



## **Rebalancing the Licensing Act: Westminster City Council's Response to the Home Office's Consultation**

### **INTRODUCTION**

The West End of London in Westminster is recognised the world over as a centre for entertainment and some of the streets around Leicester Square and Soho – which are busier at 3am than 3pm – are amongst the busiest in Europe. This all contributes to an exciting and vibrant atmosphere at the heart of London where residents and visitors have access to the widest array of licensable activities anywhere in the country.

From the West End to Edgware Road, Queensway and everywhere in between, the City of Westminster contains more licensed premises than anywhere else in the country and is home to more than twice as many as the next largest licensing authority in London. But this lively environment brings with it unique challenges. It is for this reason that Westminster has been at the forefront of licensing agenda, constantly innovating and finding solutions to new challenges.

With responsibility for more than 3,000 licensed premises Westminster takes a keen interest in national intervention when it comes to dealing with the challenges presented by the night-time economy and with alcohol licensing more generally and we congratulate the new Coalition Government on acting quickly to lay down a marker on the issue of licensing which is of such importance in shaping the way our towns and cities look and in solving complex and entrenched social policy problems. Transferring powers over alcohol licensing to the Home Office represented a strong statement of intent and was welcomed by Westminster. This consultation is a further step in the direction of a more flexible licensing regime based on an underlying principle of localism.

In Westminster 36 per cent of licensed premises can be found within our three designated stress areas despite accounting for less than 6 per cent of the City. These areas are also home to two-thirds of the City's nightclubs. Clearly this presents huge challenges for keeping residents and visitors to Westminster safe and free from nuisance, placing a considerable burden on the council's resources and our resident's quality of life. It is extremely promising therefore to know that the Government shares our concerns about the pressures that can be placed on communities and is intent on empowering local authorities to deal with them in a way that is appropriate for the local area.

We have taken a robust approach to the framework provided by the Licensing Act 2003 and while some licensing authorities may have discouraged objections to applications in order to avoid costly and time-consuming appeals, the council has encouraged the community to get involved. This principle has undoubtedly come with a hefty price tag but we are confident that it is a policy that has helped prevent the extent of problems that have occurred elsewhere developing on the streets of Westminster.

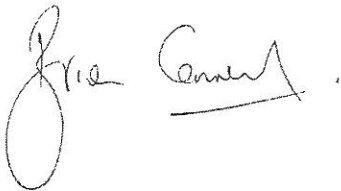
We welcome the general thrust of the proposals but would encourage the Government to be more radical in transferring powers to local communities. Licensing authorities possess unrivalled knowledge of the local environment, the

area's challenges and the views of residents and the end of the top-down, Whitehall-driven regime can not come soon enough.

The move towards a system based on full cost recovery is a bold intention that – if implemented properly – would end the practice of smaller premises subsidising the licensing costs of larger, more difficult to enforce, premises meaning that many easier to enforce premises, like pubs, could benefit from reductions in fees. Freeing councils from the stifling red-tape that prohibits them from setting fees at a local level would mean that local residents are no longer forced to pay the financial penalty for problems caused by licensed premises.

Whilst the vast majority of licence holders in Westminster and elsewhere take their duties very seriously, the mark of a responsible society is one that apportions appropriate costs and holds to account those most responsible for causing problems within communities. In this regard the new Government has made a good start but could go further in taking a tougher line on dealing with persistent alcohol sales to children and free local authorities to shift the cost burden from residents to those contributing to the social problems of an area. In Westminster's experience, this would provide the right incentives for all licencees to take a real interest in the community and level the playing field for those who already have an exemplary record of compliance.

While we support the direction of travel set out in this consultation document, Westminster City Council would like to see even bolder reforms and is keen to work with the Government to realise a truly local vision of licensing.



**Cllr Brian Connell, Cabinet Member, Business, Enterprise and Skills**



**Cllr Audrey Lewis, Chairman, Licensing Committee**

## **GIVING MORE LOCAL POWERS TO REFUSE AND REVOKE LICENCES**

### Consultation Question 1:

Making licensing authorities responsible authorities is a welcome proposal. However, it is unlikely to be of major consequence to Westminster where the Environmental Health responsible authority currently monitors all applications, particularly those with our designated stress areas.

