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Dear Mr Hodgson

Statement of Licensing Policy: A review

The Westminster Licensees Association (WLA) welcomes the opportunity to comment on behalf of its members on the City of Westminster's review of its statement of licensing 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. 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, Spirit Group, established London operators such as Urbium 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 businesses operating under their own fascia. It is these outlets in particular which stand to be most affected by the changes to the licensing regime since they often do not have substantial head office or legal resources to draw upon.

The WLA works closely with other national trade bodies, and our comments and response are supported by the Association of Licensed Multiple Retailers, with whom we have a number of members in common. We also endorse the submissions made by the British Beer and Pub Association and the British Hospitality Association – both of whom have national experience and expertise in these matters.

The Consultation

We are extremely concerned at the conduct of the consultation. The consultation period offered by Westminster is extremely tight, falling well short of the standard of good practice recommended by the Government. Four weeks is insufficient time for a membership organisation to analyse the proposals, canvass the views of its members and present a considered submission. The rushed nature of the consultation exercise is puzzling in that Westminster is not obliged to update its policy until January 2008.

It is worth noting in this context that none of the members of the WLA Executive Council had received either a copy or notification of the consultation. The WLA Secretariat was not sent a separate copy and only received details of it as part of the agenda for the Westminster Entertainment Forum in mid September. We suggest that this yet may render the consultation process – and any policy based upon it - flawed. We strongly recommend that the Council publish a revised policy for further consultation before adopting it finally in January 2008.

Overview

Independent 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, 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.

If they are to continue to contribute to the economic, social and cultural life of the Borough, they need a supportive regulatory framework and that includes the licensing process. The Council's existing Statement of Licensing Policy fails to provide this.

The WLA submitted detailed representations in advance of the adoption of the original policy. Those concerns remain and the document fails to reflect the views of the licensed retail trade. In our original submissions, the WLA concluded that:

"The tone of the document is unremittingly negative when referring to licensed retail outlets [it is] unduly prescriptive and onerous, seeking to specify much of what will be required from operators ... and steps outside of Government Guidance..

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. In short, it will distort the entertainment market within the West End to the detriment of operators, customers, residents and visitors alike."

Whilst we are not surprised, we are disappointed that the review of the Statement of Licensing Policy does nothing to address these fundamental flaws in the document.

The review document quotes evidence gleaned from residents' surveys and crime report analysis which suggests that the introduction of the Licensing Act has not resulted in the doom and gloom prophesied by the Council. In fact, the situation is improving. When the original policy was adopted, much was made of crime levels and residents' concerns to justify the adoption of a draconian licensing policy. The improving statistics removes that justification and we believe justifies some relaxation in controls to reward and encourage responsible operators.

The Association has a number of detailed comments to make, not only in response to the specific questions but point raised by the review as a whole. In the main, they are recommendations to clarify the intention of the Act and to avoid raising false expectations as to the degree of control the Council will be able to exert. These comments are set out below and grouped under the chapter headings used in the policy statement or the specific consultation questions.

PART ONE

Background

In the background section to the review document, Westminster states that its policy is working well and has not been subjected to legal challenge. This is not a view shared by those directly affected by the policy, and it is noteworthy that the Council has made little attempt to canvass the views and opinions of the trade. Certainly the reference to several hundred appeals suggests that many within the trade would dispute Westminster's positive gloss.

The absence of legal challenge and the withdrawing or small number of appeals should not be taken as any indication that the policy is seen as fair or justifiable. For many small operators in particular, it is simply not practicable to challenge Westminster's interpretation of the law. The financial and commercial risks are too great, and there is a general perception within the trade that Westminster has deep pockets and an appetite to fight any criticism of its policy.

The conclusions of this section are a clear indication that the net effect of Westminster's policy has been to reinforce and entrench the status quo which existed under the 1964 Act. We have a sector and an industry in Westminster – perhaps uniquely across the country as a whole – which is trading no differently now than it did before the introduction of this seismic change in licensing law. Westminster would no doubt conclude that this was a successful outcome of its policy, but we believe it to be a telling indictment. It also undermines Westminster's claim that falls in violent crime are solely down to the introduction of the policy. The policy has changed little from Westminster's previous policy on PELs, therefore the fall in the crime rate must be due to other factors, one of which will be increasing efforts by responsible operators to work in partnership with the police. This has yet to be rewarded or even recognised.

