

DRAFT SUPPLEMENTARY PLANNING GUIDANCE: ENTERTAINMENT USES

A response by

The Westminster Licensees' Association

The Westminster Licensees Association (WLA) welcomes the opportunity to comment on the draft supplementary planning guidance for entertainment uses (SPG). This draft policy has arisen from the Unitary Development Plan Public Inquiry, to which the WLA submitted detailed written representations in December 2002 and April 2003. Whilst we acknowledge that the Council has refined its proposed policy in the light of comments made during the public inquiry, we remain opposed to the approach adopted. We believe that the draft SPG is disproportionate to the scale of the perceived problem, potentially damaging to the licensed retail trade and the balance of uses Westminster is seeking to protect and premature with regard to recent changes in national licensing and planning policy.

By way of background, WLA is the only trade body dedicated to representing the interests of bar, club and restaurant operators within the Borough. It sits on the Westminster Entertainment Forum, has regular quarterly meetings with Council officers and is represented in discussions with local magistrates, the police and other key stakeholders. We also work closely with other trade and business bodies, both national and local.

The WLA currently represents over a third of all on-licensed premises within the Borough. Our members are predominantly restaurant, bar, nightclub and hotel operators and include national chains such as Mitchells & Butler, Punch Pub Company, established London operators such as Novus Leisure and Regent Inns and flagship licensed premises such as the Institute of Directors and Westminster Central Hall. However, the bulk of our membership is made up of a large number of individual independent small businesses operating under their own fascia. It is these outlets in particular stand to be most affected by Westminster's proposed policies since they do not have substantial head office or legal resources to draw upon to demonstrate why they should be considered as exceptions to the policy.

In commenting on the draft proposals, the WLA has focused principally on the overall approach adopted, and the theory behind it, rather than the specific proposals for each of the sub-areas. This is largely because insufficient time has been made available for the consultation period to enable a detailed scrutiny and analysis of each sub-area to be made, in consultation with affected members. We note that the Government's recommended time period for consultation is 3 months and yet the Council has persisted in a shorter time and has chosen to consult over the summer period – further hindering effective discussion.

Where possible, we have followed the same structure as the Council's draft policy and addressed each point in the order in which it appears. Paragraph numbers and policy sub-headings have also been used. We have concluded with generic comments about the approach adopted in respect of the sub-areas.

Overview

Independent pubs, bars, restaurants and nightclubs are at the heart of Westminster's vibrant and dynamic evening and night time economy. They make a very positive contribution to the local economy both in terms of taxation and employment. The hospitality industry accounts for 4% of London's GDP and the average outlet injects £64,000 each year into the local economy. The sector is the second largest private sector employer in Westminster – providing 1 in 6 jobs. However, they do much more than this - they provide social and community spaces and facilities for residents, local businesses and visitors alike. They are a major part of the West End's appeal for overseas visitors and underpin other industries such as retail and tourism.

We are disappointed that the draft SPG fails adequately to reflect the importance of this sector – the only reference being one paragraph in the introduction. The fact that the West End has an unequalled range of eating, drinking and dancing venues, cinemas, theatres, casinos and other entertainment centres is despite, not because of, the Council. There is nothing to encourage or sustain the businesses that give the West End its reputation. The tone of the document is unremittingly negative, the approach overly prescriptive and onerous on operators and the clear objective to inhibit any form of development.

If they are to continue to contribute to the economic, social and cultural life of the Borough, our members and their businesses need a supportive regulatory framework; and that includes the planning process. Sadly, the draft SPG does not provide this. It is worth noting in this context that the draft SPG is designed to restrict *entertainment* use, but will in fact apply to all licensed retail outlets. It will therefore restrict equally high quality, well managed venues – including entertainment venues - which provide a safe and attractive environment and are valued by those who live and work in the area. In short, the very venues which the Council has publicly stated it wishes to encourage.

