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Shepherd Neame Ltd

Response to Government Consultation

Introduction

Shepherd Neame is an independent family controlled business and is Britain's oldest brewer, established in 1698. The company currently operates 344 pubs of which 46 are managed, 281 are tenanted and 17 are leased.

The company has been operating the traditional brewery tied tenancy for all this time. Some of our pubs have been operated continuously as tied houses since before 1740.

Preamble

1. The market for beer and pubs has been very challenging in the last ten years, but particularly since 2008. The impact is severe:

Beer consumption down 17% (since 2008: source BBPA)
5,800 pubs closed
60,000 jobs lost

2. The reasons are many and varied, some of which affect all businesses, such as the deep consumer recession, and others which affect the sector, specifically such as the smoking ban (2007), cheap supermarket beer, decline in alcohol consumption (down 16% since 2004) and changing consumer lifestyles.

But the pub market, consisting of 50,000 small businesses, has been acutely impacted by additional factors over the same period (2008-2013), which has resulted in a significant margin pressure:

Excise duty on alcohol up 42%
Average rates bill up 25%
Average utility bill up 25%

As a result of these significant cost pressures, Shepherd Neame has made a material investment in rent support to ensure that our tenants remain viable:

2008-2013 RPI %
+15.1%

Shepherd Neame (including houses in
which we have invested)
Rent +2.8%

3. To adapt to these rapidly changing market conditions and to encourage customers to go out when money is tight, pubs have needed to invest heavily, diversify, and expand and improve their offer for food, accommodation, coffee, entertainment and general environment. Many have succeeded spectacularly, but others, particularly small wet-led community pubs, have found the decline in volume and simultaneous cost inflation too much to bear.

How has Shepherd Neame responded to these market conditions?

4. It is essential that we provide commercial support, business advice and training and development to support our licensees. Our licensees rate the services we provide, for free, very highly.

In a 2009 survey conducted by Elliot People:

- 96% of tenants said that it is important that they receive good support from Head Office and at that time, 65% agreed that they did before we added the services listed under 6 below
- 80% wanted more training, which has been provided
- Customer services scored 9.20 out of 10
- **88% agreed or strongly agreed that they were happy with their relationship**

5. Furthermore, we have responded to the requests from our licensees for a wider product range in order to attract more footfall, and have increased the number of products available – both from our own brewery and others – during the year, as follows:

See Answer to Proposed Positions 8.v. 'Guest Beer'

6. Shepherd Neame is always listening to its tenants – outlined in the Elliot People survey – and has responded in a variety of ways to ensure that our pubs are able to compete and remain viable for ourselves and our licensees into the future. Since 2008, we have:

- Acquired 26 food-led pubs and hotels for a total investment of £36,465,000
- Sold 52 predominantly wet-led pubs for a total of £15,478,000. Most of these were initially marketed for sale as pubs. Only 17 continue to trade as free houses.

7. Support for licensees is commonly referred to as SCORFA (Special Commercial or Financial Advantage). This support can be broadly categorised as below:

- **Capital Investment:** Since 2008, we have invested £16.9 million in development and maintenance expenditure in our tenanted pubs, representing an average of **£56,300 per pub**.
- **Subsidised Rent:** Traditional tied tenanted rents are substantially lower than free of tie lease rents. Typically, the tied tenant pays **70% of the rent**, which would be payable by a free of tie lessee for the same premises.
- **Property Risk:** In addition to capital investment, Shepherd Neame provides building insurance free of charge for tenants, carries out repairs to the structure and infrastructure of tenanted pubs, and decorates the exterior of tenanted pubs. We also provide a free service for rating assessments.
- **Discounts:** Since 2008, we have introduced invoice discounts of £30-£40 per barrel on own brand products.
- **Inventory Loans:** Since 2008, we have increased our investment in inventory loans, from £350,000 to £650,000, to enable our tenants to invest in order to improve their offer.

- **Retail Involvement:** Shepherd Neame is actively involved in the success of its tenanted estate through the provision of training and operational support. This has involved business and development advice, marketing support and investment in beer quality and presentation.

Since 2008, we have added to the range of operational support:

- On line web site and media support service
 - Digital marketing
 - Wine development, merchandising and training support
 - Dedicated development chef
 - Food menu development
 - Increased produce promotional support
 - Investment in beer quality initiatives, new glassware and dispensing equipment, together with training and accreditation
 - Improved letting and recruitment particulars
 - Improved induction programme
 - Business Development Manager training
 - In pub licensee and bar staff development
 - Financial support package for new licensees
 - Wide range of procurement deals
 - Licensing advice and support
8. The SCORFA benefit will vary from pub to pub and year to year, but the above gives an overall guide to the substantial investment made by Shepherd Neame to assist licensees in what is a highly competitive market. We have contributed data to the IFBB submission and our average benefit is consistent with their findings.

What is the outcome of Shepherd Neame's increased investment between 2008-2013?

9. The action the company has taken has been positive for our tenants and our business. In a 2013 HIM survey of our tenants:
- **73% of our tenants said that they were likely or very likely to recommend us to other publicans**
 - Taking everything into consideration, our tenants rated us 7.27 out of 10 (where 1 is poor and 10 is outstanding) versus 7.14 out of 10 in the 2012 survey
10. The business model remains robust and average tenure is consistent with historical data for tenancies and current employment statistics in spite of the extreme pressures within the marketplace.

