

THE SOHO SOCIETY
AND
THE MEARD AND DEAN STREET
RESIDENTS' ASSOCIATION

Nessun Dorma

Views on the proposals to reform the Licensing Acts in
England and Wales

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Section 1

Introduction

1. The Soho Society (“the Society”) and the Meard and Dean Street Residents Association “the Association”) are both amenity societies that together represent a large number of residents in Soho.
2. In the past three years, representatives of both organisations have appeared on numerous occasions before licensing magistrates and the licensing committees of the local authority to object to licences. We have also made a very large number of representations to planning committees of the local authority and appeared before formal and informal inquiries to object to planning applications. We have given evidence before magistrates’ courts on licensing matters and have also taken action in the High Court to judicially review decisions of the local authority and the Planning Inspectorate. We have had discussions with the Westminster Police and the Crime and Vice Division of the Metropolitan Police Service on licensing matters. We have carried out extensive research into case law of the European Convention in Human Rights in so far as it relates to the problems faced by residents whom we represent.
3. We have also carried out investigations into the regulation of the entertainment industry in New York, Paris, Amsterdam and Brussels. In the past 12 months alone representatives of both organisations have appeared before licensing on more than 20 occasions. As a result of these activities, both organisations have extensive experience of the strengths and weaknesses of the current legislative framework and are particularly well placed to comment on the proposals set out in the White Paper.
4. This document draws on our extensive experience of the issues that have arisen in Soho and other parts of central London. We believe residents in other central city locations such as Camden, Islington, and Bristol to name a few also face the issues we have raised. **However, to the extent that the Government believes that the issues we have raised are unique to central London, we would urge the Government to ensure that special arrangements should apply in our area and to other areas in central London that face similar issues.**
5. We are very concerned that the White Paper demonstrates overt and unjustifiable bias in favour of licensed trade interests, in a manner that is not appropriate for a major department of State that is attempting a reform that will affect a large number of people. We note that not one major residents’ group was consulted on the proposals and this is reflected in the proposals themselves. The same is also true of the Better Regulations Task Force and the fact that the only Parliamentary scrutiny so far has been by the industry-founded Parliamentary Beer Club.
6. It is vital that the views of people who live near licensed premises are accorded their proper weight by the Secretary of State. This is a long document that seeks to provide some balance in the debate. We hope that Secretary of State and the decision makers in the Home Office will go through it with the same care and attention with which we have sought to prepare it so that they may understand more fully the perspective of an important residential group in London.

Section 2

Executive Summary

A. Summary

1. We believe that there are major flaws in the proposals that have been tabled in the White paper and we would be concerned if legislation were introduced along the lines set out.
2. In particular, we do not believe that the system proposed for dealing with nuisance, crime and disorder and public safety will be effective. We believe that any increase in these factors in areas where there is already a crisis is UNACCEPTABLE. That is the case in large parts of central London, including Soho. If proposals are brought forward along the lines set out, we would urge the Home Office to create an exception for central London areas.
3. We have proposed an alternative model for dealing with licensing in this paper, which is based on the planning system. We favour a requirement for all licensing authorities to adopt a Licensing Plan for their areas, along the lines of the developments plans used in London. The Plan should cover in detail the principles and policies to be applied. Decision on licensing should be determined in accordance with the Plan unless material consideration indicate otherwise, with a right of appeal on the merits by the applicant and objector to a Licensing Inspector and thereafter to the High Court on points of law. There would be no presumption in favour of applicants or objectors: there would be a presumption in favour of the Plan itself.
4. We agree that it makes sense to create separate premises licences and personal licences but we believe that the resulting concept of the premises licence is too close to a planning consent to be dealt with independently of the planning system. Accordingly we believe that the whole responsibility for premises licensing should be transferred to the planning authorities. Licensing authorities should be required to consider ALL matters relevant to nuisance, crime and disorder and public safety, including the effect of concentration of licensed premises in an area when deciding on an application for a licence, whether or not such issues have been considered by the planning or any other authority. To the extent that it is considered desirable for personal licences to be dealt with by the same authority as the premises licence, that would imply a full amalgamation of the planning and licensing systems, with responsibility for these matters transferred to the DETR.
5. Whether or not responsibility for licensing is transferred to the DETR, we believe that licensing reform should be accompanied by reform of the planning system and environmental protection laws to improve the ability of the authorities to deal with nuisance, crime and disorder and public safety more effectively. There needs to be modernisation of a series of laws dealing with noise, highway obstruction, and building control. We do not believe that reform on these matters should be undertaken serially.
6. We are not opposed in principle to the abolition of permitted hours. We believe however that the restrictions on permitted hours have served to some extent – particularly outside central London – to protect residents from a licensing system that cannot protect them from nuisance and crime and disorder associated with

licensed premises. Accordingly we believe that abolition of permitted hours should not be undertaken until a better system for dealing with nuisance and crime and disorder issues has been put in place and tested over a period of years. As we have said, we do not believe that the proposals in the White paper are satisfactory on this point.

7. More detailed comments on the proposals and our alternative proposals are set out in section 5 of this document.

B. Issues faced by local residents in Soho and Central London

1. There is a large residential community in the West End in public housing, private flats above restaurants, bars and shops as well as in houses. It is the policy of central and local Government that there should be sustainable residential communities in central London. In our view a sustainable community is one with permanence and stability: a place where people can bring up their children and have their family homes and live in old age. It is not a place where the bulk of residents are short term, where children are excluded and where the old are forced to move out. The pursuit of this policy objective is not unique to London: it is actively pursued as a desirable policy objective in New York, Paris, Brussels and Amsterdam.
2. The central London residential community faces a serious threat to its survival as a result of the growth in the entertainment industry in the past few years. There is now, we estimate using figures from the District Surveyor's office at Westminster City Council, capacity for perhaps over 100,000 people at licensed premises before 11.00pm and for about 50,000 people after 11.00pm in Soho alone. About 30% of licensed premises in this area stay open until 1.00am and a further 40% have late licences to serve alcohol until 3.00am. There are also a large number of 24 hour night café licences in the area. That is in an area of about half a square mile. These figures mean that the size of the population in Soho on an average evening is greater than at the average football match but at a higher density in a smaller area for a significantly longer period of time and with ready access to alcohol and hard and soft drugs.
3. The result of all of this is a serious mess: there has been an alarming increase in the level of nuisance and crime and disorder. The local authority and police can no longer deal with the problems that have arisen without a halt in the growth in the numbers of people in the area, particularly late at night. The amenity, well-being and health of residents has been seriously prejudiced. It is for this reason that both the local authority and the police have decided to take action to stop further growth in this industry.
4. It is not planning that is creating this mess: it is licensing. Without an alcohol or night café licence, few premises would be profitable. It is not an exaggeration to say that planning consent without a licence is virtually worthless.
5. These issues are explored more fully in section 3.

C. Current Legislative Framework

1. We do not believe that the White Paper has analysed the problems of the current legislative framework properly from the point of view of residents. For example we do not agree that that the following are problems in the current legislation:

- (i) ability of licensing authorities to impose conditions to control the way in which a premises is used e.g. restaurant, night-club or bar;
- (ii) restrictions on permitted hours. In particular we do not agree that tourists are confused: even if they were, that would not be an argument for abolishing permitted hours any more than it would justify changing the language, currency or the side of the road that we drive on. Our evidence is that there are MORE places to drink alcohol in central London after 11.00pm than in central Paris or Frankfurt.
- (iii) differences in the licensing policies in different parts of the country. Different licensing policies reflect different circumstances relating to nuisance, crime and disorder and public safety in different parts of the country. We see no merit in consistency on a national basis for its own sake.

We do not agree that standard closing hours create more public order problems than more flexible closing hours. Any visitor to San Antonio in Ibiza for example, where there are no standard closing hours, will be aware that there is more binge drinking and drunkenness when hours are longer and more violence, nuisance crime and disorder.

2. In our view there are TEN serious problems in the current legislation, which are discussed in detail in section 4:

- (i) Split responsibility for licensing between local authorities, magistrates and the Police and little co-ordination between them
- (ii) Split responsibilities among a large number of authorities for dealing with nuisance, crime and disorder and public safety and little co-ordination between them
- (iii) Confusion about the meaning of the principle that an application must be considered on its individual merits
- (iv) Confusion about the definition of nuisance
- (v) The presumption in favour of an applicant, with the burden of proof on objectors
- (vi) Unsatisfactory approach by experts and the Police: misleading statements
- (vii) Inadequate mechanisms for monitoring compliance with conditions
- (viii) Inadequate sanctions and penalties
- (ix) Burdensome system in terms of costs, appeals and legal challenges
- (x) Inadequate legislation to manage the night-time economy

3. We also see some strengths in the current system, in particular:
 - (i) Ability of licensing authorities to have a licensing policy which reflects local conditions on a sector by sector basis within the licensing area
 - (ii) Restrictions on permitted hours
4. In our view the real issue is the management of the entertainment industry especially at night. We do not have laws that can deal satisfactorily with the problems that arise in this in this area. In particular we would note the following laws which would need to be reformed in the context of abolishing permitted hours:
 - (i) It is virtually impossible to take swift action to deal with planning infringements
 - (ii) It is virtually impossible to take action under the Noise Acts or Environmental Protection laws to deal with noise
 - (iii) It is virtually impossible to take action against premises which allow their customers to obstruct the highway under any legislation
 - (iv) It is virtually impossible to take action against premises that leave tables and chairs out beyond the time allowed in their highways licences and planning consents
 - (v) Flouting of conditions in licences in music and dance licences in common and enforcement and prosecution rarely carried out
5. Unless these problems are tackled, licensing deregulation will be an major error.