We do not dispute the appropriateness or need to develop land use policies to deal with the growth and management of entertainment uses in certain parts of the City. We do, however, believe that such policies should be balanced, fair and proportionate. The draft SPG is none of these. We believe that the problems cited by the Council as justification for its approach are not as dramatic as claimed and do not vindicate the imposition of such draconian policies.

Westminster claims that the policies aim to maintain the City's position as an important entertainment centre, whilst safeguarding amenity. We believe that the draft policy fails in that objective. Far from maintaining and supporting the sector, we believe that, as drafted, the policy will result in a stagnant market, with no incentive for existing operators to improve standards, quality of operation or diversification of offering. It will deter investment and instead place a disproportionate premium on existing licensed premises. This was the net effect when similarly restrictive policies were introduced with regard to hotel development. In short, it will distort the entertainment market within the West End to the detriment of operators, customers, residents and visitors alike.

ENTERTAINMENT USE

We find it perplexing that specific guidance on entertainment use fails to provide an adequate and up to date definition of what constitutes such use. The text is scattered throughout with inappropriate references to music and dancing licences, public entertainment and late night café licences, A3 and D2 use – none of which now exist under new national planning and licensing regimes enacted in 2005.

The glossary acknowledges that the terms used and definition of the industry the policy seeks to regulate are out of date, but does nothing to address this. Given that the changes are far from recent and that they have a very major impact on the control which the Council is able to exert over entertainment premises – particularly those selling alcohol – it is vital that the policy is grounded on the most up to date information. It therefore needs to be revised to take account of these two regulatory changes.

Moreover, the definition of entertainment use given in the glossary is itself inadequate since it fails to include cinemas and theatres within it. These venues are quite clearly part of the entertainment industry and will have a premises licence. Their customers contribute to the numbers of pedestrians and traffic movement within the West End and are also users of restaurant and bar facilities. It seems bizarre to exclude them from considerations.

Equally, the sections relating to alcohol related crime and disorder fail to take note of the off-licensed sector. Many of those individuals causing a nuisance or disorder will have purchased

alcohol from these outlets – again, licensed by the Council. In particular the street drinkers, vagrants and gangs of youths identified within the policy as causing a problem are unlikely to have been customers of on-licensed premises. We believe that off-licences should be included within the scope of the policy or alternatively the crime and disorder figures be adjusted accordingly.

If the current restricted definition is to continue to be used, then we believe full service restaurants ie those falling within the new A3 definition, should also be excluded from the scope of the SPG. Such outlets are less likely to contribute to the problems identified within the draft SPG as they are food-led and play a crucial role in encouraging families, cultural tourists and UK visitors to theatres into the West End and provide a more diffused atmosphere.

INTRODUCTION

We are somewhat surprised to see neither reference to, nor acknowledgement of the importance of pubs, bars and nightclubs in the paragraph outlining the diversity of entertainment offering within the West End. There are many internationally renowned outlets which would be classified as such and which are in themselves a draw and an attraction, contributing to the atmosphere and vibrancy of the area. Are we to interpret from this that the restrictive policy is only designed to apply to this type of outlet and that the other sectors mentioned positively in the introduction are to be viewed more favourably? It is a fundamental flaw in the policy that no attempt is made to define entertainment use.

The introduction goes on to analyse the growth of entertainment uses within Westminster. Whilst this is helpful, there is no attempt to place it in context and it is therefore difficult to see its relevance on its own as justification for the proposed policy. For example, the use of a percentage increase on its own is somewhat meaningless – to assess its relevance, we need to know what level it was at the start of the period and the end and we need to place it in the context of other uses. In certain circumstances, a 25% increase may not be as dramatic as it first appears.

