Appendix C: Response form a Large Pub Company

Comments from a pub company	Response
XXXXXX is one of the UK's largest leased pub companies, with around 1300 pubs across the UK. From the spirit of our local community pubs, the energy of our lively city centre hot spots and sports bars, to the warmth and calm of our inviting country inns; our pubs are the heart of all we do. We are a business of people that love pubs! With a mixed estate of high quality leased, tenanted and retail pubs, our years of experience have enabled us to develop a leading proposition for those wishing to work with us and run a pub business of their own. We provide industry leading, tailored business support to our Publicans and develop market-leading, flexible agreements and retail concepts to suit all aspirations. Under the ownership of Patron and May Capital, we have exciting plans to grow our business: longer term through potential acquisition opportunities and – in the here and now – by substantially investing in our teams, our pubs and Publicans. Corporate Social Responsibility (CSR) is embedded across many elements of our business, from corporate fundraising to responsible retailing. We have dedicated teams in place to assist in ensuring that our premises operate to the highest standards. We strive to ensure that our pubs are not operating irresponsible drinks promotions or serving underage drinkers or those who are intoxicated. The XXXXXXX Buying Club, our online ordering and communications portal, also has a section dedicated to Risk Management providing our Publicans with a wide range of downloadable educational tools, advice and pub-friendly materials, which can be used pub managers and team members. As supporters of Drinkaware we do not condone irresponsible promotions and pricing of alcohol, and we have actively supported Drinkaware's campaigns to help tackle binge drinking amongst 18 to 25 year olds. Responsible retailing forms a key part of our Publican training and we provide clear guidance on current legislation and best practice. We also support industry led initiatives to promote responsible retailing and are active members of industry trade bodies such as British Beer Pub Association (BBPA) and the British Institute of Innkeeping (BII). We are pleased to be able to contribute to this consultation, we have always prided ourselves with working with Local Authorities and Responsible authorities. We would like to make the following points some which are specific to the policy and referenced and some which are more general which we would ask be taken into account. **This response is produced in relation to both the statement of licensing policy and cumulative impact assessment consultations. We would ask that it is read in relation to both documents as necessary.**	Thank you for your response.
GENERAL MATTERS	Please see the list contained in Appendix 2

Integrating other guidance, policies, objectives and strategies We feel that this policy would benefit from a section in the General Matters referencing Integrating other guidance, policies, objectives and strategies into licensing decisions. Licensing policies works best when they reference, and indeed work with, other council strategic plans and policies. For instance, planning strategies and local cultural strategies often inform applicants for either new licences or variations to licences as to what the council are looking to do in terms of promoting culture, leisure use and night-time economy uses in a particular area. Often it can be difficult to find these documents online and therefore reference to them and indeed a general statement that the authority will take into account other strategies is both a pertinent and of benefit to applicants and responsible authorities alike. Links to specific strategies, will also assist new potential businesses to understand and factor in the likely costs of entry into the city. We note a reference to 'Plymouth plan for plastics, later in the policy. We feel that this should be referenced in the general section too under the above heading.	page 40. An additional paragraph has been included in the General Matters with regards to the Plymouth Plan for Plastics which states: Plymouth City Council expect businesses to review their plastic use and stop using where possible items such as plastic straws, stirrers, disposable cups, takeaway packaging, cutlery and cling film. Businesses should work with suppliers to find alternative packaging that is biodegradable and speak to their waste contractors to ensure they maximise their recycling.
Planning We would also urge you to clarify in your policy that where conditions are stipulated on a planning permission, such as restriction on hours or activities, these do not need to be repeated in the premises licence, unless there is good reason to do so. Often conditions relating to extract systems, closing times of external areas, etc. appear on both permissions and on occasion they do not even mirror the other. This leads to additional and unnecessary expense for licence holders should such conditions need to be amended.	The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by planning committee and vice versa. However, Licensing Officers regularly liaise with Planning Officers regarding operating hours and scheme designs. The Licensing Authority cannot prevent applicants requesting different times to their planning hours, however we always advise applicants that they must

