

Best practice in decision making

and applying conditions to licences



Introductions

- Cllr Paul Wray – Chair of Licensing Committee
- Sue Duckworth – Principal Licensing Officer



Overview - Licensing Act 2003

- Conditions must:
 - Relate to the application
 - Promote the licensing objectives
 - Be reasonable, proportionate and practical
 - Cannot be aspirational
 - Cannot cover matters already addressed with other primary legislation



Scope of conditions

- Conditions can only be:
 - Measures offered as part of the operating schedule
 - Conditions agreed with Responsible Authorities during the notice period and subsequently added to the application
 - Applied by Members at a hearing



Overview – Gambling Act 2005

- 'Aim to permit' – makes refusal difficult
- Licensing authority can apply conditions or exclude a default condition:
 - Must be reasonably consistent with the licensing objectives
 - Cannot attach a condition which interferes with an operating licence condition (so check the Licence conditions and Codes of Practice)
 - Cannot control membership, stakes, prizes etc. which are subject to regulation



Why use conditions?

- Most representations call for refusal
- Members must take the least onerous route
- Conditions can be used to mitigate risks and concerns
- Easier to defend on appeal
- Review of licence always an option later



Practical Considerations

When considering conditions think about:

- Impact of the condition
- Effectiveness
- Cost of imposing a condition
- Practicality
- Enforceability



Practical Considerations

- From the Manchester Arena enquiry:

Avoid conditions that include a requirement 'to the standards/numbers as agreed with the licensing authority', unless such written agreements in place, documented and enforced.



Examples

- Requirements around number and hours door staff required
 - Door staff are an expensive resource
 - Would an operator be able to employ door staff for a few hours?
 - Would the operator be able to absorb the cost of a door staff team?



Examples

- Requirement to keep doors and windows closed 'at all times'
 - Is this practical?
 - Is it ambiguous?
 - What does this mean?



Examples

- Conditions around single can sales/ multipacks/ street drinking
 - Can be used to stop selling alcohol to street drinkers
 - PSPO may mean alcohol is poured away
 - Selling only in multipacks may lead to more consumption than desired/needed



Getting Agreement

- Good practice to run proposed conditions by the operator and objectors
 - During deliberations recall all parties to discuss the practicalities of any proposed conditions
 - Can enable Members to judge how effective/enforceable conditions may be
 - Consider having a suite of conditions available where wording is agreed with Responsible Authorities



Reasoned decisions

If the decisions made by a licensing sub-committee are reasonable, proportionate and practical then ensure this thought process is described in the decision.

Always explain the 'why'.



Decision notices

The Notice of Decision should be clear and concise.

A good, reasoned, clear decision notice will be much more robust on appeal.

Appeals rely on proving a decision was either unreasonable or ultra vires.



Any questions?



Cllr Paul Wray

Chair of Licensing Committee

paul.wray@leeds.gov.uk

Sue Duckworth

Principal Licensing Officer

susan.duckworth@leeds.gov.uk