There is no doubt that the industry has enjoyed a period of sustained growth over the past decade – not only in Westminster but also nationally. In Westminster's case, this is largely as a direct result of positive planning policies which sought to actively encourage entertainment development in the Central Activity Zone – much of it now reclassified as a Stress Area. We believe that the main driver of this growth has been the restaurant sector and that the increase in floor space quoted relate to food-led rather than wet or entertainment led operations. However, an analysis of data held by the Department of Culture, Media and Sport on number of alcohol licences held in England and Wales in 2004, suggests that the level of entertainment use in Westminster and its recent growth is in keeping with national trends. Whilst the level of growth is higher than England and Wales as a whole, it is not significantly different and certainly not out of keeping with other city centre locations and central London Boroughs. It is also notable that across the country, numbers of actual licences are in decline (see Appendix 1).

The statistics quoted also refer to increases at ground floor level only. Whilst this is level at which most entertainment use is located, it does give a misleading impression of the overall land use and in particular the balance of uses. As the draft SPG goes on to note later, within the West End, it is no uncommon for there to be 6-8 upper floors of mixed commercial and residential use above the street level frontage. An assessment of ground floor uses alone may well lead to a conclusion that entertainment use is unduly dominant in the area, but an overall land use survey is a more realistic and reliable indicator.

The text then goes on to refer to the opening hours of entertainment uses, quoting number of premises, opening hours and capacity as at 2002. As this is not placed in context, it is difficult

to determine whether trading hours have been increasing over time nor whether more premises are opening later as is claimed. Premises are not able to determine their opening hours on their own initiative, nor is later opening unregulated. Indeed, the Council itself has had sole control over the opening hours of premises wishing to trade beyond normal permitted hours as set out in the 1964 Licensing Act.

It is somewhat surprising that the Council is still reliant upon out of date statistics concerning licensed retail premises – especially given the fact that the Council itself has recently issued licences for all these premises and is obliged to maintain a public register of these licences together with their detailed terms and conditions. Whilst we acknowledge that it may be too early to determine the impact of the Licensing Act in some circumstances, there can be no denying the actual numbers of outlets licensed under it and the trading hours currently in operation.

National licensing statistics produced in October 2004 by the Department of Culture, Media and Sport reveal a decline in the number of all types of licences after 2002 across all parts of the country, including Westminster, and we would also anticipate changes in opening hours and capacity levels during this period. Given the impact of this major piece of policy, we strongly recommend that the most up to date information is used, rather than relying on selective, out of date statistics.

The reference to capacity in this context is misleading since it implies that all venues are operating at full capacity at all hours and particularly up to their terminal hour. This is not necessarily the case. Capacity limits are set in conjunction with the Fire Authority and represent the absolute upper safe occupancy of the premises. There are not necessarily an indication of actual usage and most venues – particularly nightclubs – will trade under their capacity at most times. In addition, there is a marked decline in the numbers present within a premise during the final hour of trading, often only a third of the numbers reached at peak attendance.

Paragraph 3 on page 4 refers to premises with a music and dance licences. Such licences no longer exist and the reference merely serves to highlight the fact that the policy is based on out of date evidence and assumptions about the licensed retail trade and the environment within which it operates.

The policy goes on to state that the growth in the number of entertainment uses, combined with longer opening hours has led to an over-concentration in certain areas, adversely affecting character, function and residential amenity as well as balance of uses. We do not believe that the evidence provided in the policy document and the sub-sector areas is sufficient to justify this assertion. Much of the information is anecdotal and unsubstantiated, some of it is irrelevant to considerations of the impact of licensed premises, but there is little which actually supports the assertion that the problems identified are directly caused by the growth in licensed premises. The presentation of the evidence appears to conclude that entertainment use is the sole cause of the problems identified, but the Council has comprehensively failed to prove a causal link between the two.

Pedestrian Activity

The references to levels of pedestrian activity are again considerably out of date, highly selective and quoted out of context – making them unreliable from a statistical point of view. They are, moreover, unverifiable.

