

# Statement of Licensing Policy

## Licensing Act 2003

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### Document Control

Document Ref:	C3431	Date Created:	13 March 2018
Version:	1.3	Date Modified:	22 November 2018
Revision due	December 2024		
Author:	Licensing	Sign & Date:	
Owning Service	Public Protection and Culture		



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## **1. Introduction, Purpose and Scope**

- 1.1 The Licensing Act 2003 ('the Act') requires West Berkshire District Council ('the Council'), as the Licensing Authority, to publish a 'Statement of Licensing Policy' ('policy') every five years. In creating this policy, the Licensing Authority is seeking to protect and where possible to improve the look and feel of West Berkshire district, attracting visitors and making it a stimulating and enjoyable place in which to live, study and work.
- 1.2 The main purpose of this policy is to provide clarity to applicants, responsible authorities, elected Members and other persons on how the Council will determine applications made under the Act. It will also inform elected Members of the parameters within which licensing decisions can be made.
- 1.3 An effective licensing policy, alongside other initiatives, will work towards promoting the positive aspects of deregulation under the Act, such as promoting leisure provision and encouraging the regeneration of the town centre as well as controlling any negative impacts such as increase in crime and disorder, noise, nuisance and anti-social behaviour.
- 1.4 The Licensing Authority is committed to promoting a broad range of entertainment, recognising the wider cultural benefits for local communities. Live performance is central to the development of cultural diversity and vibrant, exciting communities, particularly traditional entertainment such as circuses and street arts. The Licensing Authority recognises that artistic freedom of expression is a fundamental right and should be greatly valued.
- 1.5 The Council recognises that licensed activities make an important contribution to the economy of the district. By regulating activities under this legislation the Council acknowledges that a balance must be struck between the legitimate objectives of applicants and the desires of the population as a whole, and in particular those members of the public living, working or engaged in normal activity in the area concerned. Consideration will be given to these, often conflicting, positions and all views will be taken into account when making licensing decisions or determining a course of action.
- 1.6 It should be understood that this policy cannot anticipate every scenario that may arise and as such there may be circumstances where the policy may be departed from in the interests of the promotion of the licensing objectives and where it is deemed appropriate to do so. In such cases the Council will give full reasons for departing from this policy.
- 1.7 The Council will carry out its licensing functions under the Act with a view to promoting the four licensing objectives, which are:
  - (a) Prevention of Crime and Disorder;
  - (b) Public Safety;
  - (c) Prevention of Public Nuisance; and
  - (d) Protection of Children from Harm.

- 1.8 The Licensing Authority is committed to working in close partnership and communicating with all licensees, responsible authorities and other persons where appropriate in order that they have a clear understanding of the legislative requirements. The Licensing Authority will continue to develop close working partnerships with other appropriate agencies and responsible authorities.
- 1.9 This policy is not intended to duplicate existing legislation and regulatory regimes that already place obligations on employers and operators, for example, the Health and Safety at Work etc. Act 1974 and the Regulatory Reform (Fire Safety) Order 2005. In addition, it should be noted that the planning and licensing regimes are separate. There is no legal basis for the Licensing Authority to refuse a licence application because the premises does not have planning permission.
- 1.10 The Council is conscious of the need to promote equality and when considering licensing matters will give due regard to the prevention of discrimination and promotion of equality of opportunity.
- 1.11 In determining the policy, the Council has taken into consideration any comments made by consultees, the statutory guidance issued under section 182 of the Act and the experience of administering and enforcing the Act since its introduction.
- 1.12 This policy takes effect on 7 December 2018 and will remain in force for a period of no more than five years. During this time it will be subject to regular review and updating or modification as appropriate, for example to take account of any changes in licensing legislation, with appropriate consultation on any material changes.
- 1.13 Comments on the policy may be made in writing to the Licensing Authority at any time. Contact details can be found towards the end of this document. All comments received will be carefully considered and, where appropriate, included in the policy.

## **2. Licensing Principles and Process**

- 2.1 The Council is the Licensing Authority under the Act and is responsible for granting premises licences, club premises certificates, personal licences and acknowledging temporary event notices in the district. The aim of the licensing process is to regulate licensable activities so as to promote the licensing objectives.
- 2.2 There are four main licensable activities under the Act:
- (a) retail sales of alcohol;
  - (b) the supply of alcohol by or on behalf of a club
  - (c) the provision of regulated entertainment; and
  - (d) the provision of late night refreshment.

- 2.3 This policy sets out the process the Council will adopt in dealing with licence applications and will be used as a basis in coming to consistent and transparent decisions in respect of licence applications. The overriding principle adopted by the Council will be that each application is determined on its merits. Every application will be treated fairly and objectively, taking into account the four licensing objectives, the policy and the statutory guidance issued under section 182 of the Act.
- 2.4 Each of the four licensing objectives is of equal importance and will be considered in relation to matters centred on the premises or within the control of the licensee and the effect which the operation of that business has on the vicinity. The Licensing Authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned. The Act is not a primary mechanism for controlling general nuisance unconnected to licensable activities or the licensing objectives.
- 2.5 It is acknowledged that public concern over disorder in particular may be thought to be a result of licensing legislation only. The Council can only have regard to the provisions of the Licensing Act 2003 when determining an application. However the Council recognises that other mechanisms exist to control disorderly behaviour, e.g. planning controls, town centre management arrangements, confiscation of alcohol from adults and children in designated areas, and Police enforcement powers.
- 2.6 When determining applications, the Licensing Authority must be satisfied that the applicant's operating schedule (please see section 4) seeks to promote the four licensing objectives. The Licensing Authority will make decisions guided by this policy but will not fetter its right to discretion. In the interests of the safety and wellbeing of all users of the facilities it licenses, the Licensing Authority expects licensees to adopt best practices for their industry. This policy further outlines the expectations of the Licensing Authority and should assist applicants.
- 2.7 The Licensing Authority recognises that conditions attached to various authorisations will be focussed on matters which are within the control of the licence holders. Conditions shall be proportionate and appropriate to achieve the promotion of the licensing objectives, and shall be tailored to suit the circumstances and premises.

