



**Licensing Panel
20th August 2012**

Agenda Item No. 4

Title	Application for the grant of a premises licence under the Licensing Act 2003 for Tuscanos, 25 Bath Street, Leamington Spa
For further information about this report please contact	David Davies, Licensing Services Manager, Community Protection. Tel: 01926 456113. david.davies@warwickdc.gov.uk
Service Area	Community Protection
Wards of the District directly affected	None
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006	No
Date and meeting when issue was last considered and relevant minute number	N/A
Background Papers	None

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	No

Officer/Councillor Approval		
With regard to officer approval all reports <i>must</i> be approved by the report authors relevant director, Finance, Legal Services and the relevant Portfolio Holder(s).		
Officer Approval	Date	Name
Relevant Director	08/08/2012	Roger Jewsbury
Chief Executive		
CMT		
Section 151 Officer		
Legal		
Finance		
Portfolio Holder(s)	08/08/2012	Councillor Coker
Consultation Undertaken		
N/A		
Final Decision?	Yes	

1. **SUMMARY**

1.1 Under the provisions of the Licensing Act 2003 a premises that wishes to provide late night refreshment must hold a premises licence.

2. **RECOMMENDATION**

2.1 Members are asked to consider the information contained in this report, and decide whether the application for the grant of a premises licence for Tuscanos, 25 Bath Street, Leamington Spa should be approved, and, if so, whether it should be subject to any conditions.

3. **REASONS FOR THE RECOMMENDATION**

3.1 Mr Saied YOURDKHAN applied for a premises licence for a Tuscanos on the 5th July 2012 to authorise the following activities:

Late Night Refreshment

Monday to Thursday	23:00 to 02:00
Friday to Sunday	23:00 to 05:00

Opening Hours

Monday to Thursday	12:00 to 02:00
Friday to Sunday	12:00 to 05:00

3.2 An operating schedule which will form part of any licence issued has been supplied as follows:

Prevention of public nuisance

A self-closing door must be used to prevent noise escape.

Protection of children

No children are permitted in the premises unless accompanied by an adult.

3.3 Relevant representations against the grant has been received from Warwickshire Police (**Appendix 1**) and Environmental Health (**Appendix 2**)

3.4 **These premises are contained within the council's Cumulative Impact Zone. This means that the applicant must prove that the application will not impact on any of the Licensing Objectives – it is not for anyone making representations to prove that it will.**

3.5 *For information only*, Tuscanos currently hold a premises licence that permits the following:

Late Night Refreshment

Sunday to Thursday	23:00 to 00:00
Friday to Saturday	23:00 to 02:00

Opening Hours

Sunday to Thursday	12:00 to 00:00
Friday to Saturday	12:00 to 02:00

- 3.6 A map of the area of the premises are attached as **Appendix 3**
- 3.7 When considering the application the panel must give appropriate weight to:-
- a) The representations received.
 - b) Statutory guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003.
 - c) The Council's Licensing Policy Statement (attached as **Appendix 4**)
 - d) The Licensing Objectives, which are:-
 - i) The Prevention of Crime and Disorder.
 - ii) Public Safety.
 - iii) The Prevention of Public Nuisance.
 - iv) The Protection of Children from Harm.

However, it should only consider those licensing objectives which have been referred to in the representations received.

- 3.8 The Council's Licensing Policy Statement provides that the authority will take an objective view on all applications and will seek to attach appropriate and proportionate conditions to licences where necessary in order to ensure compliance with the four licensing objectives shown earlier. Each application will be judged on its own individual merits.
- 3.9 Details of the procedure adopted by the Licensing Committee for Panel Hearings has been supplied to the applicant and those making representations. The procedure will be explained more fully by one of the Council's Legal Team at the commencement of the hearing.

4. ALTERNATIVE OPTION CONSIDERED

- 4.1 No alternatives may be considered.

5. BUDGETARY FRAMEWORK

- 5.1 This report has no budgetary considerations for the Council.

6. POLICY FRAMEWORK

- 6.1 None

7. BACKGROUND

- 7.1 None.

Kirsten Page

From: Simms, Carlie 5513 [carlie.simms@warwickshire.pnn.police.uk]
Sent: 10 July 2012 09:17
To: Licensing
Subject: Representation- Tuscano's
Attachments: Copy of WDC Reps - Tuscano's, Bath Street, Leamington a.doc

Good morning all.