The problems we face are joined up problems
and we must have joined up solutions to
deal with them.

Section 3

Issues faced by residents in Soho and central London

A. Trends in the entertainment industry in London

1. The provision of alcoholic drinks is the single most important source of profits in the entertainment industry. Unlike the provision of food, the provision of alcohol does not require space for kitchens or waiters, chefs and food hygiene controls. Alcoholic drink does not deteriorate as quickly as food so there is less waste. Most importantly of all, alcoholic drinks can be consumed standing up so more people can be accommodated in a space used as a bar as opposed to a restaurant. In fact the rule of thumb is that a bar can accommodate three times as many people per square foot as a restaurant. In some “de-regulated” European countries, such vertical drinking is not allowed. The mark-up for each pound invested in serving alcohol is significantly higher than the mark-up in any other branch of the entertainment industry. It is not an exaggeration to say that planning consent for a premises to serve food and drink or operate as a nightclub is worthless without a liquor licence or a night café licence.
2. Furthermore, people at bars can be encouraged to drink more by creating a party atmosphere: this generally involves bringing together a large group of people of similar age and background in a single venue and turning up the volume at which music is played. This is a recent phenomenon and has a different environmental impact than smaller traditional pubs and restaurants. More people can be encouraged to enter the premises if the music can be heard in the streets so it is important that doors, windows and shop-fronts should be left open. Yet more alcohol can be sold if the hours which the premises keeps are increased so a large number of premises have music and dance licences allowing them to stay open until 3.00am. As a result, there has been a trend towards conversion of restaurants into bars and conversion of small bars into mega-bars. There has also been a trend to install openable shopfronts, and to place tables and chairs on the streets. All of these commercial pressures are intensified when there are a large number of licensed premises in a small area and the pressure to compete for customers is intense.
3. A different set of commercial pressures applies to night cafes. Currently under the existing law, there is demand for night café licences from licensed premises seeking to operate on a 24-hour basis. There is also demand for night café licences from coffee bars that do not serve alcohol. Because coffee bars do not serve alcohol, their margins tend to be lower and the pressure on them to increase sales leads to their serving large groups of customers in the streets on a 24 hour basis. There is no rental cost to serving customers in the street so very often such premises will have 300 or 400 customers, only 10 or 20 of whom can be accommodated within the premises. This creates pressure for all other premises in the vicinity to do the same.

B. Growth of the entertainment industry in Soho and Central London

1. Soho is the small area of the West End bounded by Oxford Street, Charing Cross Road, Regent Street and Shaftesbury Avenue. This area shares many

characteristics with Marylebone and Covent Garden in London and with city centre locations elsewhere in the country. Soho is home to over 5,000 people many of them living in public housing and a large number in private housing above restaurants, bars and shops. People who live in the area do so because many of them have been born and brought up in the area, many others because of the need to be close to their places of work and there is a high proportion of social housing and protected tenancies. In total the whole area is about half a mile square.

2. Although Soho has always been an important entertainment centre in London, its current popularity is a recent phenomenon. In the past five years a large number of new entertainment premises have been set up in Soho – in fact according to Westminster City Council between 1997-1999, 47% of all new floor space converted into space for premises serving alcohol in Westminster was in Soho. In addition many existing licensed premises have been converted from restaurants into bars and the majority of licensed premises in Soho have section 68, 70 and 77 certificates to serve alcohol after 11.00pm. About 30% of all premises operate until 11.00pm, 30% close between 11.00pm and 1.00am and 40% operate until 3.00am. In addition there are large number of night cafes operating on a 24 hour basis in the area. Soho is an area that contains more licensed premises per square mile than any other place in the UK, Continental Europe and North America. Thus we, as residents, have by necessity have become experts in the field.
3. The scale growth in the number of late night licensed premises can be judged from the following statistics: the number of night cafes in Westminster has increased from 17 in 1986 to 150 in 1987. Of these, 68 are in Soho - accommodating 5,146 people within the premises, and a significantly larger number outside in the street. In addition, there are 110 entertainment licences in operation in Soho for premises operating after 11.00pm with a total accommodation figure of 37,582. A number of premises have regular after-hours licences granted by the Police, which we estimate have a capacity of a further 4,000 and there are a large number of unlicensed premises, premises with club licences and casinos.
4. From July to December 1999 there were 43 applications for new night café and music and dance licences and variations to these existing licences in the West End Ward in addition to the 178 renewals of music and dance and night café licences. From January 2000 to date there were another 23 applications for music and dance and night café licences. There are significantly more applications for licences, certificates and variations at the Licensing magistrates. In addition the Society receives an average of 45 notices of planning applications per month from Westminster City Council.
5. We estimate using figures from the Westminster City Council's District Surveyor's office that there is capacity for over 100,000 people at licensed premises in Soho before 11.00pm. There is capacity at licensed premises in Soho after 11.00pm for well over 50,000 people, according to our (incomplete) calculations. In addition, there is a street population of about 5,000 people at tables and chairs, eating and drinking outside licensed premises, in transit from one premises to another, seeking cabs and arriving in the area. In other words there are likely to be more people in Soho every evening than at the average football match, but at a higher density in a small area, for significantly longer periods and with ready access to alcohol and hard and soft drugs. The tubes stop running at around 1.00am so there is a major influx of unlicensed minicabs and taxis into the area at that time.

C. Consequences of the growth in the entertainment industry

1. This growth in the entertainment industry has satisfied the needs of many consumers and has brought jobs and wealth to some people. But it has also led to a major deterioration in the quality of life, health and well-being of local residents and it has jeopardised the sustainability of the central London community. This is important because it is a key objective of national and local Government that the inner cities and especially London should be places where there are sustainable residential communities.
2. The key word here is sustainable. Residential communities can survive in many circumstances but a sustainable community is one with permanence, stability, a place where people can have their family homes, bring up their children and live in their old age. It is not a place where people the bulk of residents are short term, where families and children are excluded and where the old have to move out. In this respect there is nothing unusual about London: city authorities in New York, Paris, Brussels and Amsterdam for example are all equally keen to ensure that the centre of their cities are places where sustainable residential communities can thrive.
3. These issues are all-important in the licensing context because without an alcohol licence or a night café licence few entertainment premises in central London would survive. In other words it is not planning that is driving the harmful changes we experience: it is licensing and particularly licensing for activity after 11.00pm. There are five major issues that face residents and other, which are discussed in detail below:

(i) Noise nuisance

First, there has been a very significant increase in the level of noise nuisance. Noise nuisance is perhaps the most important issue facing residents in Soho. There are two major sources of noise: noise from premises themselves and ambient noise.

Noise from licensed premises includes noise from amplifiers and recorded music, air conditioning equipment and from the voices of people inside the premises. As noted above there is significant commercial pressure on licensed premises to maximise the amount of noise emanating through openable shop fronts, doors and windows because it is an important recently developed form of advertising that attracts customers. This is a major issue where premises are below, opposite or adjacent to residents' homes.

Ambient noise results from the voices, shouting and screaming of the crowds of people in the streets before they arrive at and after they have left licensed premises, from the taxis and minicabs that flood into the area after midnight and from the vehicles that service licensed premises. This is a problem whether or not people are drunk.

The general extension of hours at licensed premises has made this problem worse, since patrons now have a habit of moving from one premises to another throughout the night and finishing up at a night café after 3.00am. This is a particular problem in Soho. Because the streets are relatively narrow and the buildings are tall, there is a canyon-like effect that amplifies noise. Taxis and minicabs are attracted into the area after midnight after the underground service closes,. Minicabs tend to park in side streets where they leave engines revving

and doors open while music is played on car stereos that only a few years ago would have serviced a concert hall.

The exuberance of people out for the evening leads them to raise their voices even if they are not being particularly aggressive. Many premises play music at extraordinarily loud levels (over 90 dBA), as described in the recent issue of the "New Scientist" that it is inevitable that people coming out of them will raise their voices: they have been deafened by the noise inside. In addition, because of the density of crowds in the streets during the evening, service vehicles collecting waste and delivering supplies can only do so during the night. Cleansing vehicles from the City council and from private waste collectors arrive after 2.00am and food and drink providers arrive from 5.00am. The sound of bottles being tossed into these cleansing vehicles and crushed is one that wakes up most people as is the sound of bottles and barrels being delivered by large vehicles. Most of these developments are related to the growth in the late night economy as the White Paper has failed to realise.

