

LICENSING COMMITTEE

2 SEPTEMBER 2021

REVIEW OF POOL OF POTENTIAL CONDITIONS

1.0 Purpose of Report

- 1.1 To seek comments from Members in relation to the pool of potential conditions that is available for use when considering the appropriate conditions to attach to a licence

2.0 Introduction

- 2.1 Within the Statement of Licensing Policy for Newark & Sherwood there is a reference to the 'pool of potential conditions'. Members will be aware that this is used by Officers and Hearing Panel Members when applying conditions to Premises Licences.
- 2.2 Members of the Committee have recently requested whether a review of these conditions is appropriate.

3.0 Background

- 3.1 There are three ways in which conditions can be attached to a licence, these are:
- Mandatory
 - Proffered
 - Imposed
- 3.2 There are 12 current mandatory conditions that apply across a range of premises.
- 3.3 As part of the application process the operator is required to set out the measures that are proposed to promote the licensing objectives. These are normally to be found within the operating schedule of an application. Where an application is received and there are no relevant representations, in such circumstances the authority is obliged to grant the licence in accordance with the application subject to such conditions as are consistent with the operating schedule.
- 3.4 From this it can be seen that the operating schedule is an important part of the application and that the applicant needs to have an understanding of the requirements of the local area. The statutory guidance makes this clear:

In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also 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 to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives.

- 3.5 The licensing authority is permitted to translate the operating schedule into enforceable conditions and to describe more specifically what is proposed if that is necessary to promote the licensing objectives.
- 3.6 In cases where relevant representations are received in respect of an application the licensing authority must hold a hearing to consider them. One of the outcomes from the hearing is to grant the licence subject to conditions which are consistent with the operating schedule accompanying the application, modified to such an extent as the licensing authority considers necessary for the promotion of the licensing objectives.
- 3.7 Whilst this appears to give a wide discretion to attach such conditions as the authority considers appropriate, in reality the discretion is tempered by a series of considerations that are set out in the statutory guidance. This states that licence conditions:
- must be appropriate for the promotion of the licensing objectives
 - must be precise and enforceable
 - must be unambiguous and clear in what they intend to achieve
 - should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation
 - must be tailored to the individual type, location and characteristics of the premises and events concerned
 - should not be standardised
 - should not replicate offences
 - should be proportionate, justifiable and be capable of being met
 - cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff
 - should be written in prescriptive format
- 3.8 The Act and its guidance are very clear that a list of standard conditions imposed in every case is not the correct manner in which conditions are to be used. They need to be applied where they are considered appropriate and proportional to the particular circumstances of any individual case.
- 3.9 The Nottinghamshire Authorities Licensing Group (NALG) produced a pool of conditions in conjunction with the responsible authorities. A copy of the current pool of conditions is attached as **Appendix 1**. These were last reviewed by NALG three years ago.
- 3.10 These are conditions that cover the four licensing objectives and have wording which is considered to be clear, precise and enforceable. The pool conditions are also provided to ensure that the wording of conditions is consistent to assist the Police and licensing enforcement staff as well as the licence holder.
- 3.11 The pool of conditions should not be viewed as the only source of conditions. The authority has the ability to place conditions on a licence and so long as the conditions meet the requirements set out in paragraph 2.7 above. The wording of a condition can be derived from anywhere. The pool of conditions gives a good starting point for the consideration of the exact wording of a condition.

3.12 It is worthy of repetition that the pool of conditions is not a set of standard conditions to be imposed on every licence but is a source of previously considered conditions that meet the requirements of the guidance and can be a valuable tool to assist Members and officers.

3.13 The Institute of Licensing has produced guidance on the use of conditions for use licensing authorities and responsible authorities. This is attached as **Appendix 2**.

4.0 Proposals

4.1 It is proposed to review the current pool of potential conditions with assistance from the Nottinghamshire Authorities Licensing Group.

4.2 Members are asked to highlight any areas where they feel the conditions could be improved.

5.0 Equalities Implications

5.1.1 None from this report

6.0 Digital Implications

6.1.1 None from this report

7.0 Financial Implications (FIN21-22/694)

7.1 There are no direct financial implications arising from this report.

8.0 RECOMMENDATIONS that:

- a) **Members support the review of the ‘pool of conditions’; and**
- b) **Members identify any areas they feel additional conditions could be developed.**

Background Papers

Licensing Act 2003

Section 182 Statutory Guidance – Home Office

For further information please contact Alan Batty on 01636 655467

Matthew Finch
Director – Communities & Environment