unit
Stoke Police Station
Booth Road
Stoke-on-Trent
ST4 4AH
Tel 01785 232840 Fax 01785 218705
Email
kevin.sherratt@staffordshire.pnn.police.uk



----- Forwarded by Kevin Sherratt/LPT Functions/Local Policing/staffspol on 16/11/2015 14:12 -----

From: [REDACTED]
To: <kevin.sherratt@staffordshire.pnn.police.uk>
Date: 16/11/2015 13:37
Subject: Re: Fw: New Premise Licence

Hello Kevin,
Thank you for your email, I agree to everything outlined in your email.
Kind regards
Keith Greenhill

Sent from Outlook

On Mon, Nov 16, 2015 at 1:17 AM -0800, <Kevin.Sherratt@staffordshire.pnn.police.uk> wrote:

Hello Keith
Please find attached the email that I originally sent you.

Regards
Kevin.

From: Kevin Sherratt/LPT Functions/Local Policing/staffspol
To: [REDACTED]
Date: 12/11/2015 15:40
Subject: New Premise Licence

Dear Keith,

Please find attached a list of CCTV and Challenge 25 condition which the police believe are necessary and proportionate to promote the Licensing Objectives, Prevention of Crime & Disorder and the Protection of Children from Harm.

These conditions will form part of the premise licence upon grant.

1. CCTV must be installed and cover all public area's. The CCTV unit shall be positioned in a secure part of the licensed premise and not within any private area of the location. Access to the system should be allowed upon reasonable request by the Police, Trading Standards or Local Authority Officers in accordance with the Data Protection Act where it is necessary to do so for the prevention of crime and disorder, prosecution or apprehension of offenders or where disclosure is required by law.
2. All images should be kept for a 31 day period and to be produced to the Police, Trading Standards or Local Authority Officers in relation to the investigation of crime and / or disorder issues, upon request or within 24 hours of such request where it is necessary to do so for the prevention of crime and disorder, prosecution or apprehension of offenders or where disclosure is required by law.
3. The CCTV system clock should be set correctly and maintained (taking account of GMT and BST).
4. The premises must adopt the challenge 25 scheme to tackle underage sales. All staff must be fully trained in its use before being allowed to sell alcohol and a record is to be kept of staff training in relation to the challenge 25 scheme
5. The designated premise supervisor should ensure that all staff training must be refreshed at least every 6 calendar months.
6. Persons purchasing alcoholic drinks who appear to be under the age of 25 must be required to produce proof of age by way of a proof of age card accredited under the Proof of Age Standards Scheme (PASS) or if a proof of age card is not available a genuine photo driving licence or passport.

If you agree to these conditions can you please reply by email.

Kind regards
Kevin.

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1. **REPORT TITLE** Immigration Bill - New Licensing Powers

Submitted by: Democratic Services Manager

Portfolio: Safer Communities

Ward(s) affected: Ward

Purpose of the Report

To inform Members of the Licensing and Public Protection Committees of the new licensing powers following the amendments to the Immigration Bill.

Recommendations

That Members note the amendments to the Immigration Bill with regards to new licensing powers and additional responsibilities.

1. **Background**

The Government has published the Immigration Bill that places additional responsibilities on licensing authorities to take action where licence holders are found to not be entitled to work in the United Kingdom.

The taxi and private hire provisions in the Immigration Bill were considered by the House of Commons' Bill Committee on 10th November 2015.

The amendments regarding taxi and private hire drivers were laid on 5th November 2015 and will now be considered during the bill's progress through Parliament, which is expected to complete in the spring 2016.

2. **Issues**

The new clause requires immigration checks and continuing compliance with immigration laws as part of the existing licensing regimes for taxis and private hire vehicles.

It does so by adapting existing provisions for private hire vehicles in London in the Private Hire Vehicles (London) Act 1998 and taxis and private hire vehicles in the rest of England and Wales in the Local Government (Miscellaneous Provisions) Act 1976.

The new clause requires immigration checks and continuing compliance with immigration laws as part of the existing licensing regimes for taxis and private hire vehicles.

Hackney Carriage and Private Hire

- a) Licensing authorities will have to ensure applicants have permission to work before being granted a licence;
- b) Driver and operator licences will not be issued for a period any longer than the length of a person's permission to live and work in the UK;
- c) Immigration offences and penalties would be grounds for a licensing authority to revoke a licence;
- d) It would be an offence for someone disqualified from continuing to hold a driver or operator licence for immigration reasons not to return their licence to the licensing authority.

