

# Appendix A

## Licensing Act 2003

### Guidance for staff on the licensing authority as responsible authority

#### Background

On 25 April 2012, each licensing authority became a 'responsible authority' under s13(4) of the Licensing Act 2003, able to make representations on applications for new premises licences and club premises certificates; applications for variations of premises licences and club premises certificates; and call for reviews.

The licensing team will now play a dual role in the licence application process, whereby it must both process and review and comment upon applications received.

This development of role places even greater emphasis on the need for the authority to be able to demonstrate that all applications are addressed in a fair and consistent manner and the licence applications process is seen to be free from bias.

#### Separation of roles

To this end, arrangements will be put into place for separation of roles within the licensing team so as to ensure that no application may be both processed and considered by the same officer.

To this end we have nominated 'responsible authority' officers for the north (Kristie Ashenden) and south (Dorcas Mills) teams and will separately allocate the role of 'processing officer' on a case by case basis.

In doing so, the team leader / unit manager will ensure that the officer who is allocated the role of 'processing officer' will not have had any recent (12 months) involvement with enforcement issues connected with the premises.

There will be no general discussion of a case between the two officers other than professionally through the formal applications process.

#### Guidance for staff

##### The licensing objectives

The following guidance is provided for officers acting in the 'responsible authority officer' role. It is produced having regard to the content of the Home Office Amended Guidance under Section 182 of the Licensing Act 2003 (April 2012). Extracts of the most relevant sections are attached as Appendix 1.

1. Representations may be made by the authority on the basis of any one or more of the four licensing objectives:
  - The prevention of crime and disorder;
  - The prevention of nuisance;
  - Public safety; and
  - The protection of children from harm.

## **Desk top review**

2. Initially, the officer concerned should carry out a desk top review of the application. As part of this, the officer should
  - Familiarise themselves with the terms of the application, including the content of the operating schedule, and the extent of any existing licence held by the current or outgoing operator;
  - Examine whether the premises is located in any one of the council's current special saturation policy areas or under an area under monitor; and
  - Review all recent history relating to the premises in question held within the shared EHTS database, including:
    - Outcomes of recent visits / inspections;
    - Outcomes of complaints investigations;
    - Outcomes of previous applications; and
    - Any other relevant information, including any incident / crime reports

## **Premises visit**

3. Once fully briefed the officer should visit the premises and the surrounding area so as to ensure that the implications of the application for the operation of the premises and the local community are understood together with how proposed control measures are intended to operate.

## **Application within a saturation area / area under monitor**

4. Where the premises that is subject of the application is located either within a current special (saturation) policy area or an area under monitor and is of a relevant category (see local policy details), special consideration should be given as to whether granting the application will add to the cumulative impact of licensed premises in that area. The current policy areas and areas under monitor are given below:
  - Current special (saturation) policy areas - Borough and Bankside; Peckham; and Camberwell (May 2012); or
  - Current areas under monitor - Elephant & Castle; Walworth Road / East; and the Old Kent Road (May 2012)

Copies of the current maps of the areas can be found on the G Drive in the Saturation folder.

5. In order to fully understand the underlying local concerns which have given rise to either the policy or the decision to monitor the local situation, the officer concerned should refer to the latest partnership analysis of alcohol related CAD, VAP and ambulance pick-ups, the latest version of the analysis can be found in the G Drive within the 'Saturation' folder.
6. If it considered that the application has the potential to add to the local concerns then consideration must be given as to whether the application sufficiently addresses those concerns and demonstrates that the grant of the application will not add to the problems being experienced.

7. If it is considered that the application does not sufficiently address the local situation then a representation should be lodged under the crime and disorder objective.
8. The applicant should also (at an early stage) be provided with a copy of the most recent partnership analysis of alcohol related VAP, CAD and ambulance pick-ups, so as to have a full understanding of the local situation. If the matter progresses to a public hearing then the information should be appended to the representation and form part of the submission to the sub-committee.

### **Other considerations**

9. The officer must then consider generally and upon the basis of evidence and information available to the licensing authority, whether the operating schedule demonstrates that the applicant has adequately risk-assessed the proposed operation of premises, including taking into account:
  - Any relevant outstanding issues arising from unresolved visits, inspections, complaints or other information;
  - Any relevant recent issues, resolved or otherwise, that may be now be reprised and / or exacerbated by the effect of the application under question; or
  - Any other relevant local issue.
10. While it may be considered that there are 'expert' authorities for each of the four licensing objectives, the licensing 'responsible authority' officer should consider each application across all four licensing objectives. Where matters of concern are identified it is recommended that these are discussed with the recognised 'lead' authority, as follows:
  - The prevention of crime and disorder – police / trading standards;
  - The prevention of nuisance – EH environmental protection;
  - Public safety – EH health and safety / LFEPA;
  - The protection of children from harm – social services / trading standards
11. However, while the expertise of the other bodies may be recognised, the final decision as to whether a representation should be lodged in the name of the licensing authority should be made on the basis of the information that is available to the licensing authority. We are likely to have first hand information about the operation of existing premises and a good local understanding of the likely effects of the application on the local community.
12. Any representation necessary must be formally lodged in time with the licensing unit administrative support team; recorded on APP and copied to the applicant and the other 'expert' responsibilities for the objectives concerned.
13. Representations should
  - Clearly state the concerns raised;
  - State the relevant licensing objectives;
  - Set out whether the concerns raised are likely to be satisfied by amendment of the application; by addition of conditions; or by other steps
  - Provide detail of what needs to be addressed and how;
  - Otherwise, indicate if refusal of the application is recommended.

