

Licensing Hearing – 11 August 2020

Extract from Statement of Licensing Policy 2019-2024

Section 3

3.0 LICENSING OBJECTIVES AND LICENSABLE ACTIVITIES

Section 4 of the Licensing Act requires the Licensing Authority to carry out its licensing functions with a view to promoting the **Licensing Objectives**, which are:

- ☐ The Prevention of Crime and Disorder
- ☐ Public Safety
- ☐ The Prevention of Public Nuisance
- ☐ The Protection of Children from Harm

Decision making will be based on promoting these licensing objectives. Decision makers will also have regard to this policy document and any guidance issued from time to time by the Secretary of State.

The policy relates to all “licensable activities” as defined by the act, namely:-

- ☐ Retail sale of alcohol (for the avoidance of confusion, the definition of alcohol was amended by the Policing and Crime Act 2017 to include alcohol “in any state”. This is to make it clear that products such as powdered and vaporised alcohol fall within the definition provided by the 2003 Act.)
- ☐ Supply of alcohol to club members
- ☐ Provision of ‘regulated entertainment’ (listed below) – to the public, to club members or with a view to profit
 - o A performance of a play
 - o An exhibition of a film
 - o An indoor sporting event
 - o Boxing or wrestling entertainment
 - o A performance of live music (except within limits defined by The Live Music Act 2012)
 - o Any playing of recorded music
 - o A performance of dance
 - o Entertainment of a similar description to that falling within the performance of live music, the playing of recorded music and the performance of dance
- ☐ The supply of hot food and/or drink from any premises between 11pm and 5am (known as Late Night Refreshment).

Note: The requirement to license “entertainment facilities” was removed in October 2012.

Section 8

8.0 CONDITIONS

The authority wishes to encourage high quality, well managed premises. The operating schedule should describe how these high management standards will be achieved. In particular applicants will be expected to demonstrate:

- ☐ knowledge of best practice;
- ☐ that they understand the legal requirements of operating a licensed business; and

□ a knowledge and understanding of the licensing objectives, relevant parts of the licensing policy, and their responsibilities under the Licensing Act 2003.

Measures offered by applicants on their operating schedule will normally become licence conditions. They therefore must be enforceable and the meaning must be clear and unambiguous. The authority may alter the wording of a condition to achieve this. The context or meaning of the condition will not be changed.

The Licensing Authority may only attach conditions to a premises licence where "relevant representations" have been received. Relevant representations are those that relate to the licensing objectives, are about the particular application and relate to the particular premises.

Conditions will only be attached to a licence where they are appropriate for the promotion of one or more of the licensing objectives. They will focus on matters that are within the control of individual licensees and that are relevant to the type of premises and licensable activities that take place.

When considering conditions, the Licensing Authority will take into account the direct impact of the activities taking place at licensed premises on members of the public living, working or engaged in normal activity in the area concerned.

Conditions that duplicate provisions in other legislation would not normally be added to licences.

8.1 Authorisation of Sales

There is a mandatory condition on all premises licences that permit the sale of alcohol that all such sales must be authorised by a person who holds a personal licence. It is recommended that this authorisation be given in writing and that this written authorisation be available for inspection by police officers (including suitably authorised police staff), trading standards or licensing officers.

Section 9

9.0 ADMINISTRATION AND DECISION MAKING

This Policy shall be decided upon by the full Council. The Licensing Committee will consist of a maximum of 15 Members of the Council. If there are relevant representations against an application, the Licensing Authority will try to resolve issues between applicants and those making representations to try to reach agreement so that a hearing is not necessary.

Members of the public who wish to submit a representation will be made aware that their personal details will be made available to the applicant, unless they clearly state that they wish for them to be redacted. Anonymous representations however, will not be accepted by the Licensing Authority. Where relevant representations have been made and not subsequently withdrawn, applications will be heard by a sub-committee of three members drawn from the Licensing Committee.

The 2003 Act enables licensing authorities to act as responsible authorities as a means of early intervention; the Council's licensing department may do so

where considered appropriate without having to wait for representations from other responsible authorities. In cases where Spelthorne's licensing department is also acting as a responsible authority and has submitted a representation against or in support of an application being determined by a sub-committee, it is important to achieve a separation of responsibilities within the authority - to ensure procedural fairness and eliminate conflicts of interest.

A separation will be achieved by allocating distinct functions (i.e. those of licensing authority and responsible authority) to different officials within the authority. The officer advising the sub-committee (i.e. the authority acting in its capacity as the licensing authority) will be a different person from the officer who is acting for the responsible authority.