As a result of all this, most residents regularly suffer from sleep deprivation or interrupted sleep. Over 50% of all recorded noise complaints in Westminster are accounted for by residents of the West End: in fact there are 12 times more complaints about noise nuisance per head from West End residents than the City of Westminster average. Ambient noise levels in Soho from 7.00pm until 4.00am exceed by a significant margin the safe values recommended by experts from the World Health Organisation. The level of noise is damaging the amenity, health and well-being of local residents. Faced with this crisis, many residents have taken to using earplugs at night, some residents have left their homes vacant – many others have turned them into (illegal) short lets, which are of course particularly attractive to prostitutes. This is not a sign of a sustainable residential community.

The high level of ambient noise is not only a result of poorly managed premises or inconsiderate licensees: it is a consequence of the concentration and saturation of licensed premises in a small area.

(ii) Problems with Waste, urinating and defecating in the streets

Secondly, there has been a significant increase in the amount of waste, urine and faeces in the street. Again this is a serious nuisance which harms the environment for residents as well as visitors. The issue is both a premises-related problem and a general problem. Both are the direct result of the large number of licences that operate in this area and the behaviour of their customers.

Premises-specific waste includes food waste and bottles from restaurants and bars. Few premises have sufficient storage space to hold the waste for more than a few hours. Most premises leave regularly leave plastic bags containing their waste on the street corners for collection by cleansing vehicles that, as noted above, will only arrive between 2.00am and 4.00am. As a result nearly every street in Soho has rubbish bags lying about in large piles. These bags are usually torn into by beggars and rubbish is scattered everywhere.

There is also a problem associated with the density of the crowds. The large crowds that come for entertainment at licensed premises leave a considerable amount of litter and waste in the streets. Waste from fast food establishments – all of which appear to have night café licences – piles up faster than it can be collected. Our experience is that the problem becomes worse as hours of operation at licensed premises are increased, because there is more waste from

using the premises for longer and fewer “non-licensed” hours in which to deal with the problem. This is an inevitable consequence of the crowds and there is very little that the cleansing authorities can do to deal with it - even if they provide additional cleansing resources.

But perhaps the most vile of the problems resulting from the concentration of licensed premises is the widespread practice of urinating, defecating and vomiting in the streets. A large majority of streets in Soho are used as public lavatories by people who have been drinking. This is a problem during all hours of the day and night. Many of Soho’s streets stink of urine today. In our view this is not a result of the lack of public conveniences. We find that people are as likely to urinate and defecate in the streets at 2.00pm on a Sunday afternoon as at 11.30pm on a Friday evening. This is not a practice confined to young men – we have witnessed numerous instances of women and older men committing such anti-social acts. Again it is NOT a consequences of a lack of public facilities. It merely reflects the fact that people who have been drinking even if they are not drunk will do things that are anti-social, particularly of a large number if other people appear to be doing the same.

Again the problem of waste, urine and the associated problems is directly related to the growth in the licensed trade. We have investigated thoroughly the efficiency of the local authority on this matter but believe that the problem cannot be dealt with by providing of more lavatories and cleaners. It can only be dealt with by control over the numbers of people in the area.

(iii) Threats to public safety

Thirdly, there is a major threat to the safety of the public on the streets. As discussed, a large concentration of licensed premises in a small area forces operators to compete with one other. If one premises disregards the rules all others will follow. If everyone is disregarding the rules systematically the ability of the local authority to enforce the rules is weakened and this in turn encourages further breaches of the rules. This is the case with tables and chairs and drinking in the streets. Soho’s streets are very narrow. Many pavements are barely 1.5 metres wide – not enough for two wheelchairs to pass by on a pavement without being forced onto the road. But at most licensed premises there are now large numbers of tables and chairs and crowds of drinkers on the pavements outside. This forces people to walk in the street itself. This is a thoroughly unsatisfactory situation. There have been accidents in the area as a result.

A misguided attempt by Westminster City Council to deal with the problem by pedestrianising the streets last year led to more drinking and tables and chairs on the street and no more room for other users. It led to more people coming to the area and exacerbated all the problems described in this section. Following a petition signed by over 3,000 residents and local businesses, the scheme was abandoned. But the streets have not yet been reclaimed and crowds of people and unauthorised tables and chairs remain the norm in certain streets creating a serious nuisance. This is not the much-canvassed European model of café society that was promised by the licensed trade in the area.

The other issue is the difficulty that fire engines and ambulances have in securing access to premises because of the crowds in the streets. We have extensive video footage showing that the crowds are so dense that the streets are inaccessible to cars in the area. One of the main problems experienced in assisting with the

victims of the nail bomb at the Admiral Duncan pub was the difficulty of getting emergency vehicles to the site quickly.

(iv) Anti-social behaviour, crime and disorder

Fourthly, there has been a significant increase in the level of drunkenness, anti-social behaviour and crime and disorder.

Soho, which is less than half a mile square, accounts for almost half of all crime in Westminster. Police statistics show the following for 1999 over 1998:

Offence	% increase
Snatches from person	55.6%
Unauthorised taking of cars	124%
Rape	33.3%
Other sexual offences	53.3%
Drug trafficking	41.6%
Disorder in a public place	45.2%
Disturbance in licensed premises	40.5%

We feel that it is incumbent on the home Office to gather statistics from other areas where there is dense licensing such as San Antonio in Ibiza and other Spanish resorts as well as Ayia Napa in Cyprus to see if similar statistics hold true.

Resources of statutory bodies are particular low at night and it is inevitable that problems will arise. There are drug dealers in the streets openly selling heroin, crack and cocaine, as well as soft drugs. They come to this area because the large numbers of people are a source of custom as well as finding that the crowds offer them some anonymity. There are clippers and prostitutes and pick pockets. All these undesirables bring violence, guns and fear into the area. While most residents would have no problems in identifying the main individuals involved, few of us would choose to testify against them for fear of the consequences. These undesirable people would not be here if there were fewer licensed premises. People who object to licences are routinely intimidated.

The same is true of drunkenness and anti-social behaviour. We have already discussed the problem of urination and defecation in the streets but there is also a problem with fights and dangerous exuberant behaviour such as swinging golf clubs at empty bottles, which are sent flying into the crowds, tearing up trees and plants and defacing buildings with graffiti. In addition to all of this is the problem of violence between drug dealers, pimps and prostitutes which usually involves knives, In such encounters, people are routinely beaten ferociously until they are unconscious and left in the streets. Hearing the screams of these people is traumatic for residents but it has now become so common that few residents will take the trouble to call out the police.

(v) Change in the character of historic areas

Lastly, the growth in the entertainment industry is causing a major change in the historic role and function of central London. As a result of the growth in this industry, rental levels have risen sharply. Rental levels for A3 uses are higher than almost all other possible uses of land in Soho. This has squeezed out other uses such as bakeries, fishmongers, hairdressers, grocers, florists, butchers, fashion shops, tailors and the film industry itself. There are now 1,930 A3 uses in the West

End Ward, 350 of which have been created since 1992 by conversion of other premises and shops. It is turning central London into a theme park and is destroying the historic urban villages of London. It has raised property prices and is also squeezing out residents in many parts of London. Already many essential workers such as policemen, teachers and nurses cannot afford to live in central London. That is not the way to create a sustainable community in the area.

The ease with which these changes occurred is in large measure due to the introduction of the Use Class Order 1987. The entertainment industry fought for and secured from the planning authorities in 1987 a change in the planning system to exempt from planning control changes of use in premises used for the provision of food and drink. This was contained in the amended Use Class Order 1987. The change now is widely perceived to have been a serious error – a key instance of a Government department being persuaded to make important changes by industry lobbying without effective consultation of other parties and without properly analysing the consequences. Since the change, two thirds of local authorities in London say that they have experienced problems as well as a large majority of planning authorities outside London. As a result of the Order, premises that had previously been given planning consent to operate as restaurants were converted into bars. Since a bar can hold three times as many people as a restaurant this was a material change for local residents in terms of disturbance and nuisance, but was not subject to any planning control.

We are deeply concerned that the Home Office should not repeat this major error made by the DETR in 1987.

D. Evidence that there is widespread concern

1. The issues we have discussed in this section show that the growth in the entertainment industry in central London is now causing very serious problems for residents and others. It is turning the centre of the city into an unattractive and undesirable place. It is destroying the quality of the City centre and damaging central London as a place to live and work in. It is also putting off many visitors, who are fearful of the environment in which the industry operates.
2. The problems referred to above are faced by ALL residents and many businesses and others in Soho and many other areas in Westminster, who all feel strongly about these issues as is evident from the following:
 - (i) In October 1998, the Licensing Working Party of the Central Westminster Police Community/ Consultative Group published a report entitled “A Good Night Out” on these issues with recommendations. This working party was a cross-community group including representatives of the licensed trade, residents, the Police, City Council and Mr Peter Brooke MP. The Working part met over a two year period. The Licensing Justices were invited to participate but refused to take part. The Police and the City Council have responded to the recommendations (see below).
 - (ii) In 1998, the Soho Society objected to ALL music and dance and night café licence renewals (over 130 in total) in Soho, calling on the City Council, inter alia, to reduce numbers at existing licensed premises by 20% in order to deal with these problems. The letter of objection is attached as Appendix 1. Not one of these objections was successful for the reasons described in the next section. In addition there have been a large number

of residents as well as the Society and the Association objecting to licences;

- (iii) In September 1999, the Meard and Dean Street Residents Association wrote to the Licensing Justices of the South Westminster Bench setting out the issues faced by residents and asking for a policy to guide the justices in dealing with these issues. The Association has not yet received a response to this letter.
- (iv) In July 1999 a public meeting was held in Soho to discuss the Draft Community Safety Plan prepared by the City Council, the Police and the Health Authority, under the terms of the Crime and Disorder Act 1998. At that meeting which was extremely attended by residents and businesses, a unanimous resolution was passed by the meeting calling for a halt to the granting of further late night licences in Soho until the effectiveness of measures to deal with existing problems had been assessed. There were more people at this public meeting than voted at the Euro elections or at a by-election for the local Ward Councillor held at about the same time.
- (v) In September 1999, December 1999 and in March 2000, at public meetings Westminster residents signed petitions to be submitted to the Home Office, Westminster City Council, the Licensing Justices, the Lord Chancellor, the DETR, the Planning Inspectorate, the Metropolitan Police Service. Each of these petitions has called for a halt to the granting of further alcohol and late-night licences until the effectiveness of measures to deal with the problems that already exist have been assessed and reform to improve the mechanisms for controlling nuisance from licensed premises.