### **3. Making an Application**

- 3.1 The relevant application forms and associated documents are obtainable from the Council's website or from the licensing team on request. It is strongly recommended that all applicants consult with the Licensing Authority prior to submitting an application. It may be appropriate to submit a draft application for comments.
- 3.2 The Council are happy to accept applications electronically. Applicants are advised to contact [licensing@westberks.gov.uk](mailto:licensing@westberks.gov.uk) for information.
- 3.3 A plan must be attached to an application for a premises licence or a club premises certificate. The plans do not have to be professionally drawn, however

they must be to scale and contain the relevant information as required under regulation. The plan should be at a scale of 1:100; however the Council will accept plans of an alternative scale provided this is approved prior to submitting the application.

- 3.4 Where a licensed premises is being constructed, extended or structurally changed, the applicant may apply for a provisional statement. This will be processed in the same way as a new licence application. However the provisional statement will not automatically be converted into a full licence on completion of works, and the applicant will have to submit a new licence application. It is acknowledged that unless representations are made at the provisional statement stage, or are not made without reasonable excuse, and neither the premises/vicinity has changed nor the type of licensable activities taking place, the licence will be granted. The applicant will be required to submit a full schedule of works, including a statement of the licensable activities for which the premises are proposed to be used as well as the plans and proposed hours of use, in order to allow the Licensing Authority to make an informed decision.
- 3.5 Where conditions have not been adhered to in the past, the Licensing Authority will expect applicants to have taken action to address those issues. Applications may be refused where there are significant outstanding issues.
- 3.6 In particular, for large scale events, it is suggested that the event should be referred to the Safety Advisory Group in advance of submission of an application.
- 3.7 With regard to shops, stores and supermarkets, the normal scenario will be for such premises to provide sales of alcohol for consumption off the premises at any time when the retail outlet is open for shopping unless representations raise reasons, based on the licensing objectives, for restricting those hours.
- 3.8 In some circumstances, flexible licensing hours for the sale of alcohol can help to ensure that concentrations of customers leaving premises simultaneously are avoided.

#### **4. The Operating Schedule**

- 4.1 All applicants for the grant or variation of a premises licence or club premises certificate are required to provide an operating schedule as part of their application. This is a key document and, if prepared comprehensively, will form the basis on which premises can be licensed without the need for additional extensive conditions. The Council expects an operating schedule to indicate the steps that the applicant proposes to take to promote the licensing objectives. This should follow a thorough risk assessment relating to the specific premises and licensable activities proposed to take place.
- 4.2 Applicants are strongly recommended to discuss their operating schedule with the responsible authorities prior to submitting the application. The Licensing Team can assist in co-ordinating this process.
- 4.3 The complexity and detail required in the operating schedule will depend upon the nature and use of the premises. It must include details of the following:

- (a) Full details of the licensable activities to be carried on at and the intended use of the premises;
  - (b) The times during which licensable activities will take place;
  - (c) Any other times when the premises are to be open to the public;
  - (d) Where the licence is only required for a limited period, that period;
  - (e) Where the licensable activities include the supply of alcohol, the name and address of the individual proposed to be designated premises supervisor;
  - (f) Whether alcohol will be supplied for consumption on or off the premises or both; and
  - (g) The steps the applicant proposes to promote the licensing objectives.
- 4.4 Where measures to promote the licensing objectives are included in the operating schedule, these may be used to form conditions attached to the licence and should therefore be clear, concise and unambiguous.
- 4.5 The following guidance is intended to assist applicants by setting out criteria and considerations that they should bear in mind when drawing up an operating schedule. They alert applicants to any matters that responsible authorities are likely to consider when deciding whether to make representations on an application or whether to call for a review of the premises licence.
- 4.6 A pool of model conditions is available on request from the Licensing Team. Individuals preparing operating schedules are at liberty to use these conditions, or volunteer any other measures(s) to promote the licensing objectives.

## **5. Licensing Objective 1: Prevention of Crime and Disorder**

- 5.1 The Licensing Authority is committed to reducing crime and disorder to improve the quality of life for the people of West Berkshire. Good management and practice procedures in licensed premises can make an important contribution to lessening the impact that consumption of alcohol can have on crime and disorder. The Licensing Authority and Thames Valley Police through the Building Communities Together Partnership will regularly monitor and review crime statistics within the district and their association with alcohol. When applying conditions, the Council will be mindful of the local Community Safety Strategy.
- 5.2 Licensees are encouraged to work in partnership with a local Pubwatch scheme to form strategies for actively preventing crime and disorder issues. This scheme encourages the sharing of information and seeks to address matters such as underage sales, drunkenness, illegal drug use and anti-social behaviour.
- 5.3 Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and event; for example

