

NORTH HERTFORDSHIRE DISTRICT COUNCIL

MEMORANDUM

To: Licensing	From: Anthony Roche Legal Services (xtn 4588)
Copy to:	Date: 17 August 2010
Your Ref:	Our Ref: LL11759
Subject: Consultation on the Statement of Licensing Policy	

Please find set out in the table below the response from Legal Services to the draft Statement of Licensing Policy dated 4 June 2010.

Given the number of suggestions I am happy to meet to discuss the content of this note if it would assist.

Paragraph	Comment
General comment 1	The structure of the whole policy needs to be looked at in order to be presented in a more logical way.
General comment 2	<p>The Policy combines both the Council acting as Licensing Authority and in its other wider functions. I would suggest that this is referred to within the introduction and that this delineation is made clearer, perhaps by introducing two parts to the policy – the first dealing with LA issues, the second dealing with Council issues.</p> <p>If this approach is adopted with a new section for the Council's Vision for Licensing this section must make it clear that this is the District Council using its community well being powers, not the LA, and that nothing in the section fetters the discretion of the LA to act independently at all times.</p> <p>If this structure is adopted all existing sections should be re-visited, eg Encouragement of Live Music, Dancing and Theatre, to consider whether they are best located in the part for LA or Council or both</p>
General comment 3	There is no section dealing with 'full' variations (as opposed to minor, which are dealt with). Should this be considered?
General comment 4	The overall length of the policy is not particularly user friendly, but this may be addressed in part by adopting a more logical structure.
General comment 5	2 of the 4 licensing objectives have specific sections dedicated to them (children/nuisance), the other 2 do not (they are instead obliquely referenced within other sections). Perhaps some of these sections eg controlled substances/ fire safety should be sub-sections

	of the relevant objective
General comment 6	<p>Suggested structure, based on existing sections, although note General Comment 5 which may affect the structure of proposed sections 8-13 and General Comment 2 which may affect proposed section 23 and others, plus various comments set out below</p> <ol style="list-style-type: none"> 1. Introduction 2. Consultation and Review 3. The Purpose and Scope of the Licensing Policy [this may drop in part into the 'Vision' section] <p>Part 1 – Licensing Authority</p> <ol style="list-style-type: none"> 4. The Licensing Process 5. Licence Conditions 6. Mandatory Conditions 7. Flexible Licensing Hours 8. Children and Licensed Premises 9. The Prevention of Public Nuisance 10. Cumulative Impact 11. Fire Safety and Capacity 12. Door Supervisors 13. Controlled Substances 14. Encouragement of Live Music, Dancing and Theatre 15. Garages 16. Adult Entertainment 17. Medium and Large Scale events 18. Minor Variations 19. Reviews 20. Enforcement 21. Temporary Event Notices 22. Cultural Strategy [this may drop in full/part into the 'Vision' section] <p>Part 2 – The Council</p> <ol style="list-style-type: none"> 23. The Council's Vision for Licensing <p>Part 3 - General</p> <ol style="list-style-type: none"> 24. Integrating Strategies and the Avoidance of Duplication 25. Delegation of Function 26. Further Information
General Comment 7	For ease of reference, all section numbers set out below relate to the original numbering in the Draft Policy
General Comment 8	Throughout the Policy various paragraphs are not numbered
1. Introduction	<p>Consideration should be given to making the following additional points</p> <ul style="list-style-type: none"> - Refer to the requirement for a policy and the particular section of the Act that comes from - Add a paragraph that recognises the Policy is being reviewed at a time when the new Government is making numerous proposals and consulting on changes to the licensing regime. When/if these changes come into force the Policy will be reviewed as set out at paragraph 3.4
1.1	"The Policy", "The Act" etc – all 'The' should start with a lower case t

1.2	Replace “introduction” with “coming into force”
2. The Purpose and Scope of the Licensing Policy	<p>The title of this section suggests it will deal with the ‘big picture’, but the section then goes into specific details.</p> <p>Consideration should be given into breaking up this section into policy/scope issues (2.1-2.3) and process issues (2.4 onwards)</p>
2.1	List of regulated entertainment refers to indoor or outdoor at number 4 in the list, but not to any of the other regulated entertainment some of which may also be indoor or outdoor. This needs to be consistent
2.3	<p>Suggest this reads simply “Each licensing objective has equal importance and the four objectives mentioned in 2.2 above are paramount considerations at all times”.</p> <p>The reference to there being no other licensing objectives reads strangely and does not appear to add anything.</p>
2.4	<p>Consideration should be given to whether (or the extent to which) the second sentence onwards is included.</p> <p>I would instead suggest, if further elaboration of the first sentence is required, the following - “Vicinity will be assessed on a case by case basis”.</p>
2.5	Should include reference to “relevant legislation” in the list of considerations
2.6	Start the second sentence with “The Act makes it clear that unless...”
2.8	<p>Insert after the word Guidance “(notification of applications)”</p> <p>Delete the words “seek to”</p> <p>Insert at start of second sentence “Such an approach is not a statutory requirement and...”</p> <p>Add a sentence explaining the requirements in the Act regarding notices</p> <p>Add a sentence that makes it clear that the content of this paragraph does not prevent the applicant distributing details of their application should they choose too.</p>
2.9	First line – “acknowledge” should be “acknowledges”
2.10	<p>The reference to “the above objectives” is not clear. Does this refer to the licensing objectives, or the Council’s objectives? This should be clarified.</p> <p>End of sentence starting with ‘Nonetheless’ – “nigh” should be “night”</p> <p>Final sentence of paragraph – consideration could be given to including reference to other Council departments and/or the responsible authorities as those with whom the Council will work in partnership.</p>
2.11	Consideration should be given to the bullet point list being in the same order as in the Guidance, as to do otherwise creates a

