

PROTOCOL (A) – PLANNING AND LICENSING

Purpose

1. Operation of licensed premises will require a number of additional approvals as well as under the Licensing Act 2003. One of the most important additional approvals is planning permission under the Town and Country Planning Act 1990. This protocol looks at the relationship between Planning and Licensing.

Planning

2. Planning permission is required for certain building operations (such as new buildings and alterations which materially affect the external appearance of the building) and material changes of use. Advice can be obtained from the Council's Planning Department on whether planning permission is required and about the planning process. Also see the Council's website at www.newcastle.gov.uk/planning-and-buildings/planning .
3. Many licensed premises will fall within a Use Class. The most relevant use classes are :-

Class	Category	Definition	Permitted Changes include:
A1	Shops	Includes: (1) the retail sale of goods other than hot food (2) the sale of sandwiches or other cold food for consumption off the premises where the sale is to visiting members of the public.	None
A3	Restaurants and cafés	Use for the sale of food and drink for consumption on the premises.	A1
A4	Drinking establishments	Use as a public house, wine-bar or other drinking establishment	A1 and A3
A5	Hot food takeaway	Use for the sale of hot food for consumption off the premises	A1 and A3
C1	Hotels	Use as a hotel or as a boarding or guest house where, in each case, no	None

Class	Category	Definition	Permitted Changes include:
		significant element of care is provided.	
D2	Assembly and leisure	Use as (a) a cinema, (b) a concert hall, (c) a bingo hall, (d) a dance hall, (e) a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.	None

4. Some premises do not fall within any Use Class. Planning permission will be required for a change to such a use. These include:-

Use	Permitted Change
as a Theatre	None
as an Amusement arcade or centre, or a funfair	None
as a Hostel	None
as a Night-club	None
as a Casino	D2

5. Planning permission is not required for a change of use where the new use remains in the same Use Class as the old use (e.g. from a café to a restaurant). Nor is it required for a change of use where the new use falls within the Use Class referred to in the Permitted Change column next to the old use (e.g. from a public house to a café). **Note:** Although planning permission may not be needed for a change of use, planning permission may still be needed for physical changes to the premises.
6. Details of the Council's Planning Policies can be seen on the Council's website www.newcastle.gov.uk/planning-and-buildings/planning/planning-a-future-newcastle or contact the Council's Planning Department.
7. Even where proposed premises have planning permission, there may still be conditions or planning obligations that will affect the way the premises are used (e.g. operating hours). It will be necessary to apply to vary or remove the condition or obligation.

8. If you are unsure whether or not the existing use of a building is lawful for planning purposes or whether or not your proposal requires planning permission you can apply for a "Lawful Development Certificate" (LDC).
9. You may need further planning consents if you are carrying out works within a conservation area, if you are making alternations to, or which affect the setting of a listed building, or if you are carrying out work to trees covered by a tree preservation order or within a conservation area.

Which application should be made first?

10. The Licensing Authority considers that in most cases all planning permissions, consents and certificates should be obtained **before** any Licensing Applications is made. It will smooth the licensing process, if the planning position is clear and certain before a Licensing Application is made and there is no doubt that the premises can be lawfully used for the purposes covered by the Licensing Application. It will mean that it is less likely that the local planning authority as a responsible authority will make representations in relation to the Licensing Application. Members of the public will also be less likely to be confused about the two separate issues and so less likely to make representations on planning matters to a Licensing Application.
11. There may be exceptional reasons why an Applicant considers that it is necessary to make a Licensing Application before or at the same time as a Planning Application. If that is the case, Applicants are requested to explain their reasons for doing so, when the Licensing Application is submitted (e.g. the only outstanding planning matter relates to a minor uncontroversial matter not relevant to licensing objectives such as extraction facilities, landscaping, or refuse storage). This may help to avoid representations being made.
12. Where an applicant has indicated that a licensing and planning application has been made at the same time, licensing officers will consider whether there should be discussion with planning counterparts with the aim of agreeing mutually acceptable operating hours and scheme designs.¹

Won't the outcome come of the Licensing and Planning Applications be the same?

13. Not necessarily. The two regimes need to be properly separated to avoid duplication and inefficiency². They are two separate statutory systems with their own statutory rules, criteria, policies and guidance, looking at different aspects of similar proposals, and where the Council is the decision-maker in both cases. Planning considers the principle of the use in the light of the approved planning policies and the effect of the development on matters such as amenity, visual appearance, character of the locality, need, outlook and privacy, road safety, noise, disturbance, smells, fumes or other harmful effects. Licensing must carry out its functions with a view to promoting the four

¹ Para 9.41 - s182 Guidance – Oct 2012

² Para 13.55 – s182 Guidance – Oct 2012

licensing objectives – the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. They involve consideration of different (albeit related) matters³. Because of this, it will not be the case that the same decisions will always be made.

14. Within the Council, the licensing function is discharged separately from the planning function. Licensing Committee and the Director of Regulatory Services & Public Protection is responsible for the former; Development Control Committee and the Director of Housing, Planning and Transport for the latter. Licensing applications will not be a re-run of planning applications and vice versa; planning decisions will not bind those making licensing decisions and vice versa⁴. Licensing and planning decisions have to be made according to the respective statutory criteria etc. that applies to them. Just because planning has granted planning permission does not mean that licensing will grant a licence; just because planning has imposed no conditions restricting hours does not mean that licensing will not consider such a restriction appropriate; just because planning has imposed a particular closing hour does not mean that licensing will not impose an earlier or later hour. Where these hours are different, the applicant must observe the earlier closing time or face enforcement action⁵. While both systems may be made aware of the decisions made by the other, they do not bind each other or create any presumption that a particular decision will be made.

Advice to Applicants, Responsible Authorities and Persons making Representations

15. Concentrate on the considerations material to the licensing or planning decision (as the case may be) rather than try to influence one decision by reference to the other. On a licensing matter, concentrate on the promotion of the four licensing objectives, and not on planning policies, objectives, and harm. There may be common facts but do not forget to relate them to the criteria relevant to the actual decision.

³ Para 13.55 – s182 Guidance – Oct 2012

⁴ Para 13.55 – s182 Guidance – Oct 2012

⁵ Para 13.56 – s182 Guidance – Oct 2012