

APPENDIX H

EXTRACTS FROM THE STATEMENT OF LICENSING POLICY

Decisions of the Licensing Authority

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

- 1) The prevention of crime and disorder**
- 2) Public safety**
- 3) The prevention of public nuisance**
- 4) The protection of children from harm.**

Each objective is of equal importance. It is important to note that there are no other licensing objectives, therefore these four are of paramount importance at all times.

The Licensing Authority must base its decisions, in relation to determining applications and attaching any conditions to licences, on the promotion of these licensing objectives. The Licensing Authority has taken full account of the guidance issued to it by the Secretary of State under section 182 of the Act. Where it is necessary to depart from that guidance, the Licensing Authority will give its reasons for doing so.

Conditions - Avoiding Duplication with other Legislation

- 2.4 In accordance with the Secretary of State's Guidance, the Licensing Authority will avoid duplication with other regulatory regimes, such as the Health and Safety at Work etc. Act 1974, as far as possible when considering licence applications and conditions attached to those licences.
- 2.5 As recommended in the Secretary of State's Guidance, when attaching conditions to premises licences the Licensing Committee will have regard to our local Community Safety Plan and relevant conditions will reflect this plan where possible e.g. the provision of closed circuit television cameras in certain places.

Any conditions that are attached to premises licences and club premises certificates will be appropriate and proportionate to the operation of the premises and be focused on matters that are within the control of individual licensees and others in possession of various authorisations.

The Licensing Authority will also avoid the use of 'standard conditions', as far as possible, and will tailor conditions to individual premises where relevant. The Licensing Authority will, however, also have 'pools' of conditions to draw from where they are relevant to individual premises. These conditions will be updated as necessary and are available on the Council's website.

This Statement of Licensing Policy recognises the Race Relations Act 1976. The Licensing Authority will have due regard to the need to eliminate unlawful discrimination, and to promote equality of opportunity and good relations between persons of different racial groups.

Conditions re Live Music Applications

- 2.6 This Licensing Authority encourages cultural activities within the borough and is aware of the need to avoid measures that will deter live and recorded music late at night when determining what conditions should be placed on premises licences and club premises certificates - particularly those conditions that impose costs of a disproportionate nature. However, any adverse environmental impact that may arise from individual applications will also be taken into account when considering such applications. Where adverse environmental impacts arise due to the provision of live and recorded music between 08:00 and 23:00, and an appropriate application to review a premises licence has been received, the Licensing Authority will consider removing the exemption from licensing requirements and attach relevant conditions to the premises licence in order to minimise disturbance to neighbours.

Applications considered on their own merits

- 2.8 The Licensing Authority recognises the contribution of licensed premises to leisure activities, culture and the economy within the borough. The role of the Licensing Authority is to exercise its statutory powers with a view to promoting the licensing objectives, **and it will not impose restrictions on existing or proposed activities except where it is deemed appropriate and proportionate to do so.**

The Licensing Authority will have no discretion to refuse to grant, or to impose conditions on, applications for new premises licences and variations to existing licences in the absence of relevant representations. Where, however, relevant representations have been made, the Licensing Authority's discretion is engaged and it must take steps as are appropriate and proportionate to promote the licensing objectives. This may include refusal of the application or the attachment of conditions.

When this policy refers to the Licensing Authority's approach to the exercise of its decision-making powers, this refers to those cases where its discretion has been engaged by the receipt of relevant representations. Nothing in this policy prevents an applicant from applying for new or varied licences, and

each case will be considered on its own individual merits, having regard to the content of this policy.

This paragraph applies equally to the grant or variation of club premises certificates.

- 2.11 The Licensing Authority recognises the issues faced by the hospitality industry due to the Covid-19 pandemic and will apply this policy as flexibly as possible to support businesses during their recovery.

Council's duty under Article 8 of the European Convention on Human Rights

- 3.9 The Council has a duty under Article 8 of the European Convention on Human Rights to protect the rights of its residents to privacy and family life. The Council also acknowledges the rights of businesses in its area to operate, but this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises.

