



BARNESLEY METROPOLITAN COUNCIL STATEMENT OF LICENSING POLICY RESPONSE

Punch Pubs Response

Punch is one of the UK's largest leased pub companies, with around 1,250 pubs across the UK.

Our business strategy is based on **People** (governance, industry standards, transparency), **Pubs** (locations, pub types and agreements) and **Punch Support** (business support, expertise, procurement, process efficiency, retail offer).

We are constantly working to improve the quality of each of our pubs and their consumer offer.

This is achieved through the recruitment of high-quality pub operators, their training and support, capital investment to develop the full potential of each outlet and the development of preferential supply agreements to maximise income. In short, we are a business of people that love pubs! With a mixed estate of high quality leased, tenanted and retail pubs, our years of experience have enabled us to develop a leading proposition for those wishing to work with us and run a pub business of their own. We provide industry leading, tailored business support to our Publicans and develop market-leading, flexible agreements and retail concepts to suit all aspirations. At the heart of the business is a working relationship between Punch as premises licence holder and the publicans running their own businesses in our pubs.

Corporate Social Responsibility (CSR) is embedded across many elements of our business, from corporate fundraising to responsible retailing. We have dedicated teams in place to assist in ensuring that our premises operate to the highest standards. We strive to ensure that our pubs are not operating irresponsible drinks promotions or serving underage drinkers or those who are intoxicated.

The Punch Buying Club, our online ordering and communications portal, also has a section dedicated to Risk Management providing our Publicans with a wide range of downloadable educational tools, advice and pub-friendly materials, which can be used by pub managers and team members.

As supporters of Drinkaware we do not condone irresponsible promotions and pricing of alcohol, and we have actively supported Drinkaware's campaigns to help tackle binge drinking amongst 18 to 25 year olds. Responsible retailing forms a key part of our Publican training and we provide clear guidance on current legislation and best practice. We also support industry led initiatives to promote responsible retailing and are active members of industry trade bodies such as British Beer Pub Association (BBPA) and the British Institute of Innkeeping (BII).

We are pleased to be able to contribute to this consultation, we have always prided ourselves with working with Local Authorities and Responsible authorities.

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Punch operate 13 pubs within the Barnsley Metropolitan Council area and are therefore ideally placed to offer a constructive response to the consultation.

The consultation has not provided a direct comparison with the current policy, allowing us to easily identify any changes proposed. For this reason, we are commenting on the policy as a whole.

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RESPONSE

Our response refers to the numbering of paragraphs within the policy. We have included comments relating to the changing needs of operators that have changed significantly in light of recent issues such as the Covid Pandemic, Brexit, rising costs and general changes in trading patterns and conditions.

1.04 Integrating Strategies

Links to the documents, council partnerships and other sources referred to here would assist applicants to understand what resources are available and how best to find them.

1.05 Public Health

It is clear that a decision has been made to put public health front and centre of the policy- it is effectively the first 'policy' matter addressed. Whilst Punch strongly agrees with the public health message and a need to educate consumers in the potential harms of alcohol, there must also be a recognition that obligations to do this should not fall on publicans and premises licence holders. The Government has, on at least 3 occasions since 2003 and the introduction of the legislation, decline to add public health as a licensing objective. This is in recognition of this point.

Public health in licensing terms is much wider than consumption of alcohol. As the section recognises, alcohol can be a force for good, but there is nothing in this section on the health benefits of having a strong and vibrant hospitality sector which provides, through premises licensing, pubs, clubs, restaurants, theatres, cinemas, competitive socialising and premises that mix all of the above and in doing so provide community hubs. The Covid pandemic showed that isolation and loneliness are significant factors in the health of the nation and the part premises such as Punch Pubs play in providing support for the community should not be overlooked when talking about 'public health involvement.' In licensing.

The draft policy states:

'The Council also takes the view that Public Health should play a key role in developing its licensing policy, particularly as health bodies generally have access to data that can inform licensing decisions and policy. As stated, although the protection of public health is not, in itself, a licensing objective, it can be pertinent to each of the licensing objectives.'

We suggest that it is made clear here that this includes both the positive, as well as the negative elements of all licensable activities in 'informing licensing decisions and policy'. Alcohol harm is, with respect, a much bigger issue than licensing, and licensing is much bigger than sales of alcohol.

We suggest that this section is revisited to rebalance the narrative to give a more balanced overview.