Please accept representation on the application for a late night refreshment licence on the above premise.

I have tried to contact the applicant to discuss this representation on both the land line and mobile to no avail.

Kind regards

Carlie J Simms

Licensing Officer
Warwickshire Police
Warwickshire Justice Centre
Newbold Terrace
Leamington Spa
Warwickshire
CV32 4EL

Direct Dial: 01926 684293
carlie.simms@warwickshire.pnn.police.uk



Remember, call 101 in non emergency situations or 01926 415000.

Please visit <http://www.warwickshire.police.uk/> for more force news and information.

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WARWICK DISTRICT COUNCIL
Licensing Act 2003

**REPRESENTATION FORM FROM RESPONSIBLE
AUTHORITIES**

Responsible Authority (please delete as applicable):
Police

Your Name	Carline J Simms
Job Title	Licensing Officer
Postal and email address	Police Station, Warwickshire Justice Centre carline.simms@warwickshire.pnn.police.uk
Contact telephone number	01926 684293

Name of the premises you are making a representation about	Tuscano's
Address of the premises you are making a representation about	25 Bath Street, Leamington Spa, Warwickshire CV31 3AF

Which of the four licensing Objectives does your representation relate to?	Yes Or No	Please detail the evidence supporting your representation. Or the reason for your representation. Please use separate sheets if necessary
To prevent crime and disorder	Yes	The premises are within the current Cumulative Impact Zone of Leamington Town Centre therefore Warwickshire Police have considered the application for a New Premise Licence and would ask Warwick District Council this licence not be granted. The area is already well provided with late night refreshment establishments. Therefore Warwickshire Police believes granting/extending licensable hours of this licence would cause further saturation within the area. Evidence of high levels of Crime & Disorder in the area underpinned the policy of the Cumulative Impact Zone.
Public safety	Yes	
To prevent public nuisance	Yes	
To protect children from harm	No	

Suggested conditions that could be added to the licence to remedy your representation or other suggestions you would like the Licensing Sub Committee to take into account. Please use	
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WARWICK DISTRICT COUNCIL
Licensing Act 2003



REPRESENTATION FROM RESPONSIBLE AUTHORITIES

Responsible Authority – Environmental Services,
Riverside House, Milverton Hill,
Leamington Spa, CV32 5HZ.

Your Name	Peter Lawson
Job Title	Senior Environmental Health Officer
Postal and email address	Warwick District Council, Milverton Hill, Leamington Spa, CV32 5HZ.
Contact telephone number	01926 456715

Name of the premises you are making a representation about	Tuscano's Licence Application Dated 5 th July 2012
Address of the premises you are making a representation about	25 Bath Street, Leamington Spa

Which of the four licensing Objectives does your representation relate to?	Yes Or No	Please detail the evidence supporting your representation. Or the reason for your representation. Please use separate sheets if necessary
To prevent public nuisance	Yes	The premises is located in the vicinity of residential premises and within the cumulative impact zone. The extended hours requested are likely to give rise to nuisance to local residents from noise on the street

Suggested conditions that could be added to the licence to remedy your representation or other suggestions you would like the Licensing Sub Committee to take into account. Please use separate sheets where necessary and refer to checklist.	The opening hours set down in the existing late night refreshment licence should be applied namely :- Sunday to Thursday 12.00noon to midnight Friday to Saturday 12.00 noon to 02.00
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Comments / Objections / Observations	Environmental Health Object
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Signed:

Date

10/7/12

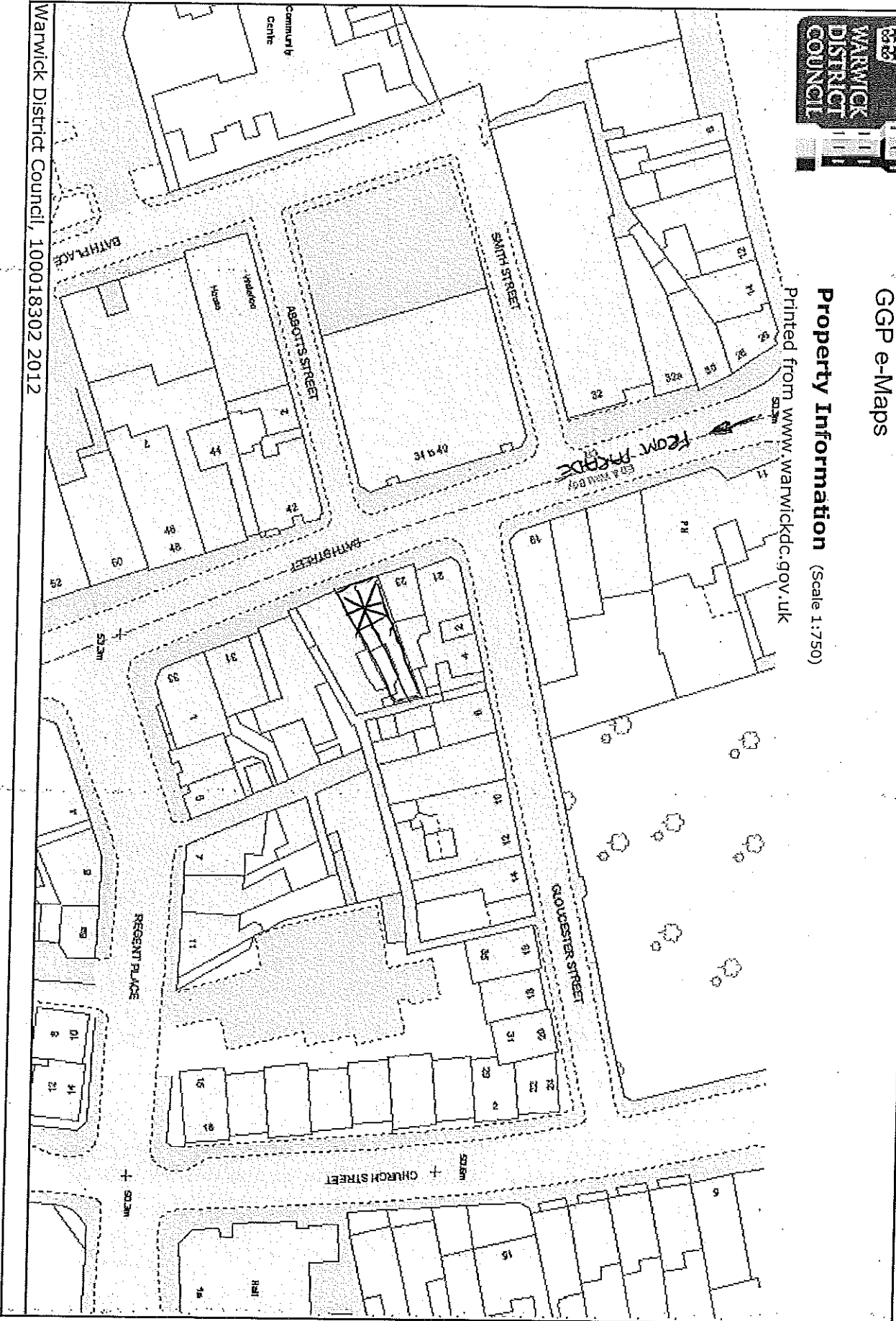
APPENDIX 3



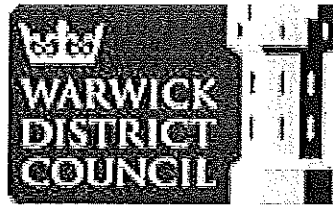
GGP e-Maps

Property Information (Scale 1:750)

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Warwick District Council, 100018302 2012



STATEMENT OF LICENSING POLICY

Reviewed 2009

(Changes to cumulative impact zone added)

9th July 2009

1. Introduction

1.1 Warwick District Council (the Licensing Authority) makes this Statement of Licensing Policy in pursuance of its duties and powers under the Licensing Act 2003, (the Act) and guidelines on its content issued under Section 182 of the Act.

1.2 Warwick District Council is situated in the south of Warwickshire in the centre of England. Appropriately for England's heartland, Warwick District Council's boundaries are roughly heart-shaped, embracing an area of some 28,253 hectares with a population of 126,000 people. The District covers four towns, Royal Leamington Spa, Warwick, Kenilworth and Whitnash as well as a large rural area with 18 Parish Councils. It is acknowledged that the town centres have a large proportion of residential premises.

