

# Final Consultation Report

Statement of Licensing Policy  
2014 – 2018

Licensing Act 2003

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## Introduction

The Licensing Act 2003 came into force in 2005 and brought the licensing of sale of alcohol, regulated entertainment and late night refreshment into one system. Leeds City Council became the licensing authority for premises in the Leeds area and the system is administered by the council's entertainment licensing section.

As part of the Licensing Act 2003 there is a requirement placed on licensing authorities to develop a statement of licensing policy which describes the principles the council will use when determining licences under the Act.

### Executive Summary

This report details the findings of the public consultation on Leeds City Council's Licensing Act 2003 Statement of Licensing Policy.

A review was undertaken on the existing policy and the proposed amendments are detailed in this document.

A more detailed review of Section 7 – Cumulative Impact Areas was undertaken with involvement with ward members, West Yorkshire Police, Crime and Disorder Reduction Partnership and the responsible authorities. Statistics relating to antisocial behaviour, rowdy behaviour and nuisance were gathered which informed proposed changes to the CIPs.

The public consultation took place between 3<sup>rd</sup> June and 28<sup>th</sup> August which was a twelve week consultation period. Officers analysed the consultation responses and produced a final draft which will be presented to Licensing Committee and full Council in November.

The final Statement of Licensing Policy will be published by 1st January 2014.

### Background

We developed and consulted upon the Leeds City Council Statement of Licensing Policy in 2005 and reviewed it in 2007 for the period 2008-2010 and again in 2010 for the period 2011-2013.

The Police Reform and Social responsibility Act 2011 received Royal Assent in September 2011 and brought a number of changes to the Licensing Act 2003 which was designed to give power back to local communities and to make it easier for Licensing Authorities to deal with problem premises and the problems associated with late night drinking.

The majority of these changes came into effect on 25<sup>th</sup> April 2012. The remaining changes (late night levy, early morning restriction orders) came into effect in October 2012 and locally set fees are likely to come into effect in 2014. These changes make fundamental changes to the way licence applications are determined and therefore there was a need to review the Statement of Licensing Policy.

The council's Licensing Committee formed a working group in July 2012 to undertake a review of the licensing policy and to hear from a number of organisations who can provide expert advice and opinion. The working group met monthly to hear from the expert panel on issues such as the late

night levy, early morning restriction orders, cumulative impact policies, dispersal in the city centre and local licensing guidance.

Part of this work was to review the five cumulative impact policies and to hear from West Yorkshire Police, the planning department and community safety. Updated crime and nuisance statistics were scrutinised and the cumulative impact policies were amended.

The Council presented these changes in a public consultation.

## **Purpose of the Statement of Licensing Policy**

The purpose of the policy is to set out the principles upon which the licensing authority will exercise its functions under the Licensing Act 2003. Applicants are expected to read the policy before making their application and the Licensing Authority will refer to the policy when making decisions.

## **Purpose of the consultation**

It is a requirement of the Licensing Act 2003 that licensing authorities consult with people affected by the policy. Specifically the Act states:

Before determining its policy for the next period, a licensing authority must consult –

1. the chief officer of police for the licensing authority's area,
2. the fire authority for that area,
3. such persons as the licensing authority considers to be representative of holders of premises licence issued by that authority
4. such persons as the licensing authority considers to be representative of holders of club premises certificate issued by that authority,
5. such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, and
6. such other persons as the licensing authority considers to be representative of businesses and residents in its area.

## **Consultation Methodology**

In order to meet the requirements of the Act the council has undertaken the following steps:

1. Held a series of meetings with the working group, officers from West Yorkshire Police, officers from City Development, including local planning officers, forward planning and regeneration and the Crime and Disorder Reduction Partnership.
2. Scrutinised crime figures relating to rowdy behaviour, anti-social behaviour and violent crime.
3. Scrutinised Environmental Health nuisance figures relating to noise nuisance and littering.
4. Examined data relating to the number of new and variation applications.

The public consultation ran from 3<sup>rd</sup> June to the 28<sup>th</sup> August 2013 and included:

- A postal consultation to the trade, support groups, religious groups, ward members and local MPs.
- A press release
- A webpage on the Leeds City Council website which provided the consultation documents and online questionnaire.

## Change Document

After a review of the policy by the working group set up by Licensing Committee, we added three paragraphs which reflect changes in the law (vicinity, interested party, necessary). We updated a number of sections to bring them up to date.

The working group reviewed the Cumulative Impact Policies and made a number of changes. The most major of this was to the city centre CIP. This CIP was altered to specify green, amber and red areas within it. This is to reflect the desire by the licensing authority to encourage good quality applications from business that offer something different to the high volume vertical drinking establishments which have been popular in the past.

Following the introduction of the concept of early morning restriction orders in the Police Reform and Social Responsibility Act a new section has been inserted which provides the process the council will follow should a request for an EMRO be received.

Finally the council, through the Licensing Committee, has introduced the concept of local licensing guidance and a new section describes what these are and how they will be utilised.

### Initial Changes

#### Throughout policy:

Removal of any reference to vicinity

Removal of any reference to interested party

Removal of the word necessary and replace with appropriate in relation to the licensing objectives

Major reordering of sections.