Increased flexibility afforded to licensing authorities in organising and administering its services would be a positive development and provide councils with a very welcome opportunity to cut out unnecessary bureaucracy.

Westminster would encourage the Government to go further in its empowerment of local authorities over its decision-making and free councils from the present series of unnecessary hoops through which to jump. The current obligation to grant applications where no formal representations are received creates a system in which one council department (in Westminster's case the Environmental Health team) is monitoring applications and making representations to the council's own sub-committee.

The only point of caution Westminster would offer in response to Question 1 is to ensure that future arrangements maintain the impartiality of licensing sub-committees in consideration of applications. For this reason it is important that the appropriate roles within local authorities are clearly defined with a proper separation of responsibilities.

### Consultation Question 2:

Westminster welcomes in principle the reduction in the burden of proof on licensing authorities. Whilst the preservation of the duty on the authority to identify a proportionate benefit in each application is appropriate, the onus on the licensing authority to demonstrate that its decisions 'are necessary' for the promotion of the licensing objectives smacks of an outdated, top-down approach that is at odds with the positive vision of localism that Westminster City Council shares with the Coalition Government.

The proposal will empower local authorities to make more considered decisions by allowing directly accountable representatives with real knowledge of the local area to balance the views of residents and applicants against the licensing objectives. This may also have the effect of making appeals less likely, allowing for significant reductions in the overall cost involved with administering licensing policies.

Westminster is proud of its performance in deciding on applications, a view supported by the high level of success in defending those decisions on appeal from either residents or applicants. However, defending our case against spurious appeals is an unfortunate use of increasingly tight public resources.

### Consultation Question 3:

In Westminster's experience, the varied extent and quality of applications and local liaison is such that potential issues are best dealt with through the open forum of a licensing hearing.

Statutory guidance that specifically required applications to address local policy issues could encourage applicants to give greater consideration to the views of the local community.

We share the Government's view that the engagement of local residents and businesses affected by proposals is of major importance in preserving the legitimacy of the licensing regime but Westminster believes that licensing authorities are best placed to disseminate information and consult based on full cost recovery. This is expanded on in the council's answer to consultation question 5 below.

#### Consultation Question 4:

In Westminster, effective communication and a strong emphasis on partnership working have proven effective in ensuring a mutual understanding of the local licensing issues and objectives. Within this framework, the views of the local police are given the most serious consideration. However, we believe that a directly accountable licensing authority represents the most appropriate body to determine the efficacy of representations. To protect this direct link between residents and licensing decisions, it is Westminster City Council's view that the discretion of the licensing authority should not be impinged upon.

Guidance should make reference to the formidable expertise of the police and fire brigade in respect of crime, disorder and public safety, and evidence along these lines should always be given appropriate weight. A responsible local authority will always give grave consideration to such representations but a de facto power of veto is an unnecessarily drastic solution to a problem that, at least in Westminster's experience, does not exist.

#### Consultation Question 5:

Westminster City Council strongly welcomes the Government's intention to increase and improve community involvement in the licensing application process.

The Licensing Act has created a highly prescriptive regime which provides little scope for licensing authorities to respond to the needs of the residents it serves. For instance, the requirement for all applicants to advertise their applications by placing a notice in a local newspaper represents is more befitting of a bygone age, at least in areas like Westminster where this condition adds unnecessary costs for both the licensing authority and the applicant. The role of local print media has changed dramatically, even in the few years since the Licensing Act was passed, and the council is aware of no one who has ever responded to such an advertisement

Westminster City Council believes that licensing authorities, with unrivalled knowledge of local issues and communities, should be given greater flexibility in publicising applications. A local authority will have a wealth of experience in engaging its residents and is therefore best placed to consult with the necessary individuals and groups. More effective forms of engagement such as letter drops, public notices, communications through resident associations and emails are already regularly widely practiced in Westminster. By placing a responsibility to advertise the application in a more flexible way on the licensing authority and allowing for full cost recovery from applicants, the Government could encourage increased engagement and help drive economies of scale to reduce the overall cost of the licensing process.

Westminster has tried to take a lead in not just informing residents but empowering them to play a positive role in the licensing process. The council's Westminster Citizen Advice Bureau Licensing Project has provided impartial and expert advice, support and representation to residents who feel they are affected by applications. This type of initiative could continue if guidance explicitly outlined that licensing authorities were empowered to offer funding to external organisations to promote the licensing objectives and ensure the most effective engagement possible.