“Other Persons”

- 6.1 The Act describes two “bodies” that may make representations to licence applications and may apply for an existing premises licence to be reviewed by the Licensing Authority, Responsible Authorities and “Other Persons”. A list of Responsible Authorities can be found in Appendix B
- 6.2 “Other Persons” means any individual, body or business who is affected by the operation of a licensed premises regardless of their geographical location. Although they may be in any geographical position, any representation they make must be relevant to one or more of the licensing objectives, and must not be considered to be frivolous or vexatious. Additionally, any application to review a premises licence must not be repetitious.
- 6.3 This Licensing Authority will, however, look at the geographical location of the author of any representation or review application received. Where the author lives or works a significant distance from the premises subject of an application or review, this Authority will examine the content of the representation particularly closely to ensure that it is valid and complies with the requirement of the Licensing Act 2003.

Staggered Closing Hours

- 8.2 Paragraph 3.1 of this policy states that the Royal Borough is the smallest of the London boroughs and is also one of the most densely populated local authority areas in this country. Although there are areas within the borough that are ‘hotspots’ of noise and disturbance related to licensed premises, there are very few areas where residents are not directly affected.

- 8.3 Because of the intense mix of residential and licensed premises within the Royal Borough, staggering closing hours of licensed premises throughout the night, rather than reducing any adverse effect on residents, may in fact disturb them continuously.
- 8.4 There are, comparatively, so many licensed premises in any given area within the Royal Borough that staggering closing hours could mean a continual disturbance to residents as customers left each of the premises. In fact, some residents of the Royal Borough frequently ask that the existing opening hours of licensed premises are reduced in order that the disturbance suffered occurs at an earlier hour rather than continuing on throughout the night, enabling them to get undisturbed sleep for longer periods.
- 8.5 The maps, attached as **Appendices C** and **D** to this Policy Statement, show the spread of disturbances linked to licensed premises and the consumption of alcohol. They also show that some residents already suffer noise and disturbance throughout the night, even though there are a significant number of late night licensed premises closing at different hours between midnight and 4am.

The Licensing Authority's view is that increasing staggered closing hours throughout the night could add to the adverse effect on residents, and any further increase in late night premises may produce an increase in noise and disturbance from customers of these premises.

- 8.7 Parking stress is higher in areas with evening uses such as pubs, clubs and restaurants. Past surveys have demonstrated that approximately 10 per cent of restaurant users drive to the premises. The stress on parking spaces within the Royal Borough is at such a high level now that any applicants for new licensed premises, particularly restaurants, would need to show how their customers would not add to existing parking issues within the borough, for example; have arrangements in place for a named taxi firm to pick up customers.
- 8.8 The Licensing Authority considers that the imposition of conditions on premises licences generally would not, by itself, resolve the issue of disturbance to residents from late night premises. Conditions may include trying to ensure that customers leave quietly, but licensees will have little or no control of their customers once they leave the close vicinity of the premises.

Residential dwellings are common above and next to most licensed premises. Generally, throughout the borough, ambient noise levels fall significantly between 11pm and midnight and noise from even well behaved customers leaving licensed premises after midnight does disturb residents. Many of the streets within this Licensing Authority area are narrow causing any noise to reverberate from building to building.

Actions that during the day would have little adverse environmental effect, such as car doors shutting and conversations, can have the opposite effect after midnight, disturbing local residents and breaking their sleep.

- 8.9 Having taken all these matters into consideration, when dealing with applications for premises licences and club premises certificates this Licensing Authority will not, generally, grant such licences or certificates permitting premises to be open to the public or a section of the public beyond midnight when its discretion has been triggered by the receipt of relevant representations. This will also apply to variations of existing licences that would entail extending the terminal hour beyond midnight.

Because of the individual nature of the Royal Borough, even those areas designated as 'higher order town centres' within the Local Plan also have a high concentration of residential use. Indeed, many of the buildings within these areas are both residential and commercial in character.

However, as stated in paragraph 2.8 above, the Licensing Authority will consider each application on its own merits and take the individual circumstances into consideration when reaching its decision.

- 8.10 There are very few solely commercial areas within the Royal Borough (those that are have residential areas in close proximity) and, taking into account the level of existing noise complaints, the limited availability of late night public transport and police records of crime and disorder, it is appropriate to **generally limit opening hours to midnight** in order to maintain the balance between residential and commercial interests. The Licensing Authority will generally expect licensable activities to cease sufficiently before midnight to ensure the efficacy of such a limitation.

