

WESTMINSTER CITY COUNCIL STATEMENT OF LICENSING POLICY

- Westminster City Council has now adopted its statement of licensing policy required under the Licensing Act 2003. Following the public consultation and the publication of Government regulations on application forms and procedures, the draft policy has been subject to some minor revision, but remains largely as originally drafted.
- The policy will now be applied and is not due to be formally reviewed until January 2008. However, if case law or practice suggest changes may be needed, the policy may be revised during the course of this 3 year period.

Vision & Objective

- Westminster's stated aim is to make sure that it offers a wide choice of high quality, well managed entertainment and cultural venues within a safe, orderly and attractive environment. They want to encourage a greater diversity of entertainment and age groups coming into the West End. However, they want to encourage seating and food rather than "mass volume vertical drinking". The focus is on tight control of management standards.
- The revised policy does place greater emphasis on the contribution of the licensed trade to the economic and social life of the Borough, its role in attracting visitors and in creating a vibrant atmosphere. It also acknowledges the need to ensure that Westminster maintains its competitive position as compared to other late-night cities. However the focus remains very much on protecting the interests of residents and tackling anti-social behaviour.
- The introduction to the policy acknowledges the need to strike a reasonable balance between these two different and often competing aims. This is reflected in the acknowledgement that the Council, acting as Licensing Authority, does not have unfettered discretion to determine applications and is obliged to grant them in the terms sought where there are no objections. This is an amendment to the original policy.

Overall Policy Approach

- The Council sets out specific policies for each of the four licensing objectives – preventing crime and disorder, preventing public nuisance, protecting public safety and protecting children. These are the objectives which applicants for new licences or major variations are required to demonstrate they will meet in their operating schedule.
- The policy clearly states that the Council wants to control the number, location and hours of premises to prevent public nuisance so there are separate policies on hours, licensable activities and a special policy against granting new applications in the Stress Areas.
- Whilst the Government Guidance does not envisage separate policy statements for the licensing objectives and types of licensable activities, there is nothing inherently wrong with Westminster's approach in this aspect providing they do not insist that operators follow the checklists and provide all the information requested. The inclusion of a special policy on hours does run directly counter to the Act.

Licensing Objectives Policy

- The four licensing objectives are the cornerstone of the new licensing regime – they are the only matters to which the licensing authority may have regard in assessing the application, considering objections, conditions and reviews and they are the tests which applicants must answer in their operating schedule.
- The Guidance specifies that local authority licensing policies should give an indication of the type of issues which they will take into consideration under the licensing objectives.

Westminster's policy goes one step further and sets out criteria and considerations which – by implication – must be met by all applicants. The presumption is that the Council will assess applications against these criteria and attach conditions to licences in these areas.

- Whilst it therefore provides a good guide to applicants as to what they should include in an operating schedule, the requirements are onerous and far reaching. Far more so than originally envisaged. Applicants will need to be careful in providing information on all these matters in their operating schedule as the operating schedule will become the terms and conditions of the licence. **WCC cannot insist upon you providing this level of info.**
- The original draft policy included a lengthy and controversial operating schedule, but this has been abandoned in light of the Government's standard national forms. However, many of the elements of the original form are brought forward into the policies supporting each of the four licensing objectives.
- **Crime:** the key consideration here will be whether the applicant has had regard to the lengthy police checklist for risk assessments, designing the layout, lighting and fittings to minimise crime and management measures to control crime. The expectation is that premises will explain how they promote the prevention of crime/disorder and there will be a specific assessment for pubs and clubs on how the risks of violence will be managed. Examples of issues to be offered include capacity, areas for permanent seating, door supervisors, restrictions on drinking in certain areas, and limitations on promotions. In addition, they will take into account levels of crime and disorder in and around the venue and compliance with conditions on existing licences. **You are not required to complete the police checklist, violence checklist and should not attach to application.**
- **Safety:** applicants will be required to provide appropriate and satisfactory assessments, management procedures and certificates (the implications is that it would be documented and provided as evidence), fire certificates stating capacity or risk assessment of emergency evacuation. Dance venues will be required to comply with the "Safer Clubbing" best practice and provide facilities for people who are ill. **You are not required to attach written risk assessments and certificates to application**
- **Nuisance:** the main focus is on noise leakage from the premises – music, customers leaving, staff, contractors, suppliers and deliveries – and there are 6 pages of guidance on issues to be covered in a noise report and environmental noise assessment. Risk assessments should identify the potential for nuisance from other sources eg litter, noxious smells and volunteer control measures. The principal ones amongst these will be control of hours and location. **WCC cannot insist on a noise or environment audit and you should not attach to your application.**

Premises which allow drinking outside – either on private forecourts, beer gardens or licensed tables and chairs – should include details of control measures to ensure people move away at a set time and the council may impose conditions on the hours of sale in residential areas.

- **Children:** the focus is on control of entry, enforcement of checks of age and compliance with industry codes of practice on the labelling and display of drinks.