We acknowledge that the West End is a busy environment with lots of people visiting – the levels were measured during peak tourist season when number of visitors are at their highest. We note that the peak level is recorded between 11pm and midnight, with numbers declining dramatically after this. People flock to the West End for a variety of reasons, not just related

to entertainment use. Even if all late night entertainment activity ceased, the number of visitors would not be dramatically reduced and problems to residents would still arise.

Crime

This section is highly misleading, with statistics being quoted out of context, being undifferentiated between all crimes and alcohol related crimes, percentages being used without reference to total number of offences and erroneous conclusions being drawn from the correlation of licensed premises and incidents. Crucially, the statistics relate all alcohol-related crime to on-licensed or entertainment premises and no account is taken of the role of off-licences in this context. Some of the statistics used are out of date, drawn from different sources and different points in time. This makes them unreliable from a statistical point of view. We also note that the statistics quoted here relate solely to the West End, yet the policy extends far wider.

National research carried out on behalf of the Government suggests that alcohol is only a factor in 30% of city centre arrests and that half of all violent crimes are caused by alcohol misuse. The policy acknowledges this, but then fails to apply this to the statistics on levels of crime in Westminster. Instead, reference is made to total reported crimes and no attempt is made to differentiate those which are alcohol related and those which are not. Equally, no indication is given as to the type of offence, the time it was committed or its location. We appreciate that it is often difficult to gain information on the involvement of alcohol in actual reported incidents since this is not always recorded, but it would be possible to apply the national averages to the total number of offences in order to reach a more realistic figure.

The policy refers to recorded crime in the West End in 2001. It is worth noting in this context that the British Crime Survey for 2001/02 notes that more inclusive police recording and classification of offences and increasing media and public attention to violent crime has led to a big jump in recorded violent crimes. Figures quoted from 2001 therefore represent a peak in recorded levels of crime and, taken in isolation, are not reliable indicators. It would be more helpful to place this information in context eg trends over time, in comparison to other London Boroughs or trends in crime statistics in Westminster as a whole. We believe that the most up to date figures available should be used as the basis for such an important policy.

Whilst it is undoubtedly too early to assess the impact of the Licensing Act on levels of crime and disorder, we note that at the most recent meeting of the Westminster Licensees Association, Inspector Duncan Slade of the Metropolitan Police stated that there had been a year on year reduction in alcohol related crime and disorder within Westminster since the introduction of the new Act. We also understand that arrests for drunkenness have been consistently falling.

The Metropolitan Police website maintains up to date figures on levels of crime, on both a financial year and rolling year on year basis. This provides total figures of actual offences within Westminster and enables a comparison to be made between the situation in Westminster and London generally or other specific central Boroughs. The website makes much of the low level of crime within London and Westminster specifically, stating that "visitors to Westminster, the capital of the Capital, will notice how safe Central London feels". Across London as a whole in the year ending February 2005, total crime fell by 2.8%.

In Westminster, there were 80,281 crimes and 10,754 offences of violence against the person. As a percentage of the total number of offences in London, this is 8% of overall crime and 5% of violent crime, suggesting that Westminster is not a crime hotspot. Applying the national statistics on the numbers likely to be alcohol related, this suggests that during the past year there were just over 5,000 alcohol related violence against the person offences across the Borough as a whole. That is just under 2 offences per licensed premises per year or, expressed differently, 15 alcohol related violent offences a day or 0.00005 incidents per visitor per day.

The website also maintains historic data, enabling trends in crime levels to be assessed. This is a major failing in Westminster's analysis. Looking back to the 1999/2000, it is possible to assess whether levels of crime and violent crime in particular have increased significantly in Westminster as claimed and whether this increase is unique to the Borough or part of a more general trend.

