

Extracts from Section 182 Statutory Guidance

The Committee should be aware of the need to have regard to the full guidance issued by the Home Secretary – however the following paragraphs are considered relevant to the consideration of this application.

- 1.9 Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must ‘have regard to’ guidance issued by the Secretary of State under section 182. This Guidance is therefore binding on all licensing authorities to that extent. However, this Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.
- 1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:
- must be appropriate for the promotion of the licensing objectives;
 - must be precise and enforceable;
 - must be unambiguous and clear in what they intend to achieve;
 - should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
 - must be tailored to the individual type, location and characteristics of the premises and events concerned;
 - should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
 - should not replicate offences set out in the 2003 Act or other legislation;
 - should be proportionate, justifiable and be capable of being met;
 - cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
 - should be written in a prescriptive format.
- 1.17 Each application must be considered on its own merits and in accordance with the licensing authority’s statement of licensing policy.

- 1.19 While licence conditions should not duplicate other statutory provisions, licensing authorities and licensees should be mindful of requirements and responsibilities placed on them by other legislation. Legislation which may be relevant includes:
- The Regulatory Reform (Fire Safety) Order 2005.
 - The Health and Safety at Work etc. Act 1974.
- 2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).
- 2.3 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.
- 2.7 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act.
- 2.8 A number of matters should be considered in relation to public safety. These may include:
- fire safety;
 - ensuring appropriate limits on the maximum capacity of the premises (see paragraphs 2.12-2.13, and Chapter 10; and
 - considering the use of CCTV in and around the premises (as noted in paragraph 2.3 above, this may also assist with promoting the crime and disorder objective).

- 2.11 Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be inappropriate for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if appropriate, checks on this equipment to be conducted at specified intervals and for evidence of these checks to be retained by the premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for licensing authorities, if they receive relevant representations from responsible authorities or any other persons, to attach conditions which require equipment of particular standards to be maintained on the premises. Responsible authorities – such as health and safety authorities – should therefore make their expectations clear in this respect to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules.

Safe Capacities

- 2.12 “Safe capacities” should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.
- 2.13 The permitted capacity is a limit on the number of persons who may be on the premises at any time, following a recommendation by the relevant fire and rescue authority under the Regulatory Reform (Fire Safety) Order 2005. For any application for a premises licence or club premises certificate for premises without an existing permitted capacity where the applicant wishes to take advantage of the special provisions set out in section 177 of the 2003 Act¹, the applicant should conduct their own risk assessment as to the appropriate capacity of the premises. They should send their recommendation to the fire and rescue authority which will consider it and decide what the “permitted capacity” of those premises should be.
- 9.37 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing

representation and should be allowed sufficient time to do so, within reasonable and practicable limits.

- 9.38 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are appropriate to promote the licensing objectives;
 - the representations (including supporting information) presented by all the parties;
 - this Guidance; and
 - its own statement of licensing policy.
- 9.39 The licensing authority should give its decision within five working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition that is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety. Any conditions added to the licence must be those imposed at the hearing or those agreed when a hearing has not been necessary.
- 9.40 Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities. In the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that those involved have the most current information.
- 9.43 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 9.44 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the

basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

- 10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided.
- 10.13 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

The Committee should be aware of the need to have regard to the Council's full Statement of Licensing Policy when carrying out its functions under the Act, but the following is considered specifically relevant.

3.2 The following will also be relevant:

- Each application will be determined on its own merits having regard to the licensing objectives; relevant guidance including that issued under Section 182 of the Licensing Act 2003, and local criteria. Where it is appropriate for MKC to depart substantially from its Policy, clear reasons will be given for doing so.
- The council's legal officer will ensure that procedural matters are adhered to and decision making is proportionate and fair.
- The right of any individual or body to apply for a variety of permissions is not undermined.
- The statutory right of any responsible authority or other person to make appropriate representations to an application or to seek a review in respect of a granted authorisation where appropriate is accepted.