One City

We note the references to the One City White Paper for the period 2006-2010. We are extremely concerned that policies relating to the Stress Areas, their definition and use are reviewed and adopted by the Council in a multiplicity of guises eg Licensing Policy Review, Local Development Plan, specific planning policy for entertainment use and now the One City Review. This makes it very difficult for the trade to plan, develop and invest with any certainty. We would strongly recommend that definitive policy on this is confined to one initiative to avoid creeping expansion of stress area policies.

As noted in our original submission, if they are to be adopted, we believe that policies aimed at restricting certain types of development are best developed through the planning regime and not the licensing regime. This is endorsed by page 9 of the consultation document which correctly distinguishes between land use concerns and control of licensable activities. We would further draw the Licensing Authority's attention to the stringent evidence requirements set out in central Government Guidance before such a policy is adopted.

The City Survey

We were extremely interested to note the responses from the residents' survey and would urge the Council to study them carefully and act on the findings. In adopting its original policy, the Council claimed that licensing and alcohol related disorder was a high priority for residents and justified the extremely restrictive approach it proposed. The results of this survey show that this is patently not the case.

In the Stress Area itself, 90% of residents were either satisfied or ambivalent about licensed premises (the latter suggesting that it is not an issue of concern) and only 6 individuals expressed dissatisfaction. Similarly, 78% of people in the Stress Area said that they did not have a big problem with drunk or rowdy people and just 13 individuals said it was a big problem. It is simply not tenable for the Council to base its policy approach on the views of such a limited number of individuals in a small area of the City.

Changes in licensing law have not had the cataclysmic effect Westminster forecast and residents' fears have not materialised – as the council notes, residents appeals were fewer than anticipated, there have only been 3 requests for reviews from residents and they are broadly happy with hours and behaviour. The logical conclusion of the results of this survey is that there is scope for relaxation the policy without jeopardising this positive position – we would

advocate the introduction of genuine case by case assessments of applications on their merits, rather than the type of operation, as a fundamental starting point. Certainly, there is nothing in the findings to justify the introduction of further restrictions.

Working Together

We are disappointed that this section makes no recognition of the contribution of the licensed retail trade and the partnership efforts that our members have made in Business Improvement Districts and in liaison with the police. The trade as a whole has invested a great deal of time and energy in raising standards of responsible retailing within their premises and in tackling problems immediately outside them. This has played no small part in the significant fall in late night crime reported here.

These figures give credence to WLA's claim that the policy is unduly prescriptive and that Westminster can afford to be more relaxed. The fact that the review itself acknowledges that the policy has had the effect of reinforcing the status quo in terms of number of premises and trading hours suggests that the fall in crime cannot solely be attribute to Westminster's tough approach. Improved accountability and responsibility amongst the trade have helped and this should be recognised rewarded.

Stress Areas

The concept of stress areas has been extensively debated in the context of the Unitary Development Plan. We refer the Council to the previous evidence submitted in this regard. The WLA does not support the concept of stress areas and has long argued that they should not form part of the Council's licensing policy. We note that the Council will shortly be adopting further land use policies in respect of entertainment use and believe that this remains the proper vehicle for addressing such concerns.

We are concerned that Westminster's approach appears to be simply to look at whether the policy should be strengthened, not to consider whether it remains justified or necessary. We would also draw the Council's attention to our previous submissions which challenged the detailed evidence base on which the special saturation policy was originally adopted. We continue to maintain that this is fundamentally flawed – it is further undermined by the Council's new evidence on the impact of the licensing regime. We continue to recommend that the Stress Area policies be removed from the Statement of Licensing Policy.

