

MODIFICATIONS TO THE DRAFT UNITARY DEVELOPMENT PLAN

Westminster Licensees Association (WLA) welcomes the opportunity to submit further written comments in response to the public consultation on Westminster Council's proposed modifications to its draft Unitary Development Plan (UDP). Whilst we are pleased that the Council has wholly revised its policy with regard to entertainment use (Policies TACE 8-10), we are disappointed that one set of restrictive and arbitrary policies have simply been replaced by another, with little apparent understanding of the implications for existing and new operators.

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 include national chains such as Mitchells & Butler, S&N Retail, established London operators such as Urbium and Regent Inns and a number of individual independent small businesses operating under their own fascia

Overview

WLA has previously been involved in consultations on earlier drafts of the plan and submitted detailed written representations to Public Inquiry in December 2002. Those representations objected to the City of Westminster's proposed policy with regard to entertainment use, arguing strongly that the Council had failed to provide adequate evidence to justify its restrictive approach. We also contended that the proposed policy was disproportionate to the scale of the perceived problem, potentially damaging to trade and the balance of uses Westminster is seeking to protect and premature with regard to the implementation of new licensing laws and changes to national planning policy. Having assessed the revised draft, we maintain that position.

Although the Planning Inspector largely endorsed Westminster's proposed approach, he did support many of the arguments set out by the WLA. He was critical of the wording of the policy, believing it to be imprecise and of unsound basis – particularly the evidence relating to crime and disorder - and was unduly rigid and inflexible. The conclusion of the report strongly suggested that if a 'stress area' approach was to be adopted, it needed far more evidence to justify it and needed to be more tightly drafted. He recommended instead a more criteria-led approach rather than one based purely on location. A range of possible alternatives was referred to but none appear to have been considered by the Council.

We believe that the same criticisms could largely be levelled against Westminster's redrafted policies: there is still insufficient, objective evidence to support the proposals; the proposed criteria approach is imprecise and fails to provide a sufficient degree of differentiation between outlets; and, the possible adverse impacts are nowhere precisely quantified or described in such a way as to give a prospective applicant or intending developer a clear idea of the admissibility of the development proposals.

In conclusion, we do not believe that due cognisance has been taken of the serious criticisms levelled at Westminster's original policy by the planning inspector nor of the representations made by trade and other bodies. In particular the modifications provide no indication of the evidential base requested at inspection and fail to provide the appropriate support to the industry, thereby threatening not only Westminster but also London's economy. We therefore wish to maintain our objections to the overall thrust and direction of the policy.

Notwithstanding our objection, we have provided commentary on the revised draft to help inform consideration of any further modifications. This should not be taken as implying support for the notion of a 'stress area' generally nor of the proposed modified policy in particular.

A New Criteria-Based Approach

Westminster's modified policies for entertainment use were published at the end of May and comments are invited by 25th June. We note that, again, the time set aside for public consultation falls far short of the Government's best practice guideline of 12 weeks. This makes it particularly difficult for representative bodies to consult within their membership and draft a collective response.

In response to the Planning Inspector's recommendations, the Council is now proposing three different policy approaches depending on the size of the outlet - less than 150 sq m of gross floorspace, 150-500 sq m and above 500 sq m - its location – outside Central Activity Zone, inside the zone and within the stress area – and the type of outlet - restaurants and cafes, pubs and bars, takeaways and other uses.

Small restaurants and cafes will generally receive planning permission in any location and even such outlets with between 150-500 sq m floorspace will have a presumption of permission if they are located inside the CAZ but outside the stress areas. Permission will only be given for outlets with more than 500 sq m floorspace wherever located in exceptional circumstances. The same is true of medium sized outlets within the stress area. Pubs and bars generally fall within the category of "may" be permissible, suggesting a more qualitative assessment. However in all cases, the Council needs to be satisfied that there is no adverse effect, nor adverse cumulative effect arising from any proposal.

These revised proposals are arguably more restrictive than those they seek to replace and will have an equally damaging effect on entertainment uses. The proposed approach is complicated and there is insufficient information on the exceptional circumstances and potential adverse effects which may affect a qualitative assessment to provide guidance to applicants. The revised policy is badly and loosely drafted and must be revised.

The revised policy also continues to ignore the projected growth in demand and need for entertainment use in the West End. Research from Westminster University predicts steady growth in visitor numbers of around 30-40% by 2015. Westminster's restrictive planning practice fails to take account of this and means that there is likely to be a shortfall in facilities to meet the needs of these visitors.