E. Summary

1. As long ago as April 1993, Westminster City Council identified the West End as a particular "STRESS" area where "the level of night time activity was at times prejudicial to residential amenity" in a licensing policy. Despite the large number of objections made by residents, the Soho Society and the Association; the evidence collected by the City Council and the Police; and the policy statement referred to above, this has not prevented the significant deterioration in the environment for residents. This is because more licenses and for longer and later hours and more people have been granted. In fact, not a single application for a licence has been refused in Soho on the grounds of nuisance or crime and disorder by the City Council or the magistrates since 1993.
2. However, as a result of the crescendo of complaints from 1996 referred to above, and in the light of the imminent coming into force of the Human Rights Act 1998, in August 1999 the City of Westminster undertook a major and widespread consultation exercise to assess its own position on these issues. In the light of that exercise and the issues raised, the City Council has now amended its licensing and planning policies. The new policies have created, so as far as is allowed by the current law, an integrated framework (on paper at least) for the management of the entertainment industry in Westminster. This is a model of joined-up Government for dealing with nuisance, crime and disorder and public safety. The new planning policies are drafted in the context of the overall policy objectives of central and local Government, and the licensing policies have been amended to reflect the fact that there is a public interest objective in ensuring that nuisance

and crime and disorder are dealt with in the overall context of the policy objectives of the city Council and of Central Government.

3. We believe that it would be entirely wrong for the Secretary of State to overturn the new framework and put in place one that is less workable in a new licensing Act. Accordingly, if there is to be legislative reform in this area we would prefer to see it improve the ability of the public authorities to operate in a co-ordinated and effective manner as far as planning, licensing, enforcement and environmental control are concerned, so that nuisance issues can be dealt with in an effective and efficient manner.

Section 4

The Current Legislative Framework

A. Problems in the current legislative framework

1. As noted above it is widely agreed by the City Council, by residents, the Police and many entertainment premises themselves as well as by the Society of West End Theatres that that nuisance, crime and disorder and public safety have become worse in Soho over the past few years. It is also widely agreed that this is the DIRECT and INEVITABLE consequence of the number of licensed premises in the area and of the extension in their hours of operation and their capacity in the past few years.
2. The Society and the Association have in the past few years objected to virtually all new licences and variations. We have also objected to a number of renewals where we have felt that the operator was not a fit and proper person to hold a licence in the area. Not one of our objections has succeeded in preventing the grant of a new licence, a variation or a renewal.
3. We note the problems that the Home Office has identified in current legislative framework in the White Paper. We do not agree that the following are problems in the current legislative framework:
 - (i) We do not agree that legislation must accommodate the way in which the industry is trying to develop customer choice by breaking down distinction between restaurants and bars if this limits the ability of the authorities to control nuisance. In fact, we believe that legislation is not sufficiently strong on this point and we note that planning inspectors and licensing authorities have started imposing conditions to restrict uses;
 - (ii) we do not believe that tourists are confused by the permitted hours in London. Any casual visitor to Soho will find a large number of venues for drinking until 3.00am. Visitors to Paris, Brussels, Frankfurt will find great difficulty in finding more than a few premises open after midnight. Besides tourist confusion about the differences between England and Wales and the rest of the world is not (yet) considered a respectable argument for changing the language, currency and the fact that cars are driven on the left hand side of the road. These things are also very different elsewhere.
 - (iii) we do not accept that the evidence shows that standard closing hours create public order problems. That is not the conclusion of the reports referred to in the White Paper and it is emphatically not the experience of those who live in an area where there is a staggering of hours;
 - (iv) we see no merit in national consistency in licensing policy. Licensing authorities must deal with local issues and diversity and accountability will dictate that different areas will be different. Devolution has been implemented in Scotland and Wales to reflect this concept.
 - (v) We do not agree that there has been excessive charging in Westminster City Council for licences. In fact although the licence charges are high, the

income produces still does not cover the costs of administration and enforcement and other costs such as waste not met.

4. In our view there are 10 major problems with the current licensing laws.

(i) Split responsibility for dealing with licensing matters

Responsibility for licensing matters is shared by the Magistrates, the City Council and in some cases the Police. The result is a mess. There is very little co-ordination between these parties. Licensing Magistrates refuse to talk to other licensing authorities and inconsistent criteria are used in assessing applications.

For example licensing justices grant section 77 certificates on the assumption that all the relevant tests will be assessed when music and dance licences are applied for. But they will never check that this is the case. In fact it is not the case.

In addition procedures before the licensing authorities are very different. Licensing magistrates have very little knowledge and experience of all the complexities of controls in the field of licensing and planning and there is no obligation on them to have regard to crime and disorder under the Crime and Disorder Act 1998.

The City Council has greater expertise in the complexities of controlling nuisance, given their own functions and there is a greater probability of its being informed about the issues given the elected status of Councillors and their contact with residents. They are therefore more likely to realise that a problem exists than magistrates.

The new Act must unify control of all licensing matters under a single licensing authority and must ensure that decision-makers have minimum levels of competence and expertise. In addition obligations under the Crime and Disorder Act must be applied to the licensing authority and there must be a duty on the authority to inform itself of the existence of nuisance, crime and disorder and threats to public safety in its area in taking its decisions on licensing.

(ii) Split responsibilities for dealing with nuisance, crime and disorder and public safety

The second problem with the current system is confusion resulting from split responsibilities for nuisance, crime and disorder and public safety in a licensing context. Responsibility for dealing with these issues is shared among a large number of authorities, who rarely co-ordinate their activities and who have little understanding of the roles and functions and powers of the others. As a result on many occasions, even when there are objectors arguing these points, these issues are not considered by ANY of the authorities when planning consents and licences are granted. The result is the situation we have described above.

In the case of noise nuisance, for example, each of the following authorities appear to have some powers to deal with the issues identified above: the Police, the Planning authorities, the Environmental Health Officer in the City Council and the Licensing authorities. However there is no systematic co-ordination by these authorities to deal with noise nuisance. Each of these authorities will routinely assume that another authority will deal or has dealt with some aspect of noise nuisance and as a result they will disregard that consideration in coming to their

decision. In the majority of cases, their belief that an issue can be dealt with by another party is wrong.

For example, licensing authorities, particularly the Licensing Justices, who have little contact with or understanding of the planning authorities, routinely assume that certain issues are planning issues and have been dealt with by the planning authorities. For example, they assume that the nuisance consequences of a small restaurant of 70 people converting itself into bar of 500 people has been dealt with through the planning system. But as we have noted above, planning authorities have no powers to prevent such a change of use no matter how much nuisance results from the change. Failure of licensing authorities to impose conditions limiting the use of a premises in such cases has resulted in the dramatic increase in nuisance.

Another example is the question of hours when considering music and dance or night café licences. Councillors on the Licensing Sub-Committee at Westminster City Council are routinely advised by officers in the licensing division that there are no planning limits on the hours of operation of the premises. Until quite recently Councillors would assume that their advice meant the whole question of hours had been considered at the planning stage and that the planning authority had decided that no limitations on hours was appropriate. Accordingly they would routinely grant applications for late licences in full on this basis. But that view of planning was wrong. The advice to planning authorities from the DETR is that planning authorities should not duplicate the controls that exist in other legislation. That means that planning authorities will not normally impose conditions as to hours in A3 planning consents on the assumption that the licensing authorities would consider all the relevant issues at the time of a licence application, including nuisance and saturation and concentration. In these cases, licences were granted to extend hours without anyone considering the issue of nuisance. All representations from objectors were set to one side.

Councillors at Westminster City Council have now begun to understand that they cannot assume that all relevant authorities will have considered issues that appear to be their responsibilities. But even this does not mean that nuisance issues will be considered. Because we find that cases on appeal are lost because magistrates dealing with these issues have no understanding of the complexities of the issues.

