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Select Committee on the Licensing Act 2003
House of Lords
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The Licensing Act 2003

Dear Sirs

1. Thomas and Thomas Partners practice exclusively in licensing and related law. The firm was founded by its eponymous partners Alun Thomas and Thomas O'Maoileoin in 2011. Both partners and indeed the rest of the firm, have many years' experience of the Licensing Act 2003 and the preceding legislation. The firm acts for tenants, landlords, developers and indeed the Crown, currently advising the Royal Household and previously as the Clerk to the Board of Green Cloth, the last remaining Court of the Royal Prerogative. We sat on the Advisory Board of the Department of Culture of Sport in both the lead up to and post implementation of the new Act.

2. In the prelude to the new Act, the Government at the time promised "*flexible opening hours for licensed premises, with the potential for up to 24 hour opening, seven days a week, will now be available*". Regretfully, what has followed is a disproportionate and onerous response to businesses and a more complicated and uncertain scheme of legislation, guidance and policies.

3. Our experience is that there has been an over reliance upon policies and restriction of use at the expense of allowing flexibility and growth for appropriate operations and operators. Furthermore, a remarkable reluctance to enforce against bad operators again to the detriment of the good, in some cases, all operators being seen and treated as the same, thus creating a burden on well-run premises at the expense of the bad.

4. The Licensing Act 1964 and, in relation to public entertainment, the Local Government (Miscellaneous Provisions) Act 1982 and the London Government Act 1963 was in some ways not perfect (e.g. there was limited provision to revoke or change conditions on licences) but stood the test of time for over 40 years. Whilst the subject of much case law, it was without doubt, a transparent and accessible platform for businesses to obtain the necessary consents to run their businesses. For example, a new licence or an

amendment could be obtained in 21 days. An application under the new Act will routinely take two months and often longer. The new Act is also without doubt as biased towards local residents as was the old Act to businesses; a balance has yet to be achieved.

5. Many councils now have 'special policies' which relate to 'cumulative impact' and support the assertion that, in some areas, there are too many licensed premises and that number has an adverse effect on local amenity.

6. It is axiomatic that the authors of such policies (even after consultation) conclude and maintain that such policies are necessary, usually in favour of residents (or at least a vocal minority of residents). These policies to an extent are understandable. For example, in the absence of such, the legislative scheme of allowing any applicant to apply for pretty much what they wanted (and in the absence of objection would get) mean that such policy presumptions level what would have otherwise been a very uneven playing field.

7. The problem has been with consistency of such policies and their implementation. Council policies are often radically different from one neighbouring council to another often resulting in 'forum shopping' or indeed operators avoiding certain areas and opening their businesses in areas where policies are absent or weaker.

8. For example: In the City of Westminster (who were the architects of cumulative impact), it is more or less impossible to obtain a new licence for a pub or bar in their Cumulative Impact Areas ("CIA"), notably Soho and Covent Garden. There are of course exemptions to the policy but the policy is intended and indeed implemented as being strict. Therefore, whilst it is usual to be able to obtain a licence for a restaurant, the hurdle for a new wine bar is virtually unassailable, no matter how small the premises are. This therefore results in new entrants to the market either forum shopping, not investing in the UK completely or amending their offer to make it policy compliant (e.g. having a glass of wine with tapas). Where a licence is granted, it is usual for such licences to be the subject of twenty or more conditions, whereas a restaurant licence under the old Act had two.

9. Food trends and such policies have meant that applications may now have a retail, bar and restaurant element. Such hybrid uses can then cause their own problems with planning legislation. Until 2002, the planning use classes order split leisure use classes into: A1 retail, A3 restaurant. A4 bar and A5 hot-food take-away. Previously, uses were either A1 or A3. Whilst food trends have evolved, there is no doubt that restrictive licensing and planning policies have led to more mixed or sui-generis uses which has led to more pressure on planning authorities, more enforcement and more uncertainty as to what the correct planning use is. Where some councils will not grant a licence without the 'correct' planning permission in place, this then causes problems in a licensing context.

10. In central London, only the Royal Borough of Kensington and Chelsea (which borders Westminster and shares a tri-borough legal team) does not have a CIA. Seemingly, the Royal Borough, which has its fair share of licensed premises, takes the view that such policies are not necessary; instead relying upon the statutory test of the licensing objectives and of course the considerations of local residents who may or make not make a representation to an application.