14. Conciliation should be entered into in all circumstances, except where the applicant does not wish it.
15. Offers to amend an application or add additional conditions made in circumstances where the relevant 'expert' authority has simultaneously submitted a representation should be discussed with that authority to look to agree a consistent position.
16. Decisions to proceed to sub-committee hearing should be made at a case review together with the team leader or unit manager and formally recorded.

#### **Presentation to the licensing sub-committee**

17. Representations made on behalf of the licensing authority will be made by the allocated 'responsible authority' officer, who will act separately from the allocated 'processing officer'.
18. Oral presentations to the sub-committee should clearly summarise the representation, identify key points for consideration and provide any relevant update on the matter.

#### **Licence reviews**

19. Formal licence reviews may be made on behalf of the licensing authority at any time and across all of the licensing objectives on the basis of first hand evidence available to the licensing service.
20. Decisions to institute a review should be taken at a formally recorded case review with either the service team leader or unit manager.
21. Except in serious circumstances, decisions to institute a review of a licence will normally be taken at a point when the licensee concerned has had opportunity to address a situation and has demonstrated either continued poor management of a situation or disregard.
22. In each case the relevant 'expert authority' should be advised
23. Representations should detail in full the concerns being raised and the outcome sought.
24. Where reviews are submitted by other bodies the allocated 'responsible authority' officer should consider whether the licensing authority would wish to submit a representation also. Such decision should be made on the basis of the evidence / information available to the licensing authority at the time.

**Richard Parkins**

**Health Safety Licensing & Environmental Protection Unit Manager**

## **APPENDIX A1**

### **EXTRACT FROM THE AMENDED HOME OFFICE GUIDANCE UNDER SECTION 182 OF THE LICENSING ACT 2003 (APRIL 2012)**

#### **LICENSING AUTHORITIES ACTING AS RESPONSIBLE AUTHORITIES**

9.13 Licensing authorities are included in the list of responsible authorities. A similar framework exists in the Gambling Act 2005. The 2003 Act does not require responsible authorities to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes. It is, therefore, for the licensing authority to determine when it considers it appropriate to act in its capacity as a responsible authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act.

9.14 Licensing authorities are not expected to act as responsible authorities on behalf of other parties (for example, local residents, local councillors or community groups) although there are occasions where the authority may decide to do so. Such parties can make relevant representations to the licensing authority in their own right, and it is reasonable for the licensing authority to expect them to make representations themselves where they are reasonably able to do so. However, if these parties have failed to take action and the licensing authority is aware of relevant grounds to make a representation, it may choose to act in its capacity as responsible authority.

9.15 It is also reasonable for licensing authorities to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority. For example, the police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each responsible authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other responsible authority.

9.16 The 2003 Act enables licensing authorities to act as responsible authorities as a means of early intervention; they may do so where they consider it appropriate without having to wait for representations from other responsible authorities. For example, the licensing authority may (in a case where it has applied a cumulative impact policy) consider that granting a new licence application will add to the cumulative impact of licensed premises in its area and therefore decide to make representations to that effect, without waiting for any other person to do so.

9.17 In cases where a licensing authority is also acting as responsible authority in relation to the same process, it is important to achieve a separation of responsibilities within the authority to ensure procedural fairness and eliminate conflicts of interest. In such cases licensing determinations will be made by the licensing committee or sub committee comprising elected members of the authority (although they are advised by a licensing officer). Therefore, a separation is achieved by allocating distinct functions (i.e. those of licensing authority and responsible authority) to different officials within the authority.

9.18 In these cases, licensing authorities should allocate the different responsibilities to different licensing officers or other officers within the local authority to ensure a proper separation of responsibilities. The officer advising the licensing committee (i.e. the authority acting in its capacity as the licensing authority) must be a different individual to the officer who is acting for the responsible authority. The officer acting for the responsible authority should not be involved in the licensing decision process and should not discuss the merits of the case with those involved in making the determination by the licensing authority. For example, discussion should not take place between the officer acting as responsible authority and the officer handling the licence application regarding the merits of the case. Communication between these officers in relation to the case should remain professional and consistent with communication with other responsible authorities. Representations, subject to limited exceptions, must be made in writing. It is for the licensing authority to determine how the separate roles are divided to ensure an appropriate separation of responsibilities. This approach may not be appropriate for all licensing authorities and many authorities may already have processes in place to effectively achieve the same outcome.

9.19 For smaller licensing authorities, where such a separation of responsibilities is more difficult, the licensing authority may wish to involve officials from outside the licensing department to ensure a separation of responsibilities. However, these officials should still be officials employed by the authority.