#### Section 3 – The Leeds District:

Update information relating to the Leeds Vision for Leeds

#### Section 4 – Integrating other guidance, policies, objectives and strategies:

Update to other council policies

#### Section 6 – General Principles:

Insert two paragraphs relating to dispersal

Insert additional paragraph in relation to opening hours

Remove reference to annex D of the DCMS guidance

Insert two paragraphs relating to planning

#### Section 7 – Cumulative Impact Policy:

Insert paragraphs 7.9 and 7.10 about exceptional factors

Insert paragraphs 7.12 to 7.14 relating to representations on cumulative impact outside cumulative impact policies

Insert paragraph 7.20 instigating an annual review of the policies

Insert paragraphs 7.21 to 7.27 to replace existing city centre CIP

Insert paragraphs 7.34 to 7.36 which replace the existing Headingley CIP wording, but only increase the scope of the CIP to include off licences operating after midnight

Delete the Area 3 Woodhouse CIP in its entirety

Insert paragraphs 7.38 to 7.40 which replace the Chapel Allerton CIP wording but do not increase the scope

Insert paragraphs 7.42 to 7.44 which replace the Horsforth CIP wording but does not increase the scope

#### New Section 8 – Early Morning Restriction Orders

This new section lays out the procedure to be followed in making an early morning restriction order.

#### Section 10 - Premises licences and club premises certificates (including variations)

Replace paragraphs 9.2 to 9.4 with 5 paragraphs that introduce local licensing guidance for applicants

#### Appendix 1 – Responsible authorities

Remove

## **Final Changes**

During a final review of the policy at the end of the consultation, and taking into consideration the consultation response, there were a number of changes identified:

### **Section 4 – Promotion of the licensing objectives**

Amendment of paragraph 4.16 to include “The team can also offer advice in relation to workplace health and safety matters, including compliance with the Health Act 2006 (smoke free).”

### **Section 6 – Premises Licences and Club Premises Certificates**

Insert a paragraph in Section 6 relating to alcohol deliveries:

An applicant seeking a licence that will 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 the age of 18
- That alcohol is only delivered to a person over the age of 18
- That a clear document trail of the order process from order, despatch from the licensed premises and delivery to the customer is maintained (with times and signatures) and available for inspection by an authorised officer
- The times that alcohol is sold on the website/over the phone and the time the alcohol is delivered is within the hours stated on the licence for the sale of alcohol.

### **Section 7 – Cumulative Impact Policies**

Insert into paragraph 7.6 “that the applicant is encouraged to submit a full and thoroughly considered application at the earliest opportunity. The onus is on the applicant to demonstrate to the responsible authorities the suitability and detail of the scheme for their site.”

Insert information in Section 7 which will assist local residents in a CIP area.

Amend 7.7. – “Despite the presumption to grant, responsible authorities and other persons will still need to make a relevant representation before the council may lawfully consider giving effect to its

cumulative impact policy. The licensing authority, in its role as a responsible authority and in consultation with the relevant ward members, will make a representation to any application received in a cumulative impact area, including the latest evidence. Any further representations from members of the public and responsible authorities will support and strengthen the licensing authority representation”.

Retain the Woodhouse CIP.

### **Section 8 – Early Morning Restriction Orders**

Amend 8.5 to include Health and Environmental Action Service as a responsible authority who might request an EMRO.

Expand 8.5 to include the role, attendance and aims and objectives of the LEG.

Insert new paragraph that the aim is to support businesses rather than hinder in a geographical area whilst ensuring compliance with the objectives. However where this has deemed to fail then an EMRO could be a possible solution.

### **Temporary Event Notices**

A recurring theme in the responses received to this policy consultation was dissatisfaction with the current temporary event notice system.

A temporary event notice is a notification procedure set out in the Licensing Act 2003. As it is a statutory process, it is not within the power of the council, or within the scope of the policy to make changes to this system. This can only be done on a national basis by the Government.

As the licensing authority is sympathetic to the concerns expressed in the consultation, it has addressed these issues in correspondence with the Home Office, requesting an urgent change to the temporary event notice system. The Home Office response is that this system is designed to be a light touch process and as such is not planning to make any changes to the statutory process.

As it appears that changes to the current system will not come from Government, the licensing authority has put in place procedures that may help to ensure that temporary events do not adversely impact on local communities.

Although a TEN does not require approval from the licensing authority and the licensing authority cannot object to temporary event notices in their own right or accept objections from members of the public, the Police and Health and Environmental Action Service (HEAS) are able to serve an objection notice if they have concerns that the event will adversely impact on crime and disorder, public nuisance, public safety or children. This ensures a temporary event notice is considered by Members of the Licensing Committee who can serve a counter notice if they concur with the objection notice. This would mean the temporary event notice no longer has effect.

It is the usual practice of HEAS to give particular attention to events in residential areas and it is expected that the concerns of local residents will already have been taken into consideration when HEAS receive the TEN notifications from the licensing authority.

Should anyone believe that an event will adversely impact on crime, disorder, nuisance, safety or children, they can contact the Police or HEAS directly to ensure their concerns are registered and will be taken into consideration. Due to the tight timescale inherent in the system, it is important that this is done quickly, and for this reason the council now informs all ward members of all temporary event notices served on the licensing authority.

In addition it is within the remit of any citizen or organisation to appeal to their MP, or direct to the Home Office, to object to the temporary event notice system as the licensing authority has done.



## Consultation Responses

### Response from West Yorkshire Fire and Rescue Service

Thank you for this opportunity to comment on your revised statement of licensing policy.

The West Yorkshire Fire & Rescue Authority is of the opinion that the revised policy will promote the four licensing objectives, in particular fire safety.

This authority has examined the 'summary of changes' and can confirm that it has no adverse comments to make. Applicants for premises licences should be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives and for complying with relevant fire safety legislation.

Officers of the Authority look forward to maintaining and developing the current close-working relationship with licensing officers of the council.

**Comments:** None

**Action:** None

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### Response from Rawdon Parish Council

Rawdon Parish Council considered the consultation at their meeting on 3<sup>rd</sup> July 2013. The Parish Council is grateful for inclusion in the consultation however the Council does not wish to comment on this occasion.