	ensure they do not breach their planning requirements. Applicants need to ensure they apply for the same hours as their planning permitted hours so as not to cause any unnecessary expense for themselves.
Safeguarding We are pleased to see reference to safeguarding (and the relevant appendix), given its relevance in relation to protection of children from harm in particular. We would, however, have concerns about licensing policy setting this out as a general matter. This can be viewed as setting a higher bar for premises seeking to vary a premises licence or apply for a new licence than for other premises (certainly if the authority were to seek imposition of conditions on licences specifically relating to safeguarding) without clarification on the point. We would suggest that general safeguarding issues need to be addressed more broadly to ensure that the same essential advice is given to all leisure, retail and hospitality service providers across the board. Safeguarding is not a licensing objective per-se and any conditions or other requirements must address licensing objectives, not 'safeguarding' in general terms. It would assist if the above is made clear in the policy and at the beginning of the annex to avoid confusion.	The council expect all businesses to take measures regarding safeguarding and all licensed premises have an obligation to promote the licensing objectives. This has been included in our Gambling Policy and Taxi Licensing Policy and we continue to promote this message to all sectors through joint working with other agencies.
THE LICENSING OBJECTIVES **Prevention of Crime and Disorder** The prevention of crime and disorder is one of the 4 licensing objectives and clearly a major pillar of licensing legislation. However, we have become increasingly concerned that licensed premises are sometimes being unfairly held to a higher standard when it comes to prevention of crime and disorder than other public premises. For instance, when Police present evidence of crime and disorder in relation to licensed premises, they will often include references to any crime that is associated not just with the premises in terms of its operation as licensed premises but generally. For instance, the Police will often include reference to all calls where those calls have referenced the premises as a local landmark which can include anything from criminal activity from people who have not been customers of the premises, offences in relation to taxis, or general disturbance and noise nuisance in a town centre where it cannot be said to be relevant to the premises. Premises licence holders will also often find reference to offences that are not relevant to the licensing objectives themselves. So, for instance, robberies at residential premises above a licensed premises are sometimes included. We feel it is important that the council recognise in their policy that these are matters that are not relevant to the prevention of crime and disorder licensing objective and that the licensing authority's expectation is that they will only be presented with evidence where it directly relates to the licensable activities being provided within the premises themselves.	Each case is considered separately and any evidence will be reviewed by Members of the Committee and their legal advisor to ensure it is appropriate.

For a city like Plymouth this is especially important given the close proximity of premises and the need to fairly differentiate between incidents that are directly related to the management of particular premises and those that are not.	
Prevention of Public Nuisance The prevention of public nuisance licensing objective is to be widely interpreted, as set out in the Statutory Guidance. However, we often come across conditions imposed on licences, as well as the investigation of complaints that do not relate to public nuisance. For instance, conditions that refer to 'nuisance', rather than 'public nuisance', set a significantly higher barrier- one that was not intended by the Licensing Legislation. We also see this in terms of enforcement action where often enforcement officers will allege that a nuisance, often a private nuisance, has occurred and demand action under the terms of the premises licence. Clearly this is beyond that which was intended by Parliament and therefore we suggest that your policy reflects the need for public nuisance to be demonstrated and for conditions relating to nuisance to relate to public nuisance rather than any wider definition. In particular, we suggest that expressly stating that private nuisance is not a licensing objective would assist in all parties understanding what is and is not the remit of licensing legislation.	All claims of public nuisance are investigated by the department and appropriate action taken. If there is a private nuisance which is not associated with the premises, then no action would be taken against the premises. The policy explains what is meant by public nuisance and it is felt that explaining in detail may cause more confusion.
Protection of children from harm We note that you prefer challenge 25 policies and that this has changed from the previous policy where 'Challenge 21' was the preferred standard. Many premises operate Challenge 21 policies and have training and signage for this. To change it can be expensive and/ or time consuming. As such, we would suggest that the licensing authority would not expect responsible authorities to suggest a change to Challenge 25 where a premises is already trading with a different challenge policy, unless there have been identified risks to children at the specific premises.	This is only a preference and businesses can choose whatever scheme they wish. However, our Trading Standards Colleagues have found that the higher the challenge age, the less likely that underage sales occur. However, the wording has been amended slightly to 'a proof of age scheme such as Challenge 25'.
LICENSING CONDITIONS Whilst XXXXXX recognise the importance of conditions on premises licences in certain circumstances, such as to prevent or to mitigate the potential risk of certain activities undermining the licensing objectives, we have a concern that more and more conditions are being placed on a licence that are then enforced as breaches of the licence in their own right. Licensing authorities are obliged to promote the 4 licensing objectives. Breaches of condition in and of themselves are an offence under Section 136 of the Licensing Act and on summary conviction can lead to an unlimited fine and/or up to 6 months in prison. It is important that this distinction is recognised in your policy and that breaches of condition in and of themselves are a matter for the Courts; whereas an undermining of the licensing objectives, which can	An additional paragraph has been included on page 9 stating 'The Licensing Authority will not impose conditions which replicate matters that constitute the offences set out in Part 7 of the Licensing Act e.g. unauthorised licensable activities; allowing disorderly conduct; sale of alcohol to any

