

Leicester  
City Council

**WARDS AFFECTED**  
All Wards

## **FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:**

**Cabinet**

**15 December 2003**

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## **REVIEW OF POLICY ON FOOD AND DRINK PREMISES: DRAFT SUPPLEMENTARY PLANNING GUIDANCE FOR THE CITY CENTRE**

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### **Report of the Service Director of Planning and Sustainable Development**

#### **1. Purpose of Report**

- 1.1 To put before the Cabinet for its approval draft Supplementary Planning Guidance (SPG) on the use of premises for food and drink purposes (A3 uses) in the city centre (the Central Shopping Core) and the area outside it, defined by the inner ring road.
- 1.2 The SPG will contribute to the on going development of a city centre strategy that will join up the work of various Council Departments and services and other agencies.

#### **2. Summary**

- 2.1 The report sets out the representations, summarised below, that were made following public consultation on the draft Supplementary Planning Guidance on the future development of food and drink premises in the city centre and the area outside. It includes responses to the representations and proposes a revision of the draft guidance.
- 2.2 An amendment to the Guidelines is recommended in response to the Development Control Committee's concerns.
- 2.3 Four written representations were received, from the Police and the Law Society, who generally supported the SPG, and two from planning consultancies, who gave less support. No amendments are recommended in response to these representations.
- 2.4 The supporting representations generally welcomed the Guidance. Any proposal to curb anti-social behaviour, which has an effect on businesses as well as new residents, was welcomed. The Police commented on the connection between operational policing and planning decisions, the determinants of pub capacity, the dispersal of large pubs need not result in inappropriate locations being chosen, and controlling staggered closing times by planning condition.
- 2.5 The planning consultancies found the Guidance too prescriptive, heavy handed and simplistic. An apparent lack of conformity with the emerging local plan and the site guidance for the Shires West was noted and other 'weaknesses' such as the

logic of blanket restrictions, whether quality flats could continue to be built above A3 uses and the effect on the development of new bar formats.

2.6 The SPG is attached as Appendix A and a list of Consultees as Appendix B.

### **3. Recommendations**

3.1 Members are asked to consider the proposed amendment and to approve the final version of the Supplementary Planning Guidance for publication.

3.2 Members are also asked to note that the SPG will feed into a wider strategy for the city centre.

### **4. Financial and legal Implications**

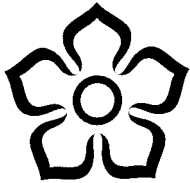
None as a result of this report

### **5. Report Author/Officer to contact:**

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### **DECISION STATUS**

<b>Key Decision</b>	<b>No</b>
<b>Reason</b>	<b>N/A</b>
<b>Appeared in Forward Plan</b>	<b>N/A</b>
<b>Executive or Council Decision</b>	<b>Executive</b>



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## **SUPPORTING INFORMATION**

### **1. Report**

- 1.1 This report proposes Supplementary Planning Guidance (SPG) to control the future development of food and drink premises (A3 uses) in the Central Shopping Core and the area on the edge of the CSC, defined by the inner ring road.
- 1.2 The guidelines are intended to assist the determination of planning applications for new Class A3 food and drink uses, for example, bars, pubs, restaurants and hot food takeaways. It covers such matters as opening hours, and the size, numbers and concentrations of A3 uses.
- 1.3 The many interrelated issues need a comprehensive approach by a number of agencies. This SPG necessarily deals with the immediate land use issues but the Guidance will contribute to a comprehensive approach, which is likely to evolve in the future.
- 1.4 The report also sets out the issues arising from the public consultation on the draft SPG and the response to them. A revised draft SPG is attached as Appendix A.

### **Consultation with the Development Control Committee**

- 1.5 At its meeting on 30<sup>th</sup> September 2003 the Development Control Committee moved the following resolution:

“That Scrutiny and Cabinet be requested to consider the issue of noise pollution related to concertina-style windows, and that consideration be given to setting a time for closing such windows”.
- 1.6 The Committee also debated the use of outdoor drinking areas and the problem with litter in the form of discarded bottles.
- 1.7 **Response:** The SPG for the local centres etc. considered this type of window and outdoor drinking areas in the context of local and district centres where residential properties are likely to be in close proximity. Residential development is being promoted in the city centre and the area surrounding it thus the issues are relevant there too.
- 1.8 The guidelines adopted in the SPG for local centres were the following:

- The use of outside areas by customers for drinking, eating or sitting out will not be permitted where significant noise and disturbance or loss of privacy is likely to be caused to residents and occupiers of nearby properties and cannot reasonably be controlled by a planning condition restricting the hours during the day when such areas can be used.
- Planning permission for folding shop front windows capable of creating an open shopfront will not be granted where harm to the amenities of local residents is likely to occur or cannot reasonably be controlled by a planning condition requiring their closure at agreed time during the day in order to minimise noise disturbance to local residents and shoppers.