We are extremely concerned at the Council's suggestion in the 3rd paragraph of this section on page 10 that:

“the contribution to cumulative impact of premises licences that are having a negative impact on the licensing objectives may, in some circumstances, be reduced if responsible authorities or interested parties apply for reviews”

This bald statement could be interpreted as encouraging or soliciting reviews. This is not appropriate for an impartial and neutral authority. We do, however, support the overall thrust of the statement – namely that those premises having a negative impact on the licensing objectives should be dealt with by means of targeted enforcement. This is our argument against the need for a special saturation or stress area policy.

We therefore **do not agree** that the Council should take into account the fact that there are already problems arising from the number of licensed premises in a Stress Area when considering complaints and applications for review. Government Guidance explicitly states that cumulative impact is not a matter for licence review proceedings and the Licensing Authority is obliged to determine a complaint in relation to the premises in question and to deal with the substance of the application for review, not other extraneous matters.

A review must relate to individual premises and behaviour. A special saturation policy is adopted precisely to deal with problems which arise from a number of licensed premises which cannot be tied to a specific outlet. It is not tenable to attempt to bring the two together in this way.

Exceptions to Stress Area Policies

We fundamentally disagree with Westminster's approach in this context and believe that the ability to apply Stress Area policies only to certain types of premises is a misuse of the power to adopt a special saturation policy as defined in Government Guidance. The policy presumption should apply to all types of outlet just as the ability to argue an exception should apply to all. It is a moot point whether the customers of restaurants and the type of outlet the policy appears to except may not equally cause the same problems of cumulative impact.

The WLA believes that responsible operators should be offered an entirely level playing field – the Licensing Authority must not be prejudiced simply on the style of venue applicants operate. The crucial test has to be whether an outlet is well run and managed, not what its generic type is.

This section of the consultation document suggests that consideration of applications should be subject to some sort of bargaining process, with applicants offering significant concessions in order to receive marginally more relaxed hours. This approach, set out formally in policy, is at odds with the need to treat each case on its merits and only to apply those conditions absolutely necessary to secure the licensing objectives.

The ruling in the Delicious case stated that the policy should be clear, understandable and transparent, so that an individual business would be able to understand the exceptional circumstances and when they would apply. The proposed special saturation policy fails that test.

We remain concerned at the prominence given to capacity limits and the need for seating as determining factors in whether a premises is run responsibly and can benefit from a more relaxed approach. Many customers choose to stand and the provision of permanent seating is unlikely to change this. There is also no evidence to suggest that standing whilst drinking inevitably translates into high volume consumption, anti-social behaviour or over crowding. A case by case assessment is more appropriate than blanket bans or exemptions.

Stress Area Boundaries

We support the conclusion in the policy review that there is no evidence to substantiate an extension to the Stress Areas and incidents of crime and disorder outside those areas should be dealt with by targeted enforcement and action against individual premises responsible for causing those problems – providing a clear causal link between specific problems and individual premises can be identified.

We have consistently argued that this is a more appropriate and proportionate response to the scale of the problem than a blanket restriction across a defined geographical area. We strongly recommend that this approach is applied across the Borough as a whole and the concept of Stress Areas, in terms of licensing policy, abandoned. At the same time, responsible operators should be rewarded with a more flexible and supportive environment.

The Council's review concludes that there should be no change to the existing Stress Area boundaries, but this is not subject to a separate consultation question. We continue to maintain that the existing Stress Areas are too widely drawn and include many locations which are either not residential nor have a concentration of licensed premises. We note the detailed analysis mapping distribution of later licensing hours against incidents of late night violence against the person carried out to determine whether the boundaries should be

extended. If the existing Stress Areas are to be retained in the Licensing Policy, we believe that this exercise should be carried out across the whole of the Stress Areas to isolate true cumulative impact.

We note the trend in violent crime reports quoted on page 17. This suggests that problems with violent crime and disorder are diminishing, not growing. This further supports our criticism of the policy as being unduly restrictive and undermines the Council's attempt to justify it as being necessary.

The figures for 2006/07 suggest fewer than 4 incidents of violent crime per night or one incident of violent crime for every 2 licensed premises per year. Given the number of licensed premises and number of people visiting the West End each evening, this is a remarkably low level of violent crime within the Borough and we look forward to the Council stressing this in their public utterances and abandoning their claims that the West End is an unsafe place for visitors.