	<i>Metropolitan Police</i>	<i>Westminster</i>	<i>WCC as % MP</i>
Overall Crime 1999/2000	1,052,047	87,615	8.3%
Overall Crime 2004/2005	1,030,545	80,281	7.8%
Violent Crime 1999/2000	156,880	9097	5.8%
Violent Crime 2004/2005	204,565	10,754	5.2%

From the above analysis it can be seen that over time, levels of crime both within Westminster and London as a whole are falling. However, the situation in Westminster is improving against the London average, with Westminster crimes falling as a percentage of total crime. Whilst violent crime does show an increase, it is less significant in Westminster than for London as a whole and again, as a percentage of total offences show a decline over the period.

There has been considerable investment in CCTV cameras in the West End to tackle alcohol related crime and disorder. The evidence from these camera also suggests a far lower incidence of crime. During a two-month period over the summer of 2002, a total of 784 crimes were captured on camera, with alcohol related offences accounting for around 10% of these. This is a very low number considering the number of visitors to the area – around 13 crimes per day or 0.00003 per visitor (assuming a conservative estimate of 500,000 visitors per day). If we look at alcohol related incidents, those figures fall to just over 1 crime per day.

Both of these alternative sources of data suggest that Westminster is not facing as significant and unique threat from crime and disorder as may be implied from their presentation of the information. There appears to be a desire to talk up the problem and paint the worst possible scenario. This is not borne out by the evidence.

Noise

Whilst we do not deny the contribution the entertainment industry and its customers make to late night noise, it is clear that the causes of noise and disturbance are far wider than this. We therefore believe that only noise and complaints about noise which are directly attributable to the industry should be taken into account as justification for the policy approach proposed.

The draft policy refers to total number of noise complaints but again fails to identify the percentage of these which relate to licensed premises and/or their customers. Indeed it actual states that the majority of these are not relevant considerations for the development of this policy – the majority of noise complaints given in evidence relate to construction work or illegal traders. No actual evidence is given of the level or type of complaint received in the areas identified as having a high concentration of entertainment uses.

If noise is to be used as a justification for the development of this policy, then accurate, up to date and differentiated data must be provided to support the assertion that it is a genuine problem. It would also be helpful to have trend data, a breakdown of figures per week or per resident and for comparison to be made with other areas in order to justify the claim that noise and nuisance from entertainment use is significant and a specific issue in Westminster. Again, the statistics provided relate to 2004 and are therefore out of date.

Figures provided by Westminster City Council in 2000/01 suggest that 70% of all noise complaints are from residential sources. A further 15% are from building sites and 5% from street noise such as busking, alarms etc. The remaining 10% will represent complaints about commercial noise and not all of these relate to licensed premises. The CAD call outs in respect of noise show extremely low levels of noise across all areas of the Borough, with Covent Garden and Soho rating no more highly than Portman and Westbourne.

This section concludes by stating that the combination of these factors threaten the development of sustainable mixed use communities. No evidence is provided to support this assertion. People are not moving out of the West End and other busy parts of the City, and neither they nor other businesses appear to be put off. Moreover, the number of actual complaints appears to be relatively low.

Indeed, research appears to suggest that demand for property in Westminster is strong and growing, with sustained residential value and buyers willing to pay “very full prices to live in busy locations above potentially noisy late night uses” (London Property Research). For many, living in the noise and bustle is an active lifestyle choice and they may be more tolerant as a result. As was noted in a recent planning appeal, “neither the Council nor the residents of the locality can expect to achieve or maintain suburban standards of amenity at the heart of a large city”.

A MORI conducted poll in April 2001 found low levels of dissatisfaction amongst the residential population of the West End. Only 10% of Westminster residents were dissatisfied, lower than for the rest of London, but comparable to national statistics. The most frequently mentioned issues contributing to a sense of dissatisfaction were those of traffic and traffic noise, parking and the presence of homeless people and drug dealers. Even in the busiest part of the West End, 85% of residents did not think bar noise was a problem and 82% did not think street noise was either. This is consistent with the Council’s own City Survey conducted at around the same time – noise nuisance ranked 13th on a list of residents’ priorities for action, and this is all noise, not just that from licensed premises.