#### Consultation Question 6:

The council welcomes the proposal to allow licensing authorities to consider any representations that are relevant to the licensing objectives set by the council. Westminster is experienced and competent in apportioning appropriate weight to representations based on their content and provenance. We share the view of the Government that local licensing authorities are best placed to assess the validity of a view and should have the power to consider relevant representation from all members of the community.

#### Consultation Question 7:

The role of local health bodies is interesting and the views of such professionals should always be considered, however clear guidance should be issued and agreed by the health service so that there is a common understanding of the role they can play within the wider licensing regime. Proposals for statutory Health and Wellbeing Boards could provide an effective vehicle through which health bodies are able to review licensing applications but much depends on how these boards develop and the functions they seek to take on locally.

#### Consultation Question 8:

Westminster welcomes the proposal to include the prevention of health harm as a licensing objective but believes that rather than applying to individual applications, the objective should be used to inform a local authority's local licensing policy. In very few cases would it be possible to assign responsibility for such problems to one particular premises.

Instead, a presumption, established through guidance, that cheap alcohol, excessive drinking and the irresponsible sale and promotion of super-strength products and alcopops, does not promote the prevention of health harm objective could be beneficial in this regard. Conditions around the provision of health messages at premises and better alcohol strength labelling could support authorities in helping drinkers to make more informed choices and meet the health objective.

Including the prevention of health harm could have a very positive impact on health particularly if health is considered in its broadest sense, going beyond health services to include the impact that licensed premises may have on noise, the street environment and perception of safety.

#### Consultation Question 9:

The licensing regime in Westminster already accepts that groups are entitled to represent members in their area, and make more valuable representations as a result.

With support of the trade, Westminster has successfully empowered and encouraged recognised representative local groups to take part in the licensing process. A similar system of group representation is used effectively when assessing planning applications and licensing authorities could be encouraged to learn from that regime.

#### Consultation Question 10:

Westminster City Council welcomes proposals aimed at empowering licensing authorities and that help reduce the overall costs of the regime. Many appeals are unnecessary re-hearings of evidence that has already been considered and determined by the licensing authority. It is Westminster's view that appeals should be a review of the decision, or restricted to relevant points of law.

In Westminster's experience, it can often be the case that during the course of the current de novo process for hearing appeals, the application, as previously determined by the licensing authority, undergoes significant amendments by the appellant such that the appeal heard by the magistrates' is appreciably different. If, at that stage, appeals are settled by mutual consent then responsible authorities or interested parties are deprived of the right to address the court.

To ensure the decision is representative of the community's wishes and proper channels of accountability are open, we believe that magistrates' courts should only consider the application as made to the licensing authority. Any substantive changes to the application made post-refusal should require a new application to be lodged with the licensing authority.

#### Consultation Question 11:

We strongly welcome the Government's intention to amend licensing legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination.

Licensing objectives are being undermined because of the delay in implementing licensing authority decisions, both during the period in which an appeal against the decision may be brought, and the subsequent delay if an appeal is lodged.

This move would likely have the effect of reducing tactical appeals designed to delay the implementation of a decision. Typically appeals are not heard for 4 to 12 months. This neuters the licensing authority and serves to clog up the local licensing system with spurious and costly appeals.

## **DEALING WITH THE PROBLEMS OF LATE-NIGHT DRINKING**

#### Consultation Question 12:

Again, the council welcomes the Coalition Government's intention to provide local authorities with increased flexibility in managing their licensing policies and objectives in a way that brings greatest benefit to the community. It would be a particularly positive development if licensing authorities were given freedoms to apply Early Morning Restriction Orders (EMROs) to specific types of premises rather than implementing a blanket approach.

It is not anticipated that Westminster would use EMROs within our current framework but it could prove to be a useful power to support and extend our existing stress areas policy.

Consultation Question 13:

We have no concerns about repealing Alcohol Disorder Zones (ADZs) and strongly support the Government's decision to do so. ADZs were poorly thought through and appeared to have been designed more for grabbing headlines than grappling with what is a huge and growing problem for society. Raising a levy on all premises and punishing responsible licence-holders for their proximity to troublesome premises has always been considered by Westminster to be unfair and indefensible.

