

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.
- 2.8 A number of matters should be considered in relation to public safety. These may include: Fire safety; Ensuring appropriate access for emergency services such as ambulances; Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts (see paragraph 2.4 above); Ensuring the presence of trained first aiders on the premises and appropriate first aid kits; Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation); Ensuring appropriate and frequent waste disposal, particularly of glass bottles; 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).
- 2.10 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.
- 2.12 "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 the premises should be.

- 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.
- 2.20 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.
- 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.
- 8.13 As well as responsible authorities, any other person can play a role in a number of licensing processes under the 2003 Act. This includes any individual, body or business entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their geographic proximity to the premises. In addition, these persons may themselves seek a review of a premises licence. Any representations made by these persons must be ‘relevant’, in that the

representation relates to one or more of the licensing objectives. It must also not be considered by the licensing authority to be frivolous or vexatious. In the case of applications for reviews, there is an additional requirement that the grounds for the review should not be considered by the licensing authority to be repetitious. Chapter 9 of this guidance (paragraphs 9.4 to 9.10) provides more detail on the definition of relevant, frivolous and vexatious representations.

- 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.
- 8.48 All parties are expected to work together in partnership to ensure that the licensing objectives are promoted collectively. Where there are no disputes, the steps that applicants propose to take to promote the licensing objectives, as set out in the operating schedule, will very often translate directly into conditions that will be attached to premises licences with the minimum of fuss.
- 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.
- 9.45 Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.
- 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.
- 10.23 Large capacity “vertical drinking” premises, sometimes called High Volume Vertical Drinking establishments (HVVDs), are premises with exceptionally high capacities, which are used primarily or exclusively for the sale and consumption of alcohol, and have little or no seating for patrons. Previous research has demonstrated that the environment within such establishments can have a significant bearing on the likelihood of crime and disorder.
- 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.
- 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.
- 14.65 There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.

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.

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 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

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 vice 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.

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.
- 17.5.1 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.