1.3 The aim of this Policy is to:-

- promote the Licensing Objectives.

1.4 The following Licensing Objectives can be found in the Licensing Act 2003:-

- **prevention of crime and disorder;**
- **public safety;**
- **prevention of public nuisance; and**
- **protection of children from harm.**

1.5 In making this Policy, the Licensing Authority recognises the following:-

- **that residents within, and visitors to the District need a safe and healthy environment to live, work and visit; and**
- **that safe and well run entertainment premises are important to the local economy and vibrancy of the District.**

1.6 This Statement provides guidance to the police, applicants, objectors and residents on the general approach that the Licensing Authority (acting through its Licensing Committee) will take when making licensing decisions.

The following, will guide that decision making process:-

- the Council as licensing authority must carry out its functions under the Act with a view to promoting the Licensing Objectives;
- each licence application will be given individual consideration on its merits;
- when making its decisions, the Licensing Authority will have regard to the matters contained in this Statement and to any government guidance that is issued from time to time; and
- the Licensing Authority will have regard to the provisions of the Human Rights Act 1998 and in particular, Article 6 (right to a fair and public hearing); Article 8 (right to respect for home, private and family life) and Article 1 of the First Protocol (right to peaceful enjoyment of property and possessions).

1.7 This Statement covers the period 7 January 2008 to 6 January 2011 and will be kept under review and revised/amended as required, following consultation.

1.8 The Licensing Authority will carry out its licensing functions in accordance with the Licensing Act 2003 (as amended) and any relevant guidance issued under the Act.

1.9 The Licensing Authority will observe the principle of the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000.

2. Delegation of Functions for Regulatory Matters

2.1 In the interests of speed, efficiency and cost effectiveness the Licensing Committee will only decide matters that have not been delegated to a sub-committee or to an officer. A copy of the scheme of delegation is available on request.

3. General Statement of Guiding Principles

3.1 The Council as a licensing authority has adopted the following principles. These principles will serve as a **general** guide to the Council when it carries out its licensing functions:-

3.2 **Principle 1 -** The Licensing Authority will not normally fix pre-determined licensing 'quotas' in any given area but see paragraphs 7 and 8.

3.3 The purpose behind this Principle is to:

- promote the prevention of crime and disorder.

3.4 If there are problems in a particular area with nuisance, crime or disorder and those problems are associated with the number or proximity of licensed premises in that area, the Licensing Authority will normally use licence conditions to address those problems, but may impose 'quotas.' (see paragraphs 7 and 8)

3.5 **Principle 2 -** The Licensing Authority generally supports the use of longer opening hours as a means of reducing the concentration of people leaving licensed premises at the same time and of staggering their dispersal. However, there is no presumption in favour of longer hours and the Licensing Authority will take into account any evidence which shows that longer opening hours in any particular case undermines the licensing objectives.

3.6 The purpose behind this Principle is to:-

- promote the prevention of crime and disorder;
- promote public safety;
- promote the prevention of public nuisance; and
- address the issue of closing hours.

3.7 It is recognised by the Licensing Authority, following Government recommendations that, longer licensing, hours with regard to the sale of alcohol are important to ensure that the concentrations of customers leaving premises simultaneously are avoided.

- 3.8 Restrictions that undermine this Principle will normally be avoided and licence conditions used to address any problems which may arise.
- 3.9 **Principle 3 -** The Licensing Authority will not fix pre-determined closing times for particular areas but will take into account any objections received when dealing with individual applications.
- 3.10 The purpose behind this Principle is to:-
- promote the prevention of crime and disorder;
 - promote public safety; and
 - promote the prevention of public nuisance.
- 3.11 Restrictions that undermine this Principle will normally be avoided and licence conditions used to address any problems which may arise.
- 3.12 **Principle 4 -** As far as shops, stores and supermarkets are concerned, the Licensing Authority will normally permit the sale of alcohol during legal opening hours unless evidence is available that to do so would undermine the licensing objectives.
- 3.13 The purpose behind this Principle is to:-
- promote the prevention of crime and disorder;
 - promote the prevention of public nuisance; and
 - address the issue of alcohol sales in shops, stores and supermarkets.
- 3.14 Restrictions that undermine this Principle will normally be avoided and licence conditions used to address any problems which may arise.
- 3.15 **Principle 5 -** The Licensing Authority will not limit the access of children to licensed premises unless it is necessary for the prevention of harm.
- 3.16 The purpose behind this Principle is to:-
- promote the protection of children from harm; and
 - address the issue of children in licensed premises, including cinemas and other public entertainment.
- 3.17 Restrictions that undermine this Principle will normally be avoided and licence conditions used to address any problems which may arise.
- 3.18 **Principle 6 –** The Licensing Authority will only attach conditions that further the Licensing Objectives and relate to the operating schedule, relevant representations that have been received or mandatory conditions as prescribed in the Licensing Act 2003.