- Prevention of use, sale or supply of illegal drugs on the premises, and procedures and provision for storage of seized items.
  - Prevention of drunkenness and alcohol abuse such as drinking games and irresponsible drinks promotions.
  - Security features such as provision and storage of CCTV - capable of retaining recording images for a period of 31 days from the date of an event and to an identifiable standard (bearing in mind the need to comply with data protection regulations)
  - A prescribed capacity limit
  - Use of door staff to control entry to the premises
  - Procedures for ejection or dispersal of persons from the premises
  - Procedures for dealing with harassment, discrimination and inappropriate behaviour.
  - Use of polycarbonate/plastic containers and toughened glass and prevention of persons taking drinks from the premises in open containers
  - Display of crime prevention notices
  - An appropriate ratio of tables and chairs to customers based on capacity
- 5.4 Wherever possible, applicants are expected to be aware of local groups known to incite violence or hatred or take part in extremist activities in order to prevent the likelihood of meetings resulting in crime and disorder. Licensees will be expected to take into consideration the potential impact on privacy or religious freedom and the ethnic and cultural composition of the local area when hosting these meetings. The Licensing Authority recognises the need to promote the elimination of unlawful discrimination and equality of opportunity and recommends licensees seek guidance from the Equality and Human Rights Commission <http://www.equalityhumanrights.com/> or by contacting them on 0808 800 0082.

## **6. Licensing Objective 2: Public Safety**

- 6.1 When visiting licensed premises, members of the public have a right to be confident that due consideration has been given to their physical safety. Where an applicant identifies an issue in regard to public safety (including fire safety) which is not covered by existing legislation, the applicant should identify in their operating schedule the steps which will be taken to ensure public safety. Such steps will be dependent on the individual style and characteristics of the premises and/or event(s) to be held. It should be noted there is an overriding legal duty to comply with the provisions of Health and Safety at Work legislation, including risk-assessment and control.
- 6.2 The Licensing Authority has a Safety Advisory Group ('SAG') and, where appropriate, applicants are encouraged to seek the group's advice on issues of public safety. For example, a licensee who wishes to stage a licensable public

event which is not specifically indicated in the operating schedule may be invited to approach the SAG. When applying for licensable events on Local Authority property, the applicant may be required to present an event plan to the SAG.

6.3 Applicants may wish to consider inclusion of the following steps within their operating schedule with a view to the safety of persons attending the premises:

- Evacuation procedures including measures for disabled persons
- Maintenance of alarm systems and emergency lighting
- Maintenance of all escape routes and exits
- Safety checks and records in a log book
- Access for emergency vehicles
- First aid equipment and trained first aiders
- Appropriate lighting and ventilation and monitoring of noise levels
- Checks on temporary electrical installations
- Use of special effects such as lasers, pyrotechnics and smoke machines
- Control of any animals at the premises
- Use of door supervisors or stewards
- Procedures to ensure safety of women and vulnerable persons
- Provision of potable water (mandatory for premises with on-sales of alcohol)

6.4 For indoor sports entertainment or where special provision must be made for the safety of the public, applicants may wish to consider inclusion of the following steps within their operating schedule:

- Provision of qualified medical practitioners
- Where a ring is involved, that it be constructed and inspected by a competent person and any material used to be flame retardant
- Where there is wrestling or similar entertainment that the public do not occupy any seat within 2.5 metres of the ring
- Where there is a water sports event, appropriate provision of staff adequately trained to be available and remain in the vicinity at all times.

## **7. Licensing Objective 3: The Prevention of Public Nuisance**

- 7.1 The Licensing Authority interprets 'public nuisance' in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour. Public nuisance could include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community.
- 7.2 The Council is committed to minimising the adverse impact of licensable activity, whilst not unduly restricting the reasonable provision of licensed activity. It is noted that there are mechanisms other than the licensing regime that are available for addressing public nuisance away from the licensed premises. Examples include planning controls and Public Spaces Protection Orders.
- 7.3 The Licensing Authority, whilst recognising the need to treat every application on its own merits, should be satisfied that the type of licensable activities proposed and hours of operation will be suitable for the location in which the premises are situated (e.g. areas of dense residential accommodation). Playing of music can cause nuisance both through noise breakout and by its effect on patrons, who become accustomed to high sound levels and to shouting to make themselves heard, which can lead to them being noisier when leaving premises. Other major sources of noise nuisance are vehicles collecting customers, the slamming of car doors and the sounding of horns. These noises can be particularly intrusive at night when ambient noise levels are lower.
- 7.4 Where premises are located near to noise-sensitive areas, e.g. residential premises, nursing homes, hospitals or places of worship, the licensee should initially identify any particular issues (having regard to their particular type of premises and/or activities) which are likely to adversely affect the promotion of the objective to prevent public nuisance. Such steps as are required to deal with these identified issues should be included within the applicant's operating schedule.
- 7.5 In considering applications, the Licensing Authority will expect to see, where appropriate, evidence that the following matters have been addressed in the operating schedule:
- Measures to reduce noise and vibration escaping from the premises; including noise from music and voices whether or not amplified
  - Consideration of the licensed hours and restrictions on when licensable activities can take place both indoors and outdoors
  - Monitoring checks and logs of any checks carried out
  - Prevention of noise from deliveries or waste collections, or disposal of glass bottles etc., at unsociable hours
  - Measures to encourage quick and quiet dispersal by customers and staff including provision for access to book taxis, lowering the volume of music during the last 30 minutes before closing time and procedures for the safe removal and dispersal of persons ejected from the premises

- Measures to control light to ensure that it does not stray outside the boundary of the premises so as to give rise to problems to local residents and businesses
- Measures to control nuisance that might be associated with the use of the external areas, particularly late at night, including supervision of the areas and specified times during which food and drink will not be permitted to be consumed in the external areas.
- Measures to control litter and odour associated with use of the premises.