Licensing Act 2003

The Bill recently published also sets out the following proposed amendments to the Licensing Act 2003. New sections and sub-sections have been added as follows:-

Premises Licences

- a) The designation of the Secretary of State as a responsible authority where the premises (not being a vessel) are being, or are proposed to be, used for a licensable activity;
- b) Disqualification of residents in the United Kingdom (UK) from applying for a premises licence where the resident is not entitled to work in the UK.
- c) Premises licences to lapse if the holder of the licence ceases to be entitled to work in the United Kingdom at a time when the holder of the licence is resident in the United Kingdom (or becomes so resident without being entitled to work in the United Kingdom).
- d) The requirement of an applicant to give notice of a transfer request to the Secretary of State.

Personal Licences

- a) Inserts and introduces a new immigration offence.
- b) Personal licences cease to have effect if the holder of the licence ceases to be entitled to work in the United Kingdom.
- c) Placing a new requirement on the licensing authority to notify the Secretary of State where an applicant for a personal licence has complied with the statutory requirements.

Options Considered

That the Committee note the proposed changes included in the Immigration Bill.

3. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

Creating a cleaner, safer and sustainable Borough

1. **REPORT TITLE** **Relaxation of Late Night Refreshment Licensing**
- Submitted by:** **(Democratic Services Manager)**
- Portfolio:** **(Safer Communities)**
- Ward(s) affected:** **(All)**

Purpose of the Report

To update Members on the new rules relating to Late Night refreshment.

Recommendations

For the Committee to Consider whether to pursue a policy that:

- a) Exempts certain categories of premise from requiring a licence for hot food or drink after 23.00
- b) Designates areas where premises do not need a Premise Licence to sell hot food or drink after 23.00
- c) Stipulate that during periods between 23.00 and 05.00, premises may trade freely for the provision of hot food and drink without the need for a licence.

Reasons

Section 71 of the Deregulation Act 2015 has now come into effect.

1. **Background**

a) Schedule 2 to the 2003 Act provides a definition of what constitutes the provision of late night refreshment. It involves only the supply of 'hot food and hot drink' between the hours of 11pm and 5am. Under Schedule 2, food or drink is considered to be 'hot' if, before it is supplied, it has been heated on the premises or elsewhere for the purpose of enabling it to be consumed at a temperature above the ambient air temperature and at the time of supply it is above that temperature; or after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature.

b) Paragraph 2A of Schedule 2 to the 2003 Act (as inserted by the Deregulation Act 2015) gives licensing authorities powers to exempt premises, in certain circumstances, from the requirement to have a licence to provide late night refreshment. Decisions to exempt supplies of late night refreshment are best made with local knowledge. The powers therefore allow licensing authorities to choose to apply an exemption specifically where they think it will be helpful to businesses and where there are no problems with antisocial behaviour or disorder associated with the night time economy. As well as freeing up the businesses in question from unnecessary costs, this can also provide greater flexibility for licensing authorities to target their resources more effectively.

c) Licensing authorities do not have to use the exemptions at all and can continue to require all late night refreshment providers to be licensed. However, licensing authorities should consider deregulation where appropriate.

- d) When choosing to designate particular categories of premises as exempt, a licensing can only exempt types of premises set out in the regulations. These are:
- Motorway service areas;
 - petrol stations;
 - local authority premises (except domestic premises) unless there is an event taking place at which more than 500 people are present;
 - schools (except domestic premises) unless there is an event taking place at which more than 500 people are present;
 - hospitals (except domestic premises);
 - community premises (church, chapel, village, parish or community hall or other similar building) unless there is an event taking place at which more than 500 people are present;
 - licensed premises authorised to sell by retail alcohol for consumption on the premises between the hours of 11pm and 5am.
- e) When choosing to designate a particular area as exempt, the relevant licensing authority must define the location, which can be of any size.
- f) When choosing to exempt the provision of late night refreshment at particular times, the relevant licensing authority must determine the times between 11pm and 5am when the exemption applies. The exemption and any subsequent change to the time will apply to the whole licensing authority area.