happen with or without conditions being on the licence in any event, are the province of the licensing authority to deal with. We would suggest that this distinction is made in your policy as it will re-enforce the message both for responsible authorities and for operators who hold premises licences in your area. XXXXXXX has always been happy to work with licensing authorities in relation to conditions being imposed on a licence where they are necessary and proportionate to achieve an identifiable aim. However, we are concerned with the prevalence of standard conditions being used across all licences within any particular class, This has taken over from a proper analysis of the need for such conditions in the first place. In particular, we have seen a rise in conditions being imposed upon premises licences by responsible authorities, irrespective of the nature of the application being made. For instance, a variation to the plans attached to a licence to effect a simple alteration in layout and where there is no change in licensable activities, increase in customer area, or removal of internal lobbies, for instance, sometimes result in officers seeking to ride on the back of that application to impose conditions that are in no way relevant to it. The case of Taylor v Manchester City Council makes is clear that any conditions imposed on a premises licence when it is varied must relate to that application itself and should not stray into other areas that are not part of the application. It is important again that this is referenced in policy in order to prevent unnecessary hearings and often additional expense to applicants seeking to make simple changes to their licence but are then held to ransom by responsible authorities who know that operators are unlikely to challenge their right to impose such conditions where the cost would be send the matter to a hearing. We submit that the imposition of large numbers of conditions on a premises licence is self-defeating. Premises licences form one part of a significant number of regulatory requirements that must be observed by publicans and this is often forgotten by regulators who often only think in terms of their one area of expertise. This means that they often do not see the wood for the trees. Policies that set out an expectation of long operating schedules or worse, require officers to object to applications unless the applicant applies their standard conditions, place an unnecessary burden on operators without necessarily helping to promote the licensing objectives. The City of London licensing authority, for instance, will only impose conditions if deemed absolutely necessary. It is not unusual to see licences with only a handful of conditions. The reason for this is that they expect operators to promote the licensing objectives, not go through the motions of complying with conditions because they have to. Also, licences grandfathered in 2005 would, likely have few or no conditions on them. We have seen no evidence to suggest such premises have undermined the licensing objectives more than "conditioned licences." We would challenge any authority to suggest that this approach leads to more issues with licence holders undermining the objectives. If anything this clarity of approach means that operators are freed up to adapt their businesses as the demands of the market change, freeing up officers from having to undertake lengthy inspections of licences and then having to send out enforcement letters relating to conditions that are breached in the observation without any real evidence that the breaches themselves undermine the	person who is drunk or is underage. (April 2018 Revised Guidance paragraph 1.16). Nevertheless, the Licensing Authority will take into account any breaches of conditions and offences under the Licensing Act when considering the imposition of conditions in reviews and the variation of licences'. Our Licensing Team and Council Members of the Licensing Committee ensure that conditions are only agreed that are necessary and proportionate.