1.9 I recommend that the same guidelines be incorporated in the proposed draft SPG for the city centre.

1.10 With regard to discarded drinks bottles it was noted that this was an issue linked with the business and is a licensing matter. It was also noted that it would be unusual to place planning conditions with regard to litter on planning applications for bars.

### **Consultation with the Strategic Planning and Regeneration Scrutiny Committee**

1.11 Members of the Committee raised various issues concerning 'zoning' of licensed premises, space for development of more restaurants to make the area more balanced, and complaints received about noise nuisance, anti-social behaviour, rubbish collection, licensing, and policing of the area.

1.12 There was a request for more joined up working between planning, licensing and the police. The Service Director explained that this was being pursued. However, the planning and licensing services are based on different legislation and deal with different issues, and therefore need to be kept separate.

1.13 In response to the specific request from the Development Control Committee, Members felt that the experience of that Committee could be used to set a time for closing such windows and that residents and businesses could be consulted on this.

### **Consultation Process**

1.14 Consultation was carried out for a period of six weeks ending on 31<sup>st</sup> October. A list of consultees is included as Appendix B. A public notice appeared in the Leicester Mercury on 20<sup>th</sup> September followed by a press release. The draft SPG appeared on the Council's website.

1.15 Four written representations were received. No further amendments to the SPG are recommended in response to the representations.

### **1. Leicestershire Constabulary**

1.16 The document is supported especially in respect of the intention to seek the advice of the Police on crime and disorder implications for venues over 450 m<sup>2</sup> but the Police would reserve the right to comment as appropriate on venues below this size.

- 1.17 Para 3.6 of the draft SPG gives the impression that the issues of crime and disorder and their effect on operational policing are not relevant to planning appeal decisions.
- 1.18 **Council Response:** It is not intended to give that impression. Indeed it makes clear that crime and disorder can impact on the amenity of an area and stand in the way of achieving wider sustainable development objectives and are, therefore, material planning considerations.
- 1.19 The Police comment that control of crime and disorder depends on:
- A. Limiting the capacity of a pub since the size alone does not control capacity.
- 1.20 **Council Response:** this is recognised in the SPG. The capacity of a pub or bar is unlikely to be known at the planning application stage, indeed the internal layout is not always shown nor whether a bar, restaurant or takeaway is proposed. The current Town and Country Planning Use Classes Order supports flexibility in the food and drink industry. It permits change of use, for example, from a restaurant to a bar, although the Order is under review so this position is set to change.
- 1.21 The implications could be restricting a use within a use class, specifying the proportion of seating and standing space, and requiring planning permission for any internal layout changes which may result in increased capacity (for example, when fire escape arrangements may be improved). The context in which a building is situated is also relevant. Large capacity venues are less desirable in situations where there are narrow streets because the resultant congestion on the street can lead to violent situations.
- 1.22 It is not intended for the SPG to be so prescriptive. It is meant to give general guidance so that each proposal can be considered on its merits and in its own context. I believe this is important in fluid situations such as the Leicester Regeneration Company project areas and Potential Development Areas where innovation may be encouraged.
- 1.23 With regard to venue size the suggested 450 m<sup>2</sup> size limit is a gross figure. Assuming 60-66% of internal gross floorspace is used as customer floorspace, although this varies, capacity could be somewhere between 300 and 600 people depending on, as the Police acknowledge, the mix of seating and standing room.
- 1.24 B. The dispersal of large scale venues need not result in inappropriate locations. It would not be unreasonable to restrict venues having 300 persons to 400m between venues (see paragraphs 3.25-3.26 of the draft SPG). In real terms, a linear route such as Charles Street would accommodate three such venues, with a more circuitous route in the city centre allowing for close spacing. Together with smaller venues it would maintain the necessary vibrancy.
- 1.25 **Council Response:** the SPG concludes that concentrations of A3 uses are undesirable for reasons other than crime and disorder. The recommended guidelines will aid a more dispersed pattern by striving to maintain diversity and so on.
- 1.26 C. Staggered closing times can be determined by planning condition.
- 1.27 **Council Response:** Witnesses attending the Housing, Planning, Local Government and the Regions Committee in 2003 were not all in favour of staggered closing times. Closing regimes for different areas could lead to the migration of drinkers to later opening bars and would spread disturbance to local