Guidance issued by the Home Office conveys that it should be considered reasonable for licensing authorities to expect other responsible authorities will intervene where the basis for the intervention falls within the remit of that other responsible authority. For example, the police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each responsible authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other responsible authority.

The circumstances in which licensing decisions may be delegated to an officer are set out in **Annex 3**.

Section 11

11.0 FUNDAMENTAL PRINCIPLES

It is recognised that licensing law is not the only means of controlling general anti-social behaviour, whether alcohol-related or not. However, licensing plays an important part in managing the night-time economy, particularly in town centres and any other identified "high risk" areas.

This authority recognises that individuals or businesses

- ☐ have the right to apply under the Act for a variety of permissions and have any such application considered on its individual merits
- ☐ have the right to make representations on an application or to seek a review of a licence or certificate.

The authority has a duty to prevent crime and disorder under Section 17 of the Crime and Disorder Act 1998 and are committed to working closely with Surrey Police, other agencies, local residents and businesses to achieve this. The authority will act in accordance with the values, principles and standards set out in the Equalities Act 2010.

The Human Rights Act 1998 makes it unlawful for a local authority to act in a way that is incompatible with a convention right. The authority will have regard to the Human Rights Act when undertaking licensing functions, particularly the following relevant provisions:

- ☐ Article 6 – everyone is entitled to a fair and public hearing within a reasonable time, by an independent and impartial tribunal established by law

- Article 8 – everyone has the right to respect for his home and private and family life
- Article 1 of the first protocol – every person is entitled to the peaceful enjoyment of his or her possessions.

Section 17

17.0 LICENSING HOURS

17.1 General

Longer licensing hours can help to avoid the concentration of customers leaving premises at the same time, leading to friction at late night food outlets, taxi ranks and other sources of transport. It is also recognised that licensing hours should not restrict the development of safe evening and night-time entertainments that are important for investment and employment locally. However, providing consumers with greater choice and flexibility must always be balanced carefully against the rights of local residents to peace and quiet. There is no general presumption in Spelthorne in favour of lengthening licensing hours: the overriding principle will be the promotion of the four licensing objectives.

Stricter measures for controlling noise are likely to be sought for late licences, particularly in residential areas and/or where there has been a history of noise complaints. Please also see measures outlined under the “Public Nuisance” heading below.

Consideration will always be given to the individual merits of any application.

17.2 Shops, stores and supermarkets

Shops, stores and supermarkets will generally be permitted to sell alcohol during the normal hours they are open for shopping. However, there may be very good reasons for restricting those hours. For example, a limitation on the hours that alcohol can be sold may be appropriate, following police representations, for shops known to be the focus of disorder and disturbance, or where youths gather and behave anti-socially.

17.3 Late night takeaways

Applications for premises offering late night take away food and drink will be considered on their individual merits. However, such premises can be the focus of disorder with large numbers of people gathering there after other licensed premises have closed. The density and closing times of other licensed premises in the vicinity will therefore be taken into consideration. Applicants for late night takeaways in Staines Town Centre will also be encouraged to include the provision of CCTV and use of town centre radios on their operating schedules.

17.4 Non-standard hours

It is recognised that businesses may wish to apply for non-standard hours for Bank Holidays, Christmas Eve or Saints days. However, any additional days should be clearly identified in their licence operating schedules with dates and times so that proper consideration can be made of their impact on the licensing objectives and so that the licence is clear and unambiguous in this respect.

Section 25 and paragraphs 25.5, 25.7 and 25.8

Staines Town Centre is no longer considered a hotspot for alcohol-related crime and disorder. However it has the strongest night-time economy in the Borough with a mixture of restaurants, bars, pubs, late night takeaways and a cinema. What applicants include on their operating schedules will depend on the type of premises, the location, and the proposed activities.

Premises that are mainly concerned with the sale of alcohol for consumption on the premises (**pubs, bars, proprietary clubs**) will need to address the risks to crime and disorder with measures in their operating schedules to:

- ☐ Prevent disorder on the premises
- ☐ Prevent drunkenness
- ☐ Prevent under age sales of alcohol
- ☐ Ensure customers enter and leave in an orderly manner
- ☐ Exclude illegal drugs
- ☐ Exclude offensive weapons

Examples include:-

- ☐ Active membership of pubwatch schemes
- ☐ Use of licensed door supervisors
- ☐ Physical security features e.g. use of shatterproof drinking glasses
- ☐ Information on amount of seating to be provided
- ☐ Training given to staff in crime prevention measures
- ☐ Use of town centre radios (Staines Town Centre) to enable licensed premises to communicate to each other and police
- ☐ Search procedures
- ☐ Measures to prevent the use or supply of illegal drugs
- ☐ Details of CCTV video cameras

This list is not exhaustive and will not suit all applications. Applicants should seek advice from Surrey Police before preparing their operating schedules in relation to the prevention of crime and disorder.