	perception that the Council has adopted a different priority order. This would mean the final bullet point being moved to be the first.
2.12	Consideration could be given to referring to 'Challenge 25' in addition to the standards listed.
3.1	<p>Why have the Police and Fire Authority been separated out for specific inclusion when they are included under the category of "Responsible Authorities"?</p> <p>The bullet point list also needs to include reference to all existing premises licence/ club premises certificate holders under the Licensing Act 2003, as I understand they have also been sent the draft policy.</p>
3.3	Consideration should be given to including reference to the Responsible Authorities as involved in the partnership approach
4. Cultural Strategy	<p>Is there a relevant Council Policy or specific strategy which should be cross referred to within this section?</p> <p>As stated above consideration should be given to including this section as part of the Council's Vision</p>
4.1	<p>As currently drafted I am concerned that the Policy shows a predetermination towards granting such applications. It also confuses the role between Council and Licensing Authority.</p> <p>It is suggested that an additional sentence be added – "However none of this section should be read as superceding the Local Authority's obligations under the Act and Guidance which remains unfettered.</p>
4.4	<p>This relates more to the LA role and may need to be repositioned within the Policy.</p> <p>It is suggested that the second paragraph regarding a review hearing should be moved to the 'Reviews' section.</p>
5.1	The final sentence should read "A standardised approach to imposing conditions..."
5.6	It is suggested that this is reworded to "The Council acknowledge that this list of model condition wording must not fetter the discretion of the decision maker but must instead be used solely to ensure consistency of approach where the particular circumstances of an application merit the imposition of a condition".
6.2	Delete "a"
6.3	<p>It is suggested that the words "pub or restaurant or hotel" are replaced with "licensed premises".</p> <p>Consideration should be given to referring to paragraph 13.23 of the Guidance which makes clear that commercial need is not a licensing issue.</p>
6.4	Should the second half of the sentence after the comma be excluded? Is this a step the Council might want to consider in the future (albeit provoked by a particular set of circumstances, as opposed to the ordinary course of events)
6.5	Bullet point 7 – are the words "and children" necessary, given that the alcohol should be confiscated from them in all public places, not just

	designated areas
6.9	It is suggested that the final sentence should be removed as this is making reference to the considerations of a different statutory authority which is beyond the remit of this Policy
6.10	It is suggested that this paragraph is deleted, as it becomes obsolete as soon as such a policy is introduced and in the meantime does not appear to add value
8.3	It is considered that it is intended the penultimate bullet point should be “; or” rather than “; and”
8.8	Consideration should be given to including reference to Challenge 25 Is the ‘Validate’ card still promoted by HCC?
9.1	Consideration should be given to whether there be reference to Environmental Protection and them taking the lead in respect of nuisance issues. It is suggested that the final sentence be deleted.
9.2	It is suggested the first sentence start with “Where there is evidence of Nuisance and its powers are engaged the Council...” First bullet point – the examples referred to are not considered to be examples of soundproofing.
9.3	Consideration should be given to adding a sentence which encourages applicants to seek early engagement with Environmental Protection.
9.4	It is suggested the final sentence be reworded to read “Conditions that are likely to be a significant financial burden may be avoided for smaller venues and community premises, where it is appropriate to do so”.
11	Refer to this section as Public Safety Introduce Fire Safety as a sub heading before 11.2 Introduce Capacity as a sub heading before 11.4
12.2	It is suggested the end of the first sentence be reworded to read “...in order to address the Licensing Objectives”. It is suggested that the second sentence be reworded to read “...at all times, at specific times, or at such times...”
13.1	Consideration should be given to the accuracy of the first sentence. Consideration should be given for the need for the words “and alcohol”
14.	It is suggested that there be a cross reference to Reviews and its section number
14.1	Insert the word meeting in the second sentence – “.. short of meeting the...”
14.4	Delete the final sentence
15.3	Consideration could be given to including the following points: - it is the responsibility of applicants to ensure they have all necessary consents, statutory or otherwise

