

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.

- 1.16 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.
- 2.10 Licence holders should make provision to ensure that premises users safely leave their premises. Measures that may assist include providing information on the premises of local taxi companies who can provide safe transportation home; and Ensuring adequate lighting outside the premises, particularly on paths leading to and from the premises and in car parks.
- 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.

- 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.
- 2.22 The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment). Licensing authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions.
- 2.23 The Government believes that it is completely unacceptable to sell alcohol to children. Conditions relating to the access of children where alcohol is sold and which are appropriate to protect them from harm should be carefully considered. Moreover, conditions restricting the access of children to premises should be strongly considered in circumstances where:
- adult entertainment is provided;
 - a member or members of the current management have been convicted for serving alcohol to minors or with a reputation for allowing underage drinking (other than in the context of the exemption in the 2003 Act relating to 16 and 17 year olds consuming beer, wine and cider when accompanied by an adult during a table meal);
 - it is known that unaccompanied children have been allowed access;
 - there is a known association with drug taking or dealing; or

- in some cases, the premises are used exclusively or primarily for the sale of alcohol for consumption on the premises.
- 2.26 Licensing authorities and responsible authorities should expect applicants, when preparing an operating schedule or club operating schedule, to set out the steps to be taken to protect children from harm when on the premises.
- 2.27 Conditions, where they are appropriate, should reflect the licensable activities taking place on the premises. In addition to the mandatory condition regarding age verification, other conditions relating to the protection of children from harm can include:
- restrictions on the hours when children may be present;
 - restrictions or exclusions on the presence of children under certain ages when particular specified activities are taking place;
 - restrictions on the parts of the premises to which children may have access;
 - age restrictions (below 18);
 - restrictions or exclusions when certain activities are taking place;
 - requirements for an accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and
 - full exclusion of people under 18 from the premises when any licensable activities are taking place.
- 8.44 It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application.
- 8.47 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.

- 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.
- 9.44 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.
- 10.13 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.

14.51 With regard to licensing hours, the Government acknowledges that different licensing approaches may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make such decisions based on their local knowledge and in consultation with other 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.

2.3 The Licensing Objectives are:

- The prevention of crime and disorder.
- Public safety.
- The prevention of public nuisance.
- The protection of children from harm.

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.

5.3.12 The Authority expects opening hours stated on a licence to mean patrons will leave a licensed venue no later than the closing time stated for that day.

6.1 The key aims of this statement of licensing policy are for the Council, as the licensing authority, to:

- Integrate its aims and objectives with other initiatives that will:
 - reduce local crime, disorder and anti-social behaviour, and
 - 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.

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.

14.1 For the purposes of this policy the licensing authority considers anyone less than 18 years of age to be a child or young person unless otherwise agreed or defined in the Licensing Act.

14.2 The Licensing Act 2003 contains a restriction on unaccompanied children under 16 entering certain premises at certain times but the Licensing Authority has discretion to impose further restrictions where considered necessary. When deciding whether to limit the access of children to premises, the licensing authority will judge each application on its own merits.

14.3 The licensee has a wide discretion to ensure that the licensing objectives can be met, but through this policy, children accessing licensed premises must not suffer any physical, moral or psychological harm.

14.4 The licensing authority will have particular regard to representations received concerning premises where there is evidence that any of the following matters may be relevant:

- The premises licence holder / staff have been convicted of serving alcohol to minors.
- The designated premises supervisor or other responsible person has knowingly permitted underage drinking, or the dealing and taking of illegal drugs.
- There is a 'substantial' element of permitted gambling taking place in the premises (a small number of amusements with prizes machines would not be deemed to be 'substantial').
- Entertainment of an adult or sexual nature takes place.
- Where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.

- There is a history of crime and disorder.
- The premises are in a high risk area, e.g. close to school; in an area with a history of underage sales; in an area with anti-social and criminal behaviour linked to persons under 18.

In such circumstances then restrictions as licence conditions may be imposed to promote the licensing objective of the protection of children from harm.

14.5 The licensing authority will not seek to limit the access of children to any premises unless it is necessary for the prevention of physical, moral or psychological harm.

14.6 Where concerns have been identified in respect of individual premises, and it is felt that the access of children should be restricted, the options available would include:

- Limiting the hours when children may be present.
- Age limitations for persons under 18 years.
- Limiting or prohibiting access when certain activities are taking place.
- Full exclusion of persons under 18 years when certain licensable activities are taking place.
- Limitations on access to certain parts of the premises for persons under 18 years.
- Permitting access only when accompanied by an adult.
- Such other condition or restriction as may be necessary to achieve the relevant licensing objective.

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

17.5.4 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.
- 1.4.7 The decisions taken by the licensing authority will be focused on matters within the control of individual licensees and others granted relevant permissions. Accordingly, these matters will centre on the premises being used for licensable activities and the neighbourhood 'in the vicinity' of those premises.
- 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.