

**WRITTEN REPRESENTATIONS RESPONSE BY WESTMINSTER LICENSEES  
ASSOCIATION (247), THE COVENT GARDEN RESTAURANT ASSOCIATION  
(768) AND THE ROCK GARDEN (843) IN RESPONSE TO RESPONSE OF CITY OF  
WESTMINSTER  
15 APRIL 2003**

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**WRITTEN COMMENTS IN RESPONSE TO CITY OF WESTMINSTER  
REPRESENTATIONS TO THE UNITARY DEVELOPMENT PLAN INQUIRY**

1. The Westminster Licensees Association (WLA) submitted detailed written representations to the Unitary Development Plan Public Inquiry in December 2002. Those representations objected to the City of Westminster's proposed policy with regard to entertainment use, contending that the proposed approach was disproportionate to the scale of the perceived problem, potentially damaging to the trade and the balance of uses Westminster is seeking to protect and premature with regard to imminent changes to national licensing and planning policy.
  
2. We are in receipt of the City of Westminster's written representations in response to these objections and have a number of additional comments to make in reply. In commenting on the City of Westminster's response, the WLA has followed the same structure as the Council and addressed each point in the order they appear in the Council's representations. The headings are those used by the Council and where necessary appropriate paragraph numbers have been given.
  
3. **Overview**
  
- 3.1 Before commenting on the Council's representations in detail, it is worth noting a number of general points which appear a number of times throughout the Council's written representations.
  
- 3.2 In justifying its approach, the Council relies on evidence which has not been made available to the WLA and remains unseen by the organisation. Moreover, they draw heavily on evidence given by various parties to a Select Committee hearing which was held in March 2003, after the drafting of initial submissions and indeed after detailed consideration of entertainment policy matters by the Public Inquiry itself.
  
- 3.3 The Council's claims at a number of points that the WLA's evidence disputes the appropriateness or otherwise of developing land use policies to deal with the growth and management of entertainment uses in certain parts of the City. This is not the case, nor has the WLA ever suggested that the Council is wrong or somehow not entitled to develop policy in this area or should do nothing about issues such as noise, litter and other areas of concern. We do however, dispute some of the evidence on

which those policies are based and also the solutions put forward as being appropriate to deal with them.

3.4 Our original submission sought to demonstrate that the scale and nature of the problems cited by the Council as justification for the UDP revisions were not as dramatic as claimed and did not justify the imposition of such draconian land use policies. We are keen to see the West End and other parts of Westminster develop in a planned and appropriate way, but remain unconvinced that the Council's proposed policies will deliver the benefits claimed and continue to maintain that they will damage the licensed trade, the amenity it provides and may well aggravate problems of disorder and public nuisance.

4. **Policies are 'disproportionate' to the 'perceived' problems.**

4.1 *Paragraph 2.4-2.5* The City of Westminster dispute the WLA's assertion that the adopted UDP policies were 'tools of regeneration'. Whilst the development of the late night economy may not have been subject to formal regeneration policy initiatives, it is true to say that the Council had adopted a policy of actively encouraging entertainment use development within the very areas now labelled as 'stressed' – a point acknowledged by several senior Councillors and officials in meetings with the WLA. (Trevor – do you have any evidence of this?)

4.2 *Paragraph 2.7* The WLA acknowledges that the RUDP makes passing mention to the positive contribution that the entertainment industry plays in the Capital. It is telling that the quotes provided by the Council are the only positive mentions in an otherwise lengthy document and that each positive is couched around with negative terms. So, for example, the Council acknowledges that entertainment use forms an "essential and valuable feature of London life", but in the very next sentence talks about conflict and potential problems.

4.3 *Paragraph 2.10* The WLA has never sought to claim that the policy is an actual blanket ban and acknowledges that deviations from it may be possible in 'exceptional circumstances'. Our original submission made clear that in our view those circumstances were so exceptional and such a high hurdle for operators to overcome that they would act as a disincentive to potential applicants – they may indeed be designed with that in mind – and that the policy would therefore operate effectively as a blanket ban.

5. ***Market Analysis***

5.1 *Paragraph 2.12* The purpose of quoting from two well respected sources of information on the retail sector and trends within that market was to demonstrate that not all A3 uses were licensed premises, and that the Council's use of the global A3 use figure could be misleading, implying a higher number of licensed premises than might otherwise be the case. The WLA stands by the information provided to it by the Association of Convenience Stores and Institute of Grocery Distribution and refutes the suggestion that it is merely anecdotal. Contrary to the Council's assertion, both organisations have confirmed that a number of small shops and coffee bars are trading in A3 premises and with A3 use.