	<ul style="list-style-type: none"> - the decision of one statutory authority (ie Local Planning Authority or Licensing Authority) is no indication of the decision of the other - the ability for a statutory authority to make representations to the other should be acknowledged
16.1	It is suggested that reference should be made to the Constitution setting out the terms of reference of each of the decision making levels referred to.
16.2	Consideration could be given to stating that the principles in this paragraph are consistent with general good decision making principles
16.4	Should include reference to “relevant legislation” in the list of considerations It is suggested that the phrase “the wider benefits to the community” is deleted and replaced with “all other factors for and against the application”
17.4	Consider including an explanation that failure to provide sufficient notice may result in
17.5	It is suggested that additional wording be inserted so that this paragraph reads “...consisting of relevant council officers and members of the emergency...”
18	At no stage is the difference between what is considered medium and what is considered large scale events explained. This may not be necessary for the purposes of the Policy though
18.1	Consideration could be given to using the phrase “five hundred and above” rather than “in excess of 499” as it is felt this is clearer. Reference to smaller events being able to be dealt with by way of temporary event notice does not provide the full picture – they could also be dealt with through a premises licence and consideration should be given to reflecting this.
18.3	Consideration should be given to whether this section of the Policy would also be relevant for a review hearing, in which case this should be referred to.
18.4	Consideration should be given to simplifying the numbering of the sub-clauses in this section
18.4.1(a)	Clarity is required as to whether this applies to one-off and time specific licences, or permanent licences, or both. Consideration should be given to using the phrase “fifteen thousand and above”
18.4.1(d)	It is suggested that an additional sentence be added to the end of this paragraph, stating “This paragraph should not be construed as meaning that the Enforcement Policy does not apply, or will not be applied, to such events”.
18.4.1(i)	Should read “...based on...” not “...based in...”
18.4.1(j)(i)	Should this also include one off, time specific, licences? Consideration should be given to using the phrase “fifteen thousand and above”

18.4.1(j)(ii)	<p>The second sentence should read "...exceptional unless the applicant gives assurances..."</p> <p>Consideration should be given as to what assurances the LA would be expecting in this situation and what would satisfy them</p>
18.4.2(a)	<p>It is suggested that this section should read as follows:-</p> <p>"The Council requires the following minimum periods in order to process applications for medium and large scale events. The Council encourages the submission of applications as early as possible.</p> <p>[table and note]</p> <p>Where relevant representations have been made and the application is referred to a Licensing and Appeals Sub-Committee for determination the Council will generally refuse all such applications that are not submitted, and duly made, within the minimum notice periods prior to the event, except in exceptional circumstances."</p>
18.4.3	<p>Insert a sub-heading for consistency of structure. It is suggested that "Operating Schedule" may be appropriate</p> <p>It is suggested that his section be clarified as applying to all medium ad large scale event applications.</p>
19.4	<p>In the second sentence replace the words "an evidential basis for" with the words "evidence supporting"</p>
20	<p>Consideration should be given as to whether this section should include a cross reference to the sex establishments policy</p>
20.2	<p>Consideration should be given to whether "age of audience members" should be included in the list of issues</p>
21.3	<p>Consideration should be given to including that it is the licence holders responsibility to be aware of the mandatory conditions (ie that ignorance of them is no defence to non-compliance)</p> <p>Consider deleting the final sentence of this paragraph.</p>
21.4	<p>Final line of this section – "effectiveness" should read "ineffectiveness"</p>
22.1	<p>Delete this paragraph</p>
22.2	<p>Delete this paragraph and replace 22.1 and 22.2 with "The Council will determine whether an application meets the criteria of a minor variation by having due regard to the Guidance which specifically excludes certain circumstances. Pre-application advice on what constitutes a minor variation will be provided where requested".</p>
22.3	<p>It is unclear what is meant by the phrase "based purely on an opinion that is not supported by appropriate evidence" and it is therefore suggested that his is reworded for clarity.</p>
22.4	<p>It is considered that this paragraph should either be deleted or moved into a Council's Vision section.</p> <p>It is also suggested that this paragraph be amended to read "It is the Council's opinion that this process may be suited to the addition of live music to licensed premises provided that the proposed activity would not adversely affect the licensing objectives".</p>

23	It is understood that this section is to be amended following recent case law and therefore this section has not been considered. An opportunity to review and comment on the proposed amendments would be welcomed
24	<p>It is considered that the final matter listed on page 28 should read “Application for a minor variation” with officer delegation in “All cases (whether representations or not)”</p> <p>It is suggested that the following be considered for specific inclusion in the list:</p> <ul style="list-style-type: none"> - Determination of whether a representation is relevant - s.90 LA 2003
25.1	It is suggested the link to the Government website be made more generic (similar to the NHDC link) in case the link changes
25.3	The first sentence should be re-ordered to read “...to request pre-application, an event specific Safety Advisory Group meeting to discuss...”

I trust that these suggestion have been useful and am happy to explain any points which are unclear within the table above.

If I can assist further please do not hesitate to contact me.

Anthony Roche

For and on behalf of
Corporate Legal Manager
North Hertfordshire District Council