

FOBRA RESPONSE TO HOME OFFICE CONSULTATION ON REBALANCING THE LICENSING ACT

The Federation of Bath Residents' Associations represents twenty four local residents' associations in central and outer areas of the city of Bath with around 4,000 resident members. The students' unions at Bath and Bath Spa Universities are affiliate members.

Although Bath is well-known as a World Heritage Site which attracts five million visitors a year, it also has late-night hotspots for alcohol-fuelled antisocial behaviour centred on the largest concentrations of licensed premises. The issue has been recognised in the designation of a Cumulative Impact Zone, but this has done nothing to tackle the problems arising from existing premises. Bath Residents welcome the government's proposal to rebalance the Licensing Act.

Consultation Question 1: What do you think the impact would be of making relevant licensing authorities responsible authorities?

- Beneficial, in that it would empower and require licensing authorities to become more proactive, and not just act as a post office in licensing cases.
- Good to make Councillors and officers more accountable for the results of licensing conditions.
- But it would push residents down the pecking order when considering representations at a hearing. The applicant is already at the head of the list, thanks to the drafting of the Act, and Police and Fire Authorities carry great weight. Residents have a job making an impact as it is, even when making well-considered proposals for conditions, let alone when opposing an application or variation. This seems to run counter to your intentions.

Consultation Question 2: What impact do you think reducing the burden of proof on licensing authorities will have?

- It is not enough to empower licensing authorities to 'consider more widely'. They need to be required to publish an agreed vision for the night time economy in their area as part of the Statement of Licensing Policy. Interested parties would be brought in during the consultation which is already required on the Statement, so this should not create any new burden. The vision could differ from one part of the authority to another (eg between rural areas and town centres).
- The above change needs to be accompanied by a new licensing objective, requiring decisions to be consistent with the vision. In this way, everyone will be focused on the needs of the area.

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Consultation Question 3: Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?

- The requirement for a local vision which we have suggested under Question 2 would ensure that applicants considered the local impact of their proposal.
- Applicants should be required to consult with residents before they apply, and demonstrate in their application that they have done so. This is not intended to create an extra burden. In our experience an initial discussion often leads to amendment of the proposal, so that residents no longer need to object formally. The delay and cost of a hearing can thus be saved. The more enlightened licensees welcome this.
- Applications need to be advertised more prominently. Window notices should definitely remain blue, so that they can easily be distinguished from other material.
- The licensing authority could publish a summary of licence applications/variations in the local paper, as is done for planning applications.
- Applications could be posted up on a central site, eg the Council office.
- Details of applications could be sent automatically to local residents who register to receive them.
- It is not enough to rely on electronic communications. Many older residents, who are likely to be particularly disturbed by the night time economy, are not on the internet.

Consultation Question 4: What would the effect be of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?

- The Police already seem to have great weight at licensing hearings, and also seem to be effective in persuading applicants to accept conditions. It is not clear that this change is needed.

Consultation Question 5: How can licensing authorities encourage greater community and local resident involvement?

- The responses to Questions 2 and 3 are relevant here too.
- Licence applications and variations should be made more public than at present.
- Licensing panels should be held out of normal working hours, so that working people can attend.
- In our area, there is no problem about being consulted over the Statement of Licensing Policy: the problem comes with its content, which is glued tightly to the licensing objectives and the procedures laid down in the Act. This needs to be freed up if the Government is serious about giving more power to licensing authorities to respond to local concerns. That is why we have proposed that licensing authorities should publish an agreed local vision for the night time

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economy as part of the Statement. Then all parties can see what licensing is trying to achieve in the area.

Consultation Question 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?

- This would allow residents who are potentially affected to make representations without necessarily living immediately close to licensed premises. For example, many residents living in outer Bath are reluctant to come into the city centre in the evening for fear of encountering antisocial behaviour on the streets. This is bad for other sectors of the economy (theatres, cinemas, restaurants etc) and reinforces the trend for the streets to be given over after dark to drunken youths. These residents should be allowed to make representations.
- It wouldn't be right to allow anyone anywhere to make objections. One possible qualification would be to restrict interested parties to those who live within the licensing authority's area.