**Comments:** None

**Action:** None

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### Response from Wetherby Town Council

Wetherby Town Council has reviewed the above public consultation document and now formally submit the following statement of concerns and recommendations. This report was produced by Cllr Neil O'Byrne and approved at the July meeting of Wetherby Town Council.

#### Concerns

There are two issues that raised concerns, they being:

- a. The provision of alcohol as part of a food delivery by takeaway food outlets
- b. That only the Police or Environmental Health and Action Service (HEAS) may oppose the granting of a Temporary Event Notice (TEN).

#### The Provision of alcohol as part of a food delivery by takeaway food outlets

The four licensing objectives (4.1) are:

1. The prevention of crime and disorder
2. Public safety
3. The prevention of public nuisance
4. The protection of children from harm

The restriction on sales of alcohol to persons under the age of 18 is due to the recognised dangers to the health and wellbeing of children and their development, so to protect them Leeds City Council has a duty to take all possible steps to prevent them accessing alcohol.

There is considerable evidence of the link between the use of alcohol and both public nuisance and crime and disorder.

The public consultation document provides predominantly for premises. An area of concern for some time has been that involving alcohol off-sales by fast food outlets, particularly in relation to deliveries, with the potential for young children and young people to access alcohol though this means.

The natural response to this assertion might be 'what evidence have you to support this view?' Therein lies a significant problem in that securing evidence of breaches of the relevant Licensing Laws is almost impossible and certainly too resource intensive for the Police and Licensing Officers to contemplate.

Neither agency will know when a delivery order, including alcohol, might be received by premises licensed to provide such a service and if they were to follow a delivery it would be almost impossible to monitor the transaction to determine whether an offence of supplying alcohol to a person under the age of 18 may have been committed.

We would encourage LCC to amend the policy to reflect the need to protect children from harm outweighs commercial gain and refuse new applications and renewals for licences to provide the delivery of alcohol with or without food. Sales of alcohol with food on-premises could be considered with adequate consideration of:

- Comprehensive risk assessment (4.5, page 12)
- Challenge 25/Check 25 (4.37, page 15)(numbering out of sequence in document)
- Mandatory CCTV with 30 day recording (7.2, page 26)
- Personal Licence Holder held responsible for any/all breaches (9.12, page 35)
- Disclosure and Debarring Service (DBS) certificate (formerly CRB) mandatory for holder of Personal Licence (9.5, page 35)

### **Only the Police and Environmental Health & Action Service (HEAS) may oppose the granting of a Temporary Event Notice (TEN)**

The system of permitted temporary activities is intended as a light touch process (10.1) and as such the licensing authority is only given notice of the event.

Save for the licensing authority intervening when various limits are exceeded, e.g. the number of time a premises user may apply in a calendar year, only the Police or HEAS may intervene to prevent such an event or modify the arrangements for it.

Whilst some applications for TENs are from charities, community and voluntary groups, there are a number that are from premises and organisation who consideration as to their suitability for such a

license might benefit from local knowledge. Accordingly, we would encourage LCC to open applications for TENs to all interested parties (10.3).

## **RECOMMENDATIONS**

a. We would encourage LCC to amend the policy to reflect the need to protect children from harm outweighs commercial gain and refuse new applications and renewals for licences to provide the delivery of alcohol with or without food. Sales of alcohol with food on-premises could be considered with adequate consideration of:

- Comprehensive risk assessment (4.5, page 12)
- Challenge 25/Check 25 (4.36, page 15)
- Staff training for all staff involved (6.49, page 25)
- Mandatory CCTV with 30 day recording (7.2, page 26)
- Personal Licence Holder held responsible for any/all breaches (9.1, page 35)
- Disclosure and debarring service (DBS) certificate (formally CRB) mandatory for holder of Personal Licence (9.5, page 35)

b. We would encourage LCC to open applications for TENs to all interested parties (10.3).

### **Comments:**

The ability to refuse any application under the Licensing Act 2003 is reliant on a relevant representation being received. An application which does not attract a representation is granted automatically, as is required by the legislation. The Statement of Licensing Policy cannot override that statutory process. The policy provides guidance for applicants when they make their application, and for councillors when they are considering contested applications. Even if the council inserts a statement into the policy regarding the sale and delivery of alcohol, this would not enable the council to refuse uncontested applications.

Anyone can make a representation but they must be based on one or more of the four licensing objections. Wetherby Town Council has provided information that suggests the sale of alcohol alongside takeaway food deliveries would have adverse impact on the licensing objective of protection of children from harm. The Town Council are able, as is anyone, to make a representation on this basis to any application. Applications are advertised by site notice and in the local newspaper. In addition all ward members are advised of licence applications as a matter of course.

However, as the council expects every applicant to have read the Policy, it is possible to insert the expectation that robust procedures are in place to ensure that any alcohol is delivered to the person that ordered it, and that the person it is delivered to is over 18.

Please see the separate response on page 5 to the concerns and suggestions regarding the temporary event notice system.

**Action:** Insert a paragraph relating to alcohol deliveries:

An applicant seeking a licence that will 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 the age of 18

- That alcohol is only delivered to a person over the age of 18
- That a clear document trail of the order process from order, despatch from the licensed premises and delivery to the customer is maintained (with times and signatures) and available for inspection by an authorised officer
- The times that alcohol is sold on the website/over the phone and the time the alcohol is delivered is within the hours stated on the licence for the sale of alcohol.

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## Response from Headingley Network

Thank you for the opportunity to comment on your Draft Licensing Policy 2014-2018.

Our major area of concern is the Cumulative Impact Policy relating to Headingley and specific paragraphs 7.4 – 7.8, each of which has the effect of diluting the policy:

7.4 – The CIP will only act IF RELEVANT REPRESENTATIONS ARE RECEIVED.