objectives. This in turn frees up resources for enforcement against poorly behaving premises and dealing with unlicensed operators.	
LICENCE APPLICATIONS **Minor Variations** We are pleased to see details about the minor variation procedure in your policy. However, we would suggest that a little more detail in terms of the bullets might assist in clarifying for both officers and applicants what might be considered a minor variation. We would propose that the following bullets are added to the list of what minor variations **can** be used for: • Make changes to layout that do not increase the customer area (beyond a de-minimis increase of, we would suggest, 10%). • Removal of conditions that are no longer relevant to the operation of the premises or are redundant following imposition of new law, such as the Regulatory Reform (Fire Safety) Order 2005.	Bullet point one on page 24 covers minor changes to the structure or layout of a premises. Please refer to s.182 guidance points 8.62 to 8.65 which provides further information about minor variations. The removal of conditions that are no longer relevant is already listed in bullet point three.
CUMULATIVE IMPACT POLICY We note that your cumulative impact policy section makes no reference to cumulative impact assessments ('CIA's'). Appendix 1 does mention that policies need to be reviewed every 3 years, rather than the 5 for the policy itself, but has no reference to the change in legislation or the creation of CIA's now required by law. We understand that there are occasions where CIP's provide a valuable tool to local authorities in regulating the night time economy. However, our experience is that they can also be an impediment to businesses and the development of a thriving night time economy. XXXXXXXXX as a promoter of entrepreneurship within our estate of leased pubs understands very well the challenges that small business operator's face when looking to enter a new market or adapt their offer. Cumulative impact policies can have the effect of dissuading operators from even attempting to get a licence. This unintentionally penalises operators considering smaller more novel applications (simply because of the prohibitive cost), often resulting in them looking to take their ideas elsewhere and thereby wasting a chance to develop a more rounded and vibrant economy in the CIP. For the same reason, such policies also promote ubiquity and stagnation as the only operators willing to take on the risk and outlay of applying in cumulative impact zones are larger established chains with the financial backing to fight for a licence. Given the plight of the pub market 5 years ago and now the casual dining market, in part because their offers failed to change as the market developed around them, the use of CIPs needs careful oversight- especially in large city centres, such as Plymouth. As such, we suggest that any CIP makes it clear that it will consider small, independent and/ or otherwise innovative applications both for new licences and variations to existing licences as being outside of the	On page 28, I have added the following paragraph: Cumulative Impact Assessments (CIA) were introduced formally in the 2003 Act by the Policing and Crime Act 2017, with effect from 6 April 2018. After publishing a CIA the licensing authority must consider, within three years, consider whether it remains of the opinion set out in the assessment as detailed in the section 182 guidance. Since 1 April 2014, there have been a total of 32 applications for new premises or major

CIP. Such applications will still need to demonstrate that they do not undermine the objectives, but we would hope that adding something to this effect into the policy will stimulate and incentivise smaller operators to make applications. Whilst it may sound counter-productive for a pub company with licenses already granted in the area to support the growth of competition, we recognise that innovation and new operators stimulate the economy for established premises and can often lead to raising standards across the board. This can only be good in the long-term for everyone. Existing cumulative impact policies need to be scrutinised with an open mind. Stagnation will kill a vibrant area and CIP's, if left to choke the area they were designed to protect can do as much damage as good. We are pleased to see that specific types of licence are identified as being particularly problematic in certain areas, rather than just applying the CIP policy to all licensed premises. This allows for an area to gradually adapt and change with the policy, so long as the policy then adapts and changes to the area.	variations in CIP areas, with only one being refused. The policy (on page 27) states that "for new applications or applications to vary an existing premises licence or club premises certificate located within an existing cumulative impact area the Licensing Authority will not operate a quota of any kind which would pre-determine any application, nor will it seek to impose general limitations on trading hours but will consider it on its own merits with regard to the individual characteristics of that premises and its impact on cumulative impact with that area". This statement within the policy and the figures of applications granted within the CIP areas demonstrate that the Council has already been operating in the way you suggest.
ENFORCEMENT We note that you have included reference to the council having adopted an 'Enforcement Policy'. We are pleased to see that this adopts the Regulator's Code. This is useful for all parties to licensing matters and recognises the important role that businesses play in local communities. **OTHER MATTERS WE WOULD ASK YOU TO CONSIDER REFLECTING IN YOUR POLICY** **On and Off-Sales** Recently we have become aware that the definition of on and off-sales has caused some confusion. In particular there appears to be confusion around whether an off-licence is required for customers to take drinks outside a premises, for instance onto the pavement, and consume their drinks there. We contend that such a sale is an on-sale. If one considers the nature of the offence of selling alcohol without the appropriate licence, it is clear that the intention is that the person making the sale is the one who would be charged with the offence, rather than, say, the purchaser. Therefore, in selling a drink in an open container for immediate consumption, it cannot be argued that the publican has made anything other than an on-sale. It is inconceivable that the law intended that should this person step outside the	The definition of on and off sales is stated in the Licensing Act 2003 and the guidance gives examples of when off sales would apply (see para 8.35 of the guidance).