2. **Issues**

The provision of late night refreshment is regulated primarily because it is often linked to alcohol-fuelled crime and disorder in the night-time economy, such as at fast-food takeaways where late-night drinkers congregate. However, these safeguards may not be needed everywhere or for every type of late night refreshment business. For example, some late-night cafés serving hot drinks after 11pm may be located nowhere near pubs and nightclubs or areas associated with alcohol-related crime and disorder.

A relevant licensing authority may use more than one type of exemption at the same time, for example by changing the times across the licensing authority area during which licensing requirements will apply and also exempting premises by type across the whole licensing authority area. However, it cannot use different forms of exemption in conjunction with one another – for example, it would not be permitted to change the times in one geographic area only.

When applying any of the exemptions the relevant licensing authority must publicise the changes and should decide on the most appropriate way to do this, in addition to updating its statement of licensing policy as soon as is practical. There is no requirement for licensing authorities to tell premises individually, however they should publicise the exemption in a way that ensures that those who are likely to be affected may benefit from it. If any fees are paid prior to an exemption coming into effect, licensing authorities should consider whether a refund or partial refund is appropriate. It is for each individual licensing authority to develop its own

refund policy and ensure that it is communicated appropriately to all licence holders that are likely to be affected by an exemption.

3. **Options Considered**

The new powers allow a relevant licensing authority to exempt the supply of late night refreshment if it takes place:

- a) On or from premises which are wholly situated in a designated area;
- b) On or from premises which are of a designated description; or
- c) During a designated period (beginning no earlier than 11.00 p.m. and ending no later than 5.00 a.m.).

4. **Proposal**

- That the Committee consider whether to pursue and explore the possibility of a policy in relation to the above options

5. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- *creating a cleaner, safer and sustainable Borough*
- *creating a Borough of opportunity*
- *creating a healthy and active community*
- *transforming our Council to achieve excellence*

6. **Legal and Statutory Implications**

None at present.

7. **List of Appendices**

Guidance of the Licensing of Late Nigh Refreshment.

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Home Office

Guidance on the licensing of late night refreshment

1. Introduction

- 1.1 This guidance sets out what activities are to be treated as the provision of late night refreshment and as such are regulated under the Licensing Act 2003 (“the 2003 Act”). It also sets out which activities are exempt from the late night refreshment aspects of the licensing regime. In particular, it includes guidance on the provisions in the Deregulation Act 2015 which amends the 2003 Act to give licensing authorities powers to opt to exempt supplies of late night refreshment from the licensing requirements of the 2003 Act which are made at or from certain designated locations, types of premises or times.
- 1.2 This guidance is not issued as part of the statutory guidance under section 182 of the 2003 Act but will be incorporated into the section 182 guidance when it is next updated. It is intended to assist licensing authorities and police forces with monitoring and enforcement activity in relation to the provision of late night refreshment. It may also help businesses who wish to provide hot food or drink to determine whether they will require a licence under the 2003 Act in order to do so.

2. General

- 2.1 Schedule 2 to the 2003 Act provides a definition of what constitutes the provision of late night refreshment. It involves only the supply of ‘hot food and hot drink’ between the hours of 11pm and 5am. Under Schedule 2, food or drink is considered to be ‘hot’ if, before it is supplied, it has been heated on the premises or elsewhere for the purpose of enabling it to be consumed at a temperature above the ambient air temperature and at the time of supply it is above that temperature; or after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature.
- 2.2 Shops, stores and supermarkets selling cold food and cold drink, whether it is immediately consumable or not, from 11.00pm are not licensable as providing late night refreshment. The 2003 Act affects premises such as night cafés and takeaway food outlets where people may gather to purchase hot food or drink at any time from 11.00pm and until 5.00am. In this case, supply takes place when the hot food or hot drink is given to the customer and not when payment is made. For example, supply takes place when a table meal is served in a restaurant or when a takeaway is handed to a customer over the counter.
- 2.3 Some premises provide hot food or hot drink between 11.00pm and 5.00am by means of vending machines. The supply of hot drink by a vending machine is not a licensable activity and is exempt under the 2003 Act provided the public have access to and can operate the machine without any involvement of the staff.
- 2.4 However, this exemption does not apply to hot food. Premises supplying hot food for a charge by vending machine are licensable if the food has been heated on the premises, even though no staff on the premises may have been involved in the transaction.
- 2.5 It is not expected that the provision of late night refreshment as a secondary activity in licensed premises open for other purposes such as public houses, cinemas or nightclubs or casinos should give rise to a need for significant additional conditions.
- 2.6 The supply of hot drink which consists of or contains alcohol is exempt under the 2003 Act as late night refreshment because it is licensed by the provisions relating to the sale or supply of alcohol.
- 2.7 The supply of hot food or hot drink free of charge is not a licensable activity. However, where any charge is made for either admission to the premises or for some other item in order to obtain the hot food or hot drink, this will not be regarded as “free of charge”. Supplies by a registered charity or anyone authorised by a registered charity are also exempt.