Consultation Question 14:

Westminster City Council believes that the evidential burden on licensing authorities to implement Cumulative Impact Policies should be lowered and need not be higher than the balance of probability. A licensing authority should be satisfied that a problem of cumulative impact exists, or is likely to occur, before special measures are introduced but concur that the current level of bureaucracy is putting off councils that might otherwise introduce such a policy.

With a wealth of knowledge and experienced licensing officers, Westminster City Council has successfully implemented Stress Areas in which special cumulative impact policies exist to limit the problems caused by the concentration of licensed premises found in the West End, Queensway/Bayswater and Edgware Road. The areas covered by these Stress Areas include more than one-third of the licensed premises and two-thirds of the night clubs within the City of Westminster despite covering less than 6 per cent of its total area. Such a concentration requires special policies and the council has been pleased with the effectiveness of this approach. However, it is Westminster's view that the requirement of an evidential basis for the decision – set at a reasonable level – affords a legitimacy that would otherwise be absent.

Stronger guidance supporting cumulative impact policies should include a presumption that later hours, increased capacity and additional licensable activity in an area with an already high concentration of premises is likely to lead to a situation which fails to promote the licensing objectives.

Consultation Question 15:

Westminster views a specific late night levy as being too prescriptive. As outlined in response to Consultation Question 25 below, any fee levy should form part of a regime of full cost recovery. Instead, we would prefer to see licensing authorities given the authority to recover all reasonable costs associated with late night premises.

Consultation Question 16:

As part of a regime that allows for full cost recovery, licensing authorities should have the authority to offer reductions in fees for appropriate premises, for instance those – like the vast majority of pubs – that provide fewer risks and usually require less enforcement action. In our experience, membership of particular schemes does not correlate with actual best practice.

#### Consultation Question 17:

The council welcomes the Government's proposals to allow local authorities to pass on the costs related to the night time economy to licence holders. However, it is the view of Westminster City Council that this should take the form of a full cost recovery regime which would be simpler and more legitimate than a specific night time levy.

#### Consultation Question 18:

Westminster already gives consideration to the impact of opening hours in its overall licensing policy so the impact of this reform is likely to be of minimal impact in the city.

We would appreciate clarification on what exactly the Home Office intends to define as 'opening hours'. Does it, for instance, cover those times when licensable activities are taking place or could it include times when the premises are used for non-licensable activities?

Breaching published opening hours should be related to offences within the Act if they are to be properly enforced. Section 136 of the Act creates an offence where licensable activities are carried out other than in accordance with an authorisation. This gives rise to a situation in which premises can remain open beyond their published hours without providing licensable activity and giving no rise to licensing enforcement.

### **TEMPORARY EVENT NOTICES**

#### Consultation Question 19:

a) The decision to allow all responsible authorities to object to a TEN on the basis of any of the licensing objectives is strongly welcomed by Westminster City Council. An event authorised by a TEN can have a considerable impact on any of the licensing objectives and we support the Government's proposals that will see licensing authorities empowered to consider all relevant representations.

We also support the proposals to ensure that applicants specify the exact address at which TENs are to be served. This will give licensing authorities more precise information on which to base its determinations.

b) Increasing the time period during which the police and other responsible authorities can object to a TEN is a sensible development that will allow key players in the licensing process more time to provide more considered responses that better reflect the particular issues of the locality.

c) In line with the plans to increase the time period during which a responsible authority can object to a TEN, Westminster considers it sensible to increase the overall notification period for a TEN application in order for the necessary evidence gathering and hearings to take place. This will empower busy residents who would otherwise not have their voices heard.

d) Westminster shares the Government's desire for a more flexible temporary licensing regime but would encourage ministers to go even further in its entrustment



of local people. We believe that licensing authorities should be free to condition a TEN as necessary to promote the locally determined licensing objectives rather than be restricted to the application of existing conditions on a live premises licence. More often than not the application for a TEN indicates that the proposed activity is significantly different from the events or times of activities that usually take place at the premises.

As passionate believers in localism, Westminster City Council considers that licensing authorities are best placed to understand the consequences of an application and should be free from top-down diktats in determining the conditions appropriate for promoting the licensing objectives.