7.5 – An applicant MUST IDENTIFY THE STEPS etc. to SATISFY the Council that a new licence WILL NOT ADD TO THE IMPACT

7.6 – APPLICANTS ARE ENCOURAGED TO MAKE EARLY CONTACT... TO DISCUSS THEIR PLANS

7.7 - Despite the CIP, members of the community STILL NEED TO MAKE REPRESENTATION before the Council will implement the CIP

7.8 – The CIP SHOULD NOT BE ABSOLUTE... and licences MAY BE GRANTED if they are unlikely to add to the impact.

These 5 paragraphs all offer encouragement to a Licence applicant to circumvent the CIP, and there is no encouragement to the community and others who seek the protection afforded by the CIP.

I trust this is a drafting oversight and that it is not the council's intention to reduce the effectiveness of the CIP.

**Comments:** The expected audience for the Statement of Licensing Policy is primarily applicants when they make their application, and for councillors when they are considering contested applications and the policy is written to provide specific guidance for those two groups. The council recognises that it could also provide information and guidance to enable local residents to make effective representations.

Taking the specific comments in detail:

7.4 – The CIP will only act IF RELEVANT REPRESENTATIONS ARE RECEIVED.

This is a statutory requirement. The council is only able to determine applications if relevant representations are received. If no relevant representations are received the council must grant the licence without any further consideration.

7.5 – An applicant MUST IDENTIFY THE STEPS etc. to SATISFY the Council that a new licence WILL NOT ADD TO THE IMPACT

This is the part of the policy that reverses the presumption to grant, which is inherent in the Licensing Act. The ability to set a CIP comes from the Guidance to Licensing Authorities issued by

the Home Office which provides the circumstances under which a licence application can be refused due to the cumulative impact this will have.

#### 7.6 – APPLICANTS ARE ENCOURAGED TO MAKE EARLY CONTACT... TO DISCUSS THEIR PLANS

The council must be fair in its actions, and in some cases encouraging applicants to make early contact can result in a positive outcome for all concerned, without the need for a hearing.

7.7 - Despite the CIP, members of the community STILL NEED TO MAKE REPRESENTATION before the Council will implement the CIP

Previously the Licensing Authority had no ability to make a representation in its own right, and so was reliant on the responsible authorities and local residents to make a representation. However this is no longer the case. The licensing authority will make a representation that states that the application is in a CIP area, and provide the most recent evidence to support that representation. Any representation received by local residents, ward members and responsible authorities would support the licensing authority representation and strengthen the case for refusal.

7.8 – The CIP SHOULD NOT BE ABSOLUTE... and licences MAY BE GRANTED if they are unlikely to add to the impact.

This again is a statutory requirement and one recently reinforced by a judgement in court.

**Action:** Insert information which will assist local residents in a CIP area. Amend 7.7 as above.

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#### **Response from Horsforth Civic Society**

Horsforth Civic Society (HCS) reviewed the consultation documents last night.

I have been asked to respond on behalf of HCS.

HCS recognises that Licensing is a complex matter and that it is therefore HCS is not qualified to comment in any detail on the proposals. We therefore recognise the expertise vested in LCC regarding this matter.

On page 30 of the booklet, HCS is pleased to see Horsforth Area 4 retaining its Cumulative Impact Policy status, and that the policy remains unchanged.

HCS is in support of the Statement of Licensing Policy 2014 – 2018.

**Comments:** None

**Action:** None

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## **Response from North Hyde Park Neighbourhood Association**

### Applicability

The Leeds City Council Consultation on the Licensing Policy LA03 for 2014-18 dated May 2013 invites comment from, amongst others

“(f) such other persons as the licensing authority considers to be representative of businesses and residents in its area”.

The North Hyde Park Neighbourhood Association (hereafter NHPNA) has spoken for residents in the area around Hyde Park Corner for nearly 40 years, and trusts that the Licensing Authority will consider the Association as representative in that sense.

### General

NHPNA welcomes the general thrust of changes described in the consultation document, in particular the promotion of a Child friendly Leeds, and the removal of the proximity condition for representations. It looks however, to a number of tighter interpretations of the rules and to the vigorous enforcement of the policy in the interests of the community as a whole. Building on the relationship with West Yorkshire is a critical part of this process, and should form a key part of the action plan for the Police and Crime Commissioner.

### Noise and Human Rights

NHPNA shares the council’s concerns (Clause 4.22) about noise nuisance, antisocial behaviour and the carry-over from these points into actual crime.

The Association observes that sleep-deprivation is used as a form of torture by despotic regimes, and urges that the human rights provisions of the licence policy (Clause 5.4) should always be enforced quickly and robustly to ensure that residents near a noisy venue have as much right to sleep (2respect for home and private life”) and to listen to their own choice of music (“peaceful enjoyment of his or her possessions”) as the event goers have the right to stay up late and the Licence applicant has to make a noise.

In the area NHPNA represents there are

- Many students working hard to achieve good grades from Universities, and lecturers who need to be compos-mentis to teach them
- A concentration of Nurses, Doctors and support staff working at the two nearby teaching hospitals
- A resurgent number of families moving back into the houses studentified a decade ago, whose children need reliable sleep to learn well and achieve their full potential
- Teachers, care-workers, bus drivers and a thousand other roles necessary for society to function, many from dawn or on shifts starting at 06:00.

So this Association looks forward to Clause 4.28 being interpreted in a way that provides more support for local residents’ right to sleep.

### Children and Late-Night Noise

NHPNA believes that if the City Council means what it says about making Leeds a “Child Friendly City” (Clauses 3.8, 3.9 and 3.11) then it must use the flexibility granted to it (Clause 1.7, 4.22) to widely define “Public Nuisance” such that no event in the city may emit noise at the premises boundary above a particular dBA level after 21:00 hrs, a lower one at 23:00 and an absolute overriding prohibition on amplified music outdoors after midnight. Such a ban has some precedents – for example Unity Day has closed earlier in recent years and the outdoor afternoon part of the Devonshire Hall Ball had a time limit this year.