- 2.8 Supplies made on moving vehicles (for example boats, trains or coaches) are also exempt. However supplies made from a vehicle which is permanently or temporarily parked, such as from a mobile takeaway van, are not exempt (see section 3.4 below for more detail on provisions for 'Vessels, vehicles and moveable structures').
- 2.9 Supplies of hot food or hot drink from 11.00pm are exempt from the provisions of the 2003 Act if there is no admission to the public to the premises involved and they are supplies to:
- a member of a recognised club supplied by the club;
 - persons staying overnight in a hotel, guest house, lodging house, hostel, a caravan or camping site or any other premises whose main purpose is providing overnight accommodation;
 - an employee of a particular employer (for example in a staff canteen);
 - a person who is engaged in a particular profession or who follows a particular vocation (for example, a tradesman carrying out work at particular premises);
 - a guest of any of the above.

3. Exemptions based on designated locations, premises types and times

- 3.1 The provision of late night refreshment is regulated primarily because it is often linked to alcohol-fuelled crime and disorder in the night-time economy, such as at fast-food takeaways where late-night drinkers congregate. However, these safeguards may not be needed everywhere or for every type of late night refreshment business. For example, some late-night cafés serving hot drinks after 11pm may be located nowhere near pubs and nightclubs or areas associated with alcohol-related crime and disorder.
- 3.2 Paragraph 2A of Schedule 2 to the 2003 Act (as inserted by the Deregulation Act 2015) gives licensing authorities powers to exempt premises, in certain circumstances, from the requirement to have a licence to provide late night refreshment. Decisions to exempt supplies of late night refreshment are best made with local knowledge. The powers therefore allow licensing authorities to choose to apply an exemption specifically where they think it will be helpful to businesses and where there are no problems with anti-social behaviour or disorder associated with the night time economy. As well as freeing up the businesses in question from unnecessary costs, this can also provide greater flexibility for licensing authorities to target their resources more effectively.
- 3.3 The powers allow a relevant licensing authority to exempt the supply of late night refreshment if it takes place:
- a) on or from premises which are wholly situated in a designated area;
 - b) on or from premises which are of a designated description; or
 - c) during a designated period (beginning no earlier than 11.00 p.m. and ending no later than 5.00 a.m.).
- 3.4 When choosing to designate a particular area as exempt, the relevant licensing authority must define the location, which can be of any size.

Vessels, vehicles and moveable structures

Under section 189 of the 2003 Act, a vehicle which is not permanently situated in the same place and is or is proposed to be used for one or more licensable activities while parked at a particular place, is to be treated as if it were premises situated at that place. Therefore, a mobile provider of late night refreshment, such as a kebab van, could be treated as exempt if it supplied hot food to the public late at night in an area which had been designated as exempt. If the mobile van drove to and began operating in a non-exempt area, a licence to carry on this activity would be required. Should the licensing authority introduce an exemption, and subsequently wish to revoke it if problems arise, it has the power to do so. Areas which are likely to be considered for exemption by licensing authorities (for example, an area outside a town centre) are unlikely to be areas in which mobile kebab vans would frequently operate. As such, mobile vehicles selling late night refreshment are likely to still require licences in the areas in which they are more commonly found.

