

APPENDIX C

AMENDMENTS TO THE LICENSING POLICY MADE AFTER THE MEMBER WORKSHOP (18th January 2011)

- 1.1** This Statement of Licensing Policy has been prepared in accordance with the provisions of the Licensing Act 2003 (the Act) and guidance issued under Section 182 of the Act by the Home Office..
- 3.1** This Policy will take effect from 1st February 2011 and will be subject to periodic review and consultation. It is likely to be further reviewed in the near future due to the proposed changes in the Licensing Act.
- 3.4** The Licensing Authority has also taken into account the guidance issued by the Department of Home Office under section 182 of the Act with regard to licensing policies.
- 4.1** This Licensing Authority when determining applications, authorisations and notices that have attracted relevant representations, and review applications, will normally work within the framework of this Policy and also take into account the Guidance issued by the Home Office under section 182 of the Act. However, this Licensing Authority reserves the right to depart from this Policy and the Guidance whenever it considers it correct and appropriate to do so.
- 6.2** Representations can be made by an 'interested party' about certain applications made to the Licensing Authority. An interested party means any of the following:
- (a) a person living in the vicinity of the premises,
 - (b) a body representing persons who live in that vicinity,
 - (c) a person involved in a business in that vicinity,
 - (d) a body representing persons involved in such businesses
 - (e) an elected member of the Licensing Authority
- In determining whether a person is an interested party, the Licensing Authority shall take into account the following principles:
- Each case will be decided upon its merits.

APPENDIX C

- This Licensing Authority will not apply a rigid rule to its decision making,
- This Licensing Authority will give the widest possible interpretation to the term 'business'
- This Licensing Authority will take into account any guidance provided by the Home Office under section 182 of the Act on the matter.

Interested parties may also apply for a review of a Premises Licence or a Club Premises Certificate.

6.6 Relevant Representation

A relevant representation has been defined in a number of stated cases which have appeared before the High Court and which are binding on the Licensing Authority. Of particular note is the case of *Daniel Thwaites Plc v Wirral Borough Magistrates' Court and The Sauehall Massie Conservation Society and Wirral Metropolitan Borough Council [2008] EWHC 838 (Admin)*. In brief it was said that a licensing authority should look for some real evidence to support the representation made. Fears and speculation as to what might happen will not be enough. Whilst this case remains relevant, Herefordshire Council will expect a representee to give evidence of some description to substantiate a conclusion that the variation will infringe the licensing objectives.

6.7 Furthermore the case *R (on the application of Hope & Glory Public House Ltd) v City of Westminster Magistrates' Court [2009] EWHC 1996 (Admin)* established the fact that a representation made in relation to public nuisance must be more than a private nuisance and that a single interested party is incapable in law of constituting "the public" for the purposes of satisfying the test of "public nuisance" pertinent to the licensing objective.

6.8 Therefore the Licensing Authority will deem that any representation which is not supported by any evidence of some description is not a

APPENDIX C

relevant representation. Acceptable evidence will normally relate to real and reliably witnessed events at the premises. However evidence may also be considered when arising from very similar events which have taken place at another location and were run by the same applicant / promoters. An aggrieved representee whose evidence has not been accepted by the Licensing Service can informally appeal to his or her councillor for assistance when a representation has not been accepted.

6.9 Furthermore, where only one public representation is received in respect of the public nuisance licensing objective, then this too will be deemed not to be relevant on the grounds that it is a private nuisance. However, in such a circumstance the licensing service will refer a single complainant to the environmental health service for investigation as a potential statutory nuisance.

6.15 The Licensing Authority will not deal with any anonymous representations made by members of the public, unless either requested in writing to do so or if the Licensing Authority feel that by disclosing the persons details natural justice may be effected.

7.2 The authority would accept a publication which is circulated in the immediate vicinity of the premises or in the Hereford Times or the Journal.

8.4 Applicants are recommended to acquaint themselves with:

- The contents of this Policy dealing with the 4 licensing objectives
- The Guidance issued by the Guidance issued by the Home Office under section 182 of the Act and the other guidance available on Government websites.

25 OTHER REFERENCES & GUIDANCE

APPENDIX C

Applicants are recommended prior to making an application to have regard and to take into consideration in their application the following documents (as appropriate to their premises and the activities that will be provided):-

- The Guidance and information on licensing provided on the website of the Home Office