premises, or indeed take that drink away with him, that this would somehow transform that on-sale to an off-sale. The terms 'on' and 'off' sales originate from the Licensing Act 1964. Analysis of the legislation (by reference to off-sales) demonstrates that all off-sales had to be intended to be sold for consumption away from not only the licensed premises but any land associated with that premises or land immediately adjoining it for them to be considered an off sale. The intention was to ensure that in a situation where a seller makes an on-sale, that on-sale does not become an off-sale simply by means of it being consumed in the immediate environment of the premises, such as an unlicensed garden or on the pavement outside the pub. As such, we feel that this needs to be clarified in the policy. We would propose a statement along the following lines:- "On and off-sales are defined by reference to the intention of the seller at the time of sale. A sale in an open container for immediate consumption at the premises is an on-sale. This extends to where the person who has purchased the drink at the bar and then consumes it either in a pub garden or on the pavement immediately outside the premises. An off-sale is a sale designed for consumption away from the premises and its immediate environs. This will usually be in a sealed container such as a bottle or can and the seller when selling that drink had no intention for the purchaser to remain at the premises to consume it".	
GDPR We note that the policy does not make reference to the GDPR One of the most significant changes in recent times has been the change to data protection legislation introduced via GDPR. Whilst the obvious effects of this regulatory change relate to protecting personal data held on behalf of individuals, such as social media, mailing lists, email data bases and various other forms of storage of someone else's data, there are other effects that need to be reflected in licensing policy. For instance, the requirement for CCTV at a premises licence is not only expensive to install, but we question the value of such systems in terms of crime prevention and detection, especially in smaller community pubs. However, it is now commonplace for police to demand CCTV in almost all premises and to insist upon complicated and demanding CCTV condition's to be added to premises licences. In addition, operators of CCTV systems have to consider the GDPR implications. In particular, anyone who stores data, including CCTV footage of individuals, which is classed as data for the purposes of GDPR, must be responsible for its safe collection, storage, usage and disposal. Handing over CCTV footage to Police officers in the active investigation of a criminal offence, such as a fight, would obviously be a legitimate reason for providing data. However, a condition with a general requirement to hand over CCTV at the behest licensing officer or police officer would arguably breach GDPR were it to be enforced. This means that there are numerous CCTV conditions on licences that would likely, were one to try and enforce them as they are written, cause an operator to breach GDPR.	Each business must ensure it complies with GDPR. The Policy does not require us to go into detail about another piece of legislation and may lead to confusion.

Similarly, club scan conditions need to be thought about in terms of GDPR and the obligations of the data holder. For instance, the time for which any data is stored and the purpose for storing that data needs to be made clear to people handing over their data. Again conditions that require such data to be handed over at the behest of an officer other than in investigating a criminal offence would in all likelihood breach GDPR. We feel therefore that this need to be addressed in the policy in order to ensure that conditions are updated to ensure compliance and that CCTV in particular is not being universally required where there is no real and pressing need for it.	
Agent of Change Whilst we recognise that the principle is currently being debated in terms of planning, it is equally as important in licensing. We recommend that the licensing policy expressly recognises that developers of new residential developments need to protect their buyers from potential sources of noise disturbance, not expect existing licensed premises to have to adapt their offer to accommodate the new development. In particular, small pubs often rely on live or recorded music, provision of social events and other community based promotions, such as beer festivals, in order to survive and thrive. We have, unfortunately, seen a rise in complaints and reviews directed at existing premises that have often been at the heart of the community for over a century, from residents moving into new properties nearby. Whilst it is incumbent upon licence holders to promote the licensing objectives, it is iniquitous and arguably a breach of their Article 1, Protocol 1 human right to peaceful enjoyment of property, which includes their premises licence, to have their livelihood threatened and sometimes taken away because of poorly designed and constructed residential property built next door.	All complaints must be investigated and where a public nuisance has been witnessed then action must be taken to address this. The Licensing Officers work with businesses to ensure they fully understand their licensing conditions and are taking suitable measures to control any noise or other nuisance. This often involves no cost such as reducing the volume. All businesses should be able to operate with total sound containment. Once planning permission has been granted to a residential development then the surrounding area has changed not only for the residents but the commercial premises.
Tables and Chairs licences External areas, especially gardens and enclosed spaces laid out to tables and chairs, are often attractive in their own right, as well as promoting businesses. Where they are on council land, they can be useful sources of revenue for local authorities. We would ask that your policy refers to any tables and chairs policy in place, with links to where application forms can be found on the council website etc. Whilst not strictly related to the Licensing Act 2003, the council policy document is a useful guide to licence holders and the more information that can be provided about ancillary matters, the more likely it is that licence holders and applicants will use this resource.	A link to the webpage for the application for a tables and chairs licence has been included on page 23.