11. In practice and effect, the inconsistency of approach across authorities can cause glaring and unfair and inconsistent consequences. An application in Westminster's CIA will always attract objection from the Environmental Health Officer, Police and more recently, the Licensing Authority, thus engaging the CIA Policy which otherwise would not apply. In RBKC, there is no such practice with objections being made and applications determined on their merits.

12. Landlords and Tenants as a result have to negotiate conditional lease agreements and indeed some operators prefer to adapt their use or indeed move to an area which is outside the CIA. Where such applications are made, there are usually far less 'policy objections' and in the absence of other objections usually mean that an application is granted outside a CIA easier, quicker and usually on better terms. Whilst it could be argued that is the intention of such policies, the effect is that more and later licences are often granted in areas which are more residential than areas of so-called 'stress', for example in Marylebone, in preference to Soho.

13. The unintended consequence is that the very residents that such policies were intended to protect are the victims of displacement from CIA areas. Whereas, in areas such as Soho where arguably such uses would have a lesser impact, it is not possible to obtain a new licence.

14. Some Councils have even stricter policies or worse still, policies which are impossible to interpret or apply with consistency. In Islington for instance, there is a strict special policy which does not differentiate between a large pub, small restaurant or a supermarket. It's a one-size-fits-all approach which hinders both residents and councils.

15. Most Councils now give no formal credit for a well-run business or a proven operator. This is a counter-productive approach based upon a reluctance (presumably due to financing) to carry out appropriate and sufficient enforcement activity which would identity the good from the less-so. In our experience, a well-run and experienced operator can and does operate their business more often than not without problem or complaint. Removing what was formerly known as the 'fit and proper' test means councils are unable to give proper weight to what matters in an application – not just what it is but who it is. The fact that there seems to be a meagre number of prosecutions supports this.

16. Confusingly, some Councils (even Westminster being one example) will grant an off licence with very little scrutiny. We are aware of a recent case where such a licence was granted in Leicester Square Underground Station (in the heart of Westminster's CIA) and where the Police were concerned that alcohol would be drunk on the tube system. However, because the application was not for a pub or a bar use, it was policy compliant and therefore allowed.

17. Other unfairness arises (again giving the example of Westminster where most of our applications are made) as to what is a restaurant and what policy therefore applies as a consequence. In Westminster, in order to qualify as a restaurant, several hoops have to be jumped through:

    a. Alcohol may only be served with a table-meal to persons seated by waitress/waiter service
    b. No take-away
    c. No disposable crockery
    d. Customers shown to their table

18. The outcome of an application where all such tests are not satisfied is that the application will be considered as a pub or bar and therefore likely to be refused. In reality and the 21st century, many restaurants are inconsistent with this 'white table cloth' approach. The UK and London in particular is at the forefront of a casual dining revolution and such policies act as a real deterrent for development and investment.

19. Fixed opening hours are also an antithesis of what was proposed by the Government in 2003. Instead of a potential for later opening to ease the pressures of the infrastructure of fixed-closing-times, such policies usually reflect exactly that, even since the introduction of the night tube.

20. Enforcement is also inconsistent nationally. Test purchase range from being regular in some areas to rare or never in others. Many local authorities often prefer to review a licence rather than prosecute as the evidential test is quicker and presumably cheaper.

21. The 1896 11th edition of Paterson's Licensing Acts contained 435 pages. The Alcohol and Entertainment Volume of the 2016 Edition alone contains 3008. Instead of a slimline, refined and flexible licence of accessible legislation, what has been born out of the 2003 Act is a complex scheme of primary, secondary laws, compounded by inconsistent local policies which if published in Paterson's would run to several thousand more pages.

22. There is inconsistency in approach and an over-emphasis on the protection of residential amenity in some cases where there is no evidence of likely detrimental impact. That balance needs to be re-addressed. Proportionality is a recognised fulcrum of both licensing, national and European law – appropriate flexibility (called it carrot and stick) is missing from the licensing system.

23. In difficult economic times, the leisure industry (being the biggest employer in the UK) should be encouraged and supported. In the vibrant West End of London, it's virtually impossible to buy a drink after midnight. That can't be right.

Yours faithfully

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