The issue of hours is particularly relevant in the present case because few if any A3 planning consents will have restrictions as to hours in their planning consents at present because there is a prohibition against serving alcohol as a primary activity after 11.00pm in the Licensing Act 1963. **If the Home Office removes this limit, then there must be a requirement for the issue to be considered by the planning authorities in the light of the UDP before any A3 premises are allowed to operate after 11.00pm.**

A third important example is the tendency of magistrates to assume that all noise complaints can be dealt with by the Environmental Health Officer. They will routinely impose conditions stating that an applicant must comply with the reasonable requests of the EHO. But the EHO has very limited powers under the Environmental Protection Act 1990: they cannot for example deal with the consequences of ambient noise by issuing noise nuisance notices under that Act. Neither it appears can they impose the most basic regulations preventing the emission of amplified music from openable shopfronts. All of these issues are properly dealt with the other countries in the context of relaxed permitted hours.

Finally there is a widespread misunderstanding about how the planning system deals with noise nuisance. In the vast majority of cases, planning permission is sought before a premises comes into existence. The planning authority has to make its decision based on arguments about what might happen as a result of the premises coming into being. It will have no actual evidence on the point. If a planning authority gives consent to a series of planning applications and it subsequently finds that its assumptions were wrong and that nuisance has increased as a result of the crowds in the street or because it failed to impose a condition there is little it can do. If the licensing authority does not consider the issue then no other authority will do so and nuisance will increase.

The licensing authority must be required to take into account ALL matters that are relevant to the control of nuisance, crime and disorder and public safety, notwithstanding the responsibilities of any other authorities in this field. These matters must explicitly include the issue of saturation and concentration of licensed premises in an area, whether or not such issues have been considered by other authorities. In addition all related legislation needs to be modernised including noise standards for building controls, environmental protection and highways obstruction. Relaxation of permitted hours should not take place until all this has been achieved and tested over a period of years.

(iii) Confusion about the meaning of the principle that an application must be considered on its individual merits

The third major issue with the current legislative framework is confusion about the judicial nostrum that an application must be considered on its individual merits. Our experience of this particular judicial nostrum is that licensing justices and Councillors mostly take it to mean that a licence will not be refused unless there is something wrong with the licensee or his premises are unsuitable.

As a result, issues such as crime and disorder are routinely considered to be irrelevant ("these matters are serious and there is a real problem caused by drunkenness but these matters are the responsibility of the law enforcement authorities" - according to one decision letter). It is often said by the licensing authorities in their decision letters that a licence cannot be refused because there is a problem with patrons in the streets: evidence is required that the licensee is responsible for the disorder. Similarly with applications for new licences, evidence is required that licensees are LIKELY to be responsible for disorder. At licensing hearings at the Magistrates Court and at Westminster City Council the person responsible for implementing the Community Safety Plan adopted by the City Council and the police pursuant of the Crime and Disorder Act has NEVER been consulted and has never volunteered his opinion in any licensing case. This is despite the fact that licensing issues are among the top three issues (out of ten) identified as priorities for the authorities under the Plan.

This nostrum is also taken to mean that the context in which applications are made cannot be considered. For example an application to increase numbers at a premises by 200 will often be granted on the grounds that the increase is small and is unlikely to have any effect on the levels of noise and disturbance to nearby residents. Acoustic engineers acting for applicants will argue that ambient noise levels would rise by less than 3 dbA with 200 people – which they say is imperceptible to the human ear. They will argue that nuisance would only arise if the numbers applied for exceeded 500 people. However, after 4 such applications are granted in the immediate vicinity of the residents in the space of a few weeks,

sometimes on the same day and with the same acoustic engineer acting for different parties, licensing Committees will have increased numbers by maybe 2,000 people. The result is a serious increase in nuisance. Each premises on its own was immaterial but the cumulative effect increased the level of nuisance significantly.

Finally some licensing decision-makers assume that this legal principle means that licensing policies cannot be adopted and that such policies can set aside whenever a decision-maker feels like it.

Licensing Authorities must be under a duty to have regard to ALL the factors giving rise to nuisance, crime and disorder and public safety in deciding whether to grant or renew or revoke a licence, whether or not the licensee or applicant has control over such issues or not.

(iv) Definition of nuisance

In law the amount of nuisance that an individual is expected to tolerate depends on the character of the area. Some licensing Committees however take this to mean that all levels of nuisance are acceptable in Soho on the grounds that this is the character of the area and will refuse to listen to any arguments about nuisance. This is especially true of certain magistrates.

The Society and the Association have been advised that under the Human Rights Convention, nuisance would amount to a violation of the Article 8 rights of individuals where it affects the amenity and well-being of individuals even if it does not damage their health. There is extensive evidence that the level of nuisance particularly after 11.00pm is interrupting and depriving MOST residents of sleep at night. According to the World Health Organisation this constitutes a serious danger to the well-being and health of individuals who live in area such as this. We have also been advised that there are positive obligations on public authorities under Article 8 to secure the Convention rights of individuals even when these are being interfered with by third parties. In practice this mean that public authorities have an obligation to take action to reduce the level of nuisance to a level where the well-being and health of individuals is not affected.

Yet despite this, even licensing authorities who as a matter of policy apply the Convention have granted licences on the grounds that a further grant will not materially increase the level of ambient noise. There is no recognition and little understanding of the positive obligations in Article 8.

There must be an obligation on licensing decision-makers to receive regular training on Human Rights and other legal issues and costs of this must be borne by licensing fees.

(v) Presumption in favour of an applicant and burden of proof on objectors

The fifth major weakness of the current legislative framework from our perspective is the presumption in favour of an applicant. This places an enormous and insurmountable burden on objectors, especially this is a judicial process unlike planning.

We have found that an effective case cannot be mounted unless objectors have legal advisers, acoustic engineers, experienced advocates and surveyors on their

side to present the detailed technical and legal points that have to be made. Applicants for a licence will normally be supported not only by solicitors and barristers as well as by architects, surveyors, acoustic engineers and planning experts, all of whom will have been paid to present the case for the licensee. Only a very few objectors will be able to afford to use expert witnesses or be represented by lawyers. Even where objectors can afford to use experts, the costs of these experts is not tax deductible for objectors whereas they are for applicants. In our opinion, hardly any magistrates or councillors who take licensing decision understand the technical language that such specialists speak but there is a great presumption that their expertise outweighs the amateur arguments of local residents.

If such experts say things that are incorrect or debatable, there is little that an objector can do until he has had a chance to check the facts; this is always after the hearing when the only remedy is judicial review. For example at one recent hearing, an eminent QC acting for an applicant argued that evidence that his client was in breach of his licence conditions could not be presented by objectors to the licensing Committee as that would be a breach of the human rights of the applicant. This view (remarkably) was accepted by the licensing decision-makers and the Committee refused to hear the evidence. It was only much later that the Society and Association were able to obtain legal advice, which confirmed that the position taken on the matter by the licensing authority was illegal.

Many residents who are affected by licensed premises are afraid to make their objections in public. They are very concerned – in many cases with good reason - about being harmed and harassed by applicants. They are intimidated by the adversarial nature of the hearings and by aggressive cross-examination of their evidence. Many people who have had to go through this experience have refused to make objections in their own name and will not appear to give evidence in person - but they are nevertheless very concerned to ensure that the Society and the Association do object on their behalf and that officers of these organisations appear to make the case.

Only a few residents have the experience, knowledge and confidence to be able to appear as objectors presenting the case of the Society and the Association and these individuals cannot afford to keep taking time off work to prepare, collect evidence and attend the hearings as well.

Finally, we believe that for new applications where the burden of proof is on the objector, it is virtually impossible to demonstrate that the granting of the licence will CAUSE nuisance crime and disorder. The problem here is that the presumption in favour of an applicant is even stronger once the application has been granted.

This aspect of the current system has made it virtually unworkable. It would be unjust for there to be a presumption in favour of applicants with the burden of proof on objectors in the new Act.

(vi) Unsatisfactory approach of experts and the police

The sixth major problem we face in the current licensing regime are the misleading and inaccurate statements made by the police and other experts in front of licensing committees and magistrates. This matters because objectors have to spend a considerable amount of time challenging the evidence of these parties –

sometimes even with the Ombudsmen and the Police Complaints Commission. This raises the bar against objectors when the burden of proof is on them.

For example in a recent case the police sent a letter to the licensing Committee stating that they had no objection to the renewal of a licence even after objectors had alleged that the applicant was in serious breach of the conditions of his licence. When asked after the hearing was adjourned whether they had looked at the CCTV tapes before giving their view, they confirmed that they had not. But the police refused to look at the CCTV tapes, refused to give the tapes to the licensing enforcement officers at the City Council, refused to clarify to the Committee in writing that they had not looked at the tapes and said they would object to any licence condition giving the City Council authority to have access to the tapes in future. In discussions with senior police officers at Clubs and Vice Division at Charing Cross Police station we were told that the police were not interested in dealing with issues that did not directly deal with violent crime. This makes a complete nonsense of the priorities agreed by the police and their obligations in the context of the Community Safety Plan and of the White Paper's proposals in relation to police responsibilities.