However, this is a general policy and does not automatically mean that all applications, when the discretion of the Licensing Authority is exercised on receipt of valid representations, will result in premises licences being granted until midnight or that no applications will be granted with a **terminal hour after midnight**. The Licensing Authority highlights the fact that each application will be considered on its own merits and **an individual application may result in a terminal hour** being set for either before or after midnight dependent on the particular circumstances of that application.

The Licensing Authority considers that, generally, a **terminal hour of 12 midnight will**, in this particular area, be a better method of promoting the two licensing objectives of the prevention of crime and disorder and the prevention of public nuisance, than extending terminal hours.

- 8.11 When reaching a decision on whether to grant or vary a licence or certificate **with a closing hour after midnight**, the Licensing Authority will have due regard to the ability contained within the Licensing Act 2003 for "other persons" and 'responsible authorities' to apply for the licence to be reviewed if the premises operate in a manner that does not promote the licensing objectives.

- 8.12 The implications of noise and disturbance to residents will also be considered when applications are made to increase the capacity of venues operating after midnight, where there is already a maximum capacity set. In considering such applications, the Licensing Authority will have to consider the overall effect of any increase on the rights of residents to privacy and a family life.

Where increases in capacities are granted but it is considered that the increase will have an adverse impact on the environment, the Authority will consider the imposition of conditions to diminish or avoid the impact where its discretion is triggered through the receipt of valid representations. See chapter 14 for more details on capacities.

- 8.13 This policy recognises that in this particular borough, disturbance is likely to follow from late trading. Any exception to the policy is only likely to be applied where the applicant can demonstrate that the new, or extended, licence will not exacerbate the problem.

Consideration will always be given to the applicant's individual case. The Council will take into account any proposals that the applicant makes to minimise the risk of nuisance being caused by customers departing from the premises. However, it is unlikely that the mere fact the premises will be well managed, or that the applicant is of good character, or that the premises, or the capacity or the increase in hours applied for is small, will alone be sufficient to demonstrate that no exacerbation will occur.

Non Standard Timings and Seasonal Variations

- 8.15 Where an applicant for a premises licence anticipates that on 'special occasions', such as significant birthdays and Bank Holidays, there will be a demand to remain operating later than usual, the Licensing Authority suggests that the applicant specifies on the operating schedule how many occasions late openings would be anticipated and what control measures will be put in place to promote the licensing objectives.

The Licensing Authority will take into consideration the content of the operating schedule when reaching its decision where its discretion has been triggered through the receipt of relevant representations.

Late Night Refreshment

- 11.2 The Licensing Authority advises any applicants for a premises licence to sell hot food and non-alcoholic drink after midnight to give a detailed account of how they will promote the four licensing objectives and, in particular, the prevention of crime and disorder and the prevention of public nuisance. The Authority regards midnight generally as an appropriate terminal hour for the provision of licensable activities as stated in paragraphs 8.10 – 8.11 of this Statement of Licensing Policy. Applicants wishing to provide late night refreshment, particularly 'take-aways', should note the content of these paragraphs when making applications to trade after midnight.

- 11.3 As previously stated in this document, the proximity of residential properties to commercial premises throughout the Royal Borough demands that late night operators ensure any noise and disturbance caused by the operation of their business is either eradicated or kept to a minimal level.

This Licensing Authority will have due regard to any representations from 'responsible authorities' and 'other persons' to the grant or variation of a licence to provide hot food and hot drink to the public. It will also look particularly closely at any measures proposed by the applicant to promote the licensing objectives.

- 11.4 The Licensing Authority will pay due regard to paragraph 3.15 of the Secretary of State's Guidance which states that where late night refreshment is offered "...as a secondary activity in licensed premises open for other purposes such as public houses, cinemas or nightclubs or casinos should not give rise to a need for significant additional conditions.

The key licensing objectives in connection with late night refreshment are the prevention of crime and disorder and public nuisance, and it is expected that both will normally have been adequately covered in the conditions relating to the other licensable activities on such premises".

Midnight closing – off sales

- 12.1 The Licensing Authority is aware that there are many small 'general stores' within its area that are permitted to sell alcohol for consumption off the premises and also trade until the early hours of the morning, if not for the whole 24 hours.