NHPNA recommends that the noise limits include a pitch-specific criterion, as it is low-pitch (bass) notes which carry the furthest and are attenuated the least by walls, trees and windows. A Byelaw of this kind would not prevent clubbers from enjoying themselves at an indoor event; but if indoor, the sound will not disturb others nearby who may well be trying to sleep. In tightly packed residential areas such as this, the “disproportionate impact” noted in Clause 4.23 is all too evident.

### TENs

NHPNA notes the inclusion of Temporary Event Notices in the scope of this consultation; these have been the subject of considerable stress to Headingley and Hyde Park residents and this Association urges Leeds City Council to make forceful representations to the Home Office and the Department of Communities and Local Government to redress the balance between the rights of residents and applicants in this naively drafted and inadequately amended piece of national legislation.

In the meantime, NHPNA congratulates the Council for the changes made to its TENs procedures this Spring, and makes the following further practical suggestions for working around the threat posed by noisy, all-night parties of the kind inflicted on this area on the night of 6<sup>th</sup> – 7<sup>th</sup> December 2012 (an event which members of this association believe to have fallen squarely into the category of “irresponsible licenced activity” (Clause 1.5)):

1. Use the Licensing Criterion “the protection of children from harm” to block any TENs in urban areas which emit noise after 23:00. Any child getting to sleep after that time will not learn much the following school day, and its life prospects will therefore have been harmed. Furthermore, any children coming into contact with a sleep-deprived Teacher, Doctor, Social Worker, Nurse etc. risk poorer teaching or treatment, also impairing the child’s life chances.
2. Block all Late TENs on the grounds (Clause 5.15) of insufficient time to prepare adequate precautions – this does not just apply to the Applicant’s preparations, but to precautions the event’s neighbours may need to take!

### Wider Public Health Issues

NHPNA urges the city council to take heed of the growing incidence of liver disease (tracking alcohol sale deregulation, but with a time lag), and the recently published research pointing out the increased risks of breast cancers from disturbed sleep patterns; adding these factors to the mental health and consequential costs of excessive alcohol consumption suggests that more Applications should be challenged on Public Health grounds.

### Cumulative Impact

Headingley has become a clubbing and Stag/Hen destination, quite apart from the Student traditions of the “Otle Run”; after dark in the winter months the sheer number of revellers reeling between

one alcohol outlet and the next can make the area quite threatening to other residents, and the after-effects (vomit, noise, fighting, graffiti) blight the area. The Headingley cumulative impact policy put in place on 2005 has helped a little, but a number of operators have applied for "Alcohol with food" licences only to make the venues much more like pubs or bars – some have attempted to amend their licences, others simply bend the rules. NHPNA urges LCC to retain the Cumulative Impact Policy, and the Designated Public Places Orders which apply to this area.

Many residents would applaud a Licensing approach and an enforcement policy which takes a holistic view on the basis of the balance of risk rather than proof in a criminal court.

If you have any questions or comments on this response, please contact the undersigned in the first instance.

### **Comments:**

#### Noise and Human Rights

Clause 4.28 is a bulleted list of matters relating to public nuisance which the council may consider when determining licences. These include noise control measures, lighting, customer noise etc. Consideration of the time licensable activities are to take place and proximity of residents would be taken into consideration by the Health and Environmental Act Service when considering a representation under the objective of public nuisance.

#### Children and Late-Night Noise

NHPNA suggest applying a condition to any event in the city relating to decibel levels of noise being emitted from the premises. This is possible and could be suggested in representations from either members of the public or Health and Environmental Action Service. The Licensing authority does not have the ability to apply conditions without a valid representation.

#### TENs

Please see the separate response on page 5 to the concerns and suggestions regarding the temporary event notice system.

#### Wider Public Health Issues

Public health is not a licensing objective as specified in the Licensing Act 2003. The council can only take public health into consideration where it relates to a specific problem at a specific premises and then only if the problem could also have a negative impact on the licensing objectives of crime and disorder, prevention of public nuisance, public safety or protection of children from harm.

#### Cumulative Impact

The council intends to maintain the cumulative impact in Headingley and extend it to include premises licensed for off sales after midnight. Any decision and enforcement action taken by the licensing authority must be fair, reasonable and proportionate. In addition the council has always taken into consideration the right of applicants to appeal the decision in the Magistrates Court. Therefore although the council would aim to take a holistic view, this must be based on fact rather than speculation.

**Action:** None



## **Response from Leeds City Council Environment Act Service**

### **Overview**

The Environmental Action Service (EA) welcomes the opportunity to comment on the proposed Leeds Licensing Policy for the period 2014 – 2018. Our Service has considerable experience and history working with partners and residents to successfully support businesses to ensure compliance with the objectives of the Licensing Act 2003 (LA).

Our Service comprises of both the Health and Safety Team and Environmental Protection Team who are both Responsible Authorities under the Licensing Act in their own right. In terms of this response the views are those of our Service as a whole and relate to the prevention of public nuisance and public safety. Having considered the draft policy we are in broad agreement with the proposed changes. The proposed policy has also given us an opportunity to review our own policies in relation to this area of work.

In general terms, whilst the document is reasonably easy to read and understand, further clarity could be achieved by adopting the principles of Plain English.

We feel improvements could be made regarding the relationship between Planning and Entertainment Licensing. This would clarify the role of each service and reduce confusion for applicants and others involved in the process. We would also support the development and implementation of the Early Morning Restriction Orders in certain circumstances. There are clearly areas of Leeds where a wider area based approach is required to ensure compliance with the Licensing Objectives. Additionally the management of venues should play a key role in achieving the objectives. This responsibility should be strengthened and made clearer in the policy document.