Consultation Question 7: Are there any unintended consequences of designating health bodies as a responsible authority?

- No. As with designating licensing authorities, this would encourage health bodies to take a proactive interest in licensing matters, and to exert pressure for restraint on drinking.
- They could be expected to take a strategic interest in this, eg by shifting the focus of attention away from pubs towards supermarkets, where most of the alcohol causing most of the harm, is being sold.
- As mentioned under Question 1, this could have the unintended effect of shunting local residents down the pecking order.

Consultation Question 8: What are the implications in including the prevention of health harm as a licensing objective?

- Given the magnitude of the health implications of alcohol, both acute - in terms of its involvement in violence, especially domestic violence, and accidents leading to A&E admissions, and poor performance at work – and chronic health damage, it is amazing that prevention of health harm has not been included previously among the licensing objectives.
- Analysis of information from A&E admissions could help to identify irresponsible premises and dangerous drinking practices. Enforcement action could be targeted on these premises, and encouragement given to safer drinking practices.

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Consultation Question 9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?

- We assume that residents' associations are already considered eligible as interested parties. If necessary, there should be specific provision for their involvement.
- We think that any organisation with an interest in the social character of the area should be eligible. This could include churches and local authority Youth Services as well as your suggestions for school governors, housing associations and registered social landlords.

Consultation Question 10: What would be the effect of making the default position for the magistrates' court to remit the appeal back to the licensing authority to hear?

- To fulfil your stated objective of giving local authorities more power to respond to local concerns, it makes good sense for the default position to be that the magistrates' court should remit the appeal back to the licensing authority.
- This would concentrate as much consideration as possible at the level of the licensing authority, and help to minimise costs.
- The court's role would then be to consider whether the licensing authority had applied the procedures correctly, not to re-run the case.
- Residents need to be recognised as interested parties in any appeal by the applicant.

Consultation Question 11: What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination?

- Reviews of a premises licence are not launched lightly, and the licensing authority does not take the decision to modify/suspend the licence or to remove the designated premises supervisor without strong evidence of problems. It is entirely appropriate for the decision to apply immediately, otherwise the action loses its point against the premises in question and any deterrent effect on other premises is weakened.

Consultation Question 12: What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of the local areas?

- Reduced opening hours would make it easier for city centre residents to sleep at night.
- This could be a very positive step, allowing local authorities to determine the conditions which should apply in their area.
- It would tie in well with the provision we have proposed under Question 2 for local authorities to publish a vision for the night time economy in their areas, and for a new licensing objective that decisions should be consistent with this vision.

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- Residents need to be consulted about the detail of the EMRO.

Consultation Question 13: Do you have any concerns about repealing Alcohol Disorder Zones?

- No

Consultation Question 14: What are the consequences of removing the evidential requirement for Cumulative Impact Policies?

- It required a disproportionate effort over a two-year period to agree a CIP in the centre of Bath, despite regular problems and widespread local concern. Resources were diverted away from everyday work, and it would be good to make it easier to introduce a CIP.
- But the real issue is how a CIP operates. What happens in practice in Bath is that the local authority's solicitor tends to discourage the panel from giving much weight to relevant representations from residents, so the onus which should be thrown clearly on to the applicant or licence-holder to justify their request is effectively still left with objectors, as it would be without a CIP. As a result there has been little or no barrier to the issue of new licences or of variations which intensify operations.
- To make CIPs bite, they need to be based on a stronger presumption against the grant of new licences or variations. Our Statement of Licensing Policy states that *"If the licensing authority decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one of the licensing objectives and that necessary conditions would be ineffective in preventing the problems involved."* We suggest that you need to remove this evidential requirement on the licensing authority.
- The legal status of CIPs has never been made quite clear, as they are not mentioned in the Act. They could be vulnerable to a determined challenge from a litigious licensee. We suggest they should be written into the Act.

Consultation Question 15: Do you agree that the late night levy should be limited to recovery of these additional costs? Do you think that the local authority should be given some discretion on how much they can charge under the levy?

