

## ***WESTMINSTER CITY COUNCIL - DRAFT STATEMENT OF LICENSING POLICY***

- Westminster City Council has now prepared its draft statement of licensing policy as required under the Licensing Act 2003. The draft policy is due to be endorsed by Councillor Lewis in the last week of August and will be published for formal public consultation on 6<sup>th</sup> September. Comments will be invited by 1 November 2004.
- The WLA has been forwarded an advance copy of the draft policy and a very brief summary of the key points is set out below. A more detailed analysis will be provided in due course following discussions with Council officials and legal advisers.

### ***Vision & Objective***

- Westminster's stated aim is to make sure that it continues to offer a wide choice of high quality, well managed entertainment and cultural venues within a safe, orderly and attractive environment – valued by those who live and work in the area as well as visitors. It is somewhat ambiguous as to whether it is the entertainment offering, the environment or the Borough which is to be valued by residents, businesses and tourists.
- In order to achieve this aim, they want to encourage a greater diversity of entertainment and age groups coming into the West End. They also claim to want to provide greater flexibility for licensees. However, they want to encourage seating and food rather than “mass volume vertical drinking”. Tight control and management of standards are the key.
- It also wants to increase the residential population and ensure that it enjoys a good quality of life. This will bring it into direct conflict with the entertainment industry as Westminster is seeking to encourage residential growth in the heart of the Central Activity Zone and mixed use development.
- It is this vision and aim against which the draft policy should be judged and, as may be expected, it falls short. Far more emphasis is put on discouraging mass volume vertical drinking and in protecting residential amenity.

### ***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 on cumulative impact which applies only in the Stress Areas. Westminster claims to have provided the required evidential base to justify such an approach, but this is a moot point.
- 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. It is somewhat outside the spirit of the Act and Guidance but not the letter. However, the inclusion of a special policy on hours does run directly counter to both the Act and Government Guidance and it is questionable whether Westminster has provided adequate reasons to justify a departure from guidance in this aspect. This may be open to judicial review.

### *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 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. A draft operating schedule is also included which includes very wide ranging questions.
- 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. It should also be noted that the Government is envisaging standard national application forms and Westminster’s model operating schedule may not be enforceable.
- **Crime:** the key consideration here will be whether the applicant has had regard to the lengthy police checklist for risk assessments, levels of crime and disorder in and around the venue and compliance with conditions on existing licences. 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 include areas for permanent seating and limitations on promotions.
- **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 in particular set out measures to keep sound levels below levels where hearing will be damaged and provide facilities for people who are ill.

### *Public Nuisance*

- There is an expectation that applications will contain measures to limit noise and vibration to minimise it at source and control any leakage. Risk assessments should identify the potential for nuisance from other sources eg litter, noxious smells and volunteer control measures. Westminster’s principal policy lever to control nuisance is to restrict licensing and closing hours.
- 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*

- This is the least controversial objective and the focus is on staff training to control entry and sale.

### ***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.
- 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.

The policy includes an expectation that premises will be cleared no later than half an hour after licensable activity ceases. However there is also an expectation that alcohol sales will cease no less than half an hour before customers are expected to leave. The Council is keen to promote a wind down period.

- Westminster is claiming that aside from Fridays, Saturdays and Sundays prior to bank holidays these are current licensing hours. This is not the case – they are current opening hours including drinking up time, but the new Act only refers to hours during which licensable activities take place so the implication of the above is that alcohol could be sold until 11.30pm and a later closing time could be applied.
- The policy is, to all intents and purposes, a blanket policy. However, Westminster is at pains to stress that applications for later hours will be considered and granted in exceptional circumstances. The criteria to be used to assess whether later hours will be allowed include – hours when customers will be on the premises, hours when music will be played, hours when food or drink will be taken outside, existing hours and past operation of the premises, hours of premises in the vicinity, access to public transport, capacity, type of use.
- 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. Although there is a separate policy on mixed use premises (see below) it is not clear how this relates to the special saturation policy.

- 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.
- Following intense lobbying from local authorities – and in particular Westminster – the Government accepted that Councils should have the ability to set a special saturation policy for areas where it was felt there was a saturation of premises and clear evidence of the cumulative impact of those premises on the licensing objectives. The Guidance sets out several clear steps which must be gone through before such a policy can be adopted and requires a firm evidence base linking specific problems with the premises in question.
- Westminster has effectively operated a special saturation policy within the Stress Areas for some time and the recent public inquiry on the Unitary Development Plan accepted the principle behind the concept of stress areas, whilst suggesting that Westminster had provided insufficient evidence to support such an approach. It is arguable that the same applies in this instance. Whilst we may be able to challenge this, there is nothing in the Guidance which prevents the Council from acting in this way.
- The police draft policy is of blanket objections to all applications in the West End Stress Area unless there are genuine exceptional circumstances. This is excessive and is beyond what is expected and envisaged but it is for the Council to challenge police blanket objections in the first instance and they are unlikely to do so.

#### ***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 is particularly concerned about incidental or casual nudity and 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 their policy needs to take account of this. For such premises, the Council will consider the application on its merits and with regard to each of the relevant policies. Particular weight will be given to the primary and late night use to which the premises will be put – the implication being that it will be treated as that.

- **Temporary Events:** new temporary event notices 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.

### *General*

- Separate rules and policies on application and committee procedures will be drawn up in due course. We would expect this to deal with advertising, application forms, committee composition and conflicts of interest. Much of this will be set by national regulations.
- There is no reference in the policy document itself to the phasing of applications during the transitional regime, but this should not be taken as meaning that Westminster has abandoned this proposal. The policy statement is principally designed to set out how the Council will apply policy from the point at which the Act is fully implemented ie at the end of transition, and internal communication policy documents are still referring to phased applications being encouraged.
- The Guidance and Act are clear that undertakings attached to existing licences cannot be transferred to new licences during the process of conversion. However, Westminster will be seeking agreement from applicants to voluntarily translate undertakings into conditions when existing licences are converted. They also state that they will apply conditions replicating undertakings if you apply to vary your licence. It is a moot point as to whether they are legally able to do this.