residents over a longer time period. Recent studies cite the most frequent cause of violence as arguments over scarce resources - queuing to get into venues, queuing for drinks, taxis etc. Note that late night bus services were begun on a trial basis late in 2002. The new Licensing Act encourages flexible opening hours in order to spread demand.

## 2. Landmark Planning

- 1.28 Landmark Planning considers the guidance to be heavy handed and offering simplistic solutions. It is uncomfortable with a prescription for every case when it is much better to consider each case on its merits. It is also a reaction to a single ideal of securing residential accommodation throughout the city centre.
- 1.29 **Council Response:** the SPG makes it clear that it focuses on land use issues but can contribute to the comprehensive approach, involving a number of agencies, needed to tackle interrelated issues. It could be viewed as 'heavy handed' if seen in isolation of other measures. As with all planning applications each case is treated on its merits.
- 1.30 The promotion of residential uses may have a moderating effect on the direction the evening economy is taking, which may then lead to a more inclusive evening economy. I agree that there need not be residential uses on every street. In areas where there are already large concentrations of A3 uses, residential uses may not be desirable at all (Guideline 5).
- 1.31 Landmark Planning noted the following detailed weaknesses:
- (a) Competition stimulates change and improvements. New development should be encouraged, as it is likely to improve quality, including security measures, and lead to innovation.
- 1.32 **Council Response:** the SPG does not discourage new development. Policy SPA06a, paragraph 4.36a of the second deposit replacement local plan, states that A3 uses will continue to be encouraged in the Central Shopping Core. The status of the SPG is as a supplement to local plan policies.
- 1.33 (b) A3 uses can generate lively and active frontages. There is no logic to blanket restrictions.
- 1.34 **Council Response:** active frontages can be achieved but A3 uses can also be counterproductive where the 'capacity of the market exceeds the number of customers' resulting in daytime and evening closure of pubs during the early part of the week. These do not contribute to lively frontages.
- 1.35 The logic of restrictions is carefully set out in the text, it is to maintain a diverse and active shopping street not dominated by groups or individual A3 uses; and, to reduce congestion on streets during the evenings and aid faster dispersal of customers. The 20% 'limit' is actually quite generous and reflects the situation on the ground.
- 1.36 (c) A3 uses in retail premises (e.g. coffee shops and restaurants in large stores) could be compromised.
- 1.37 **Council Response:** The main use of these premises will continue to be shops. Any A3 element would be subsidiary and not affected by the guidelines. It could be one way of providing family-oriented food and drink uses in and near the primary

shopping area that will help retain shoppers in the centre, a particular concern of the LRC.

- 1.38 (d) Restricting the upper floors to ancillary residential accommodation only outside the Central Shopping Core is too prescriptive and will prevent the development of quality flats above bars. It is more useful to apply appropriate noise insulation.
- 1.39 **Council Response:** This is a misreading of the guidelines. Guideline 8 restricts A3 uses not residential on upper floors outside the Central Shopping Core. Noise insulation is not always effective in preventing low frequency bass noise.
- 1.40 (e) 2300 hour closing times and 150 m<sup>2</sup> gross floorspace are too restrictive and will prevent new bar formats being developed.
- 1.41 **Council Response:** The guidelines were drafted with existing (fine grained) built up areas outside the Central Shopping Core in mind, such as Millstone Lane and Friar Lane. The Guidance acknowledges that the LRC Masterplan and area and site SPG will determine the amount and location of new A3 uses. St Georges, for instance, is in the LRC New Community project area and will be the subject of a detailed development framework. There is no suggestion that any bar or restaurant in the theatre itself (or outside the theatre) will be automatically subject to restrictive operating hours. That would be inimical to the very idea of a Cultural Quarter.

