

ESSENTIAL REFERENCE PAPER 'E'

Your contact: Oliver Rawlings
Ext:
Fax:
Your ref:
Date:

Dear

Thank you for your response to East Herts draft Statement of Licensing Policy (SLP). We appreciate you taking the time to read the document and for your reasoned response. We have considered your points and our response is set out below.

Firstly as you are aware the revised guidance under section 182 of the 2003 Act is just that, guidance. This licensing authority has had regard to the guidance when drafting the revised SLP. We are also aware that departure from the guidance could give rise to an appeal or judicial review and that our reasons for doing so would then be under scrutiny.

SLP para 5.3

Your point is agreed. The Act and guidance do not allow for a premises licence application to be refused simply on the grounds that the primary use of the premises is as a petrol station.

The paragraph has been reworded as follows:

Although there is no requirement in the legislation for an applicant for a licence to provide proof of primary use it is considered useful for this information to be included so that it is clear to all parties if the licence has affect or not. Applications that do not include this information will still be processed and determined as required by the Licensing Act 2003.

SLP para 5.4

This section does not supersede the statute but simply states the format of the information that the Licensing Authority would request be provided to establish primary use. This makes it clear to all parties what information they would be requested to provide if we were looking at the primary use of a site. A test for primary use is not defined in the 2003 Act, the Guidance and as yet there has been no case law so for clarity the authority has chosen to define the test that they will seek to apply. We are not imposing a requirement but offering guidance on how we will discharge the licensing function. The two year period was chosen as a longer period of measurement gives a more accurate picture and avoids taking into account any unusual or seasonal fluctuations in trade.

The paragraph has been reworded as follows:

Where there is a question around the primary use of premises, we may request that an applicant or licence holder demonstrate that their premises are not primarily used as a garage based on intensity of use. The licensing authority requests that evidence be based on income (from retailing petrol and derv and vehicles sales/maintenance versus other items) and the numbers of individual sales (of petrol, derv and vehicles sales/maintenance versus other items) over the previous two years to show that petrol and derv sales, and vehicle maintenance and sales, are not the premises main feature.

SLP para 5.5

We agree that paragraph 5.5 is inconsistent with the other paragraphs of this section. Evidence of primary use or not would not be grounds for refusing a new application for a premises licence. The entire paragraph has been removed.

SLP para 5.6

We do not consider this paragraph superfluous. The reference is directly linked to Section 4 of the SLP which relates to licensing hours and indicates the hours that are likely to be granted to different types of business, in different locations, when representations have been received and not withdrawn. The paragraph will remain unchanged as the policy is written for all readers and not just those with a good knowledge of licensing.

SLP para 5.7

This comment is correct; the paragraph of the guidance that should be referenced is 5.23. The reference in the paragraph will be changed and the wording slightly amended:

Paragraph 5.23 of the statutory guidance issued under the Act makes it clear that, where representations are received, we must decide whether or not any premises is used primarily as a garage. We are aware that different authorities take a number of different approaches to this question. However, we hope that the proceeding paragraphs will guide applicants and licence holders as to the information we would like them to provide if this question arises.

Suggested wording for the Petrol filling station section of the SLP

The statement of licensing policy is supposed to detail the approach of the licensing authority to discharging the licensing function. The suggested wording is just a regurgitation of the wording of the Licensing Act 2003 and would not give people reading the policy any indication of how we would approach and deal with such matters.

Paragraph 6.6

We agree that the wording of paragraph 6.6 could be clearer.

6.6 (1) is not a test by which an application will be granted but an indication that this sort of application, which would promote the licensing objectives, would be welcomed.

6.6 (2) is not expecting applicants to be able to effect a real reduction in capacity of alcohol sales in an area but rather at an individual premises. This appears to be almost identical in intention as point 6.6 (3).

The following changes have been made to Paragraph 6.6:

Where relevant representations have been received we will take into account if the application:

- (1) contributes to the family-friendly development of the town centres; or*
- (2) effects a real reduction in the capacity for alcohol sales in that premises (for example by replacing a vertical drinking establishment with seated consumption and waiter/waitress service).*

We hope that these changes satisfy your concerns and that you now have a clearer understanding of what we are seeking to achieve with the SLP.

Yours sincerely,

Oliver Rawlings
Senior Specialist Licensing Officer
East Herts Council