

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.

- 2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 2.19 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. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. 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.
- 9.4 A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to

the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

- 9.9 It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.
- 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.
- 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. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right

to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

- 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.
- 10.15 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.
- 14.19 There can be confusion about the difference between the “need” for premises and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of Licensing policy
- 14.64 The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa. However, as set out in chapter 9, licensing committees and officers should consider discussions with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.

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.

3.5 Mixed area development with licensed premises close to residential accommodation can result in complaints from residents. Whilst Local Planning Authorities do have to consider noise impact on new residential development from existing businesses, applicants will similarly need to exercise caution when planning speculative developments or major refurbishments so that noise control figures in the development brief and proactive control measures are put in place from the outset.

5.2.1 The commercial demand for additional licensed premises as distinct from the issue of cumulative impact will not be a matter for the Licensing Authority.

5.3.1 Unless necessary to do so (and subject to the statutory guidance), the licensing authority will not establish zones in particular areas where premises will be either required or coerced into having fixed or predetermined closing times. Further, the licensing authority will not require a licensee to make use of the licensed hours granted.

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.

5.3.5 Shops, stores and supermarkets will normally be permitted to sell alcohol for consumption off the premises during their trading hours. However, in the case of an individual shop known to be the focus of crime, disorder, disturbance or anti-social behaviour, or other matters relevant to the licensing objectives then subject to relevant representations being made a limit may be imposed on the licensed hours by the licensing authority.

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.

8.6.8 The MKC Environmental Health function has a role in ensuring that the licensing authority is made aware of relevant issues that may impact relevant licensing objectives such as prevention of public nuisance and ensuring public safety. Staffs who have dealt with the investigation of nuisance or health and safety matters under separate

legislation will provide a written representation to the licensing authority when considered appropriate. They may enter into dialogue with the applicant or their agent to seek a resolution to the matters of concern by mutual agreement. In the event that a satisfactory outcome cannot be reached then they will present their evidence before the licensing sub-committee.

- 9.3 Licensing law is not a mechanism for the general control of any anti-social behaviour being displayed by patrons once they have left the curtilage of the licensed premises. Other more specific legislation should be used. However when issues can be linked to customers from particular premises or area then the licensing authority may consider it relevant to the licensing framework licensing law will always be part of a holistic approach to managing such issues.
- 9.4 In some areas there may be concentrated numbers of licensed premises that can lead to problems with the licensing objectives in the area itself or even some distance away. In such circumstances the impact of those premises when taken as a whole can be far greater than that arising from individual premises. It may not be possible to distinguish individual premises as being the sole cause, or even a major contributory factor to, a particular problem; it is the cumulative impact of all the premises that causes problems for a wider area.
- 9.5 The term 'cumulative impact' should not be confused with the term 'need' which relates to the commercial demand for licensed premises. 'Need' is not a matter to be taken into account when determining licensing applications but is a matter for the market and the planning process to consider.
- 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.

1.4.8 There is no definition of 'vicinity' but in addressing this matter, the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on the community, working or engaged in normal activities in the area concerned. In taking its decisions, the licensing authority will take into account the fact that licensing law is not a mechanism for the general control of anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business holding the licence, certificate or permission concerned although if patrons are causing issues outside of a venue or on their way home this may be a relevant consideration on what licence restrictions should be in place because the licensing objectives may be compromised by the presence of the premises rather than its operational standards.