

Licensing Act 2003 – Draft Statement of Licensing Policy responses

Responses received during the consultation period for the above policy which closed on the 4 March 2009. These are summarised as follows:

1. Salisbury District Council Licensing Committee

- I. Specify hours where licensing activities should not take place as is currently the case in Salisbury.

Officer Recommendation:

The policy should not seek to restrict what an applicant can or cannot apply for. Each application should be considered on its merits. Currently in the other 3 'Districts' there are premises already licensed beyond 0300 hours with a handful of premises licensed for 24 hours.

June 2005 case law - The British Beer and Pub Association, The Association of Licensed Multiple Retailers, The British Institute of Innkeeping v Canterbury City Council, concluded that:

"It is vital that the policy does not turn into a rule that is applied inflexibly and fetters that exercise of discretion. There must be a willingness to consider individual application on their particular merits."

Also Guidance issued under section 182 of the Licensing Act 2003 states that the Government wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time economies which are important for investment and employment. Providing consumers with greater choice and flexibility is an important consideration. It also states that shops, stores and supermarkets should be free to provide sales of alcohol for consumption off the premises whenever the retail outlet is open for shopping.

- II. Relevant Parish Councils to be notified of licensing applications in their area.

Officer Recommendation:

The legislation requires applicants to advise the defined responsible authorities of their application. They are also required to advertise the application both at the premises and in a local newspaper. If local authorities were to consult other bodies, then this could be classed as soliciting objections, which is not appropriate bearing in mind the requirement to be completely impartial. It is for this reason that there is no intention to consult with Town and Parish Councils, or any other body or individual.

Town and Parish Councils can, however, object to an application by making a representation, as they could be classed as representing local residents who live in the vicinity.

- III. Include powers of entry in the policy

Officer Recommendation:

The Licensing Act 2003 does include appropriate powers of entry to premises. It is not the intention to include details of the law in the policy.

2. Gary Tomsett, Team Leader Pollution and Housing, Salisbury District Council

- I. Suggest that Para 3.18 Expectations (Preventing of Public Nuisance) condones what may constitute illegal activity.
Officer Recommendation:
The Policy states that where other powers exist they should be used. The absence of any control does not imply approval.

- II. Suggests that Para 4.4 (The Licensing Function) that joint working is effective in dealing with nuisance issues
Officer Recommendation:
Section 182 Guidance para.2.26 states the Licensing Act 2003 should not duplicate a requirement imposed by other legislation.

- III. Suggests that 'need' in Para 7.1 (Cumulative Impact) is not appropriate for licensed premises
Officer Recommendation:
Sentences referring to 'need' have been removed from the policy.

- IV. Suggests that the enforcement protocol mentioned in Para 9.1 (Enforcement) may not exist and that any such protocol would conflict with the Council's Enforcement Policy.
Officer Recommendation:
The Enforcement Protocol is in existence and has been signed by all Enforcement Agencies including the District Councils. This protocol does not conflict with the Enforcement Policy as it is about determining the primary enforcement authority for any contraventions and does not specify appropriate enforcement matters.

- V. Concerns that where licensable activities provided to a small number of people take place within a large scale event that where Temporary Event Notices are used there is no opportunity to recover the costs of dealing with the event as a whole. This relates to Para 18.1.
Officer Recommendation:
If the main body of the event does not include licensable activities then the use of Temporary Event Notices is legitimate. It is expected that the Public Event Safety Group would engage with any large event to ensure that adequate controls are in place.

3. David Bardwell, Principal Environmental Health Officer, West Wiltshire District Council

- I. Suggest several amendments relating to emphasis, interpretation and typography.
Officer Recommendation:
The policy has been amended accordingly.

4. Wiltshire Fire & Rescue Service

- I. The word 'district' could have connotations to the old District Councils.
Officer Recommendation:
To avoid any confusion this has been replaced by the term 'area' or 'the Council's Area'

- II. The policy should state that contraventions observed but enforced by other authorities will be passed to those authorities.

Officer Recommendation:

Para 9.4 now includes this statement.

- III. The legislation should be specified relating to Fire Safety.

Officer Recommendation:

This should not be in the policy as this legislation may change.

5. Wiltshire Police

- I. Para 1.3 should mention that Personal Licence holders can be taken to a hearing.

Officer Recommendation:

Para 1.3 has been amended.