### **Views of the Environmental Protection Team (EPT)**

#### Promotion of Licensing Objectives – Public Nuisance

Whilst assessing the impact of a licensed premises on the local area the EPT will follow the provisions laid down in the LA and associated guidance. Matters that arise within the physical building in question or the immediate area outside within the boundary are under the control of the licence holder etc. Any issues raised in relation to the licensing objectives can be resolved either informally or formally. Responsibility is fairly clear and often a prompt resolution can be achieved usually to the satisfaction of all parties.

However our Service frequently receives complaints concerning patron noise in the vicinity of the subject premises. There is usually considerable debate as to where the responsibility of the business ends when the patrons leave the venue. In assessing new premises applications, variations or reviews this type of issue frequently becomes the major area for discussion and often disagreement between our Service and the business. Quite often the patrons wouldn't be in the area if it wasn't for the venue in question.

We feel that conditions should be used to strengthen the role and responsibility of the licence holder to deal with such matters. Conditions such as 'notices should be displayed to request patrons to be quiet on leaving the premises' may not be sufficient at certain locations. We would wish to see licence holders take a more proactive approach with patrons to reduce the effect of the operation of their business on the local area in terms of public nuisance. Such steps could include the provision of

announcements inside the building and suitable literature or notices within the premises rather than just upon exit.

The Council is able to consider a number of matters following representations from our Service or local residents. Whilst the list of matters in the proposals are useful, we feel that they ignore a number of issues. Consideration should be given to the design, construction and layout of the premises. Additionally a history of relevant complaints can be a valuable source in providing an indication of the likelihood of complaints occurring

The hours of operation of the business can be crucial in terms of the prevention of prevention of nuisance. This should be included in the matters under consideration.

It should be remembered that the role of our Service is the **prevention** of public nuisance. This happens through the provision of advice and support to businesses at all stages. Officers within our team have considerable experience in determining these preventative measures.

#### Premises Licenses and Club Premises Certificates

In our experience the current relationship and process between Planning and Entertainment Licensing can cause frustration and confusion for the applicant. We feel there should be a clearer description of the relationship between both parties. The current process allows the applicant to either seek planning consent or a premises licence in the first instance. However the revised policy appears to indicate that the applicant should first obtain planning consent for any changes. If this is an intended change this is to be welcomed and should provide clarity for all those involved. We do however feel this could be made clearer in this section. We consider that planning is vital to the licensing process and a clear statement of planning policy in relation is required and should be referred to in this document.

Proformas are used to ensure that the business owner has considered all relevant matters when submitting an application. We feel this approach should be promoted at every opportunity. Indeed we would like to see an application only being accepted upon receipt of a fully and satisfactorily completed proforma. There may however be exceptional circumstances where this may not be appropriate and this should be allowed for.

Linked to the proforma we would like to see the promotion of discussions between all parties at the earliest possible opportunity in the process. All too often these discussions are held far too late to enable a managed solution to any potential problems with an application. A more proactive approach from an applicant would greatly improve this situation.

#### Cumulative Impact Policies (CIP)

When submitting an application in a CIP it is the applicant's responsibility to ensure that their proposals will meet not only the licensing objectives, but also have no impact on the area in question.

Quite often applications are received with scant information in terms of meeting these criteria. This results in a number of protracted and quite often late discussions between all parties concerned. The policy should ensure that the applicant is encouraged to submit a full and thoroughly considered application at the earliest opportunity. This will assist our Service in providing a response to their firm proposals in a timely manner rather than undertaking the role of designing a scheme to suit

their application. It should be made clear in the policy that the onus is on the applicant to demonstrate to the Responsible Authorities the suitability and detail of the scheme for their site.

Applicants should be encouraged to undertake a proactive approach towards working with partners in such an application. This will ensure that the process works in a timely and efficient manner without unreasonable deadlines being imposed upon partners by the applicants.

#### Early Morning Restriction Orders (EMRO)

This is a new tool and a potential change for our approach to promoting the licensing objectives. If used correctly this could achieve a far greater and more efficient compliance with these objectives than the current method. We would like to see our Service mentioned as a Responsible Authority and requester of an EMRO. Using an evidence based system we feel is the correct approach which provides credibility to any application and subsequent decision. It would be worth mentioning the role, attendance and aims objectives of the Licensing Enforcement Group.

Additionally the policy should make clear that this process should aim to support businesses rather than hinder in a geographical area whilst ensuring compliance with the objectives. However, where this has deemed to fail then the EMRO could be a possible solution.

#### **Health and Safety Team Comments**

##### Promotion of Licensing Objectives – Public Safety

We would like paragraph 4.16 rewording slightly to read in the following way:

Applicants are advised to consult with the Environmental Health, Health and Safety Team, who can offer advice as to the appropriate measures that may need to be incorporated into the operating schedules. On receipt of relevant representations the Council will have regard to the views of the Health and Safety Team. The team can also offer advice in relation to workplace health and safety matters, including compliance with the Health Act 2006 (smoke free).

**Comments:** The council welcomes the detailed response from Environmental Health.

HEAS suggest “Indeed we would like to see an application only being accepted upon receipt of a fully and satisfactorily completed proforma.”

The proforma risk assessment is provide to assist applicants in creating an operating schedule. It is not mandatory and cannot be required as it is not a statutory requirement but a local arrangement. The Licensing Act is very clear that conditions must be relevant for each premises, and therefore requiring standard conditions is not acceptable.

HEAS suggest “Consideration should be given to the design, construction and layout of the premises. Additionally a history of relevant complaints can be a valuable source in providing an indication of the likelihood of complaints occurring. The hours of operation of the business can be crucial in terms of the prevention of prevention of nuisance. This should be included in the matters under consideration.”

