



Licensing team update — March 2017

# Commercial property Staying out late and boosting the economy

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**Welcome to our spring 2017 bulletin, in which we consider topical issues for the licensing and leisure sectors. In this edition we focus on the much discussed 'late night economy'; the Policing and Crime Act 2017 (which received Royal Assent on 31 January 2017); issues with sales of alcohol by coffee shops and updates on the 'sugar tax' and business rating.**

## Late night Czar

Taking a lead from Amsterdam, the Mayor of London (Sadiq Khan) appointed the capital's first "night czar" on 4 November 2016 with a remit to promote London's "late night economy". Politicians and business leaders often laud this sector and its potential to create employment and stimulate economic growth; however operators are undoubtedly facing challenges.

The introduction of the weekend night tube has the potential to boost trade in London, but what of the national picture? The lure for landlords of higher rents from alternate uses (frequently retail) and business rating re-valuations may add to the pressures, but there are some positive signs. Local authorities have become increasingly prepared to protect licensed venues and recognise the important role they can play as community spaces.

In August 2016, Wandsworth Council moved to protect 120 pubs in the Borough by proposing the removal of permitted development rights through "Article 4 Directions" taking effect in August 2017, meaning that any change of use (to for example, retail) would require planning permission. Since April 2015, permitted development rights have been removed in respect of pubs that are listed as assets of community (ACVs) and the pace of ACVs continues unabated with the website for the Campaign for Real Ale stating that over 2,000 pubs have been listed to date.

The 2017 Budget offered some respite for the licensed trade with an announcement that pubs with a rateable value of up to £100,000 will get a business rating discount of £1,000; albeit for just one year from 1 April 2017.

## Late Night Levy

In earlier bulletins we considered the progress of the "late night levy" which was introduced in October 2012.

Although adoption is not compulsory by licensing authorities and take-up rates have so far been slow, concerns have been expressed by operators and trade bodies that the levy (and particularly where combined with an early morning alcohol restriction order) could harm the late night economy.



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During 2016, both Blackpool and Cheshire East Councils rejected proposals to adopt the levy and following the establishment of a Business Improvement District, Cheltenham Council is consulting on scrapping its late night levy in 2017 to avoid a duplication of levies on businesses. However, Hackney Council (with nearly 400 premises in its area licenced to sell alcohol between midnight and 06:00) is consulting on adopting the levy with a view to raising around £362,000 a year.

Changes to the levy were introduced by the Policing and Crime Act 2017, resulting in licensing authorities being able to adopt the levy:

- for part (rather than the whole) of their areas which, although potentially reducing the revenue collected, could lead to increased, targeted adoption of the levy, and/or
- to cover premises such as those selling take-away food.

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### Beer with your coffee?

Rising rents and business rates are leading some operators to consider remaining open for business into the evening to take advantage of the footfall provided by commuters and visitors to leisure venues such as theatres and cinemas. So what are the issues for operators to consider?

- If they hold under a lease, are there use restrictions against selling or storing alcohol or restrictions against making the necessary alterations to allow that sale or storage?
- Does the local authority have a "saturation zone" policy in place restricting the growth of licensed premises?
- Will the licensing authority insist on alcohol being served with food?

Coffee shops typically operate under either Class A1 (retail) or Class A3 (café) of the Use Classes Order.

The proper use classification of a coffee shop will depend on the nature of the operation. Shops with a significant degree of consumption on the premises particularly where there are hot food sales, would tend to be classified as A3 uses. Where customers predominantly visit the shop, and purchase a coffee and sandwich for consumption off the premises, the use is likely to fall within Class A1.



Source: Shutterstock

Where the trade is weighted more towards people sitting in for their coffee and cake, the use is more likely to fall within A3. But what are the planning implications of selling an ice cold beer from a coffee shop? On the face of it, the position remains the same – much will depend on the pattern of trade between on and off premises consumption, in terms of whether the use is within Class A1 or A3. Whether a use falls within a particular use class is a question of planning judgement, and a matter of fact and degree in each case.

Arguably the sale of alcohol for consumption on the premises pushes the use closer toward Class A3, and is more akin to a restaurant than a retail shop. But there is a point at which a Class A3 coffee shop could become a Class A4 drinking establishment if the level of alcohol sales began to outstrip the sale of coffee, and this could require planning consent. When considering whether planning consent is required for a change of use, one needs to ask whether the proposed use is materially different to the existing lawful use.

Again, that is a question of planning judgement which must take into account all relevant factors, such as likely effect on noise, changes in peak business hours, changes in intensity of the use, effect on wider character of the area. It is only if a change of use is "material" that planning consent for that change is required, regardless of whether premises have changed from one use class to another.

### Bitter sweet?

An update on our March 2016 bulletin regarding progress of the 'sugar tax'.

The 2017 Budget confirmed that the Soft Drinks Industry Levy will be set at two levels (18 pence a litre where sugar content is 5g per 100 ml and 24 pence a litre where sugar content is 8g per 100 ml) and will apply to both importers and domestic drinks producers of drinks with a proposed implementation date of April 2018. The government argues that this will allow sufficient time for reductions in the sugar content of soft drinks, but some in the industry consider they are being unfairly targeted compared to other parts of the food and drinks industry. We will be monitoring developments with updates in further bulletins.

For further information on any of the topics raised in this bulletin, please contact Julien Allen or Rory Stracey or Andrew Williams.

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