5.2 *Paragraph 2.14* The Council acknowledges here that its original submission had failed to differentiate between numbers of off and on licensed premises and used a global licensed retail figure. The fact that the off-licence sector is considerably smaller than the on-trade is irrelevant – the fact remains that the use of a global figure of all licensed premises was used and did imply a higher number of entertainment uses than is actually the case.

6. ***Market in Context***

6.1 *Paragraph 2.18* The WLA has yet to see any evidence provided by the Council which provides an objective and reasoned definition of saturation. Whilst important in its own right, the definition of saturation is arguably less important than the way in which it may be used in policy terms and in individual assessments of cases. If a saturation policy is to be adopted – and the WLA does not believe it should be – then it should not be applied in a blanket way. Each case must be assessed on its merits and it should be incumbent upon the Council and any objectors to demonstrate that that particular premises will contribute to saturation and that the cumulative effect of additional premises will have adverse consequences in terms of public nuisance, disorder, crime or other substantive issues of planning concern.

6.2. The WLA notes that since the Public Inquiry was launched the Government has published guidance to local authorities on the use of saturation in licensing decisions. We would draw the Inquiry's attention to this and in particular the requirement that

there be a clearly identified cause and effect between particular premises and particular problems.

6.3 *Paragraph 2.21* The Council claim that the WLA's original submission is misleading in providing a ratio of entertainment uses to residents. It goes on to acknowledge the difficulty in providing an accurate ratio of entertainment uses to residents at anything other than Borough level. The WLA accepts that this is the case and that an accurate assessment of the ratio of licensed premises to residents in the three Stress Areas is difficult to provide. We note, however, that the Council's own evidence suggests that there are 12,700 residents in West End and St James' Wards and approximately 160 premises with an m&d licence within the West End. It is the premises with m&d licences which stay open later and which therefore have the greatest potential impact on residents. Using these figures, a ratio of 0.01 late night entertainment venue per head of population in the West End.

## 7. *Impact of the Industry*

7.1 This section of the WLA's original submission was not seeking – as the Council's written representations imply – to deny that there are issues of concern which may arise in respect of the management and development of the late night sector, but rather questioning whether those problems were as serious as the Council claimed and that the contribution of the licensed trade to problems such as noise, street cleaning and litter should be viewed objectively and action taken within the context of wider policies in these areas. It questioned whether, on the evidence available, the problems identified justified the introduction of such draconian policies exclusively against the licensed trade. It went on to argue that if genuine concerns were demonstrated, that any action should be proportionate.

## 8. *Noise*

8.1 *Paragraph 2.26-2.28* We welcome the Council's recognition that noise nuisance of all types is not a priority area of concern for the majority of residents. This endorses our recommendation that measures directed towards noise nuisance from licensed premises should be similarly prioritised. Noise is undoubtedly an issue for many residents, but action must be taken against the main sources of that noise, not simply the entertainment industry.

9. ***Crime and Anti-Social Behaviour***

9.1 *Paragraph 2.29-2.31* The WLA had never sought to suggest that the Council should not do anything about particular problems it identifies. We have, however, argued that those problems should be backed up by clear evidence of a link to licensed premises – either generally or specifically – and that measures taken should be proportionate to the scale of the problem.

9.2 The WLA has acknowledged that alcohol and more specifically alcohol misuse may be a factor in crime and anti-social behaviour, but the available research evidence does not support the Council’s simplistic assertion of an automatic link between alcohol per se and offences nor does it support a link between the simple number of licensed premises and offences. We refer to the authoritative evidence cited in our original submission.

9.3 It is also worth noting in this context that the Government’s Anti-Social Behaviour White Paper and Bill and the draft National Alcohol Strategy make no reference to a link between alcohol/licensed premises per se and anti-social behaviour, nor do they suggest that limiting the number of licensed premises is an appropriate policy response.

10. ***Residents Experience***

10.1 **Para 2.33 – one of your original comments Trevor – any thoughts or response**

11. **Policies are ‘misguided’ as they will exacerbate many of the problems the Council wishes to resolve**

11.1 *Paragraph 3.3* The WLA’s evidence should not be taken as being supportive of or acknowledging the concept and principle of stress areas in the City and West End.

11.2 Commenting on a proposal and suggesting alternative approaches does not necessarily mean endorsement of the policy or the presumptions on which it is based but rather a commentary on the Council’s approach. As the Council’s quote from the WLA’s original submission clearly shows, the comments about stress areas are prefaced by an ‘if’. This does not imply acceptance of the Council’s position or viewpoint.