## **8. Licensing Objective 4: Protection of Children from Harm**

8.1 This objective includes the protection of children from moral, psychological and physical harm. The applicant should initially identify any particular issues (having regard to their particular type of premises and/or activities) which are likely to cause concern in relation to children. Applicants will be expected to consider the risk of children being exposed to alcohol, drugs, gambling, activities of an adult and/or sexual nature and exposure to excessive noise or incidents of violence and disorder. Such steps as are required to deal with these identified concerns should be included within the applicant's operating schedule.

8.2 The provisions of the Act are that unaccompanied children under 16 should not be on 'premises being used exclusively or primarily for the supply of alcohol' (e.g. 'alcohol led' premises such as pubs, bars and nightclubs). In addition, it is an offence to allow unaccompanied children under 16 on premises licensed to sell alcohol for consumption on the premises between midnight and 05:00.

8.3 Where appropriate, applicants should state in their operating schedule:

- (a) whether or not they will admit children to any or all parts of the licensed premises;
- (b) where children are to be admitted, the steps that will be taken to protect children from harm, for example supervision requirements, provision of designated areas for children and families, and hours during which children will not be permitted to be on the premises.

The applicant will also be expected to consider provision for lost and found children (in particular at large public events).

8.4 Where appropriate, the Licensing Authority will expect the applicant to evidence how they will supervise children who are performing in an event with regulated entertainment event and what consideration will be given to the welfare of children at attractions or performances likely to attract children. Where children are supervised, the Licensing Authority will expect the operating schedule to demonstrate that these supervisors have been appropriately checked by the Disclosure and Barring Service.

8.5 Where events are taking place that are provided solely or mainly for children, for example an under-18s disco, the expectation is that no alcohol will be served.

- 8.6 Applicants are required, where appropriate, to set out in their operating schedule the arrangements they have in place to prevent the sale of alcohol and age-restricted items to children. The Council expects all applicants to apply a Challenge 25 policy in respect of age restricted items. Where such a policy is not proposed within the operating schedule, it is expected that the applicant provides justification as to why such a policy is not required. The Licensing Authority recommends use of any of the following as an acceptable proof of age:
- (a) Passport
  - (b) Photocard driving licence issued in the European Union
  - (c) Proof of Age Standards Scheme Card (PASS)
  - (d) Official ID card issued by HM Forces or by a European Union country bearing a photo and date of birth of holder.

Consideration should also be given to training (including refresher training) for staff, and records to evidence this training. In addition there should be means of recording challenges and/or refusals relating to potential sales of alcohol to underage persons.

- 8.7 Where there are off-licence sales, the Licensing Authority would expect the operating schedule to demonstrate how the licensee will discourage the sale of alcohol to customers on behalf of children in the vicinity ('proxy sales'). For example, if the licensee has any suspicions of this activity to ask the customer if they have been approached by children to purchase alcohol and if necessary contact the Police.
- 8.8 Applicants from retail outlets which use self-scanning devices or which offer delivery of alcohol will be expected to demonstrate how they are going to prevent the purchase or delivery of alcohol by persons under the age of 18 and how they will comply with Challenge 25, where applicable.
- 8.9 The Licensing Authority will also expect applicants to set out in their operating schedule the measures that they will take to ensure that alcohol is not sold by persons under 18 unless specifically approved by a responsible person, or they are working as a waiter/waitress in a specially designated part of the premises and alcohol is sold only with a table meal.
- 8.10 Where appropriate, the Licensing Authority would expect applicants to demonstrate in their operating schedule that they will observe industry best practice guidance on the naming, packaging and promotion of alcoholic drinks to prevent children from being enticed into purchasing these products.
- 8.11 Licensees are encouraged to inform the appropriate agencies where it has been highlighted that children have tried to purchase alcohol and/or illegal substances.
- 8.12 In relation to exhibition of film, the Licensing Authority will expect the operating schedule to demonstrate that entry shall be controlled to protect children from exposure to strong language, sexual content and other inappropriate matters.

- 8.13 The Licensing Authority proposes to abide by the recommendations of the British Board of Film Classification, but the Licensing Authority reserves the right to re-classify any film. Information regarding such classifications will be published on the Council's website. All requests for a classification must be accompanied by a synopsis of the film and a full copy of the film in DVD or other appropriate format, and submitted at least 28 days before the proposed screening. Failure to submit a request in time may result in the Council being unable to classify the film. Requests shall be assessed against the BBFC guidelines and the licensing objectives.
- 8.14 The Licensing Authority recognises the West Berkshire Safeguarding Children Board as the competent body and responsible authority to advise matters relating to the protection of children from harm.
- 8.15 In considering applications, the Licensing Authority will expect to see, where appropriate, evidence that the following matters have been addressed in the operating schedule:
- Limiting the hours that children may be present
  - Excluding children when particular specified activities are taking place
  - Limiting the parts of the premises to which children have access
  - Age limitations
  - Excluding under 18s from the premises when licensable activities are taking place
  - Requiring that an accompanying adult be present
  - Arrangements for restricting children from viewing age-restricted films
  - Arrangements to ensure that sufficient adult staff are present to ensure that the children are protected from harm

## **9. Representations and Mediation**

- 9.1 Where relevant representations have been submitted, the Licensing Authority shall aim to facilitate negotiations between the applicant, objectors and any relevant responsible authorities prior to the hearing. Hearings may be avoided when all parties arrive at an amicable solution to the issues raised through negotiation.
- 9.2 In determining the grant or variation of a licence, any person may make a representation, including the responsible authorities.