PART TWO

As a general point, we see no reason for introducing specific policies for different types of outlet. Given that the new licensing regime has replaced six separate licences for different types of outlet, and that the Council wishes explicitly to promote a diverse and varied offering, we find it bizarre that the policy maintains separate provisions for rigidly defined outlets. The focus should be on licensable activities not on the type of outlet providing them.

We are also concerned that the drafting of these sections continues to give the impression that the Licensing Authority can either impose these particular restrictions on an outlet or require an applicant to offer up these concessions in order to have their application considered. It can do neither in the absence of relevant representations. In the absence of such a representation, the licensing authority has no choice but to grant the application in the terms sought and may not impose any additional conditions on the licence. The policy must make clear that it is for the applicant to decide whether to offer the restrictions set out in the policy, or offer alternative measures to meet the licensing objectives.

Hotels

As with its section on restaurants, the Council's policy suffers from being outmoded and outdated. Licensed retail premises have developed considerably and the old definitions of restaurant and hotel are neither applicable nor appropriate.

We are concerned that references to "generally grant" in this section will give the impression that a condition to this effect will be automatically applied or that an applicant will need to include reference to this in their Operating Schedule. We do not agree to an apparently general or blanket approach. Such matters should be considered on a case by case basis.

We note that many of our member's establishments will run pre-booked events whereby access is by ticket only and members of the general public are not admitted. This is particularly the case for restaurants and club-style venues such as Café de Paris or CC Club which will be booked out exclusively to corporate clients for events on a number of occasions. Would the suggested policy apply equally to this type of outlet or event?

Restaurants

As noted above, we believe that all applications should be treated on their merits and should not be subject to specific treatment or restrictions simply because they operate a certain business model.

In respect of the proposed policy on restaurants, we are concerned that the approach outlined for ‘genuine restaurants’ - a pejorative phrase in its own right – appears to be attempting to reintroduce the old, abandoned Part IV licences.

The WLA has some restaurants within its membership which would meet the proposed criteria, but many of these will have diversified following the introduction of the Licensing Act and will have introduced music or entertainment and more relaxed access to the bar in keeping with the broad thrust of the new legislation. We also have many former bar and drink led operators who have chosen to develop their food offering. We find it perverse that Westminster wishes to put the clock back in this way and note that it may work against its stated aim of increasing the seating and food offering in bars and encouraging consumption in more controlled environments such as restaurants and hotels.

As currently drafted, we believe that the policy for ‘genuine restaurants’ is too limited in scope to be truly beneficial and unlikely to be sufficiently attractive to encourage operators to adopt a more restrictive business model. The policy is outdated and divisive, attempting to force square pegs into round holes with no meaningful evidence to support why that is required.

Moreover, we believe it may be difficult to determine in practice. For example, if music is playing and a customer chooses to dance, will that take that premises outside the scope of the exemption immediately? What happens if a customer meets friends at the bar and joins them for a drink at the end of the evening or mid way through a meal? What sanctions will be imposed and how will it be policed?

What is the evidence to suggest that a customer having a drink at a bar at the end of a meal is any more likely to create nuisance or disorder than one having the drink at their table? What evidence is there to suggest that customers visiting a bar at a full service restaurant but not staying to dine will cause problems?

Whilst the following should not be taken as support for the Council’s proposed approach, if a separate policy for restaurants is to be maintained and relaxed in this way, we strongly recommend that it is applied to all full service restaurants, regardless of how their bar area is used. Given the fall in crime rates and very low incidences of crime overall, we can see no justification for promoting restaurants with no ancillary drinking over and above those businesses that provide a more balanced food and drink offer.

However, we cannot agree with the specific consultation question posed at the bottom of page 27. In the first instance, we do not agree with restricting this approach to so-called “genuine” restaurants and secondly, we cannot endorse a position which seeks to promote one type of business at the expense of another. Our support for extended hours for restaurants should not be taken to imply that we support longer opening for them over and above pubs and bars.