3.19 The purpose behind this Principle is to:-

- ensure that all applications are dealt with on merit;
- ensure that conditions imposed further the licensing objectives; and
- ensure that conditions relate to the operating schedule or relevant representations which have been received.

4. Licensing Objectives

4.1 Prevention of Crime and Disorder

4.1.1 In addition to the requirement for the Licensing Authority to promote the licensing objectives, it also has a duty under Section 17 of the Crime and Disorder Act 1998 to exercise its functions with due regard to the likely effect of the exercise of those functions on, and to do all it reasonably can to prevent crime and disorder in the District.

4.1.2 The Licensing Authority will expect all licensed premises to be managed responsibly.

4.1.3 When considering applications for premises licences for late night refreshment the Licensing Authority will take into account the potential for disorder that this type of premises may cause to the night time environment.

4.1.4 The Licensing Authority will consider attaching conditions to licences and certificates to prevent crime and disorder. Any such conditions imposed will be tailored to the style and characteristics of the premises and the type of activities expected to take place there.

4.1.5 The Licensing Authority recognises that there are a number of mechanisms for addressing unlawful or anti-social behaviour that occurs away from licensed premises, qualifying clubs and temporary events. These include:-

- planning controls;
- enforcement of Environmental Protection legislation (e.g. on noise nuisance);
- positive measures to provide a safer and clean town centre;
- environmental controls, in partnership with local businesses, transport operators and other departments of the Council;
- powers to designate parts of the District as places where alcohol may not be consumed publicly;
- police enforcement of the law with regard to disorder and anti-social behaviour, including the issue of fixed penalty notices;
- dispersal of people quickly and safely from town centres to avoid concentrations which may produce disorder and disturbance;
- the prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk;
- confiscation of alcohol from adults and others in designated areas;
- police powers to close down instantly for up to 24 hours any licensed premises or temporary events on the grounds of disorder, the likelihood of disorder or excessive noise emanating from the premises; and
- the power of police, other responsible authority or a local resident or business to seek a review of the licence or certificate in question.

4.2 Public safety

- 4.2.1 The Licensing Authority will consider attaching conditions to licences and certificates to promote public safety. Any such conditions will be tailored to the style and characteristics of the premises and the type of activities expected to take place there.
- 4.2.2 The Licensing Authority will consider attaching a 'safe capacity' to licences and certificates when it appears necessary to ensure public safety or to prevent crime and disorder.

4.3 Prevention of public nuisance

4.3.1 The Licensing Authority will take an objective view as to the potential for nuisance and will seek to attach appropriate and proportionate conditions to licences and certificates where necessary in order to prevent it. Any such conditions imposed will be tailored to the style and characteristics of the premises and the type of activities expected to take place there. In each individual case that arises following representation, the Licensing Authority will:

- consider the potential for nuisance associated with the style, characteristics and activities of the licensable activity involved;
- examine the potential steps which could be taken to reduce the risk of nuisance, particularly in areas of dense residential accommodation; and
- consider restricting the hours of the licence or the licensable activity only as a last resort because of the potential impact on disorder and anti-social behaviour from fixed and artificially early closing times.

4.3.2 By way of guidance, the Licensing Authority would expect that after 23.00 all persons outside the premises would move indoors, and any amplified sound to be inaudible in neighbouring domestic properties.

4.3.3 Any exceptions to this would need to be justified in an operating schedule showing how the licensing objectives were being achieved.

4.3.4 In the event of a variation to remove this condition, and in the case of the necessity of a hearing, evidence would be expected to be submitted to the Licensing Panel that the change would not impact on the licensing objectives

4.3.5 It should also be noted that the Licensing Authority expects that the premises will usually close within half an hour of the end of the last licensable activity.