### **3. Salusburys (Solicitors) on behalf of the Law Society**

- 1.42 Welcomes the guidance. It has been felt for some time that there are too many such uses granted planning permission, which has had a deleterious effect on the character of the city centre. Salusburys' office, close to the Central Shopping Core, has had windows broken as a direct result of crime and disorder attributed to the amount of A3 uses in the city centre.
- 1.43 Salusburys' opinion is that there are sufficient number of A3 uses to provide an adequate service to those working in the Primarily Office Areas, which should retain their character as such. Consideration of quiet conditions in the context of residential accommodation is applicable to those working in the area (of Millstone Lane and Friar Lane) after office hours. Any proposals to ensure that anti-social behaviour can be curbed (incidences of vomiting, urinating and graffiti are mentioned) are very welcome.
- 1.44 **Council Response:** The guidelines concentrate on the relationship between residential uses and new A3 uses but the undesirable consequences of the evening economy do have an effect on those who also work in the city centre and its surrounding areas. It applies to anyone who has an interest in the city centre.

### **4. Donaldsons (on behalf of Shires West)**

- 1.45 Donaldsons wish to bring to Members' attention two main areas of concern:
- (a) Conformity with the emerging local plan and the existing site SPG for Shires West.
- 1.46 Donaldsons' view is that the A3 SPG is more restrictive than policy SPA06a in the replacement local plan and the site SPG adopted in February 2003 for the Shires

West site. It recommends that a clear distinction is made in the emerging SPG between land use changes within established city centre locations and major mixed use projects where a bespoke balance and range of uses can be agreed with the Council in order to provide the optimum development solution.

- 1.47 **Council Response:** essentially in agreement with this view (see the Council's response in paragraph 1.22 above). The guidance does not take precedence over the emerging policies in the local plan. A3 uses will continue to be encouraged. The principles in the SPG will however guide the Council in its dealings with developers.
- 1.48 (b) A restrictive 'blanket' approach to A3 uses. The guidelines are overly prescriptive and portray a negative approach to A3 uses. The SPG should identify 'stress' and 'growth' areas such as PDAs. The LRC in its Masterplan identified a shortage of a range of A3 uses.
- 1.49 **Council Response:** I disagree that it is too prescriptive. Reference is again made to the Council's response in paragraph 1.22 of this report. The SPG is meant to give general guidance so that each proposal can be considered on its merits and in its own context. This is important in fluid situations such as the Leicester Regeneration Company project areas and Potential Development Areas where innovation may be encouraged.
- 1.50 The SPG is less of a negative approach to A3 uses than a positive approach to all uses. It would not, for example, prevent a greater concentration of A3 uses such as a food court in the Shires West scheme if that were proposed. In a scheme of this size a balance of uses overall and adequate measures taken to preserve residential amenity can be achieved from the outset.
- 1.51 The concerns noted in the LRC Masterplan were that families and more sophisticated tastes are not well catered for and that the evening economy consists mainly of 'vertical drinking'. The market has largely determined the current situation.
- 1.52 The LRC was recommended to introduce family-oriented food and drink uses in and near the primary shopping area to help retain shoppers in the centre. The SPG, paragraph 3.8, recognises that cafes and coffee bars have been beneficial in this respect. Paragraph 3.7 of the SPG notes that the SPG can play a part in the management of the evening economy so that the city centre is made more attractive to a wider audience.
- 1.53 The Government has since stated that the deregulation of opening hours (Licensing Act 2003) is one means of taking pressure off city and town centres by making local facilities more attractive.

## **FINANCIAL, LEGAL AND OTHER IMPLICATIONS**

### **2. Financial Implications**

None

### **3. Legal Implications**

None

### **4. Other Implications**



None

OTHER IMPLICATIONS	YES/NO	Within Supporting information
Equal Opportunities	NO	
Policy	YES	Throughout the SPG.
Sustainable and Environmental	YES	Throughout the SPG.
Crime and Disorder	YES	Section 3 of the SPG
Human Rights Act	NO	
Elderly/People on Low Income	NO	

**5. Background Papers – Local Government Act 1972**

1. City of Leicester Local Plan (1994)
2. Second deposit draft replacement local plan (2003)
3. Report to the Development Control Committee, 30 September 2003.
4. Report to the Strategic, Planning and Environment Scrutiny Committee, 5 November 2003.

**6. Consultations**

See Appendix B

**7. Report Author**

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