It is recognised that late night takeaways can be the focus of anti-social behaviour, and in Staines Town Centre the use of CCTV, licensed door supervisors at peak times, and signing up to the town centre radio may be considered necessary to address this.

Shops and off licences applying to sell alcohol will need to address the risks to crime and disorder with measures in their operating schedules. Examples include:-

- ☐ That there will be regular staff training (whether or not staff are paid) in relation to sale of alcohol to under age people and that training records shall be kept.
- ☐ All refusals to be recorded. in a refusals book. Refusals books shall consist of a bound book with consecutively numbered pages, and shall be held at the premises and available for inspection on demand at all times by the responsible authorities. Records shall include the reason for the refused sale, whether because the customer looked under 25 and could not provide ID, or the customer appeared to be intoxicated, or whether the sales assistant suspected that the sales may be made on behalf of someone who may be underage or intoxicated (known as proxy sales).

- ☐ Use of Electronic Point of Sale (EPOS) system to remind staff via a suitable visual prompt or audible warning. Alternatively stickers can be used over certain products to remind cashiers to check the customer's age.
- ☐ That there is CCTV coverage of the licensed premises and the immediate vicinity outside in accordance with Surrey Police's Operational Guidelines in the use of CCTV in licensed shops.
- ☐ That a personal licence holder may be required to be on duty at high risk times such as outside school hours and during the evenings, for example where a business has been prosecuted for underage sales and/or is a source of youth disorder.
- ☐ That staff shall not sell alcohol to any person they have reason to suspect may be buying the alcohol for a child and that there shall be signage to warn adults that it is an offence to buy alcohol on behalf of a child. This is known as "proxy sales". Where there is evidence of such sales taking place, consideration should be given to ensuring CCTV coverage outside the shop.
- ☐ In areas with problems with alcohol related youth crime and disorder, that licence holders shall participate in "Bottlewatch" schemes, if requested to do so by responsible authorities.
- ☐ In areas where there is an Offwatch scheme, that licence holders sign up to such a scheme.

This list is not exhaustive and applicants should seek advice from Surrey Trading Standards or Surrey Police before preparing their operating schedules

25.5 PUBLIC SAFETY

The public safety objective is about ensuring the physical safety of performers and people attending licensed premises. The risk to public safety will vary according to the type of premises and the activities that take place there. Most risks will be adequately covered by other legislation such as the Health and Safety at Work etc. Act 1974 or fire safety legislation. However other laws may not cover risks that are associated with particular types of activities or entertainment and will therefore need to be addressed in preparing licence applications.

Examples will include

- ☐ The provision of a suitable Residual Current Device (RCD) protection of electricity supplies to entertainers' equipment, including microphones, when regulated entertainment is organised on site
- ☐ Setting maximum numbers of people allowed (and use of clickers or counting machines when capacity levels are expected to be high)

Applicants are advised to seek advice from the Environmental Health Service (or other enforcement authority for Health and Safety at Work) and Surrey Fire and Rescue Service before preparing their operating schedules.

25.7 PUBLIC NUISANCE

Licensed premises can have a significant impact on communities from noise, litter, light, odour and anti-social behaviour.

25.7.1 Noise

It is recommended that operating schedules contain sufficient information for officers to form a view as to whether noise from licensable activities is likely to cause a problem to people living nearby. Applicants should provide details of proposed noise control measures, particularly if premises are in residential areas where regulated entertainment is being applied for late at night, or where there is a history of noise complaints. The licensing authority will normally apply stricter conditions in these circumstances where relevant representations have been received. Whilst each application will be considered on its individual merits it should be noted that restricting the hours of regulated entertainment may be necessary to prevent public nuisance.