WHERE DOES THE ENTERTAINMENT SPG APPLY?

We welcome in principal the suggestion that the Stress Areas be broken down into sub-areas, providing that this allows for a departure from proscriptive policy. We have always argued that a more targeted and street by street approach would be beneficial and that all areas should not be subject to the same policy. However, it is clear that the sub-division of the Stress Areas has been carried out purely to justify the policy approach outlined in the RUDP – namely that there should be no new development – and that no attempt has been made to consider potential applications within the sub-areas on their merits.

It is difficult to find any reference throughout the remainder of the document which suggests that a differentiated approach has been applied based on the location of the proposed application. The starting point for the assessment is the assumption that entertainment use will always have an adverse effect and should be prevented. As a result, there appears to be no area where additional entertainment use would be appropriate.

We firmly believed that any tightening of the already restrictive approach to entertainment use within the Stress Areas should be balanced by a more supportive or relaxed approach to entertainment use in other areas. This appears to be lacking.

We also note the broadening and widening of the areas covered by the proposed policy. No objective justification is provided for the extension of policy into new areas and we question whether sufficient evidence is given.

SUB-AREA CHAPTERS

In the time available, it has not been possible to carry out a detailed assessment of each of the sub-area policies and comment on either their profile or the specific proposals. However the following comments apply to all.

- **Land use data:** the sub-area profiles all quote from a 1990 Land Use Survey which provides baseline information on the amount of entertainment use. This is then contrasted with later GOAD data from 2005 on ground floor use. The presentation of the data is misleading as it suggests to the reader that the two figures are measuring the same things and that the difference between the two is the level of increase in entertainment use. This is not the case. The later figures relate only to ground floor use and, as would be expected, show a far higher percentage of entertainment use. However, with 4-6 floors of office, commercial and residential buildings above them, the impact of entertainment use on overall balance of uses is diluted and the rate of increase may well be lower. The statistics used significantly overstate entertainment use as a percentage to total land use. We believe it is misleading to use two very different surveys to attempt to demonstrate an historical trend and that only like for like information should be used in this instance.
- **Definitions:** the use of out of date information as the basis for the profiles means that the policy is being based on erroneous assumptions. The profiles all refer to public entertainment licences, music and dancing licences and night café licences – none of which now exist. The Council has responsibility for licensing all premises and is obliged to maintain an up to date register of all premises licences issued. It is therefore entirely feasible for it to use up to date information on the number and type of premises.
- **Statistics:** we have already highlighted the problems with the Council's use of statistics in the introduction to the policy. Many of the same points apply to the sub-areas profiles. Statistics are quoted selectively, cherry-picked from a range of sources with no attempt to place in context or historical trend. The majority are out of date and in respect of statistics relating to crime and noise are undifferentiated in respect of alcohol and non-alcohol related. This must be rectified as a matter of urgency.
- **Balance:** we are concerned that the sub-area profiles seem to accord far less weight to the views of entertainment uses and their customers (many of whom will be other commercial uses and local residents as well as visitors) than they do those of residents and the retail sector. For example, in the Carnaby Street sub-profile, reference is made to the need to strike a balance to ensure retail does not get overwhelmed – and this when retail is the dominant land use and when entertainment is recognised as supporting it. There appears to be no recognition of the need to ensure a true balance of uses in less commercial areas. There is a danger that we could create residential areas with no services to support those communities.

CONCLUSION

The above analysis is not designed to deny that the sale and consumption of alcohol can cause problems of crime, disorder and nuisance, nor to suggest that the Council should do nothing to tackle them through its planning policies where appropriate. It is designed to place the supporting evidence and data in context and to question whether the type of evidence quoted is robust enough to justify the adoption of the proposed proscriptive policy. We would suggest that the SPG as drafted fails that test and fails the sector it seeks to manage.