We would urge the Council to abandon its perceived approach that restaurants and hotels are good and pubs and bars are bad. This is overly simplistic and fails to take account of the way in which the outlet is run and managed. We go back to our central approach which is that the statistics quoted by Westminster suggest that there is scope for a more relaxed approach, but that that must be determined by management of premises not type of business.

For example, we note that the crime reports used to justify a more relaxed approach to restaurants fail to map incidents against actual customer numbers or visitor – a more insightful approach than mapping against numbers of outlets. Moreover, the graphs on pages 23 and 24 actually show a higher incidence of crime for restaurants than other types of premises when you look at actual number of offences – when it comes to late night crime, only nightclubs are responsible for generating a higher number of offences than restaurants.

Pubs and bars are actually placed 3rd and 4th place behind restaurants in terms of incident numbers, depending on timing. Even using the Council's approach of number of incidents per 10 premises, pubs and bars are in 4th place.

For this reason, we cannot agree with the Council's position as set out in the consultation question.

Casinos

The WLA does not have any casinos within membership and has no comment to make other than a general observation that a policy for specific premises again appears to pre-judge the outcome of the application.

Combined Use

The introduction of further separate policies for hotels and casinos can only add to the complexity of the policy and its difficulty in interpretation and application. Our concerns and comments made during the consultation on the original policy continue to apply.

Children

The WLA has been in long dispute with the Council over the concept of embedded conditions and the carrying over of restrictions relating to children under 14 not being allowed in the bar area. We believe that the Council was wrong to carry this condition over at transition and wrong to continue to refer to it in a Statement of Licensing Policy.

The consultation document clearly sets out the position under the Licensing Act 2003 – namely that unaccompanied children under the age of 16 are not allowed in alcohol-led premises at any time, and that their presence in other premises selling alcohol is restricted between midnight and 5am. We see no justification for an additional blanket policy of the type proposed by Westminster. This goes beyond the scope of the Act and Government Guidance.

Such an approach may be merited in certain circumstances but it must be applied on a case by case basis and then only if the Licensing Authority's discretion is engaged by means of a relevant representation. There is no justification for a blanket requirement on all premises for *accompanied* under 16s to be eating a meal or to leave the premises by a certain time.

This amendment must be removed from the scope of the revised policy.

Corporate Facilities and Canteens

As with other applications, these should be judged on their merits.

Off Sales of Alcohol

We welcome the recognition by the Council of the role that off-sales of alcohol play in creating problems of public nuisance and disorder. Many of the problems laid at the door of the on-trade are actually caused by individuals drinking at home and on the streets in advance of an evening out in the West End. We believe that there is merit in carefully considering the licensing hours granted to shops and supermarkets and, where there are relevant representations and genuine concerns about the level of corporate responsibility and contribution to identified problems, there may be scope for applying conditions limiting hours, restricting the siting of alcohol, measures to control price, promotion and sales. However, this can and must only be done on a case by case basis and where there is clear evidence of concern.

Whilst we find the Council's analysis of the problems associated with off-sales persuasive and the proposed policy appealing, we cannot support the use of blanket policy approaches

towards a particular type of outlet. We also question whether the Council could take powers of this nature and apply a cumulative impact policy in respect of off-sales.

Non-Standard Hours

We believe that it is important that the Council clarify that this section relates to non-standard hours for events referred to in an Operating Schedule and not events covered by a Temporary Event Notice as the drafting of this section has caused some confusion to operators. TEN notifications do not attract representations and cannot have conditions applied to them.

We do not agree with the overall thrust of this section of the document which states that “in general, the need for non-standard hours should be met by Temporary Event Notices”. This is entirely out of step with advice from DCMS and LACORS which has consistently urged applicants to be explicit about the days and events on which they would like non-standard hours to apply, precisely because it allows them to be carefully scrutinised and avoids the need for the use of ad-hoc temporary permissions. We cannot support any tightening of Westminster’s policy to discourage application for non-standard hours.

Encouragement of the use of non-standard hours for a variety of events, specified in advance and in detail may actually satisfy the needs of business and obviate the need to apply for longer trading hours as a matter of course to satisfy all eventualities.