4.4 Prevention of Harm to Children

4.4.1 For the purposes of the Act, the "responsible authority" in respect of issues relating to the protection of children from harm, and to which copies of applications should be sent is:

The Assistant Head of Service, Planning and performance children, Young Children and Families Directorate, Saltisford Office Park, Ansell Way, Warwick. CV32 4UL

- 4.4.2 For the purposes of this Policy and for the making of representations in respect of any application, the Warwickshire Children and Young People's Joint Management Team have indicated that they will regard the term "children" to include any person between the ages of 0 – 18 years old.
- 4.4.3 Nothing in this statement of policy limits the access of children to licensed premises unless it is necessary for the prevention of harm to children.
- 4.4.4 Areas that may give rise to particular concern in respect of children include premises:
- Where there have been convictions of members of the current staff for serving alcohol to minors, with a reputation for underage drinking or where the Portman Group Code of Practice on Naming, Packaging and Promotion of Alcoholic Drinks is not being followed (the Portman Group's code is particularly commended to applicants for premises licences/ club registration certificates);
 - With a known association with drug taking or dealing;
 - Where there is a strong element of gambling on the premises;
 - Where entertainment of an adult or sexual nature is commonly provided (e.g. topless bar staff, striptease, lap/table/pole dancing, strong and offensive language).
- 4.4.5 It is acknowledged that complete exclusion of children will be rare but the options to be considered by the Council for limiting access of children, where regarded as necessary for the prevention of harm to children, may include any of the following:
- Limitations on the hours when children may be present;
 - Age limitations (below 18);
 - Limitations or exclusions when certain activities are taking place;
 - Restrictions or exclusions in respect of parts of premises;
 - Requirements for an accompanying adult;
 - Full exclusion of people under 18 from the premises when any licensable activities are taking place.
- 4.4.6 The Licensing Authority cannot impose conditions requiring the admission of children to any premises. Where no licensing restriction is necessary, this will remain a matter for the discretion of the individual licensee or club.
- 4.4.7 In the case of premises giving film exhibitions, the Licensing Authority expects licensees or clubs to include in their operating schedules arrangements to ensure that children will be restricted from viewing age-restricted films classified according to the recommendations of the British Board of Film Classifications.

4.4.8 Where a number of children are expected to attend regulated entertainment (e.g. theatre production, 'junior disco', film shows), the Licensing Authority may consider the need to require a specified number of adults to be present at the place of entertainment to control the access and egress of children and to assure their safety. The number of adults required will need to be calculated on the basis of a risk assessment by the applicant and will need to take into consideration the size of the venue, the number and ages and ability of the children present and the type of activity involved. These matters will need to be addressed by the applicant as part of the operating schedule.

The Licensing Authority will consider attaching conditions to licences and certificates to prevent harm to children.

5. Other Considerations

5.1 Live Music, Dancing & Theatre

5.1.1 This Policy recognises the need to encourage live music, dancing and theatre for the wider cultural benefits of the community generally. In addressing such issues, the potential for disturbance in neighbourhoods will always be carefully balanced with these wider benefits.

5.2 Integration of Strategies

5.2.1 The Licensing Authority shall secure the proper integration of this policy with local crime prevention, anti-social behaviour away from licensed premises, planning, transport, tourism and cultural strategies by:

- Liaising and consulting with Warwickshire Police, Community Safety Forum, and considering any guidance from the crime and disorder strategy document; and
- Liaising and consulting with the appropriate Council Officers, the Planning Committee, the Executive, and considering guidance in the Local Plan.

5.2.2 Specific conditions may be attached to premises licences to reflect local crime prevention strategies. Such conditions may include

- the use of closed circuit television cameras;
- the provision and use of shatterproof drinking receptacles;
- a drugs and weapons search policy;
- the use of registered door supervisors;
- specialised lighting requirements;
- restrictions on hours of opening; and
- membership of an appropriate Pub-Watch scheme.

5.2.3 Certificates issued to club premises shall reflect local crime prevention strategies and may include any or all of the requirements listed above. The Licensing Authority will have regard to any local orders and/or strategies relating to street drinking.

5.2.4 The Council's Licensing Committee shall receive any reports relevant to the needs of the local tourist economy and the cultural strategy for the area to ensure that the Committee considers these matters.