- We agree that the cost of late night policing should be recovered by means of a levy on licensed premises. The costs should be those incurred after midnight.
- But it would be unfair to impose this just on the premises which themselves open late at night. Much of the alcohol which leads to drunkenness and antisocial behaviour is bought at supermarkets and consumed at home, some at premises which open early in the evening, and some at late-night premises. All these suppliers should contribute to the levy, with perhaps a higher rate for those open late.

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Consultation Question 16: Do you think it would be advantageous to offer such reductions for the late night levy?

- An incentive for premises to join best practice schemes seems a good idea.

Consultation Question 17: Do you agree that the additional costs of these services should be funded by the late night levy?

- Yes, because local authorities incur costs as well as the Police. Such services should include street marshal teams with paramedic members, taxi marshals, street cleaning and the provision of temporary toilets in places where street urination is a common problem.

Consultation Question 18: Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol-related crime?

- Yes. This would be part of the proposal we have made under Question 2, that local authorities should be required to publish an agreed vision for the night time economy in their area.

Consultation Question 19: What would be the consequences of amending the legislation relating to TENs so that:

a. All the responsible authorities can object to a TEN on all of the licensing objectives?

b. The police (and other responsible authorities) have five working days to object to a TEN?

c. The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?

d. Licensing authorities have the discretion to apply existing licence conditions to a TEN?

- A simplified procedure needs to be introduced for community organisations, which might organise at most a couple of events a year.
- The Police definitely need longer than 48 hours over a weekend to deal with TEN applications. We have had cases of licensees in Bath deliberately submitting their applications on a Friday afternoon.

Consultation Question 20: What would be the consequences of:

a. Reducing the number of TENs that can be applied for by a personal licence holder to 12 per year?

b. Restricting the number of TENs that could be applied for in the same vicinity (e.g. a field)?

- We support restricting the number of TENs in the same vicinity.

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Consultation Question 21: Do you think 168 hours (7 days) is a suitable minimum for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

- Persistent sale of alcohol to young people is a very serious offence which merits a severe penalty. We support the increased fine on conviction.
- We question whether it is appropriate to provide an alternative to prosecution by way of a voluntary closure notice. This saves the licence holder from the correct penalty of a conviction, with the publicity, disgrace and criminal record which this ought to entail.
- If the voluntary route is to continue, the penalty needs to be significant. 7 days appears to be a suitable minimum period.

Consultation Question 22: What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

- The voluntary route should not be followed for the most serious cases of underage selling, which should be the subject of prosecutions. We think that an appropriate upper limit would be one month.

Consultation Question 23: What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?

- This is the minimum that could be done to demonstrate that the offence is taken seriously.
- It will require licence-holders to exercise responsibility and vigilance, and to ensure their staff act correctly.

Consultation Question 24: For the purpose of this consultation we are interested in expert views on the following.

a. Simple and effective ways to define the 'cost' of alcohol

b. Effective ways to enforce a ban on below cost selling and their costs

c. The feasibility of using the Mandatory Code of Practice to set a licence condition that no sale can be below cost, without defining cost.

- The Government is insisting on making this issue unnecessarily complicated. The simplest and most effective option would be to impose minimum pricing by unit of alcohol. The price could be set nationally and updated from time to time.

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Consultation Question 25: Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?

- Yes. Local authorities are going to face serious budgetary pressures for the foreseeable future. There can be no justification for less than full cost recovery, except possibly for small independent businesses.
- This may have the desirable effect of discouraging weak applications or minor variations.

Consultation Question 26: Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?

- Yes.

Consultation Question 27: Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol-related crime?

- Yes. There is a particular continuing need to ban irresponsible promotions. We are concerned as to whether the Mandatory Code conditions are being enforced.

Consultation Question 28: Would you support the repeal of any or all of the mandatory conditions?

- No. All these measures are justified either in the interest of consumers or to discourage irresponsible drinking.
- But if any change is made, it should be in the direction of making conditions more clear and enforceable.

Consultation Question 29: Would you support measures to de-regulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?

- We are not aware of any particular deregulation needs. This whole Act went much too far towards making life easy for the trade. It now needs to be tightened up.

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