

CONSULTATION RESPONSE – POPPLESTON ALLAN SOLICITORS

Jonathan Smith – Partner:

I am instructed on behalf of Vue Cinema who, as you know, will shortly be opening in Darlington, to respond to the draft Statement of Licensing Policy which you recently circulated. For the purposes of this response, I am (mainly) addressing the changes that have been made since the last Statement of Licensing Policy.

Paragraphs 1.2 and 1.3

These are new paragraphs, and present a rather negative picture of the licensed trade. Each of the sub paragraphs or bullet points are about enforcing powers for Police and local residents and enforcement, and negative issues surrounding alcohol. There is only one paragraph, (iii), which gives any balance to these two paragraphs. It is a rather negative way in which to start any policy.

Officer Comment

These paragraphs set out to balance the issues of concern raised nationally in respect of alcohol and also the contribution made by responsible retailers of alcohol. Officers note the view of the consultee but do not agree that this is a negative start to the policy.

Paragraph 2.1

Are you able to provide links the studies that have been carried out to the electronic policy itself, which would assist? Are you able to provide me with hard copies of the study? Has any work been done on the time at which these people come out into Darlington, since from both my personal experience and those of the clients I act for, they see customers coming to their premises later and later in the evening.

Officer Comment

Ref paragraph 2.1 – this information was provided by the *Balance Alcohol Perceptions Survey-Summary report for Darlington*. Further information is available at: www.balancenortheast.co.uk. This information has been forwarded to the consultee.

Paragraph 2.2

Where have the “alcohol related crimes recorded” actually happened? Is this a consistent area? Is this for Darlington Town Centre, or the whole of the Borough Council? This is a surprising increase when, nationally, over the period from 2012 through to 2015 the number of alcohol related crimes is decreasing. Furthermore, it would be wise to have a look at what is meant by “alcohol related crime”. Does this include burglaries where the offender may have been under the influence of alcohol, which is likely to be linked to off-licences as opposed to the on-trade? How has

alcohol related violent crime fared? Again, a link to the study would be sensible, and could you let me have a copy of it?

Officer Comment

Ref paragraph 2.2 – this information was provided by Durham Constabulary who has confirmed that they have seen a rise in alcohol related crime, contrary to the national picture. The definition that has been use by the Police in respect of “alcohol related crime” is: **Any incident where alcohol is perceived to be a contributory or motivating factor**. The consultee has been advised to approach Durham Constabulary should he require more detailed information on the statistical information provided by the Police.

Paragraphs 2.4 to 2.6

The difficulty with these two paragraphs is of course that public health is not a licensing objective, and public health can only be relevant in terms of any Cumulative Impact Policy which may be implemented, and so I do question why these paragraphs are there? I have no issues with the role the Director of Public Health plays in any decision on a Cumulative Impact Area, nor making reps about underage drinking, but I do not understand the points behind paragraphs 2.4 and 2.5 unless they are being included as part of a proposal to introduce a Cumulative Impact Area.

Officer Comment

Paragraph 2.6 of the Policy makes it clear that Health is not a Licensing Objective but Health may contribute to any cumulative impact policy and may also make representations/make applications for reviews or be party to reviews in respect of issues such as under age sales etc. The preceding paragraphs simply provide the context for the issues of concern for health

Paragraph 3.3

The first comment I would make is that it is refreshing to see a simple conclusion prepared, such as you have done so in the table.

The only observations I have is that firstly unamplified live music is exempt with no audience limit whatsoever, no matter where the unamplified live music is taking place, so I suggest that you split amplified live music and unamplified music into two separate categories and, secondly, technically, there is also a difference between Regulated Entertainment taking place on Local Authority premises, or in schools or hospitals, where the entertainment is being run / organised by the Local Authority itself or on behalf of the Local Authority, or where it is being run by a third party but with your agreement.

Officer Comment

The initial policy document showed no limit for unamplified music but did not state “all Premises” in the exemption box. This has been corrected. Officers are aware of the issues in respect of the Local Authority premises and have included a footnote (** *This exemption may not always apply & the advice of the Licensing Authority should be sought for*

any event on Council premises.) that further advice should be sought for any events held on Local Authority premises.

Paragraph 3,4

Under “Incidental Music” the activity to which it is incidental must however itself be an activity which does not constitute Regulated Entertainment. The exhibition of films at a circus would of course still be exempt if it is incidental to another activity, or an advertisement / education information. Boxing or Wrestling would be exempt in a circus, if it is of a Greco-Roman or Freestyle format, even if it was held in a circus.

Officer Comment

A statement has been included in the Policy advising The Policy does not seek to be legal advice as the Policy cannot cover every eventuality. It appears unlikely (even though not impossible) that a circus would engage in the activities described above by the consultee but in such cases it is expected that proper legal advice is sought as directed by the policy.

Paragraph 9.9.1

There is a typographical error in that the word “has” should be deleted.

Officer Comment

The typographical error has been corrected.

Paragraph 11.5

Although this isn’t part of the changes to the policy, it is unusual to find a statement that a “Licensing Authority will normally require a Personal Licence to be on the premises at all times when alcohol is being sold”. This is not the legal position, and goes over and above what the Act requires. A statement such as this or, indeed, an absolute condition requiring it would often appear on a Premises Licence as part of a minor variation or review, where there have been issues at the premises, which have been down to the general management and supervision of the sale of alcohol.

Officer Comment

This part of the policy cannot be imposed on any licence where there have not been any representations requiring such a condition. It has however been imposed following review of premises where there have been repeated underage sales. Whenever such a condition has been imposed the licence holder always has the right of appeal to the magistrates courts.

Paragraph 11.6

I don't know whether you need to revisit this in light of the decision handed down by the Advocate General in the European Court of Justice on minimum pricing, albeit there has been no formal decision made by the Court as yet.

Officer Comment

The Policy makes it clear that it is not our intention to pursue minimum unit pricing.

Paragraph 13.1.1

Again, this is an existing paragraph, but I find it surprising (and indeed without any foundation in law) that the Licensing Authority would not “consider” an application unless the appropriate planning consent is in place, and that exceptions will be made where the applicant “can demonstrate compelling reasons” why the licensing application could be considered when the planning application is still pending. This would fall foul of the challenge that was made to the Canterbury Licensing Policy whereby the Licensing Authority sought to place stricter requirements on applicants than the legislation provided, and I would suggest it is unenforceable and the two regimes are entirely separate.

Officer Comment

The wording of the policy has been amended to remove the barrier to the licensing process but at the same time remind applicants of the need to ensure that proper permissions are in place.

APPENDIX 2