The Licensing Authority will consider any relevant representations received. Any of individuals or responsible authority may request a representative to make representations on their behalf. This could be a legal representative, a friend, an MP or a Ward Councillor. The Licensing Authority will inform Parish Councils,

Town Councils and elected Members of valid applications received within their areas of jurisdiction.

- 9.4 The Licensing Authority itself is able to make representations, but this is likely to be limited to few cases, for example to ensure appropriate and proportionate conditions are included on a licence where the operating schedule is not clear. If the Licensing Authority makes a representation there shall be a separation of responsibilities between the officer exercising that role and those who are administering the application to ensure procedural fairness and eliminate conflicts of interest.
- 9.5 For a representation to be relevant it must:
- (a) relate to the effect of the grant of the application on the promotion of the licensing objectives;
  - (b) not be 'frivolous or vexatious', and
  - (c) in the case of a review, must not be 'repetitious' if the representation is from a person other than a responsible authority, and
  - (d) if it concerns the designated premises supervisor, be made by a chief officer of police and include a statement explaining the reasons for the objection.

Representations can include positive/supportive representations as well as objections.

- 9.6 The Licensing Authority is responsible for considering representations in the context of this policy and legal requirements in order to determine whether they are relevant. The Licensing Authority authorises suitably qualified staff to discharge duties as appropriate to their seniority, professional qualification and/or experience.
- 9.7 Where a representation is received, the Licensing Authority will need to consider if it is frivolous or vexatious. The Licensing Authority may also consider the representation to be 'irrelevant' if it does not directly relate to the application and its impact on the promotion of the licensing objectives. If the decision is made that a representation is frivolous, vexatious, and/or irrelevant, the person making the representation will be informed of this in writing with full reasons being given for the decision.

## **10. Cumulative Impact**

- 10.1 The Council recognises that the commercial demand for another premises in an area is not a matter for licensing considerations, but more a matter for the planning process and the market.
- 10.2 The Council also recognises that where there are several premises providing licensable activity in the same vicinity, the cumulative impact may have an adverse effect on the community; in particular from nuisance and disorder. Accordingly, the Council may refuse additional applications if it believes that to grant a licence would undermine one or more of the Licensing Objectives, and

representations have been received from a responsible authority or other person. In addition, the Council has to be satisfied that the criteria set out in the legislation are met. As detailed earlier in this Policy, each application will be considered on its own merits.

- 10.3 If the Council considers that a 'Special Policy' is needed to deal with the cumulative impact of licensed premises, it will only do so following consultation as specified in the Licensing Act 2003 and following the proper process.
- 10.4 The Council will expect licensees and potential licensees within an area to communicate with each other and prepare their Operating Schedules so that they complement each other and collectively meet the Licensing Objectives.

## **11. Decision Making**

- 11.1 The Council will seek to carry out its responsibilities under the Licensing Act 2003 efficiently and cost-effectively. To do this, functions are delegated in line with the Councils Constitution published online via the link cited at Appendix B. This form of delegation is without prejudice to referring an application to a Sub-Committee or the Licensing Committee if it is considered appropriate in particular cases.
- 11.2 The quasi-judicial nature of the licensing process is such that elected members and officers of the Licensing Authority can offer only limited assistance at hearings. It is important therefore that those giving evidence either as applicants or objectors consider taking legal or other professional advice and ensure they are fully aware of the procedure to be followed at the hearing.
- 11.3 In determining the application the Licensing Authority will consider:
- (a) the case and evidence presented by all parties;
  - (b) the promotion of the four licensing objectives;
  - (c) guidance issued by central Government; and
  - (d) the Licensing Authority's own Statement of Licensing Policy.

and will take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- to grant the licence subject to the operating schedule modified to such extent as the sub-committee considers necessary for the promotion of the licensing objectives, and subject to the relevant mandatory conditions;
- to exclude from the scope of the licence any of the licensable activities to which the application relates;
- to refuse to specify a particular person as the designated premises supervisor;
- to reject the application.

- 11.4 If it is reasonably considered that the licensing objectives cannot be met unless additional specific conditions are attached, then the Licensing Authority may consider attaching those which are appropriate for the promotion of the licensing objectives, proportionate to the individual style and characteristics of the event or premises concerned.
- 11.5 The decision of the Sub-Committee shall be accompanied with clear, cogent reasons for that decision, having had due regard to the Human Rights Act 1998 and all other relevant legislation. The decision and reasons for that decision will be sent to the applicant and those who have made relevant representations, and a summary of the decision shall be posted on the Licensing Authority's website as soon as is reasonably possible after the decision has been confirmed.
- 11.6 Anyone aggrieved by a decision of the Council has a right of appeal as set out in the Act. The Council will inform the appropriate parties of their right of appeal in accordance with the Act when confirming a decision of the Sub-Committee.
- 11.7 Where no relevant representations are received, the licence will be issued automatically with such conditions that are mandatory and those arising from the operating schedule. The Council has no discretion in such circumstances to refuse the application or to alter or add to the conditions offered through the operating schedule.