We do not support the assertion that extended hours on a Bank Holiday Monday will not generally be permitted. This implies that the Council will not grant them and discourages applicants from applying. The Council can only refuse to grant if a relevant representation is made on this particular point.

All aspects of non-standard hours should be dealt with on a case by case basis.

No Nudity

Whilst we have no particular objection to this approach, we see no need for it to be adopted as a matter of policy. Surely such matters are best left to case by case assessments?

Smoke Free Premises

We question the need for the inclusion of a specific policy of this nature which is particularly pertinent at the present time in a general statement of licensing policy designed to apply from 2008 to 2011. Issues to do with public nuisance – be it noise from people outside the premises, smoke or other matters – can be dealt with through existing statutory controls and more particularly through the licensing review procedure should problems arise. The existing policies quoted on managing queues, control of outside patrons and noise and fumes would appear already to encapsulate any concerns which may arise in respect of smokers outside the premises. We therefore see no need for a specific policy of this nature.

Conditions

We have no concerns with this approach.

Hearings

We agree with the Council’s approach.

Other Issues

The consultation concludes by asking if there are other changes which we think should be made to the policy. We refer the Council to our first submission on the original Statement of Licensing Policy made in 2004.

We continue to believe that the Council’s policy is flawed and should be fundamentally revised and rewritten. We oppose the use of a plethora of different policies for different types

of outlet, the imposition of core hours and attempt to impose blanket conditions through the direction of applicants. We continue to question the evidence base used to justify the adoption of such a restrictive approach.

The Council's Statement of Licensing Policy is possibly the lengthiest in the country and it is certainly the most complex. As with Government Guidance, much of it was written to deal with transition and the conversion of existing licences. We believe that there is considerable scope to revise and simplify the policy document. There is also scope to introduce more flexibility without sacrificing the Licensing Authority's ability to control genuine problems as and when they arise.

Over and above the points made earlier, we would like to re-state our concerns about the following elements of the existing statement of licensing policy:

- ***Policies on the licensing objectives:*** The inclusion of specific policies on each of the licensing objectives and references within them to matters that are likely to be the subject of conditions appears at odds with Guidance. The lists of matters the licensing authority will consider in assessing applications are wide-ranging and read as a checklist of issues which applicants must address. There is a danger that many of these issues will not be relevant to the majority of outlets and may translate into inappropriate or disproportionate control measures. The policy must make it clear that it is for applicants to decide how they will meet the licensing objectives and that these policies are, at best, examples of best practice not absolute requirements.
- ***Duplication:*** many of the items listed under Public Safety and Public Nuisance duplicate existing statutory provisions and are therefore unnecessary and should not be applied as conditions. We further note that there is no legal basis for the implied requirement for written risk assessments to be provided in support of applications. We would draw the Council's attention to the judgement in the case of BBPA and others vs Canterbury in this respect.
- ***Core Hours:*** we remain opposed to this as a concept and continue to maintain that it runs counter to both the Act and Government Guidance. Guidance specifically states that terminal hours should neither be fixed nor engineered by the local authority. It goes on to recommend that policy statements should emphasise that "*consideration will be given to the individual merits of an application.... that longer licensing hours are important to ensure that concentrations of customers leaving premises simultaneously are avoided... that licensing hours should not inhibit the development of thriving and safe evening economies*". It concludes "*arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided*". Westminster's policy flies in the face of these statements.
- ***Enforcement:*** the original statement of licensing policy referred to work being done by the Council to develop a risk assessment based approach to inspection and enforcement activity and an enforcement protocol. During discussions at the time, we were assured that this would be developed in consultation with the trade and be made public so that operators could understand the criteria against which they were being assessed and the actions they needed to take to improve. This has yet to materialise, and we strongly recommend that it is published as part of the revised licensing policy

Conclusion

We appreciate that this is a somewhat lengthy and critical response, but the draft policy is a detailed and complex document. We trust that our observations will be viewed in a constructive manner and taken into account when the final draft of the policy is formulated.

The WLA remains committed to working with the Council to ensure a smooth transition to the new regime, and to that end will continue working with officers on revisions to the rules of management and the enforcement regime to be adopted.

Yours sincerely

Kate Nicholls
Secretary