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1.10.1 Prevention of Crime and Disorder

The prevention of crime and disorder is a major pillar of licensing legislation. However, we have become increasingly concerned that licensed premises are sometimes being unfairly held to a higher standard when it comes to prevention of crime and disorder than other public premises. For instance, when Police present evidence of crime and disorder in relation to licensed premises, they will often include references to any crime that is associated not just with the premises in terms of its operation as licensed premises but generally. For instance, the Police will often include reference to all calls where those calls have referenced the premises as a local landmark which can include anything from criminal activity from people who have not been customers of the premises, offences in relation to taxis, or general disturbance and noise nuisance in a town centre where it cannot be said to be relevant to the premises.

Premises licence holders will also often find reference to offences that are not relevant to the licensing objectives themselves. So, for instance, robberies at residential premises above a licensed premises are sometimes included. We feel it is important that the council recognise in their policy that these are matters that are not relevant to the prevention of crime and disorder licensing objective and that the licensing authority's expectation is that they will only be presented with evidence where it directly relates to the licensable activities being provided within the premises themselves.

CCTV, ID scan & GDPR

One of the most significant changes in recent times has been the change to data protection legislation introduced via GDPR. Whilst the obvious effects of this regulatory change relate to protecting personal data held on behalf of individuals, such as social media, mailing lists, email data bases and various other forms of storage of someone else's data, there are other effects that need to be reflected in licensing policy.

For instance, the requirement for CCTV at a premises licence is not only expensive to install, but we question the value of such systems in terms of crime prevention and detection, especially in smaller community pubs. However, it is now commonplace for police to demand CCTV in almost all premises and to insist upon complicated and demanding CCTV conditions to be added to premises licences. In addition, operators of CCTV systems have to consider the GDPR implications. In particular, anyone who stores data, including CCTV footage of individuals, which is classed as data for the purposes of GDPR, must be responsible for its safe collection, storage, usage and disposal. Handing over CCTV footage to Police officers in the active investigation of a criminal offence, such as a fight, would obviously be a legitimate reason for providing data. However, a condition with a general requirement to hand over CCTV at the behest licensing officer or police officer would arguably breach GDPR were it to be enforced. This means that there are numerous CCTV conditions on licences that would likely, were one to try and enforce them as they are written, cause an operator to breach GDPR.

Similarly, club scan conditions need to be thought about in terms of GDPR and the obligations of the data holder. For instance, the time for which any data is stored and the purpose for storing that data needs to be made clear to people handing over their data. Again conditions that require such data to be handed over at the behest of an officer other than in investigating a criminal offence would in all likelihood breach GDPR.

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We feel therefore that this need to be addressed in the policy in order to ensure that conditions are updated to ensure compliance and that CCTV in particular is not being universally required where there is no real and pressing need for it, in line with the Information Commissioner's statements on this matter.

In terms of replacing glassware with other products, we would have a concern about this being considered a crime and disorder issue without evidence of a specific problem or need. For one, event reusable plastic products harm the environment more than glass. Secondly, whilst there are certain categories of premises where it might be a public safety issue (festivals, large music venues, for instance), its inclusion in a list of measures to be considered to prevent crime and disorder suggests that glassing incidents are regular and need dealing with. It is not our experience that this is the case. We would suggest that this recommendation is qualified (if it is to remain within prevention of crime and disorder) to make it clear that it should be considered for higher risk premises, as suggested above, rather than as a general measure.

3. Prevention of Public Nuisance

The prevention of public nuisance licensing objective is to be widely interpreted, as set out in the Statutory Guidance. However, we often come across conditions imposed on licences, as well as the investigation of complaints that do not relate to public nuisance. For instance, conditions that refer to 'nuisance', rather than 'public nuisance', set a significantly higher barrier- one that was not intended by the Licensing Legislation.

We also see this in terms of enforcement action where often enforcement officers will allege that a nuisance, often a private nuisance, has occurred and demand action under the terms of the premises licence. Clearly this is beyond that which was intended by Parliament and therefore we suggest that your policy reflects the need for public nuisance to be demonstrated and for conditions relating to nuisance to relate to public nuisance rather than any wider definition. In particular, we suggest that expressly stating that private nuisance is not a licensing objective would assist in all parties understanding what is and is not the remit of licensing legislation.

1.11 and 1.12 child exploitation

We welcome the references in the policy to both sexual and criminal exploitation of children. We expect that this ties in with wider policies and advice available to businesses that are not licensed. It might be useful to provide links to any other sources of material to assist operators/ regulators and others in understanding more about this important and complex issue.