The same issue has arisen in connection with the City Council's Environmental Health Officers who have NEVER once given evidence to any of the licensing authorities on ambient noise readings in the area. Nor have they once given advice of the implications of the levels of noise for the health and well-being of local residents or given data on noise complaints in the area – all of which would suggest that a real problem exists and all of which is the reason for the changes in the Council's own licensing and planning policies. Despite all the evidence they routinely state that they have no objections to licences being granted without mentioning or giving evidence on any of the above.

This is an unsatisfactory aspect of the current regime. The new Act must place a duty of care and attention on all those giving evidence as experts to give the whole truth and to be personally liable where they have made negligent or deliberate misstatements and statements which they knew would be misleading.

(vii) Inadequate mechanisms for monitoring compliance with conditions

The seventh major weakness of the current licensing regime is the inadequacy of mechanisms for monitoring compliance with conditions. Licensing authorities will routinely apply conditions to licences that they believe will deal with the nuisance consequences of granting the licences. But they have no idea whether the enforcement officers can enforce the conditions or wish to do so. In particular the magistrates have no accountability for the conditions they impose so they rarely have to face the consequences of bad conditions. For example magistrates often impose conditions requiring sound limiters to be installed in licensed premises to be monitored and enforced by the City Council's EHO. The City Council's EHO however refuses to monitor and enforce sound limiters on the grounds that they can be tampered with and are therefore worthless as a control. Licensed premises subject to these conditions are thus not subject to any effective control. Even when the matter is drawn to the attention of the Licensing Justices, there is no response.

Magistrates rely heavily on the police but senior policemen at the Clubs and Vice office have told us that they have no interest in dealing with problems such as these either in the current or in the proposed regime. In addition the City Council's

licensing inspectors do not work on a 24-hour basis so licensed premises that flout their conditions after 5.00pm are rarely observed by inspectors. The extension of hours that has taken place at licensed premises in recent years has not been accompanied by the extra resources to deal with all these issues. Again, all of this increases the burden that objectors have to bear when there is a presumption in favour of the applicant.

In an area like Soho, a large number of licensed premises are in breach of their conditions and undertakings. It is quite unrealistic in such circumstances to expect further conditions to have any effect on the behaviour of licensees.

In addition to all this, the current system does not allow the authorities to recover the costs imposed on the Council and other agencies by licensees. Costs of waste cleansing, police, enforcement, noise inspectors, licensing inspectors, administrative costs cannot be recovered from licensees.

Conditions should only be imposed where they are likely to be effective. Where effective mitigation by conditions cannot be achieved licences should be refused. Conditions should not be imposed where there is evidence that they are widely flouted. The licensing authority must be responsible for enforcement and must be accountable to local residents for ensuring compliance with conditions it has imposed.

The new Act must also ensure that all the direct and indirect costs of administration and management of the licences in an area fall on licensees and not on council taxpayers or other business ratepayers.

(viii) Inadequate sanctions and penalties

The eighth weakness of the current system is the inadequacy of the system of sanction and penalties. We agree that the current system of sanctions and penalties is inadequate. Licensing authorities are unwilling even when there is substantial evidence to revoke licences. We are not aware that a single licence in Soho being revoked since 1993 despite the evidence of problems.

There must be a better system of imposing sanction and penalties for breaches of conditions

(ix) Burdensome system in terms of costs, appeals and challenges

The ninth major issue for residents is the problem of appeals and costs. Objecting to an application imposes major costs on objectors as discussed above. In relative terms the cost on an objector is significantly greater than on an applicant.

Where residents are dissatisfied with decisions of magistrates and the City Council, there is no right of appeal on the merits of the case. Residents must petition the High Court for a judicial review. There is no right to be heard at the High Court and this process is lengthy, complex and very expensive. It cannot be done without legal representation given the nature of the arguments that can be heard. Finally, some parties, including the City Council have argued that judicial review cases can only be brought by individuals and not by incorporated associations such as the Society and the Association. As we have said, individuals are unwilling to be seen to be challenging applicants and it is difficult to persuade individuals, however strongly they may feel about a particular licence or applicant to allow their names to appear if the applicants can have access to the claim.

Where residents wish to ask for revocation or judicial review, the risks that costs might be awarded is a major deterrent.

The new Act must introduce provisions to ensure that objectors cannot be left with costs when objecting to licences and challenging decisions of the licensing authorities.

(X) Lack of co-ordinated legislation to manage the night-time economy

The current legislative model places great weight on the efficiency of other statutory agencies. We have already referred to weaknesses in the planning system but there are serious deficiencies in the Environmental Protection Act 1990, in highways legislation (to control obstructions caused by crowds) in buildings control legislation. If permitted hours are to be extended or abolished then there will need to be more local and national Government workers working during the night and there will need to be a strict system for ensuring that such officials are not corrupted by bribes. We note that some licensing enforcement officers at Westminster City Council will admit that they regularly receive offers of bribes not to report licensing offences.

B. Strengths of the current system

1. Despite all the weaknesses in the current system we believe that the system also has a number of strengths for residents that we believe should be retained in any new regime.

(i) Ability to have a licensing policy based on local conditions

It is widely accepted that licensing authorities under the current law can adopt policies provided that these policies do not dictate the outcome of their decision making without regard to the facts. The advantage of a licensing policy is that it introduces clarity, predictability, and transparency to decision making especially where there are a large number of potential decision- makers (such as magistrates and councillors) who have varying levels of knowledge and understanding of the legal issues involved in licensing.

Furthermore a policy can be related to local circumstances and can deal with complex issue such as whether a presumption in favour of an applicant should apply on a locality by locality basis depending on the actual conditions that prevail. We have been advised by counsel in the context of a judicial review of a decision of Westminster Council, for example, that the presumption in favour of applicants under the existing licensing Acts has already been displaced in Soho. Accordingly, we have been advised, it would be reasonable for the licensing authorities to adopt policies that create a presumption against new licences and that place the burden of proof on applicants. Such a policy is entirely appropriate in Soho but would clearly be inappropriate in all parts of the City of Westminster and certainly not on a national basis.

If policy is set on a national basis it will be vague and confusing as it will not by definition be able to deal with all the special situations that pertain.

The ability of licensing authorities to set policy on a local basis and in the light of local conditions should be retained, even if this means a loss of

consistency nationally. Nuisance, crime and disorder and public safety are local issues and there is no merit in spurious consistency on these matters.

(ii) Restriction on permitted hours

In the context of the problems we have described in this and the previous sections, the simple restrictions on the serving of alcohol as a primary activity after 11.00pm has served to protect residents to some extent (particularly outside central London) from a free for all.

The White Paper argues that there is evidence that relaxation of permitted hours would lead to a reduction of binge drinking and therefore reduce disorder at closing time. The research paper on which it is supposed to be based does not show this or say this. Nor does it recommend a general relaxation of permitted hours. Hours in the West End have in fact been relaxed. As noted in section 3, around 70% of all premises in Soho have late licences. The effect has been to extend the period in which there is noise and other nuisance to 4.00am. There is widespread bar hopping after 11.00pm and drunkenness, binge drinking, violence and disorder continues to be a problem. In fact the increase in nuisance and crime and disorder is directly related to the relaxation of hours as has already been noted in studies carried out by Westminster City Council. The recent article in the Independent discussed research from the University of Durham, which showed that 24-hour drinking would be likely to cause more and not fewer problems. The evidence of relaxed permitted hours in Ibiza, for example, does not offer any comfort that there will be an improvement in nuisance or crime and disorder with abolition of permitted hours. Conditions there are close to anarchy and the behaviour of British tourists there was recently described by the British Consulate as "disgusting". The majority of visitors to the most notorious place, San Antonio, are British, British tourists are generally considered to be the worst and perhaps most ominously the worst area is called the West End and a large number of license holders there are also licence holders in Soho.

It is also untrue to say that relaxed permitted hours are without their problems on the continent: in Italy, Parliament recently discussed provisions to limit permitted hours and the sale of alcohol is very strictly controlled throughout the Nordic area. In New York and throughout America (except for New Orleans) drinking on the streets is an offence.

Finally it should be noted that longer drinking hours will put smaller, family owned businesses under pressure. These businesses will find it more difficult to compete with the major chains which will supply duty rota managers to keep premises open 24 hours a day.

Permitted hours should not be relaxed from the current limit of 11.00pm until the mechanisms introduced by the new Act with respect to controlling nuisance, crime and disorder and public safety have been assessed for a period of at least five years. It can take up 3 years to determine a case if on appeal to the various Courts and any shorter period will not allow a representative sample of cases to be examined.

Relaxation should be based on a requirement for local authority to draw up a new section of the UDP dealing with

- **Land use patterns**
- **A1 uses**
- **Environmental factors**
- **Crime and disorder**
- **Ambient street noise levels**

Section 5

Proposals set out in the White Paper

A. Introduction

1. We welcome some aspects of the proposed reform. But we do not believe that the system proposed for dealing with nuisance, crime and disorder and public safety will be effective, taken in the round. In fact it will make problems worse – a point which is acknowledged in Appendix 4 of the White Paper. In areas where there is already a crisis for residents - such as in the West End - this is UNACCEPTABLE. We believe that many of the proposals are unworkable without parallel reform in planning and other legislation.