- 12.2 However, because of the particular nature of this borough, when an application is made to continue selling alcohol in shops after midnight to coincide with its normal hours of operation - and the discretion of the Licensing Authority has been triggered through the receipt of relevant representations - it is advisable that the applicant shows that this would not lead to crime and disorder issues, disturbances and noise nuisance.

It is also advisable for the applicant to provide measures by which the promotion of the licensing objectives will be achieved, particularly the prevention of crime and disorder and the prevention of public nuisance.

- 12.3 This Authority and the borough Police are particularly concerned with the adverse effects 'street drinkers' can cause and, in particular, anti-social behaviour. Where licence applications receive representations regarding this issue the Licensing Authority may impose licence conditions restricting the sale of cans and bottles of super strength lager/cider, i.e. 6% ABV or above, and/or restrictions on quantities, i.e. sales of single cans or bottles of lager/cider, and container sizes of particular alcoholic drinks.

- 12.4 Where off sales are permitted, operators should recognise their responsibility to ensure that litter discarded by 'street drinkers' in the vicinity of their premises is cleared away regularly.
- 12.5 The Licensing Authority recognises that the provisions of the Business and Planning Act 2020 allows
- fast-track pavement licence applications for the outdoor use of tables and chairs and other furniture for the consumption of alcohol and food
 - temporary permission for the sale of alcohol for consumption off the premises for most premises already licensed for the sale of alcohol on the premises, while the premises are open for the sale of alcohol for consumption on the premises or until 11pm, whichever is the earlier, and
 - the temporary suspension of any licence conditions on the current licence for the sale of alcohol for consumption on and off the premises which would prevent
 - off sales of alcohol being sold in an open container, or
 - restrict the times for off sales of alcohol for those premises already licensed for on and off sales of alcohol, at a time when they are open for the sale of alcohol for consumption on the premises - subject to a cut-off time of 11pm, or the closure time of an existing outdoor area, which is the earlier
 - off sales of alcohol by way of deliveries to buildings used for residential or business purposes,

as an important step to aid business recovery in the hospitality sector during the Covid-19 pandemic. These temporary measures are currently due to end on 30 September 2021, but could possibly be extended by the Secretary of State beyond that period.

Operators should continue to take appropriate steps to ensure that the increased use of forecourts and other outdoor areas does not cause unnecessary nuisance to local residents, as this could lead to a summary review of their premises licence and the temporary permission for off sales of alcohol being withdrawn.

13. Local Area Risk Assessments

- 13.1 The Secretary of State's Guidance states in paragraph 8.41 'In completing an operating schedule, applicants are expected to have regard to the Statement of Licensing Policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives.'

- 13.2 The Guidance goes on to state that ‘Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:
- the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises, and proximity to areas where children may congregate;
 - any risk posed to the local area by the applicants’ proposed licensable activities; and
 - any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.
- Applicants are expected to include positive proposals in their application on how they will manage any potential risks.’
- 13.3 Paragraph 8.45 of the Guidance states that ‘The majority of information which applicants will require should be available in the licensing policy statement in the area. Other publicly available sources which may be of use to applicants include:
- the Crime Mapping website;
 - Neighbourhood Statistics websites;
 - websites or publications by local responsible authorities;
 - websites or publications by local voluntary schemes and initiatives; and
 - on-line mapping tools.’
- 13.4 Paragraph 8.47 of the Guidance states that ‘Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.’
- 13.5 This Authority notes the contents of these paragraphs from the Secretary of State’s Guidance and, in particular, the use of the word ‘expected’. Applications that do not in any way address the contents of these paragraphs may be returned to the applicant as ‘incomplete’.

The Licensing Objectives – Prevention of Crime and Disorder

- 14.3 In relation to ‘the prevention of crime and disorder’ this may, for example, be promoted by: employing registered door supervisors; ensuring staff have attained relevant BIIAB qualifications i.e. the Drugs Awareness Certificate, the Barperson’s National Certificate, the Professional Barperson’s Qualification; incorporating a search policy into the entry conditions of the

premises; the location and standard of any CCTV systems on the premises; and having sufficient trained staff on the premises.

Where the discretion of the Licensing Authority has been triggered by the receipt of relevant representations, conditions reflecting these examples are very likely to be attached to premises licences where premises are situated in crime and disorder hotspots or where they operate after midnight.