These are matters that can are considered by the Licensing Committee when making a determination of a contested application. The Licensing Committee is reliant on responsible authorities and other people to make a representation to bring these to their attention, if they believe it is relevant.

**Action:** Amendment of paragraph 4.16

Amend 8.5 to include Health and Environmental Action Service as a responsible authority who might request an EMRO.

Expand 8.5 to include the role, attendance and aims and objectives of the LEG.

Insert new paragraph that the aim is to support businesses rather than hinder in a geographical area whilst ensuring compliance with the objectives. However where this has deemed to fail then an EMRO could be a possible solution.

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#### Response from South Headingley Community Association

South Headingley Community Association is fully supportive of most of the changes proposed in the Draft Public Consultation Document: Statement of Licensing Policy 2014-2018.

#### **Cumulative Impact Policy**

We support the retention of the Headingley/Hyde Park CIP and its increase in scope.

However, we note the proposal to delete the existing Woodhouse CIP, which goes along Woodhouse Lane, past Leeds University and up to Hyde Park Corner. ***We strongly suggest that the Woodhouse CIP is retained***, since the area suffers from the same alcohol related problems as Hyde Park and Headingley – for example, that stretch of road is part of the Otley Run.

#### **Early Morning Restriction Orders**

We fully support the procedure for making an EMRO, and the assertion that the Licensing Committee will take into account: "Nuisance statistics compiled from complaints made to Environmental Health in relation to noise, odour and litter nuisance" and "Anecdotal evidence from residents organisations, ward members and other representatives of people living in a specific area".

#### **Temporary Event Notices**

We understand that this document is in line with National Legislation, but the legislation is unfit for purpose and incompatible with the effort being put in to restore the residential community of South Headingley (which includes people of all ages). It's not a 'light touch issue', but a serious issue which affects the health of the community. It seems incomprehensible that such a form of event and disturbance is seen as appropriate in a residential area. Are all the efforts and financial costs of residents, community groups and councillors that are being made to re-establish the quality of this area to be squandered by poor quality legislation?

£Thousands are being spent on Health and Wellbeing, yet behaviour which undermines this causing sleep deprivation and stress, is treated as a 'light touch issue', that doesn't need to be authorized by the licensing authority.

It's disgraceful that residents are forced to react and respond to poor quality legislation that should be sound in the first place. We do not want this statement to be another form of bureaucratic letting off of steam – we want action.

The council must re-engage the police with noise and anti-social behavior. A TEN can't be prevented if there is no history of noise held by the police, even if the council is in possession of noise statistics.

As well as the anti-social disturbance of these events there is also collateral criminal damage/vandalism to property and the environment.

Just like the 'legal-high' there is now exploitation of a loophole. This needs to be closed because it's a very serious abuse of the licensing regulations.

When attending the Environment meetings we are told there is nothing we can do about TENs because it is national legislation. If local authorities and residents have more of an understanding of the need for particular legislation, they should have the ability to be able to adjust national regulations.

South Headingley Community Association completely concurs with the issues raised by North Hyde Park Neighbourhood Association, and also wants to emphasize their point relating to the serious damage caused by sleep deprivation - it should not be seen as a nuisance but as something far more deeply damaging, and certainly not something to be dealt with by 'a light touch'.

Allowing these events to take place just confirms the culture of LS6 as Studentville/Party Town and encourages anti-social, irresponsible and inconsiderate behavior.

We support Cllr Janette Walker's push for change with regards to the mis-use of TENs and want her and her colleagues to be given every support. In a time when the funding of councils is being cut back we cannot afford to let the current situation continue, perpetuating an ineffective and therefore expensive bureaucracy.

TENs are an issue which affects the future sustainability of our community. We cannot emphasize enough how a change is needed to national legislation to enable councils to deal with the problem.

**Comments:** The council notes the request to retain the Woodhouse CIP.

The council works in partnership with the police and its own Health and Environmental Action Service, through the Licensing Enforcement Group which meets regularly to discuss issues relating to licensed premises. Both the Police and Health and Environmental Action Service are able to serve an objection notice to temporary event notices if they consider that they would cause adverse impact on the licensing objectives.

Please see the separate response on page 5 to the concerns and suggestions regarding the temporary event notice system.

**Action:** Retain the Woodhouse CIP?

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## **Response from a member of the public by letter**

### **Cumulative Impact Policy CIP**

I support the retention of the Headingley / Hyde Park CIP and its increase in scope.

However I would strongly object to the proposal to delete the existing Woodhouse CIP (Woodhouse Lane from the University to Hyde Park Corner). There is an enormous amount of alcohol related nuisance in this area, probably more than further north, including lots of broken glass on pavements and noisy alcohol-related shouting and singing at all times of the night especially at weekends.

### **Early Morning Restriction Orders EMRO**

I fully support this idea, including giving weight to nuisance statistics and representations from resident organisations, ward members, and other representations. We have an enormous amount of on-street noise in this area which continues through as late as 7 or even 8 am, disturbing / preventing sleep and greatly affecting health as noisy groups move on from one venue to another or eventually make their way home.

Noisy groups can go past every 5 minutes on noisy nights - leaving other residents barely able to function at work the next day as a result.

### **Temporary Event Notices TENS**

**The current TENS legislation is unfit for purpose.**

**It should not be an argument that the TENS legislation as enacted in Leeds is in line with Government Policy (it is also debatable that the legislation as enacted in Leeds does comply with Government Policy, which is clearly intended to allow reasonable events, wanted by the majority of local residents, and not intended to allow unilateral licences which cause unwanted disturbance to others)**

We have found in this area that TENS amount to licences to create unwanted noise and disturbance, which affected communities are powerless to prevent except by trying to persuade TENS applicants to drop their application - which can take an enormous amount of time and effort and which may well not be effective. That is of course assuming we found out about the application, which may well not be the case.