- The impact of the activities taking or proposed to take place at a licensed premises or businesses or individuals who are likely to be affected by it.
- 5.3.2 Any restriction on trading hours will be considered only where it is necessary to meet the licensing objectives.
- 5.3.4 The licensing authority may set an earlier closing time where after representations having been made, it considers this is appropriate having regard to the nature of the licensable activities and the impact on the licensing objectives.
- 6.1 The key aims of this statement of licensing policy are for MKC as the licensing authority to:
- Integrate its aims and objectives with other initiatives that will:
 - (a) reduce local crime, disorder and anti-social behaviour; and
 - (b) reduce the supply and use of illegal drugs in licensed premises.

Recognising that localities that have the highest densities of licensed premises are likely to have the greatest impact on the range of services that are available to all the other citizens of Milton Keynes. It may therefore be necessary for the licensing authority to manage, control, or restrict licensable activities and/or hours of opening through the licensing process based on reliable evidence supplied by for example partner agencies.

- 7.2.1 Under Section 17 of the Crime and Disorder Act 1998, local authorities must have regard to the likely effect of carrying out of their functions on crime, disorder and anti-social behaviour; doing all they reasonably can to prevent these matters occurring.
- 8.4.1 In certain circumstances specific public safety issues arise from licensable activities involving persons who are not engaged in a work activity. As a consequence controls may need to be exercised by the use of licensing conditions as suggested by the responsible authority dealing with the health and safety issues.
- 10.2 When considering contested applications the licensing sub-committee must have regard to the licensing objectives. This could include reference to the following information:
- The occupancy figure for the proposed premises.
 - Whether the proposed premises will act as a replacement for others in the area that no longer have a licence.
 - The proposed methods of management outlined in the applicants operating schedule.
 - The proposed hours of operation including opening hours.
 - The proposed licensable activities.

- The impact on the emergency services.
- The views of police, including crime and disorder statistics along with the seriousness and nature of previous incidents occurring at similar premises in the locality.
- Compliance history of the applicant.

16.4.2 The licensing authority will consider representations that indicate that specific premises require door supervision for the purpose of meeting the crime and disorder licensing or public safety objectives. In such cases, the licensing authority may impose a condition that an agreed number or ratio of licensed door supervisors must be employed at the premises either at all times, or at such times as certain licensable activities are taking place.

17.1.1 Licence conditions will not be imposed for any other purpose than meeting the licensing objectives. The licensing authority will not impose blanket standard conditions. Conditions that are applied will be focused on matters which are within the control of licence holders at or within the vicinity of premises and shall take into account guidance under Section 182 of the Licensing Act. Duplication of other statutory regimes shall be avoided.

17.1.2 The licensing authority will attach conditions to licences or certificates only to ensure that they will:

- refer to matters as stated in the operating schedule;
- refer to one or more of the licensing objectives; and
- deal with any relevant representations received from a responsible authority or other persons that are considered by officers or the licensing sub-committee to be appropriate.

17.1.5 Conditions will accurately reflect the individual style, location and characteristics of the particular premises, and be clear, unambiguous, and proportionate.

17.3.1 The licensing authority may set an occupant capacity following representations received in order to meet the licensing objectives, for example from the Fire Authority or another responsible authority under the Act.

17.4.1 The licensee will be expected to ensure that all relevant and current safety certification required in accordance with a licensing condition is available for inspection upon request by an authorised officer. Certificates may cover services installations including electrics, safety precautions, emergency standby arrangements, special effects and pyrotechnics etc.

26.3 Whilst contested licensing applications are quasi-judicial in nature, the licensing sub-committee will try to keep the proceedings as informal as possible. However, some degree of formality is needed to ensure that all parties receive a fair hearing. The procedure will be designed to ensure that all parties are able to express their

views openly and fairly. The procedure is inquisitorial rather than adversarial and, whilst applicants, individuals and businesses who may be affected, and responsible authorities are entitled to bring legal representation with them if they wish, this is not a requirement.

- 26.5 The licensing sub-committee will determine each case on its individual merits whilst taking into consideration the terms of this policy document. Where the licensing sub-committee determines that it is appropriate to attach conditions to a licence or certificate it will ensure that those conditions are focused on the direct impact of the activities taking place at the premises concerned. Such conditions will be proportionate to the activity to be controlled and will only be imposed in the interests of the licensing objectives.