Stress Area

We continue to maintain our objection to the use of the term 'stress area'. Our objection has less to do with the principle behind the policy – namely the identification of an area where entertainment uses are clustered – and more to do with the terminology used.

The term is not only subjective and pejorative but is drafted from the stand point of only one group of stakeholders whose views the Council states it wants to balance. Moreover, we believe that it runs counter to the general thrust of London Plan Policy 3.D.4 which recommends that UDP's should "support the night time and evening economy in Central London" and Policy 4A.14 which refers to the challenge set to local authorities to ensure that those businesses continue to make a full contribution to London's World City status.

We recommend that the term 'stress area' be replaced by 'entertainment zone' in keeping with broader central and London government recommendations on the management of the late night economy.

Gross Floor-space

We would question whether size is necessarily an appropriate criteria to use to assess the potential adverse impact of an outlet. As with the initial draft of the UDP, the Council has again failed to provide any evidence to support the assumption that the size of premises relates directly to crime and disorder. Arguably many larger outlets will have less of an adverse effect as they have the space to devote to acoustic lobbies, provide spacious seating and good disabled access, for example. It is worth noting in this context, that restaurants and bars with a strong food offering will tend to be of a larger size, since roughly half the floorspace of the outlet as a whole will be given over to back of house operations.

The policy fails to provide a workable definition of the primary criteria for assessment – gross floorspace. This is not a concept that is used within the licensed retail trade nor property companies working within it and is therefore open to interpretation – does it refer to the overall size of the building or the outlet within it, trading area or customer area. In particular, clarification is required as to whether it applies to one or all floors as staircases and stairwells reduce the trading area of an outlet by around a third.

We therefore strongly recommend that the policy is revised to clarify what is meant and that the existing Royal Institute of Chartered Surveyor's definition of Net Internal Area is applied. For ease of reference, we have attached this definition.

The use of Net Internal Area would mean that an assessment was made on the space available to customers – where the adverse effects are most likely to arise - not taken up by the outlet as a whole and will therefore not unduly penalise smaller operators. The smaller the premises, the larger the back of house space tends to be.

Regardless of the definition used, the proposed size bandings are unduly restrictive and will place an artificial barrier on the market and may actually worsen the potential for problems. It is questionable whether a licensed outlet of less than 150 square metres would be viable in business terms. It certainly would not have the space to provide a good food or entertainment offering and would therefore rely on attracting a large number of drinkers.

A mature market such as the West End needs a small number of large iconic outlets to attract and draw in customers. Westminster's proposed approach would frustrate this in future. Larger outlets also have the resources to deal with problems as they arise, to invest in security, monitoring and street scape improvements as well as the increasing requests from Westminster City Council and others to contribute to Business Improvement zones, CCTV and additional policing.

The WLA would be willing to carry out some research amongst its members to determine the average size of existing premises and hence the real impact of Westminster's proposed policy.

Type of Development

In any event, the proposed scale and type of generally permitted development for entertainment will leave little or no room for manoeuvre for operators and developers that endeavour to respond to the changing needs of the consumers. Such severe constraints on scale can do nothing to improve the ease of accessibility or the quality of the leisure experience.

The old-fashioned definitions of a pub, restaurant and nightclub are no longer appropriate in today's dynamic market place. Outlets are increasingly hybrid and offer a wide range of experiences both at different times of the day and for different customer bases. Operators need the local authority to adopt a commonsense approach to the categorisation of outlets and one which reflects the dynamism and flexibility of modern day retailing.

It is worth noting in this context that the imminent reform of licensing laws will only serve to increase the varied nature of outlets since all activity-based licences will be replaced by one premises licence authorising the sale of drink, late night refreshment or entertainment. It will also give the local authority an opportunity to exercise greater controls over the management of individual premises which will arguably prove a better method of dealing with public nuisance and concerns about disorder than arbitrary restrictions on size of outlet.

Exceptional Circumstances & Additional conditions

The proposed modifications state that the Council will impose conditions on the planning permission for new entertainment uses or extensions to premises to limit opening hours. will be set out in supplementary planning guidance to take account of local conditions.

We are unable to comment on these proposals as they continue to be extremely vague. We would note that the Council has failed to provide the additional evidence required to justify this type of approach requested by the planning inspector. There is also insufficient detail to enable an applicant to understand what would be required of him.

Conclusion

The WLA is 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.

We believe that the modifications to the pre-inquiry UDP fail to meet the criticisms and requirements set down by the planning inspector. The Council has singularly failed to take on board comments made during the course of the public inquiry and therefore must be further revised.