Measures could include:

- ☐ A simple requirement to keep doors and windows at the premises closed when music is being played
- ☐ Limiting amplified music to a particular area of the building
- ☐ Moving speakers away from external walls or walls that abut private premises, or adjusting the direction of the speakers
- ☐ Installation of acoustic curtains, seals to doorways, rubber speaker mounts
- ☐ Fitting self-closing devices on doors so that they do not stay open.
- ☐ Monitoring noise levels at the perimeter of premises and taking action to reduce the volume if it is likely to disturb nearby neighbours, e.g. it could be too loud if the words of the song are clearly audible
- ☐ Noise limiters on amplification equipment (if proportionate to the premises – noise limiters are expensive and are likely to be a burden for smaller premises)
- ☐ Prominent clear and legible notices displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly
- ☐ The placing of bottles and cans into bins outside the premises to take place at times that will minimise disturbance to nearby premises

25.8 PROTECTION OF CHILDREN FROM HARM

The Council is committed to the safeguarding of children and vulnerable persons. The Licensing Act 2003 places legal responsibilities on holders of Premises Licences and Club Premises Certificates, and those who work in licensed premises to ensure that children are protected from harm at all times when on licensed premises.

In exercising the Council's powers under Section 182 of the Act to designate a body which is competent to advise the Council about the protection of children from harm, the following principles have been applied:

- ☐ the need for the body to be responsible for an area covering the whole of the licensing authority's area; and
- ☐ the need for the body to be answerable to democratically elected persons, rather than any particular vested interest group etc.

Having regard to the above principles and the guidance issued by the Home Office, the Council designates the Surrey County Council Children's Service for this purpose.

There are a great variety of premises for which licences may be sought. These will include theatres, cinemas, restaurants, pubs, cafes, take-aways, community

halls and schools, all of which will have different risks to children. The general relaxation that gives children greater access to licensed premises is a positive step, which aims to promote more family friendly premises. However the risk of harm to children is equal in importance to the other licensing objectives and applicants must include in their operating schedules the steps they propose to take to prevent moral, physical, or psychological harm to children.

When considering applications for new licences and variations to existing licences, the Council will seek to be assured that applicants have considered safeguarding of children and vulnerable persons within the Operating Schedule of the application. Where alcohol is to be sold, applicants should include details of the measures they propose to prevent its supply to children. It is expected that:-

- ☐ staff will receive regular and adequate training on the law and practice relating to age restricted sales (including challenging purchasers, checking identification), such training to be properly documented and records made available for inspection.
- ☐ registers of refused sales will be maintained and made available for inspection
- ☐ Applicants should indicate whether they are signatories to the Portman Group Code of Practice.

Further additional examples of recommended management practice for the protection of children could include:

- ☐ exclusion from the premises in certain circumstances;
- ☐ the display of prominent warning notices about the supply of alcohol to minors.;
- ☐ consideration of and / or refusal to stock high strength beers, lagers, ciders, etc.

It is now mandatory for premises which sell or supply alcohol to have an age verification policy in place. The Council favours the Challenge 25 scheme and such a scheme volunteered as part of an operating schedule will be given the appropriate weight when the Council determines the licence application.

Applicants needing advice on how to avoid age-restricted sales should contact Surrey Trading Standards Service (contact details at **Annex 2**) before preparing their operating schedules.

There are certain restrictions in the Act relating to the presence of children on licensed premises. In the case of premises, which are used “exclusively or primarily” for the supply of alcohol for consumption on those premises, it is an offence to allow anyone under the age of 16 to be on such premises unless they are accompanied by an adult.

Where the consumption of alcohol takes place but is not the exclusive or primary activity at a particular venue, those under 16 are not allowed on the premises between midnight and 05.00 unless an adult accompanies them.

The licensing authority will not seek to further limit the access of children to any premises unless it receives representations to that effect based on concerns about physical, moral, or psychological harm to children. The following are examples of premises that will raise particular concern:-

- ☐ Where there have been convictions of members of the current staff at the premises for serving alcohol to minors or with a reputation for underage drinking

- ☐ Where there is a known association with drug taking or dealing
- ☐ Where there is a strong element of gambling on the premises
- ☐ Where “adult” entertainment is being proposed.

Applicants seeking a licence that would enable them to provide alcohol as part of an alcohol delivery service should include in their operating schedule the procedures they intend to operate to ensure that:

- ☐ the person they are selling alcohol to is over 18;
- ☐ that alcohol is only delivered to a person over 18;
- ☐ that a clear document trail of the order process from order to delivery is maintained (with times and signatures) and available for inspection by an authorised officer;
- ☐ the time that alcohol is sold on the website / over the phone and the time; and
- ☐ that the alcohol is delivered is within the hours stated on the licence for the sale of alcohol.