11.3 As previously noted, the WLA has never sought to question the Council's right to do something about problems that it perceives to exist. We have, however, sought to question the merits of the solutions it puts forward to those problems. We have also not suggested that the Council should do nothing, but rather argued that any response should be proportionate and directed at the issues of greatest concern and 'stress' to residents.

11.4 *Paragraph 3.4* The Council state that the WLA provides no concrete evidence to justify its assertion that new or additional premises will not draw more customers into the West End but spread the existing customer base. The same could be said of the Council's counter claim. Like DAC Trotter, our assertion is based on the collective trading experience of our members and their understanding of the market within which they operate, its dynamics and the challenges of competition.

11.5 *Paragraph 3.5* Whether Manchester and Leeds have had to positively attract late night entertainment uses into their city centres in order to revitalise them is irrelevant to a consideration of their experiences of more flexible licensing and planning policies and the positive impact that has had on crime and disorder in the city centre.

12. ***Terminal Hours v Staggered Hours***

12.1 The WLA continues to maintain that the key point of consideration in this debate is not the closing time of the premises but the leaving time of the individuals using it. hence the concern should be to facilitate a staggered leaving of customers rather than a staggered closing time for outlets. Westminster's policy will frustrate this and perpetuate the problems which undoubtedly arise from a mass exodus of people from outlets at 11pm and 1am.

12.2 *Paragraph 3.10-3.11* The WLA disputes the assertion that the West End already has staggered closing times. The Council's figures clearly show 3 main closing times, with the overwhelming majority of premises closing at 11pm and 1am. This is not staggered but stepped and certainly does not allow for staggered leaving times by customers.

12.3 The assertion by DAC Trotter and Mr Frank Whitely that extended licensing hours will simply push the problems associated with the night time economy later into the night is simply that, an assertion. This view is not held by other members of ACPO

and is not supported by evidence from the Home Office or Department of Culture, Media and Sport.

**13. *Sugar Reef***

13.1 Although the appeal was ultimately dismissed, the Inspector did acknowledge the fact that a later closing time had resulted in lower levels of noise overall and an average background noise level which was not likely to “materially reduce the amenity of residents”. He also acknowledged that extended hours “may have contributed to a more gradual exodus, spread over a longer period”. Much of the decision is case and location specific but as an example of the closing time vs leaving time debate, it is still valid and telling.

**14. *Effect of the Policies***

14.1 *Paragraph 3.21* The Council provides statistics about planning applications submitted and the number approved. This is interesting but clearly relates to cases processed under existing policies. As the Council has acknowledged, the RUDP represents a significant tightening of those policies and therefore consideration of existing planning applications cannot be a reliable indicator of how cases will be dealt with in the future.

14.2 The WLA is surprised by comments made by the Council at the end of that paragraph which seem to imply that land use planning policy should be used to protect and foreclose an existing market. We would question whether this was an appropriate policy objective **Trevor – any views here**. We would also note that the small, independent operators that the Council is keen to protect, and which make up the majority of the WLA’s membership are not in favour of this approach to the market.

**15. *Policy v SPG***

15.1 The points that the Council makes in various parts of its written representations on the merits of UDP over and above SPG are not disputed. We are not seeking to suggest that SPG should be used in place of UDP as a

general rule of thumb. We agree that SPG is not the place to set out policy and that the UDP process provides greater scope for consultation and input into policy development. Our argument that SPG may be more appropriate relates specifically to the point in time at which the Council is seeking to revise its UDP.

15.2 With the planning and licensing regimes in a state of flux – a position which has been apparent since early 2000 when the Government stated its intention to revise both regimes – policy positions should be revised after these reforms are in place. We accept that the Council should not prejudge the outcome of those reviews and that is precisely why we have argued that the revision of the UDP at this point in time is inappropriate. We also accept that the Council cannot wait for the outcome of these reforms if urgent or pressing issues of concern arise in the meantime. SPG should be used in the interim to allow Council's to respond to specific issues of concern in the short term.

**16. Policies are 'inappropriate' at this time**

16.1 Whilst the Council provides much additional commentary on the issues identified by the WLA in this section, it does not provide any argument to counter the assertion that the uncertainty in all these areas means that a major policy revision at this time is inappropriate. We question the relevance of much of this section to this central issue.

16.2 *Paragraph 4.11 and 4.15* The WLA is not seeking to suggest that planning is irrelevant or subordinate to other statutory controls. It is, however, appropriate to note that other controls exist and Government guidance that planning should not seek to duplicate them. We suggest that the RUDP does that to a great extent.

16.3 *Paragraph 4.21* The WLA questions whether the Westminster Entertainment Forum fulfils the role of a proactive Entertainment Management Zone as identified by the Mayor's Draft London Plan.