#### Consultation Question 20:

a) In Westminster's experience it is the number, nature and duration of temporary events that determine the impact on the local environment. Reducing the number of events that an individual can apply for could have adverse consequences if it encourages more applications from inexperienced and less responsible promoters

It is the council's view that a more focus should instead be given to the frequency of TENs. Current rules allow for events to be held at one location only 24 hours apart. Consideration could be given to defining the frequency of TENs to ensure they are used for occasional events only. In order for licensing authorities to deal with this issue that often causes residents to complain, they should be free to take into account the frequency of TENs at a premises when deciding on the likely impact of a particular application.

b) Restricting the number of TENs that can be applied for in the same vicinity or building would be a welcome development. Westminster has previously had to deal with operators seeking to define Trafalgar Square as multiple vicinities to enable events to take place continually. This is a clear circumvention of the law and reforms that prevent buildings and open spaces being artificially divided to avoid the restrictions laid down in the Act would be very welcome.

### **PROTECTING CHILDREN FROM THE HARM OF ALCOHOL**

#### Consultation Question 21:

Westminster City Council takes very seriously the issue of persistent selling of alcohol to children and considers a voluntary closure an insufficient punishment for licence holders who value profits more highly than the duties they have to protect young people from the harm of alcohol. Persistent underage selling should trigger an expedited review, with the licence suspended until the review hearing.

#### Consultation Question 22:

Westminster cannot accept the premise of the Consultation Question as we do not believe that a voluntary closure of seven days or more is a suitable penalty for the serious offence of persistently selling alcohol to underage persons. The vast majority of licence holders understand that in a responsible society they have a duty to protect vulnerable groups from accessing potentially harmful substances. A voluntary closure does not present the necessary deterrent.

### Consultation Question 23:

Westminster already operates a well established and successful policy of forcing licence reviews on those found to be persistently selling alcohol to children. We would however appreciate support and further guidance that sets out proportionate sanctions.

The consultation paper also proposes the introduction of tougher sentences for persistent underage sales. Westminster supports this but would warn that such a move would require corresponding sentencing guidance for the courts if the measure is to be effective. Many of the fines imposed through prosecution are too low to represent a sufficient deterrent. The bureaucracy and time required to prosecute an irresponsible licence holder unfortunately provide licensing authorities with little incentive to spend scarce resources on a system of recourse that offers inadequate punishment.

## **BANNING BELOW-COST SALES**

### Consultation Question 24:

The application of a minimum-pricing regime is one area of alcohol licensing policy that should be led by Government at a national level. Whilst Westminster would support effective and practical measures which raise the retail cost of alcoholic drinks, but believe that this must be joined up. In London, for instance, where local authority areas can often be relatively small and boundaries are not always clear, this could result in duplication or displacement.

Banning below-cost sales would not increase the cost of alcohol sufficiently to prevent cheap alcohol being available, nor would it have a significant impact on pre-loading or general excessive consumption. At cost price alcohol is still very inexpensive and such a move would likely have minimal effect.

Minimum unit pricing would, in Westminster's view, be far more likely to help tackle the worryingly entrenched issues around alcohol in society. In conjunction with a stricter requirement to display the alcohol strength on pre-packed alcohol drinks this may be a more practical solution. Considerable care would need to be taken in setting minimum retail prices. A price too low would be ineffective while an expensive unit price could create a black market.

## **REDUCING BURDEN AND BUREAUCRACY OF LICENSING AND COVERING ITS COST**

### Consultation Question 25:

Westminster City Council strongly welcomes the Government's intention to allow local authorities to recover its reasonable costs caused by licensing premises. We envisage this would include elements of the late night levy proposed in consultation questions 15, 16 and 17.

Under the current charging regime licensing authorities have been required to make the Act work by subsidising the licensing process from the public purse. This has been to the detriment of Westminster residents who have been forced to pick up the

tab for the additional costs caused by the high concentration of licensed premises in areas like the West End.

Local flexibility will be the key to making a success of a new regime based on full-cost recovery. We appreciate the Government's willingness to dispense with the top-down directives that prescribe one-size-fits-all fee levels without any regard to local circumstances.

Current national fee bands are not only set at an inappropriate levels but are too narrow to reflect the range of impact that different licensed premises, of different size and category, operating at different hours of the day, can have on the local environment. The current legislation endorses a situation that sees large premises open longer into the night have their licensing costs subsidised by smaller premises with more limited opening hours.