The Leeds Licensing Dept tells us they “have” to approve applications unless the applicant has a proven record of creating a nuisance. The address may already have been subject to complaint, but as long as the person making the application has not had a complaint against them that seems to be OK. Even very strong representations from councillors are disregarded, which surely cannot be right.

There is no duty to consult or even inform other residents in a street that a TENS application has been made - the first other residents may know about it is the event itself.

This includes where the application is for a street party which involves an application to shut off the street to through traffic on a working day and denies other residents access to their parking areas or garages. (The latter requires Highways approval, but how can representations be made to Highways if affected others don't know about the TENS application?)

There is no consideration for, for example, the presence of a high proportion of Muslim families, to whom alcohol consumption is forbidden, who will find drunken revellers celebrating in the street outside their homes especially abhorrent - and a really bad example for their children and young people.

Because there is no duty to inform, when individuals claim at the time of the event that they have a TENS licence there is no way of confirming this.

We are told that TENS licences are still subject to the normal Noise Nuisance regulations, but this is of little help when the individuals holding the event believe that they can make as much noise as they wish and the Noise Nuisance service has been pared to the bone and is unlikely to visit (now reduced to one vehicle for the whole of Leeds to cover out as far as Wetherby, no extra help for events like Carnival which can totally tie up this one vehicle. Our experience in this area is that Noise Nuisance are unable to visit at the time of the disturbance, even when the disturbance continues all night until 9 or 10 am).

It is clear that the TENS legislation is intended to allow things like street parties which have been requested and agreed by the whole street, e.g. for a Royal Wedding or Jubilee. It is clearly not intended for individuals to have private parties, yet this is what is happening under it.

In addition to noise, TENS approvals may well lead to antisocial behaviour such as urinating in people's gardens, disposal of bottles cans and glasses in people's gardens, damage to walls gardens and properties. Street parties in particular can attract a large number of extra people to the area as we have seen in street parties such as the Hessle Riot and at Headingley Mount on Welton Road. Noise from outside parties carries especially far and is even more of a nuisance than noise from house parties.

It is essential that something is done about the TENS legislation. It is not an exaggeration to say that our whole community is under threat from the current way in which the TENS legislation is currently enacted.

**At the very least:**

1. Neighbours must be informed and consulted about TENS applications.
2. If the majority of people in a street do not want the TENS licence to be granted, it should not go ahead, particularly when the application is for a street party directly outside their home.
3. Representations from Councillors, community groups and local residents must be allowed and taken into consideration when deciding whether to allow a TENS application. TENS applications must not simply be rubber stamped as at present.
4. Much more time is needed for the application to be considered - currently only 10 working days are needed, only 5 for a Late application, which is not long enough for representations against the application to be considered.
5. Applicants must be informed that a TENS is not a licence to make as much noise as they wish.
6. Noise Nuisance must be able to cope with the number of TENS applications granted on a particular day, or they should not be granted.
7. TENS applications which are being made in an area already subject to a high amount of noise nuisance, for example the area around the University, should be given particular scrutiny as to whether it is advisable to grant them.
8. The questions in the Guidance on the Government website must be asked and answered. For example under <https://www.gov.uk/government/publications/your-guide-to-organising-a-street-party>

9. The fee for a TENS application should be considerably higher - though possibly with procedures to reduce or abolish it for a genuine street party wanted by all the residents for occasions like Jubilees etc. £21 is simply too cheap and doesn't allow for the work involved in properly considering the application.

The above has concentrated on the nuisance elements of the effects of Licensing.

But of course restriction of alcohol sales and venues also protects livers from damage and protects the health of individuals, this being especially important in young adults whose livers are especially susceptible and who can suffer lifelong health problems as a result of alcohol excess before the age of 25 years. There is little point in Leeds Alcohol Strategy if Licensing doesn't play its part in protecting the health of individuals likely to drink to excess. As a qualified Clinical Biochemist and also as a qualified Mental Health Social Worker I am probably more aware than others of the health problems related to alcohol excess.

As far as I am aware, I have the support of all the Councillors in Inner North West in my response to this Consultation. Our Councillors have been as distressed as we have been in their inability to control alcohol nuisance in our area, especially as concerns TENS applications but more generally also.

**Comments:** Please see the separate response on page 5 to the concerns and suggestions regarding the temporary event notice system.

**Action:** None – the suggestions made are outside the scope of the policy.

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#### **Response from a member of the public through the online form**

I believe with high unemployment still plaguing the City of Leeds the City must not make any changes that will impact jobs. Furthermore, I do not support the move to limit licences for lap dancing clubs in the city, in particular city centre. Nonetheless I do support restrictions on temporary events, especially if they are in an area that has residents that would be impacted.

**Comments:** This policy relates to premises licensed to sell alcohol and provide entertainment. The licensing of sex establishments is not within the scope of this policy.

Please see the separate response on page 5 to the concerns and suggestions regarding the temporary event notice system.

**Action:** None



## BRE Code of Practice on Consultation

The consultation is being conducted in line with the BRE Code of Practice on Written Consultation. The consultation criteria are listed below. More information can be found at: <http://www.berr.gov.uk/files/file47158.pdf>

### The Consultation Criteria

#### 1) When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

#### 2) Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

#### 3) Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

#### 4) Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

#### 5) The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

#### 6) Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

#### 7) Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you have any questions or complaints about the process of consultation on this paper, please contact Susan Holden, Principal Project Officer, Entertainment Licensing, Leeds City Council, Civic Hall, Leeds, LS1 1UR.