## **12. Temporary Event Notices**

- 12.1 Temporary event notices (TENs) or late temporary event notices (late TENs) may be used to authorise licensable activities at premises where there are 499 persons or fewer (including any staff and volunteers) present. TENs are not applications for permission to hold an event; they are notices of intention to hold an event. If there are 500 or more persons present at the event, a premises licence will be required.
- 12.2 In accordance with the 2003 Act, any individual person aged 18 or over may serve a TEN, whether or not they hold a personal licence. An individual who is not a personal licence holder may only serve a TEN 5 times a year of which 2 can be late TENs, and a personal licence holder no more than 50 times a year of which 10 can be late TENs. However, no more than 15 TENs covering a maximum of 21 days may be served in respect of any particular premises in a single calendar year.
- 12.3 Organisers of temporary events are encouraged to serve their TEN as soon as is reasonably practicable in order for the Police and Environmental Protection to consider whether or not they have any concerns about the event and, if they have, to enable all parties to try and take steps to resolve those concerns. The TEN form is available on the Council's website.
- 12.4 Although the legal requirement is 10 clear working days (or 5 clear working days for late TENs) not including the date of receipt or the date of the event, the Licensing Authority recommends that at least 2 months' notice be given to hold such events, to allow sufficient time for organisers to plan their events safely, for appropriate publicity and for consultation with responsible authorities and interested parties. Any longer period than this may mean that organisers do not

have all the details available at the time of submitting the notice, and any lesser time means that planning may be rushed and haphazard.

- 12.5 The processing of TENs by the Council is controlled by a strict statutory timetable; therefore, the Council will not accept a notice unless it is complete in all respects at the time of submission.
- 12.6 In the event of an objection, the Licensing Authority will hold a hearing and give a decision not less than 24 hours before the event is due to take place.
- 12.7 Organisers of events are reminded of the police powers to close down events with no notice on the grounds of disorder, the likelihood of disorder, or public nuisance. Therefore, the Licensing Authority expects organisers to be aware of the relevant offences under the Licensing Act 2003, for example sales of alcohol to children or to intoxicated persons.
- 12.8 Where exceptional events of local, national or international significance arise, for example a one-off local festival or World Cup, the Secretary of State may make a licensing order to allow premises to open for specified extended hours.

### **13. Personal Licences**

- 13.1 Personal licences authorise individuals to sell or supply alcohol, or authorise the sale or supply of alcohol for consumption on or off a premises at which a premises licence is in force for that activity.
- 13.2 Personal licence applicants with relevant unspent criminal convictions are required to notify the Licensing Authority of the nature of those convictions at the time of application. Where a personal licence holder is convicted of a relevant offence during the period when their application is being considered, the licence holder is required to advise the Licensing Authority forthwith.
- 13.3 Where the Police believe that the grant of a personal licence would undermine the crime prevention objective, they will issue an objection notice. The Licensing Authority will arrange for a hearing to take place at which the application will be determined.
- 13.4 It is an offence for a personal licence holder who is convicted of a relevant offence not to inform the issuing Licensing Authority in order that their licence can be amended. The personal licence holder must also notify the Court that they hold a personal licence.

### **14. Club Premises Certificates**

- 14.1 In order for qualifying clubs to supply alcohol and provide other licensable activities at their premises, a club premises certificate is required. Qualifying conditions are specified in section 61 of the Act and the Licensing Authority must be satisfied that these conditions have been met, including evidence that the club is non-profit making.
- 14.2 The Act does not require any member or employee to hold a personal licence in order to supply alcohol to members or sell alcohol to guests on the premises to

which the certificate relates, nor is there a requirement for the club to specify a designated premises supervisor. Where a club intends to admit the general public to an event where licensable activities will take place, then a premises licence or a TEN will be required.

## **15. Management of Licensed Premises**

- 15.1 A critical element of the proper control of licensable activity and a premises where such activity is provided is good management. The Council encourages all licence holders to consider what skills and competencies are required for the safe delivery of regulated activities and secure appropriately trained staff.
- 15.2 Within all licensed premises, whether or not alcohol is to be sold, the Council will expect there to be proper management arrangements in place which will ensure that there is an appropriate number of responsible, trained/instructed persons at the premises to ensure the proper management of the premises and of the activities taking place, as well as adherence to all statutory duties and the terms and conditions of the premises licence.
- 15.3 Any premises where alcohol is sold under a premises licence must have a designated premises supervisor (DPS) who must be a personal licence holder. The DPS will be named in the premises licence, a summary of which must be displayed on the premises.
- 15.4 The Council will normally expect the DPS to have been given the day-to-day responsibility for running the premises and as such it is expected that the DPS would usually be present at the licensed premises on a regular basis. The licence holder will also be expected to ensure that the DPS has experience commensurate with the size, capacity, nature and style of the premises and licensable activities to be provided. Where the DPS is not available at the premises for whatever reason, the Licensing Authority will expect his or her full contact details to be available at the premises and made known to at least one individual who will be present at the premises.
- 15.5 The Act does not require a DPS or any other personal licence holder to be present on the premises at all times when alcohol is sold. However every sale of alcohol must be made or authorised by a person who holds a personal licence on the premises, or by the DPS under authority that has been delegated (or must be made or authorised by the management committee in the case of community premises). The Licensing Authority recommends that if the DPS authorises persons to make sales of alcohol, that this is done in writing, that the document of authorisation is kept on the premises and that all staff are made aware of the location of the document. Where the DPS has delegated responsibility for the sale of alcohol, they still have a duty of responsibility for the action of those they have authorised to make those sales.