Full cost recovery should include all reasonable costs associated with the administration of licensing, including enforcement, and the costs of the services made necessary by the presence of licensed premises. The council would also encourage the Government to free licensing authorities from red-tape that prevents them from basing local fee levels on the classes of premises, taking into account their impact locally. We believe that this would mean that some classes of premises could see a significant reduction in the costs of their licences. This could, for instance, mean that pubs are charged less for licences.

Such a reform would also make the Licensing Act 2003 consistent with other licensing legislation administered by licensing authorities.

Consultation Question 26:

Westminster City Council warmly welcomes the proposal to amend the legislation so that premises licences are automatically revoked if annual fees are not paid. The procedure in the Gambling Act 2005 to revoke a licence when fees have not been paid for 28 days after the due date is well established and has worked well. This could significantly reduce the costs of maintaining extinct licences, reduce the amounts spent by licensing authorities on debt collection and help to rationalise public licensing registers, giving residents a clearer view of the licensing landscape in their area.

Consultation Question 27:

We welcome the Government's decision to consult on the impact of the mandatory conditions on licensing introduced in April 2010. There is little evidence of benefit in Westminster during the short time they have been in force. Similar or more appropriate conditions are already imposed in relevant cases.

Consultation Question 28:

Whilst some of the conditions are of limited use, none of the mandatory conditions undermine or conflict with the licensing objectives. The two conditions, (d) and (e), which have yet to come into force are likely to have the greatest cost implications for the trade. In our experience responsibly run premises already comply with these requirements.

Consultation Question 29:

De-regulation of the Act would be welcome. However, Westminster believes that these proposals could go much further in reducing the legislative framework in order to allow local licensing authorities more scope for determining and administering local licensing policies and decisions.

The Licensing Act, as it stands, is far too prescriptive and appears to be based on a presumption that local authorities should not be trusted to properly reflect the particular needs of the local community. Westminster believes that local councillors and officers, with their intimate knowledge of the area and obvious local legitimacy, are best placed to shape the future licensing landscape and be held to account for those decisions. The current regime's attachment to uniformity serves only to create a burgeoning bureaucracy and discard good local practice.

For example, the artificial concepts of 'interested parties' and 'responsible authorities' are not required in an efficient and flexible regime. Similarly, Whitehall direction on timescales, procedures and fee levels conflict with our natural instinct for localism. In its previous role of licensing premises for public entertainment, Westminster operated an efficient and effective licensing system with just a fraction of the legislative provisions that burden the current regime.

Westminster City Council would also like to see the Government prioritise the following reforms which would streamline the system and reduce costs for licensing authorities, licencees and taxpayers and would enthusiastically welcome the opportunity to provide the Home Office with further insights on the current regime and possible reforms, from our unique standpoint:

- A general slip rule should be introduced to allow the council to waive procedural rules in individual cases where it is appropriate to promote good administration.
- To reduce costs and encourage innovation, advertising of applications should be less prescriptive (see response to question 5)
- Sections 43(5)(a) and 44(6)(a) of the Act should be amended so that the licensing authority should only exempt a person from the requirement to obtain consent to the transfer of a licence from the existing licence holder where he has taken all reasonable steps to obtain such consent .
- The council should be free to determine the size and make up of its licensing committee and sub committees.
- The council should be free to determine its own schedule of delegations.
- The frequency at which the Statement of Licensing Policy is reviewed should be determined by the council, based on periods of time between reviews, and not on fixed periods at present.
- The ability of applicants to appeal against the refusal for a TEN should be removed.
- Application forms seeking authority to provide late night refreshment should be amended so as to request applicants to indicate whether the late night refreshment sought is for consumption on or off the premises, rather than indoors or outdoors as is currently the case.
- The Act should make it clear that events which can be characterised as demonstrations and covered by the Public Order Act, are not licensable under the Licensing Act.
- The Act should clarify that the supply of alcohol includes the provision of alcohol in any form, including a gaseous or suspended form in the air. We

have experience of gin and tonic being provided through a suspension in the atmosphere and customers being charged to enter.

- Regulations should be changed so that a licensing authority may waive the requirement for an applicant or person submitting a notice or representation electronically to also submit a hard copy of the application, notice, or representation.