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2.01: Operating Schedule

We note that the following statement is included:

'When determining applications at a hearing, the licensing authority will consider the adequacy of the steps or conditions offered by the applicant in the operating schedule.'

We would remind the Licensing Authority that the test to be applied is whether any steps are proportional and appropriate to the promotion of the licensing objectives. 'Adequacy' is not a term of art used in the Licensing Act 2003 and as such it might assist to amend this reference accordingly.

2.03.2

We also note that there is a request for applicants to undertake a local risk assessments and take into account the local area profile. The Licensing Act 2003 was designed to simplify the process and remove extra costs from applicants that were required under the Licensing Act 1964, which included:

- A requirement for a local area analysis on 'need'; and
- A hearing in all cases

Whilst of course a new business would undertake some form of analysis into the area (market research) it would not necessarily be a formal process and certainly for small businesses would not be more than an individual assessment. We are concerned that the inclusion here as part of an expectation in the licensing process runs contrary to the Government's reasons for introducing the 2003 Act. In particular, by including this expectation, there is an inference (whether intentional or not) that without undertaking this exercise, an applicant is more likely to find themselves at a hearing.

We note the local area profile is a general document and that whilst it is full of data as to how Barnsley compares nationally on important demographic and social matters, we found it difficult to extrapolate it into something tangible from a licensing perspective.

2.03.3 Public Health Measures to be Considered

We appreciate that this section is opened with the recognition that public health is not a licensing objective, the operating sentence in this section states:

'The licensing authority expects applicants to consider the health impacts of their proposed activities in relation to the Licensing Objectives.'

We submit that this is in fact a public health licensing objective by the back door. Each of the four licensing objectives stand and fall on their own merit and is subject to their own guidance. By simply listing conditions relating to the sale of alcohol, the real purpose here (whether intentional or not) appears to be to add 'public health caused by alcohol related harm' into the licensing objectives.

2.03.8 Licensing Conditions

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We welcome the policy statement that:

'The licensing authority will only impose conditions on licenses and certificates that are proportionate and appropriate for the promotion of the Licensing Objectives and will not impose conditions for any other purposes.'

Whilst Punch Taverns recognise the importance of conditions on premises licences in certain circumstances, such as to prevent or to mitigate the potential risk of certain activities undermining the licensing objectives, we have a concern that more and more conditions are being placed on a licence that are then enforced as breaches of the licence in their own right.

Licensing authorities are obliged to promote the 4 licensing objectives. Breaches of condition in and of themselves are an offence under Section 136 of the Licensing Act and on summary conviction can lead to an unlimited fine and/or up to 6 months in prison. It is important that this distinction is recognised in the policy and that breaches of condition in and of themselves are a matter for the Courts; whereas an undermining of the licensing objectives, which can happen with or without conditions being on the licence in any event, are the province of the licensing authority to deal with.

We would suggest that this distinction is made in your policy as it will re-enforce the message both for responsible authorities and for operators who hold premises licences in your area.

Punch has always been happy to work with licensing authorities in relation to conditions being imposed on a licence where they are appropriate and proportionate to achieve an identifiable aim. However, we are concerned with the prevalence of standard conditions being used across all licences has taken over from a proper analysis of the need for such conditions in the first place.

In particular, we have seen a rise in conditions being imposed upon premises licences by responsible authorities, irrespective of the nature of the application being made. For instance, a variation to the plans attached to a licence to effect a simple alteration in layout and where there is no change in licensable activities, increase in customer area, or removal of internal lobbies, for instance, sometimes result in officers seeking to ride on the back of that application to impose conditions that are in no way relevant to it.

The case of Taylor v Manchester City Council makes it clear that any conditions imposed on a premises licence when it is varied must relate to that application itself and should not stray into other areas that are not part of the application. It is important again that this is referenced in policy in order to prevent unnecessary hearings and often additional expense to applicants seeking to make simple changes to their licence but are then held to ransom by responsible authorities who know that operators are unlikely to challenge their right to impose such conditions where the cost would be sent the matter to a hearing.