## **16. Complaints, Enforcement and Inspections**

- 16.1 Complainants are encouraged in the first instance to raise any concerns directly with the licensee or business concerned. Complaints may be sent to the Licensing Team, West Berkshire District Council, Council Offices, Market Street, Newbury, RG14 5LD, or [licensing@westberks.gov.uk](mailto:licensing@westberks.gov.uk) for investigation.

- 16.2 Where there are any issues identified or need for improvement at a premises, officers and responsible authorities will seek to work with the licence holder to address these concerns and to achieve a resolution through informal means wherever possible.
- 16.3 The Council undertakes proactive risk-based inspections of all licensed premises to ensure continued promotion of the licensing objectives and compliance with licence conditions. Premises that consistently fail inspections may be subject to a licence review or other enforcement action. Where one-off events are taking place, the Licensing Authority may also carry out inspections to ensure promotion of the licensing objectives.
- 16.4 In terms of enforcement, the aim is to target those premises which are causing problems within the community, whilst supporting well managed premises and activities which provide opportunities for the enjoyment of leisure time without having a negative impact.
- 16.5 Protocols for enforcement may be established between responsible authorities and the Licensing Authority in order to ensure efficient and targeted action for specific problems and high risk premises that require greater attention, whilst allowing a lighter touch in respect of well run, low risk premises. This does not prevent action being taken by any individual authority at any time should offences become apparent. In most cases, a graduated form of response is expected to resolving issues of non-compliance although it is recognised that in serious cases a prosecution or a review application will be the most appropriate means of disposal.
- 16.6 In addition to the Council's enforcement policy, which is available at [www.westberks.gov.uk](http://www.westberks.gov.uk), the Licensing Authority will also have regard to the Regulators' Compliance Code and the Enforcement Concordat and any decision to instigate legal proceedings will take account of the criteria set down in the Code of Crown Prosecution and Attorney General Guidelines.

## **17. Reviews of Premises Licences**

- 17.1 At any stage following the grant of a premises licence, a responsible authority or other person may ask the Council to review the licence because of concerns arising at the premises in connection with one or more of the four licensing objectives. However it is hoped that this can be avoided by dealing with issues in an informal manner wherever possible, and that reviews will be a measure of last resort.
- 17.2 In every case, the application for review must be relevant to the promotion of the licensing objectives. A hearing will be held to determine the application unless all parties agree that a hearing is not necessary.
- 17.3 Where the request originates from a person other than a responsible authority (e.g. a local resident, residents' association or local business) the Licensing Authority must consider whether the request for review is vexatious, frivolous or repetitious. The Licensing Authority may refuse an application for a review on any of these grounds and will give reasons to the applicant for such a refusal.

## **18. Early Morning Restriction Orders (EMROs)**

- 18.1 The Licensing Act sets out powers conferred on licensing authorities to make early morning restriction orders. These powers are designed to help licensing authorities address specific problems caused by late night supply of alcohol in their areas allowing licensing authorities to restrict the sale of alcohol in the whole or a part of their areas between midnight and 06:00. Licensing Authorities may make an EMRO in relation to problem areas if they have evidence that the order is appropriate for the promotion of the licensing objectives.
- 18.2 At the time of writing this policy the Licensing Authority has no plans to make an EMRO in any part of the district. However, the situation will be kept under review and should evidence emerge that suggests that the sale of alcohol between midnight and 06:00 is creating specific problems the Council will consider whether the introduction of an EMRO is appropriate. In considering the appropriateness of an EMRO the Licensing Authority will consider evidence from partners, including responsible authorities, local Community Safety Partnerships or other sources such as the consultees in Appendix A. If a proposal to implement an EMRO arises in the future the Licensing Authority will advertise and consult about its proposal in accordance with legislation and national guidance.

## **19. Late Night Levy (LNL)**

- 19.1 Late night levy powers will allow licensing authorities to raise a contribution from late opening alcohol retailers (from midnight to 06:00) towards policing the late night economy. This is a power that licensing authorities can choose whether to adopt for their areas. If adopted the powers must apply to the whole of the licensing authority's area. Income from the net levy is to be split between the Police and the Licensing Authority on the basis of a minimum 70% allocated to the Police and a maximum 30% allocated to the Licensing Authority.
- 19.2 At the time of writing this policy the Licensing Authority has no plans to collect a LNL. However the situation will be kept under review and prior to making a decision to implement a LNL, the Licensing Authority would have discussions with the Police and Crime Commissioner (PCC) and local police to decide whether it is appropriate to introduce a LNL. If a proposal to implement a LNL arises in the future, the Licensing Authority will consult the PCC, the police, licence holders and other sources such as the consultees in Appendix A about its proposal.

