

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.

1.3 The licensing objectives are: The prevention of crime and disorder; Public safety; The prevention of public nuisance; and The protection of children from harm.

1.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
- giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;
- recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;
- providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and
- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.

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.

1.17 Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy

2.15 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club

premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

- 2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping..... In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.

- 2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

- 9.12 Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local areas. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective.However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

- 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;
- its own statement of licensing policy.

10.4 The conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence or certificate holder, which they should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule, which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public.

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.

10.14 Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.

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.

5.3.3 The licensing authority is likely to impose stricter conditions regarding noise control for those premises that are situated close to residential areas if relevant representations are received. In these situations the licensing authority will expect the applicant to have scoped the potential for public nuisance including noise and/or vibration nuisance, and to have factored in suitable control measures within their operating schedule.

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: -
 - i. Reduce local crime, disorder and anti-social behaviour,
 - ii. 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

7.2.5 The licensing authority firmly believes that the licensing framework must be balanced by the high standards of house management by licensees and their staff. If this does not occur and there are no reasonable mitigating factors then the licensing authority can take firm enforcement action, in line with the MKC enforcement policy, to ensure that the licensing objectives are met.

- 8.2.2 Premises referred to in an application for a licence or certificate will also require the correct planning permission granted for that use (either before or after a licensing application is considered) and be compliant with, or have arrangements in place to be compliant with any conditions attached to a planning permission. It is however recognised that licensing applications should not be a re-run of a planning application and the two regimes unless legislation or guidance changes are entirely separated albeit covering related issues. Licensing committees are not therefore bound by decisions made by a planning committee or visa versa but may consider them relevant in certain circumstances in relation to the licensing objectives.
- 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.

17.5.1 The licensing authority wishes to protect the amenity of residents and businesses in the vicinity of licensed premises and for these purposes 'in the vicinity' is taken to mean the immediate area around licensed premises without any stated distance criteria. Matters of concern will be dealt with on an individual basis

17.5.2 Where considerations apply to late night refreshment premises, they shall only be taken to apply to their operation between the hours of 11 p.m. and 5 a.m. when a premises licence would be required.

17.5.4 The licensing authority will also consider representations made by relevant persons or responsible authorities on the adequacy of measures proposed to deal with the potential for nuisance and/or anti-social behaviour having regard to all the circumstances of the application. These could include the steps taken or proposed to be taken by the applicant regarding the following issues:-

- Excessive noise and vibration escaping from the premises, including music, noise from mechanical ventilation equipment and human voices.
- Disturbance by customers, staff, delivery vehicles or contractors arriving at or leaving the premises. This will be of greater importance between 11p.m. and 7a.m.
- Queuing either by pedestrian or vehicular traffic on land under the applicant's control.
- Arrangements made or proposed for parking by patrons, and the effect of parking by patrons on local residents
- Confidence in the management to deliver the control measures proposed.

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.