B. Comments on the proposals

(i) Premises and personal licences

We welcome the proposal to separate the premises licence from the personal licence. That will clarify matters for residents and the public. However, we believe that the premises licence is too close in concept to the planning consent for responsibility for this to be vested in any other authority except the planning authority (see below).

We broadly agree with the proposals set out in connection with personal licences. However, we do not agree with the proposal that personal licence holders should have the freedom to manage any premises at any times of the day. Our experience is that special requirements should apply to those who wish to manage premises that operate after 11.00pm. Nor do we agree that the fit and proper test should be abolished. As we have discussed above, the ability of a licensee to resist commercial pressures in the interests of ensuring that a premises does not cause problems for local residents is a question of the character of the licensee and not of his competence. In the case of licensees of multiple operators the very size and modus operandi may be intrinsically inimical to good environmental practice.

(ii) Single integrated framework for licensing

For the reasons set out above we believe that the creation of a single integrated framework for all licensed premises makes sense. It is appropriate that premises that operate after 11.00pm or serve alcohol, which have the potential to cause nuisance, crime and disorder should be subject to a unified licensing control and approach.

However we doubt that the system proposed will be workable as currently configured unless there is parallel reform of the planning and licensing system. As noted above the split responsibility for control of nuisance, crime and disorder and public safety in planning, licensing and environmental legislation is a major issue. We do not believe that this problem can be resolved in the context of reform of licensing legislation alone and without reform in these other areas we do not have confidence that the problems of nuisance, crime and disorder and public safety can be properly dealt with.

Accordingly we believe that responsibility for issuing, enforcing and monitoring and revoking premises licences should be transferred to the local planning authority. There is greater expertise in the planning system with dealing with the issues of nuisance and the obligation under 17 of the Crime and Disorder Act 1998 already applies to all planning authorities. There are better-trained staff, more competent personnel and better procedures for dealing with applicants and objectors. It will therefore be much cheaper and more efficient to administer. We would accept as a second best transfer of these responsibilities to the local licensing authority provided that the system was set up in a manner that duplicated the procedures and process in planning, with an appeal to a licensing inspector rather than the Courts. We see no merit in treating licensing as a judicial function: it is an administrative function and ought to be dealt with accordingly.

We would envisage that planning authorities would have responsibility for dealing with applications for licences and variations as at present - determination would be in "accordance with the UDP unless material consideration indicate otherwise". That will require local authorities to devise policies in respect of premises licences - as is current the case with planning consents - and would allow local factors to play the major role in control of licensed premises. There would be a presumption in favour of the UDP as is currently the case in planning law. We believe that the presumption in favour of the UDP should apply even if the responsibility is transferred to the local licensing authority.

There are other major advantages in this proposal. Transfer of responsibility to the planning authorities would avoid the confusions that arise in the minds of the licensing authorities when deciding whether certain issues are matters for the planning or licensing authorities. It would also avoid the double jeopardy issues involved in considering the same issues relating to nuisance, crime and disorder and public safety (all of these are also planning issues) by two different authorities. There would also be a more effective system for dealing with objections, an established process for dealing with appeals through the planning Inspectorate and the High Court.

We believe that there would need to be some reform in the planning system to make this proposal effective:

- (a) The Use Class Order 1987 should be abolished and the requirements for developers to seek planning consent for any material change of use should be restored. This will not prevent developers from making application for multiple uses in respect of the same premises at the same time e.g. restaurant, bar and café use. If responsibility is transferred to the licensing rather than the planning authority we would expect legislation to allow licensing authorities to limit the uses of premises in this way if it is appropriate to do so. For example D2 planning category includes nightclubs, sex establishments, music halls, gyms, assembly rooms. Unless activity is restricted under the licence to one of these a premises will have the freedom to switch between these uses without any control over the effect of the change;
- (b) Each premises would have a planning consent and a premises licence. The planning consent would be for the benefit of the land and would in principle endure in perpetuity as at present. Developers could make speculative applications for planning consents if they wished. Planning

authorities would have the flexibility to impose any conditions they saw fit in a planning consent but they would be required to leave to the premises licence the matters relating to nuisance, crime and disorder and public nuisance. If responsibility for premises is transferred to the local licensing authority then there it would have to duplicate controls in this area to ensure that all issues were considered. This would prevent the situation that currently exists where different authorities consider others to have responsibility for these issues and as a result they are sometimes missed;

Premises licences would be for the benefit of a particular operator and would lapse with the change of ownership of the business. Conditions in premises licences would not necessarily have to follow conditions in planning consents – they would reflect the particular operator’s plan and any change in local circumstances since the planning consent was granted – but they would not exceed hours, numbers etc in the planning consent. ALL issues relevant to nuisance, crime and disorder and public safety would have to be considered including saturation and concentration. The grant of the premises licence would have to be in accordance with the UDP unless material considerations indicate otherwise. Conditions in a premises licence could be changed and amended if appropriate in the light of changing circumstances, without having to pay compensation. The licence could also be revoked if appropriate in the light of all the changing circumstances, without having to pay compensation. It is important that premises licences should be capable of being revoked if there is good reason to do so whether or not the operator has abided by the terms and conditions of his licence. There is precedent for this in the case law of the European Court of Human Rights. In other words the premises licence would be a flexible from of planning consent.

- (c) Breaches of conditions in premises licences should be an offence in law., The police and the local authority should be under a duty to initiate proceedings against premises in breach of licences or to bring the matter to the attention of the authority dealing with the licence. Residents should have the right to bring matters to the attention of the licensing authority which should have a duty to consider each complaint;

(iii) Transfer of responsibility to local authorities

We agree with the proposal to transfer responsibility over licensing matters to local authorities. Local authorities have a better understanding of the cross-disciplinary issues involved in the control of nuisance, crime and disorder and public safety. Local authorities also have specific responsibilities to deal with crime and disorder under the Crime and Disorder Act 1998, which magistrates do not have. Finally local authorities are likely to be more alert to problems of nuisance and at an earlier stage than the licensing justices. However, rather than admit their errors, local authorities tend to argue that they have no obligations to inform themselves of nuisance issues when they make poor decisions. To improve the effectiveness of the local authority therefore we believe that there should be a duty on local authorities to take reasonable steps to inform themselves of nuisance, crime and disorder and threats to public safety in making decisions of premises licences.

We find the licensing magistrates somewhat removed from reality. For example we have still not received a reply to an important letter sent by the Association in

September 1999 on problems in the licensing system. This letter is attached as Appendix 2.

We are aware of important arguments that local authorities cannot be considered to be independent under the provisions of Article 6 of the human rights convention unless there is a right of appeal on the merits to an independent party. We are not competent to comment on this issue but would note that if applicants are to have a right of appeal on the merits the same right of appeal on the merits should also apply to objectors.

If responsibility for the premises licence were transferred to the planning authority, then a full right of appeal against decisions of the local authority would be allowable to the Planning Inspectorate as in the case of planning.

(iv) Notification of an application

We believe that the notification procedures proposed in the White Paper are too short and are unworkable from residents' point of view. For example, the licensing Committee of the Soho Society meets once a month. Attempts to meet more often have proved impossible given the pressures of work, the volume of other cases to be dealt with and the lack of funding for permanent staff and the need for certain members of the Committee with experience of licensing cases to be present. If a meeting of the licensing Committee takes place on the 1st of the month and a notification arrives on the 2nd of the month, it will only become apparent to the Committee on the 1st day of the following month leaving only a few days to review the operating plan. That in itself will require someone to take time off work to review the plan which will not always be possible in the time available. There is a high chance that many deadlines will be missed as a result.

Furthermore, we believe that the only satisfactory notification procedure is for all residents within a half-mile radius of proposed premises to be informed of all applications by post. We have first hand experience of dealing with the current system of notices in windows and lampposts. It does not work. Applicants will often place notices in obscure places or amidst posters where they are not noticed, objection dates are defaced or sometimes no notice is posted at all. When objectors do not see the notices they cannot object and the lack of objection is too often taken as a sign that residents are indifferent.

(v) Presumption in favour of an applicant

In our view there are three reasons why it would be wrong for there to be a presumption in favour of an applicant with the burden of proof falling on objectors:

- (a) First, under the European Convention on Human Rights public authorities must not take any steps that violate the Convention rights of individuals. That obligation is absolute and does not depend on whether there are objectors or not: it is for the public authority to satisfy itself after due investigation that its actions do not cause a violation of the Convention rights of others.

Where the licensing authority has established that the grant of additional licences has high potential to result in a violation of its obligations under the Convention, then it is entirely appropriate that it should operate a presumption against an applicant even if there are no objections from residents and others. Soho is just such a case for the reasons set out

above. The Society and the Association have received advice from counsel that the facts as they relate to Soho, as far as the Convention is concerned, indicate beyond doubt that a presumption against an applicant for a new licence and for variations to extend hours and numbers at existing premises should apply.

In the light of this advice we believe that the question of whether there should be a presumption in favour or against an applicant is a matter for each licensing authority to determine based on local circumstances and not one that can be set centrally by central Government either by guidance or by statute.