## **Appendix A: List of Consultees**

- Association of Convenience Stores
- Association of Licensed Multiple Retailers
- Bingo Association
- British Amusement Catering Trade Association
- British Institute of Inn Keeping
- British Beer and Pub Association
- Committee of Registered Club Associations
- Community Safety Team
- Drug and Alcohol Action Team
- Guild of Master Victuallers
- Home Office – Immigration Enforcement
- National Federation of Community Organisations
- Parish and Town Councils
- Premises licence and club premises certificate holders
- Planning
- Public Consultation Portal
- Public Health Team
- Pubwatch
- Royal Berkshire Fire and Rescue
- Society of Licensed Victuallers
- Thames Valley Police
- West Berkshire Council Environmental Health
- West Berkshire Council Planning
- West Berkshire Council Trading Standards
- West Berkshire Safeguarding Children Board

**Appendix B: Delegation of Functions**

See relevant scheme of Delegations.

## Appendix C: Glossary

<b>Capacity Limit</b>	Where the Licensing Authority and/or Fire Authority have set a limit on the number of people allowed in a premises or part of a premises, to prevent overcrowding which can lead to crime and disorder and concerns over public safety.
<b>Child</b>	Any person who is under the age of 18 years.
<b>Club Premises Certificate</b>	A certificate authorising the supply of alcohol to members of a qualifying club, the sale of alcohol to guests on the premises and the provision of regulated entertainment without the need for any member or employee to hold a personal licence.
<b>Council</b>	As far as this policy is concerned, any reference to the Council shall be interpreted as the Licensing Authority.
<b>Cumulative Impact</b>	Where there is a potential impact on the promotion of the licensing objectives due to a significant number of licensed premises concentrated in one area.
<b>Designated Premises Supervisor</b>	A specified individual, holding a personal licence, who is responsible for the day-to-day running of the business and whose name will appear on the premises licence.
<b>Late Night Refreshment</b>	The supply of hot food and drink between the hours of 23:00 and 05:00 for consumption on or off the premises.
<b>Licence Types</b>	<ul style="list-style-type: none"> <li>• Premises Licence</li> <li>• Club Premises Certificate</li> <li>• Personal Licence</li> <li>• Provisional Statement</li> <li>• Temporary Event Notice</li> </ul>
<b>Licensable Activities</b>	<ul style="list-style-type: none"> <li>• The sale of alcohol by retail</li> <li>• The supply of alcohol by or on behalf of a club to, or to the order of, a member of a club</li> <li>• The provision of regulated entertainment</li> <li>• The provision of late night refreshment</li> </ul>
<b>Licensing Objectives</b>	<ul style="list-style-type: none"> <li>• Prevention of Crime and Disorder</li> <li>• Public Safety</li> <li>• Prevention of Public Nuisance</li> <li>• Protection of Children from Harm</li> </ul>
<b>Licensing Qualification</b>	Qualification accredited by the Secretary of State and a requirement for a personal licence.
<b>Operating Schedule</b>	This forms part of the completed application form for a premises licence and must promote the licensing objectives. See section 4 for more information.
<b>Personal Licence</b>	This authorises individuals to sell or supply alcohol or authorise the sale or supply of alcohol for consumption on or off the premises for which a premises licence is in force for the carrying on of that activity.
<b>Premises Licence</b>	A licence in respect of any premises, including land or buildings under public ownership within the community that are to be used for one or more licensable activities. Valid for an indefinite period unless revoked or surrendered.
<b>Proprietary Clubs</b>	Clubs run by individuals, partnerships or businesses for the purpose of making a profit.

<b>Provisional Statement</b>	Where premises are being constructed or extended or substantial structure changes are proposed.
<b>Qualifying Club</b>	Where members have joined together for particular social, sporting or political purposes and then combine to buy alcohol in bulk as members. Examples of qualifying clubs are: <ul style="list-style-type: none"> <li>• Political clubs</li> <li>• Royal British Legion</li> <li>• Working men's clubs</li> <li>• Social and sports clubs</li> </ul> A qualifying club can, however, obtain a premises licence if it wishes to offer its facilities commercially for use by the general public.
<b>Regulated Entertainment</b>	Entertainment that is provided to members of the public or to members of a qualifying club, or entertainment held with a view to profit. This includes plays, films, indoor sporting events, performance of dance and live and recorded music. For more detailed advice on whether a specific activity constitutes regulated entertainment, please contact the Licensing Team.
<b>Relevant Offences</b>	As set out in Schedule 4 to the Licensing Act 2003.
<b>Relevant Representations</b>	Representations (objections) made by a responsible authority or any other person which are deemed as relevant
<b>Responsible Authorities</b>	This group can make representations and includes bodies such as: <ul style="list-style-type: none"> <li>• The Chief Officer of Police</li> <li>• The Fire Authority</li> <li>• The Local Enforcement Agency for the Health and Safety at Work etc. Act 1974</li> <li>• The Weights and Measures Authority</li> <li>• The Planning Authority</li> <li>• Environmental Health</li> <li>• Public Health</li> <li>• The body responsible for matters relating to the Protection of Children from Harm - the Local Safeguarding Children Board</li> <li>• The Licensing Authority</li> <li>• Home Office (Immigration Enforcement)</li> </ul>
<b>SAG</b>	Safety Advisory Group. An advisory body whose purpose is to offer advice and guidance on event organisation.
<b>Temporary Event Notice (TEN)</b>	A notice of intention to carry on of the sale of alcohol, provision of regulated entertainment or late night refreshment at a premises not otherwise authorised by a premises licence or club premises certificate.
<b>Late Temporary Event Notice (late TEN)</b>	As per Temporary Event Notice, however, can be served with between 5 and 9 working days notice before the day of the event. There is no right of appeal or to a hearing if the Police or Environmental Health raise an objection.