- II. Para 1.12 should not suggest that the police will help applicants physically complete applications.

Officer Recommendation:

It is suggested that the expectation of the Licensing Authority that Responsible Authorities will fully engage with potential applicants in order to help produce good quality licences that will have an impact on safeguarding of the licensing objectives. The paragraph has been amended to provide appropriate emphasis for larger premises.

- III. In Para 3.6 the first bullet should just read violent behaviour, it shouldn't be necessary to lead to serious injury.

Officer Recommendation:

Paragraph amended as requested.

- IV. Para 3.18 the last bullet should include noise.

Officer Recommendation:

Amended as requested.

- V. Para 4.7 why should it say that it is recognised that they have no direct control.

Officer Recommendation:

It is intended to leave this part in as it clarifies where the licence holder is unable to exert any control.

- VI. Para 9.2 what are the Hampton Principles?

Officer Recommendation:

The paragraph has been removed as being superfluous.

- VII. Para 16.1 the word 'extreme' should be removed.

Officer Recommendation:

Amended as requested.

6. Edwina Fogg, Councillor Marlborough & Kennet District Council

- I. Para 11.1 should be amended to mention DEFRA's guidance on powers to deal with night noise emanating from licensed premises

Officer Recommendation:

Paragraph has been amended to include the word 'nuisance' but not mentioning DEFRA guidance as this may change.

- II. Basic information should be user friendly.
Officer Recommendation:
Detailed guidance notes will be available for applicants and objectors to applications.

7. John English, Councillor Salisbury East

- I. Serving of 'over the limit' drinkers.
Officer Recommendation:
It is a direct offence to serve a person with alcohol when they are drunk. This is therefore not a policy issue.
- II. The consumption of alcohol should be limited on health grounds.
Officer Recommendation:
Health is not a licensing objective and therefore health based controls are not possible under this legislation.
- III. Some premises appear to be responsible for a high percentage of violent crimes.
Officer Recommendation:
Crime and disorder is one of the licensing objectives and therefore relevant. Where a premises can be shown to affect one of the licensing objectives, then a review of the licence can already be requested.

8. Geoffrey Carr & Brian Mudge, Councillors West Wiltshire Licensing Committee

- I. Councillor Carr has raised various matters of typography which have been addressed.
- II. Suggests that Para 1.14 should be amended to allow the licensing authority to impose conditions relating to matters not raised by objectors.
Officer Recommendation:
The law prevents licensing authorities from dealing with matters that have not been brought to their attention.
- III. Para 3.9, 3.14, 3.19 & 3.23 are identical.
Officer Recommendation:
These are considered important phrases and repetition is felt appropriate.
- IV. Para 3.22 requires clarification in relation to what are adult activities.
Officer Recommendation:
The wording has been clarified.
- V. Para 12.5. 12.6. Is there any need to encourage types of licensable activity?
Officer Recommendation:
It is the Governments stated objective to encourage 'live music' and some other forms of entertainment. The policy supports that view.
- VI. Suggests that Para 8.1 be amended to bring the time in line with the expectations to sleep contained in Para 3.18.
Officer Recommendation:
The paragraph has been amended.

- VII. Para 14.1 should be amended to give more emphasis to joining pub watch schemes.

Officer Recommendation:

Paragraph amended accordingly

9. M. L Hunter, resident of Pewsey

- I. Suggests that in Para 1.5 there should be guidance on when carnivals are licensable.

Officer Recommendation:

While guidance has been produced for the new council this is a legal view which has not been tested in court and could therefore change. The policy document is a statement on how the licensing authority considers applications and not policy on what it considers to be exempt. However, this information could be included in guidance notes for applicants.

10. Minety Parish Council

- I. Considers that the policy should be directed at urban areas rather than rural.

Officer Recommendation:

The policy must apply to the whole of the council's area.

- II. Applications should be considered in relation to local conditions.

Officer Recommendation:

It is a clear objective of this policy that each case will be considered on its merits, which would include location.

11. Zeals Parish Council, Limpley Stoke Parish Council & Pewsey Parish Council

- I. Request that town and parish councils should be included in the consultation process.

Officer Recommendation:

See comments Salisbury District Council Licensing Committee above.

12. Pewsey Parish Council

- I. There is no definition of responsible authorities.

Officer Recommendation:

A list of current responsible authorities has been added in Appendix A, Glossary of Terms.