The Licensing Objectives – Public Safety

- 14.4 In relation to “public safety” this may, for example, be promoted by: ensuring that staff have the appropriate training; ensuring that safe capacity limits are set and that there is no overcrowding.

The Licensing Objectives – Prevention of Public Nuisance

- 14.5 In relation to ‘the prevention of public nuisance’ the Licensing Authority will take particular care to ensure that residents are not disturbed late at night. Where an application is made for a new licence and the Licensing Authority’s discretion is triggered through the receipt of relevant representations, the Authority will not grant the application unless satisfied that it will not create an unreasonable disturbance to local residents.

The Licensing Authority will take the same approach when it is considering an application for a variation to an existing licence. However, before refusing an application on these grounds the Authority will consider whether such disturbance may be avoided by the application of conditions.

The Licensing Authority expects applicants to give due consideration to implementing a dispersal policy to ensure disturbances to neighbouring residents are kept to a minimum. The dispersal policy should include, entry and exit points, waiting areas, smoking areas, assistance with taxi’s and local transport and re-admittance, along with others deemed appropriate for the premises’ location.

- 14.6 In the case of every premises licence application, where the Licensing Authority’s discretion has been triggered by the receipt of relevant representations, the Authority will consider whether: the sound from music and/or customers may escape from the premises; noise from ventilation and other mechanical plant is minimal; the timings of deliveries and collection of trade waste; steps are taken to ensure patrons and staff leave the premises quietly (including the prominent display of notices to this effect); arrangements are made for patrons to park their cars in a manner that does not disturb or inconvenience local residents; and arrangements are made to minimise noise from taxis.

The Licensing Authority recognises that food and drink delivery services are becoming a growing trend and expects applicants to consider implementing a home delivery policy to minimise potential disturbance to neighbours from courier drivers collecting from their premises. Points to consider should be; where food will be collected from by the drivers, turning off engines whilst waiting outside the premises and drivers being able to use the premises facilities (toilets, waiting areas), along with others deemed appropriate for the premises' location.

Conditions may be imposed to satisfy these considerations, or when the Authority is concerned that conditions alone will not be enough to ensure the licensing objectives are promoted it may consider whether a particular application should be granted or not. The Authority will also consider whether applicants have made sufficient arrangements to ensure that any waste and bottles from the premises do not cause any detrimental environmental effect in the vicinity.

'Detrimental environmental effect' includes ensuring that the footway outside licensed premises is kept clean and any stains and grease caused as a result of the operation of individual premises are removed by regular cleaning at the operator's expense.

Where relevant, the Licensing Committee may place conditions on a Premises Licence to ensure waste and bottles are disposed of properly. The Authority appreciates that some, or all, of these issues may not be relevant to an individual application and has included them for the assistance of applicants.

The Licensing Objectives – Protection of Children from Harm

- 14.7 In relation to "the protection of children" this may, for example, be achieved by ensuring children are not admitted to premises on days when adult entertainment is provided, and that children are not admitted, or allowed to remain on, premises after a certain time.

Additionally, the use of "proof of age" cards complying with the Home Office approved Proof of Age Standards Scheme (PASS) is now standard good practice for operators to prevent under age sales and consumption of alcohol in their premises. Use of this scheme is recommended to operators although in exceptional circumstances it could be imposed as a condition on a premises licence.

Details of the PASS scheme can be found at: <http://www.pass-scheme.org.uk/> or by contacting any member of the Authority's Licensing or Trading Standards Teams.

Capacity conditions

15.2 The Licensing Authority accepts that a lot of the problems that may occur in late night licensed premises may be controlled by good management practices. However, controlling the numbers of customers allowed into the premises may also assist in promoting the following three licensing objectives:

the prevention of crime and disorder
public safety
the prevention of public nuisance

15.3 Therefore, where the discretion of the Licensing Authority is applied through the receipt of relevant representations, the Authority will consider setting a capacity condition where this may be beneficial in promoting the licensing objectives mention in paragraph 15.2.

Annual fees

24.4 Licence holders should note that in the event of a failure to pay the annual licence fee this Authority will suspend the licence in accordance with section 55A Licensing Act 2003.

These extracts are not exhaustive and the Licensing Sub-Committee may wish to refer to the full copy of the Statement of Licensing Policy when considering its decision.