- (b) Secondly, quite apart from these issues, we doubt whether it would be fair to place the burden of objecting to licences on individuals, given the likely “inequality of arms” between applicants and objectors. The case law relating to Article 6 requires public authorities to ensure by public funds if necessary that objectors and applicants have such equality. In most cases the applicant will appear at hearings with acoustic engineers, architects, surveyors, solicitors and barristers to promote the application. The cost of these advisers will be a tax-deductible burden on his business and failure to win the licence will in the vast majority of cases mean that only a small fraction of his or her net wealth has been lost.

Most individuals wishing to object to a licence are in an entirely different position. Only a very small number of individuals will have the resources to be to use acoustic engineers, architects, surveyors, solicitors and barristers. Even if an individual could afford such advisers, the costs would not be tax-deductible and the quantum of costs is likely in most cases to be a sizeable proportion of an individual’s resources. In these circumstances if the new licensing regime is to have a provision to award costs against objectors few objectors will come forward. If there is no provision to award costs then individuals will not be able to recover the substantial costs of advisers and few will appear with any kind of representation and expert advice.

The Society and the Association do not have the resources to use advisers of any kind. Many of our members who are adversely affected by licensed premises do not wish to make their individual objections known to the applicant for fear of reprisals. There have many cases where objectors have been threatened, harassed and abused by licensees. Even where individuals do come forward and appear to give evidence at hearings, they are intimidated by the adversarial nature of the hearing and hostile questioning by the applicant’s barristers. Many of these individuals continue to urge the Society and the Association to object to new licences but will not appear at hearings as individuals but only as part of a local group.

- (c) Thirdly, we find it difficult to see how individuals wishing to object against a new licence could demonstrate to the satisfaction of a licensing authority operating a presumption in favour of an applicant that such a premises would cause an increase in crime and disorder, nuisance and or public safety. The lack of evidence of this matter would flow simply from the fact that there were no existing premises.

It is difficult to see how a system in which there was a burden on objectors could command the confidence of residents. We are aware that there are currently similar presumptions in favour of applicants in the licensing case law. But the current system does not command our confidence. It has led to a serious environmental crisis in Soho and in other areas. In the light of the advice we have received from leading counsel on this matter and which Westminster City Council has received from its own legal advisers, the City Council no longer operates a presumption in favour of applicants for in Soho music and dance and night café licences.

We recognise that it would be unfair to applicants for there to be a presumption against the grant of a licence in areas where there are no particular problems. For this reason we feel that the only way forward is to base decisions on local policies and for there to be a presumption in favour of the local policy as is the case in planning.

(ci) Appeals against decisions of the licensing authority

We profoundly disagree with the proposal that the appeal against the decision of the licensing authority should be to a Crown Court judge sitting with magistrates. We believe that lay magistrates are not competent to make decision on the law and under the proposals set out, the merits of the case will be irrelevant.

Furthermore we do not see how residents who wish to object to a licensing decision on a point of law will be able to argue such a case without the benefit of legal representation. Unless there is system to cover the costs of local residents and no costs are awarded against, this will only be an avenue for appeals by applicants.

We recommend that the same system should be adopted as in planning with an appeal on the merits for both parties to an inspector- who would in our preferred model be a planning inspector - with a right of appeal to the High Court on points of law. The costs of representation in the High Court should be borne by the licensing system costs should only be awarded against parties in the most exceptional circumstances. We believe that a system which introduced a Licensing Inspectorate would also work if it operated in the same way as the Planning Inspectorate.

We would also recommend that unincorporated amenity societies such as ours be given specific rights to challenge decisions of the licensing authority in the Courts.

(vii) Abolition of permitted hours

We do not object in principle to the abolition of permitted hours but we do not believe that it would be appropriate to do so until the effectiveness of the controls over nuisance, crime and disorder and public safety have been assessed for at least a five year period. There should be a further period of consultation at the end of the five years and legislation should be introduced at that stage to abolish permitted hours if justified.

(viii) Costs and resources

The full costs of the system should be recovered by fees charged to premises licence holders. These fees should be in relation to the numbers and

size of the premises and the hours kept. These fees should be set at a level that covers in full the administrative costs of the system, including enforcement officers and the costs of representation and expert witnesses for objectors. There should also be cost recovery for additional policemen, waste collection and cleansing and for CCTV systems.

We do not believe that this can be done effectively by the Home office. Standard national charges and reallocation of fees introduces an element of political judgement and cross-subsidy. Fees should be set locally to recover the reasonable costs of the system. It should be open to any applicant to challenge the reasonableness of the fees in the Courts.

We would support a proposal to fund recognised amenity groups such as the Society from licence fees rather than all residents and to give such organisations rights to take actions on behalf of residents in Courts and before licensing authorities. However, in order to do this, the running costs of such societies will also need to be covered in so far as they relate to licensing and there would need to be strict rules concerning membership of such societies.

(ix) Zoning

We agree that zoning is a difficult concept for the issues identified in the White Paper. **We believe that discretion to adopt zoning must be left with the local licensing authorities, which will need to publish policies in this respect.** Again, we believe that all decisions on licences will need to be taken in accordance with the UDP unless material considerations indicate otherwise.

(x) Guidance from the Home Office

We are dubious about the merits of this proposal. Guidance issued nationally will be vague since it will not be able to deal with local issues and any attempt to deal with local issues through guidance will be fruitless since the Home Office has no knowledge of the local situation. We are particularly concerned as evidenced by the language and proposals in the White Paper that the Home Office is too close to trade interests and that lobbying will be more effective by the trade than by local residents.

We do not believe that guidance should be given to local licensing authorities to take into account police views: we believe that this should be embodied in legislation. There should also be a requirement to take into account the views of other parties such as local residents.

(xi) Police powers

As noted above, we are concerned that placing responsibility for any aspect of the licensing regime on the police will be fraught with difficulty given their lack of interest in the issues, particularly dealing with nuisance. **Accordingly powers to close down premises and impose sanctions, prosecute for licence breaches, and seek changes in licence condition should also be vested in the local authority. To deal with the problem of misleading and incomplete statements from experts, it must be an offence to make a statement before a licensing authority that is a deliberate or negligent misstatement or which is knowingly misleading. This should apply to all parties.**

We note the White Paper's boast that the powers given to the police to deal with disorder are tough. We would note that there are probably the weakest in Europe. In France and Belgium, for example police have powers to shut premises for up to one year. We believe that police powers need to parallel those in France if the Home Secretary wished to be considered to have implemented tough measures.

In addition we believe that recognised amenity groups should also have the powers to initiate prosecutions and apply for changes to licence conditions.

(xii) Sanctions and penalties

We support the proposals that have been tabled. We agree that licensing authorities should have the power to make determinations that licence conditions have been breached and that any party should be able to draw the attention of the authority to such a breach. We also agree that revocation should be considered if there have been three endorsements to a licence within a five year period.

We believe, where a premises licence has been found to be in breach on three occasions over a five year period, that the identity of the personal licence holder at the time of the breaches or at the time revocation is being considered, should not be a relevant consideration. Where a premises licence has been revoked, no new application should be allowed by any party for that site for a two year period and no application by the holder of the licence that was revoked for a five year period. This is to prevent a situation where a holder is indifferent to whether a licence is revoked because he can merely sell the business to another party who would probably secure a licence. Where the premises licence has been revoked, it should be a material consideration in deciding whether a premises licence should be granted to the holder of the premises licence in respect of any other site in country.

There should therefore be a national database for premises licences as well as for personal licences, open for inspection by any party and available on the internet. The database should record all the conditions to which the licence is subject, the name of the holder, and a list of endorsements. It should also be available by name of premises holder so that objectors will be able to access easily details of the operating record of the premises licence holder in complying with the terms of the licence.

(xiii) Off sales

We believe there should be a presumption against the ability of night cafes, bars and pubs to allow customers to drink or consume refreshments purchased on the premises in the street. This should also apply to take away premises. This practice should ONLY be allowed where there is no danger to public safety and where the premises can demonstrate that there will be no nuisance resulting from its operations.

We have extensive video evidence that demonstrates that a considerable volume (perhaps more than 40% in the West End) of rubbish on the streets is associated with a particular chain of hamburger vendors who operate through the world. Their distinctive branding of all their packaging means that the source of rubbish on the streets can be identified precisely.

C. Transitional issues

There are a number of issues that will inevitably arise as the new legislation is brought into operation. We would highlight the following issues that need to be addressed:

(i) If permitted hours are abolished

If permitted hours are abolished in the Act, there should be a requirement on all premises wishing to serve alcohol after 11.00pm to seek planning consent to do so. Extensions to permitted hours should not be granted without documentary evidence that planning consent has been sought and granted since the change in the legislation. This is because as we have said the normal basis on which planning consent is granted is that planning should not duplicate controls in licensing – in this case permitted hours. Planning authorities should consider all applications in the context of the UDP. This should also apply to all premises that have operated as bars with a section 77 certificate.

(ii) Transfer to local authorities

Care must be taken to ensure that transfer of licensing responsibilities to local authorities is done in an orderly manner. There must be adequate time for training of officers and councillors and there must be an adequate number of Councillors capable of sitting on panels

**Soho Society
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