- 3.5 When choosing to designate particular categories of premises as exempt, a licensing authority can only exempt types of premises set out in the regulations. These are:
- Motorway service areas;
 - petrol stations;
 - local authority premises (except domestic premises) unless there is an event taking place at which more than 500 people are present;
 - schools (except domestic premises) unless there is an event taking place at which more than 500 people are present;
 - hospitals (except domestic premises);
 - community premises (church, chapel, village, parish or community hall or other similar building) unless there is an event taking place at which more than 500 people are present;
 - licensed premises authorised to sell by retail alcohol for consumption on the premises between the hours of 11pm and 5am.
- 3.6 When choosing to exempt the provision of late night refreshment at particular times, the relevant licensing authority must determine the times between 11pm and 5am when the exemption applies. The exemption and any subsequent change to the time will apply to the whole licensing authority area.
- 3.7 A relevant licensing authority may use more than one type of exemption at the same time, for example by changing the times across the licensing authority area during which licensing requirements will apply and also exempting premises by type across the whole licensing authority area. However, it cannot use different forms of exemption in conjunction with one another – for example, it would not be permitted to change the times in one geographic area only.
- 3.8 Where a premises is situated in the areas of two or more licensing authorities, any of those authorities may be the relevant licensing authority and it would be advisable for an authority wishing to apply an exemption to discuss it with the other authority concerned. This might apply, for example, where an area or premises type exemption is being applied and the licensing authority is aware that a particular premises such as a motorway service area sits across the boundary of two or more licensing authority areas.

- 3.9 Licensing authorities do not have to use the exemptions at all and can continue to require all late night refreshment providers to be licensed. However, licensing authorities should consider deregulation where appropriate.
- 3.10 Existing late night refreshment licences for premises that become exempt from regulation will remain extant unless the holder chooses to surrender it to the licensing authority, but there will be no requirement on the licence holder to pay annual renewal fees and any conditions on the licence will cease to apply for as long as the exemption is in place. In cases where an exemption in relation to late night refreshment provision is applied, other licensing is unaffected. For example if a premises is licensed to sell alcohol and is exempt from requiring a late night refreshment licence, their licence in respect of the sale of alcohol is unaffected. Where a premises benefits from an exemption applied by the licensing authority, any existing conditions on a licence relating solely to the provision of late night refreshment will have no effect during the period of the exemption.
- 3.11 When deciding which exemption to use, if any, the relevant licensing authority should always first consider what the risks are in terms of the promotion of the licensing objectives. The decision to make an exemption is a licensing function that licensing authorities should include within their statement of licensing policy. It would then therefore be subject to the statutory consultation process with other responsible authorities and relevant parties set out in section 5 of the 2003 Act. However, it is for the licensing authority to decide on the detail and extent of the consultation beyond the statutory minimum. The licensing authority may decide to only consult on the proposed exemption or, alternatively, it may form part of a wider review of other matters within its statement of licensing policy. It is also for the licensing authority to decide within its statement of licensing policy whether the decision to grant exemptions is delegated to its licensing committee or to an officer.
- 3.12 When applying any of the exemptions the relevant licensing authority must publicise the changes and should decide on the most appropriate way to do this, in addition to updating its statement of licensing policy as soon as is practical. There is no requirement for licensing authorities to tell premises individually, however they should publicise the exemption in a way that ensures that those who are likely to be affected may benefit from it. If any fees are paid prior to an exemption coming into effect, licensing authorities should consider whether a refund or partial refund is appropriate. It is for each individual licensing authority to develop its own refund policy and ensure that it is communicated appropriately to all licence holders that are likely to be affected by an exemption.
- 3.13 Licensing authorities can review the exemptions at any time, to change the times, locations or types. However, unlike many other types of licensing decision, the late night refreshment exemptions are not made on a case by case basis and there is no recourse to bring an individual premises back into the licensing regime if there is a problem with that particular premises. In such cases the licensing authority would have to take a decision about the entire exemption and apply it across the whole area. Alternatively, depending on the scale of the problem, other powers could be used such as closure powers under the Anti-social Behaviour, Crime and Policing Act 2014. Environmental health legislation around noise nuisance may also offer a solution.

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Agenda Item 6

Update in Relation to the Number of Temporary Event Notices Allowed Per Year.

From January 1st 2016, the Council can now issue three extra Temporary Events Notices each year for the same area or premises; increasing the permitted from 12 to 15.

- The number of people allowed to attend an event licensed using a Temporary Event Notice is 499. This includes your staff;
- The event cannot last more than 168 hours, which is 7 days;
- If an applicant already has a personal licence to sell alcohol, they can be given up to 50 TENS a year for different premises / locations;
- If an applicant is applying for a Standard TEN, the local council, police and environmental health officer must receive a copy of your TEN at least 10 working days before the event; and
- If an applicant is applying for a Late TEN, the local council, police and environmental health officer must receive a copy of your TEN at least 5 working days before the event.

If an applicant applies for a LATE TEN and it receives objections from the local authority, police or Environmental Health, the notice won't be valid and the event cannot go ahead.

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