We submit that the imposition of large numbers of conditions on a premises licence is self-defeating. Premises licences form one part of a significant number of regulatory requirements that must be observed by publicans and this is often forgotten by regulators who often only think in terms of their one area of expertise. This means that they often do not see the wood for the trees. Policies that set out an expectation of long operating schedules or worse, require officers to object to applications unless the applicant applies their standard conditions, place an unnecessary burden on operators without necessarily helping to promote the licensing objectives. The City of London licensing authority, for instance, will only

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impose conditions if deemed absolutely necessary. It is not unusual to see licences with only a handful of conditions.

The reason for this is that they expect operators to promote the licensing objectives, not go through the motions of complying with conditions because they have to. Also, licences grandfathered in 2005 would, likely have few or no conditions on them. We have seen no evidence to suggest such premises have undermined the licensing objectives more than "conditioned licences."

We would challenge any authority to suggest that this approach leads to more issues with licence holders undermining the objectives. If anything this clarity of approach means that operators are freed up to adapt their businesses as the demands of the market change, freeing up officers from having to undertake lengthy inspections of licences and then having to send out enforcement letters relating to conditions that are breached in the observation without any real evidence that the breaches themselves undermine the objectives. This in turn frees up resources for enforcement against poorly behaving premises and dealing with unlicensed operators.

2.11 Planning and Licensing

Agent of Change

Whilst we recognise that the principle is currently being utilised in the context of planning applications, it is equally as important in licensing. This has recently been reflected in changes to the S186 Guidance which now makes specific reference to the Agent of Change Principle.

'14.66 ...Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required by the local planning authority to provide suitable mitigation before the development has been completed.'

We recommend that the licensing policy expressly recognises that developers of new residential developments need to protect their buyers from potential sources of noise disturbance, not expect existing licensed premises to have to adapt their offer to accommodate the new development. In particular, small pubs often rely on live or recorded music, provision of social events and other community based promotions, such as beer festivals, in order to survive and thrive.

We have, unfortunately, seen a rise in complaints and reviews directed at existing premises that have often been at the heart of the community for decades or more, from residents moving into new properties nearby. Whilst it is incumbent upon licence holders to promote the licensing objectives, it is iniquitous and arguably a breach of their Article 1, Protocol 1 human right to peaceful enjoyment of property, which includes their premises licence, to have their livelihood threatened and sometimes taken away because of poorly designed and constructed residential property built next door.

3.02 Cumulative Impact

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We note that there are no cumulative impact policy areas identified, but that this will be kept under review. We believe that this is a sensible approach.

We understand that there are occasions where Cumulative Impact Policies provide a valuable tool to local authorities in regulating the night-time economy. However, our experience is that they can also be an impediment to businesses and the development of a thriving night-time economy. Punch, as a promoter of entrepreneurship within our estate of leased pubs understands very well the challenges that small business operators face when looking to enter a new market or adapt their offer.

Cumulative impact policies can have the effect of dissuading operators from even attempting to get a licence. This unintentionally penalises operators considering smaller more novel applications (simply because of the prohibitive cost), often resulting in them looking to take their ideas elsewhere and thereby wasting a chance to develop a more rounded and vibrant economy in the CIP. For the same reason, such policies also promote ubiquity and stagnation as the only operators willing to take on the risk and outlay of applying in cumulative impact zones are larger established chains with the financial backing to fight for a licence. Given the plight of the pub market 7 years ago and now the casual dining market, in part because their offers failed to change as the market developed around them, the use of CIPs needs careful oversight.

We re-iterate the points made above in relation to introducing cumulative impact via the back door and would ask that given there is no evidence for cumulative impact areas, these sections need to be carefully considered and where necessary clarified in light of this finding.

3.04 pavement licences

We recommend that this section is updated in line with the expected changes that were introduced under the Business and Planning Act 2020, which are in the process of being permanently adopted, with changes, by way of the Levelling Up and Regeneration Bill currently going through Parliament.

4 Enforcement

We note reference to the council's enforcement policy. The attachment of this document is, of course, very welcome.

We would also suggest that the Regulator's Code is referred to in the body of the policy (rather than the enforcement document) and a link provided. This further promotes understanding of what licence holders, interested parties as well as enforcement officers can expect from the enforcement process.

Conclusion

We trust that the information set out herein is of benefit to the Authority in relation to the policy.

The detail included within the policy is welcome, although as a general note, the emphasis on public health throughout with 'expectations' around alcohol harm reduction as the sole public health issue is tantamount to establishing a public health licensing objective by the back door. We would ask that this is looked at afresh to give a more balanced view on the public health benefits of licensed premises as community hubs and providers of activities outside of sale of alcohol.

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