Hours Policy

- Unlike the current licensing regime, the new Act only applies to the sale of alcohol and the concept of drinking up time is abolished. Premises apply for hours during which licensable activities – sale of alcohol, provision of entertainment or late night refreshment – will be provided and are expected to set out in their operating schedule closing times.

- Government Guidance specifically states that the local authority should not fix terminal hours, impose blanket terminal hours or engineer staggered closing times. Westminster's proposed policy runs directly counter to this. Westminster is proposing to establish 'core hours' across the Borough. Applications which fall within the core hours will normally be granted but those which fall outside will only be granted in exceptional circumstances. For new premises within the stress areas, these hours will effectively be terminal hours.
- The core hours for the sale of alcohol are:

Mon – Thurs	10am – 11.30pm
Fri – Sat	10am – midnight
Sunday	12 – 10.30pm
Sun before bank hol	12 - midnight

For other licensable activities, the core hours will be 9am -11pm, except New Year's Eve. These are the hours during which customers are allowed to remain on the premises, suggesting that alcohol sales will need to finish before this cut off.

- In considering hours outside of these core hours, regard will be had to the availability of late night transport, whether there is residential accommodation nearby, the detail of the proposed hours and the type of licensable activity being carried out within them, the capacity of the premises and the hours of other outlets in the area.
- Conditions will normally be attached requiring customers to leave the premises no later than half an hour after the last licensable activity ceases. A longer period of time will be considered if it is part of an active wind down process.
- This policy will only apply to new licence applications or to existing licensees seeking to vary their existing hours or increase their capacity. All existing licensees are guaranteed to get at least their existing hours, although it is possible that some will be able to apply to increase their hours and still fall within the core hours policy.

Special Saturation Policy

- Westminster is proposing to adopt a special policy in relation to the three existing stress areas of refusing all new applications for pubs and bars, hot food and drink takeaways and premises offering music and dancing. Applications for other licensing uses will be accepted provided they meet the relevant criteria in relation to the licensing objectives and do not add to the cumulative impact.
- Since the policy was first drafted, the Council has accepted a further change to this presumption against grant. They will now allow existing businesses within the stress areas to vary their hours provided that this variation is in line with the core hours. In this context the core hours will be applied as strict terminal hours.
- The policy will be applied strictly and will only be overridden in genuinely exceptional circumstances which relate to the cumulative impact. So, for example, one licence out and one licence in or offsetting of capacity or the substitution of licensable activity for one which creates less nuisance or which would further the licensing objectives eg food for alcohol or the removal of entertainment. The policy also suggests that an application to include regulated entertainment for those businesses which have previously made use of the 2 in a bar rule would be allowable within the stress area, particular when considerations of a reduction in capacity and/or hours are volunteered at the same time.

- There is nothing to prevent the Council adopting a special saturation policy providing it provides sufficient evidence to support it and only acts following representations from relevant bodies not on its own initiative. The policy should only be used to create a rebuttable presumption against grant and arguably Westminster's more flexible approach to different types of outlet and the allowance of applications within the core hours is counter to this but may be beneficial to certain aspects of the trade.

Licensable Activity Policy

- Although the new Licensing Act effectively replaces the existing 6 licensing regimes with one premises licence, Westminster's policy retains the distinction with separate policies relating to different types of outlet. The highlights are set out below. The policies for different licensable activities seek to define those activities and interpret how the special saturation policy and other restrictive policies will be applied.
- **Restaurants/Refreshment:** these are outlets which only serve alcohol with food and where any bar area is ancillary and only used to serve customers waiting to dine. Applications from such outlets will generally be accepted even in the stress areas.
- **Pubs/bars:** these are outlets where the exclusive or primary use is the supply of alcohol. They are not music and dancing premises which are defined separately. The policy states that pubs principally cause nuisance from noise and provide opportunities for crime. Applications for outlets in the stress area will generally be refused.
- **Music and dancing:** such outlets will generally have permission refused in the stress areas and will see conditions on drug policies, safer clubbing and safe and sound applied.
- **Nudity:** this will only be allowed in exceptional circumstances as it is viewed as a nuisance by its mere existence. The Council will not consider full or partial nudity to be a normal part of the operation of a pub or bar.
- **Mixed use premises.** The Council acknowledges that many venues are now hybrids, providing different uses at different times of the day and that there policy needs to take account of this. For such premises, the Council will consider the primary purpose of the outlet and apply the relevant policy to it, taking particular account of the activities being held outside the core hours.
- **Temporary Events:** new temporary event notice are designed to replace SOEs but there are strict conditions governing their use and the number of TENs which will be granted to a premises in a given year. The Council is seeking a maximum 2 month and minimum 1 month notice of temporary events.

Conditions

- The policy now acknowledges that the Council may only impose conditions if its discretion is engaged by means of a relevant representations. It also clearly states that conditions must not duplicate other statutory regimes. The suggestion that agreement would be sought to voluntarily translate undertakings into conditions when existing licences are converted or impose them if a variation is sought has now been abandoned.