The reputation of the company is strong and the average tenure has increased by 10%, during four very challenging years for all retail businesses, from 4.8 (2008) to 5.3. The average tenure of our tenant in the 1870s, a boom time for the industry and when lifestyles and social mobility were very different, was 8.4 years. Again, in the 1950s – another boom time for pubs – the average tenure was 8 years. The annual number of applicants for tenancy has increased from 664 (2008) to 1,249 (2012).

The average length of employment within the general workforce is 7.9 years (source: CIPD). In our managed houses, the average tenure for a pub manager is 5 years and slightly lower than that for the average tenant.

11. The recent announcement in the Budget by the Chancellor to scrap the Duty Escalator and cut beer duty by 1p is a much-needed boost to the sector. As a consequence, we are **planning 40 major investments within our pub estate in 2014 and estimate that we will create 200 jobs.**

We continue to look to enhance our commercial services to help our tenants drive continuous improvement in the offer to their customers. We have a variety of quality support and marketing roles under consideration at present. There will again be no charge for these services.

Are we fair with our tenants?

12. It is fundamental to our business that we have a strong tenanted business, with successful licensees. Shepherd Neame is a family business priding itself on good people relationships and fair dealings. More than half of our staff have completed 10 years with the company. All of our tenants are on six months' notice to quit with no requirement to sell the business. The company is obliged to buy back the inventory at the expiry of the term. **If we do not deal fairly with our tenants, we could have 300 empty pubs and no business six months from now,** and we would not have a continuous (and growing) flow of applicants.
13. In the same 2013 HIM survey, **89% of our tenants think that our Code of Practice is fair** and 94% state that the company "sticks to the Code of Practice".

Is the rent review process fair and effective?

14. Fairness is enshrined into our rent review process:
- 60% of our rent agreements are for three years, with rent discounted in Years 1 and 2
 - 38% of our rent agreements are for five years, with the rent discounted in Years 1, 2, 3 and 4
 - **100% of our agreements provide for a rent review within a period not exceeding five years**
 - **0% of our agreements have UORR clauses**
 - In the HIM survey, 57% of our tenants rate their rent as fair
15. The process itself:
- **Step 1** Pre-warning
Six months prior to review, BDM advises of any specific circumstances
Rent proposal prepared by RICS qualified valuer to ensure consistency
Proposal issued three months prior to review
 - **Step 2** Where initial proposal not agreed, a meeting is established between the tenant and his advisors and the Tenanted Trade Director
 - **Step 3** If no agreement, a further meeting can be set up with the Chief Executive
 - **Step 4** If no agreement, tenant would have recourse to PIRRS
 - **Step 5** Alternatively, tenant would have recourse to Arbitration

16. From 2008-2013, the company has conducted 237 rent reviews, with all settlements agreed at Step 1 or Step 2.

Step	Stage	Number	%
1	Initial proposal	177	75
2	Initial meeting	60	25
3	CEO Meeting	0	0
4	PIRRS	0	0
5	Arbitration	0	0

17. The company has been operating tied tenancies since at least 1715 and to the best of our knowledge, has only been to arbitration twice (the last time in 1993). On both occasions, the arbitrator settled the rent at a higher level than that originally proposed by Shepherd Neame.
18. It is frequently assumed that the sole reason for tenants leaving pubs is that the rent is too high and the price of beer is too high. This is incorrect. In fact, many other factors also contribute, such as retirement, marital breakdown, change of lifestyle, change of career, or moving to another pub.
19. Shepherd Neame prides itself in having strong personal relationships with its tenants at all levels within the company and invests considerable amounts in maintaining strong social engagement via Annual Licensees Dinner/Dance, with Pub Awards, Hospitality and various awards to recognise longevity or exceptional achievement.

It is overwhelmingly in our interests to ensure that our licensees feel happy and secure in their businesses and to give them the platform to focus on the key issue of giving their customers a good experience. A discontented licensee will share his troubles with his customers, who will take their business elsewhere.

The BIS Enquiries 2004-2012 and Statutory Code Process

20. Shepherd Neame has grave concerns about the process of the four Select Committee Enquiries, which have led to the current Consultation, in that:
- There has been **no call for evidence from smaller companies**
 - There has been **no objective assessment of the differences between traditional brewery tenancies and FRI leases**
 - There is little or no appreciation of the difference in capital risk and reward between tied agreements (tenancy versus lease) and a free house
 - The evidence base presented lacks intellectual rigour and is based on anecdote and misrepresentation rather than the objective enquiry and analysis.
 - The various licensee groups do not represent individual tenants of companies such as Shepherd Neame
 - There has been little or no evidence received from individual tenants

21. In 2011, the Government responded to the BIS Enquiry of that year as follows:

“Government should not intervene in setting terms of commercial, contractual relationships, where these are fully justified by law and have been found by the OFT to be raising no competition issues that significantly affect consumers. Fundamentally, whether or not a lease or tenancy includes a tie is a commercial decision on the part of both parties.

In terms of framing a solution, the Government therefore considers the debate over “tied” or “free of tie” to be largely a distraction. There is nothing in itself that causes the tie to be fundamentally wrong – and, in fact, in some instances, the tied model may be essential to the preservation of small British brewers and local beer – and with them, British businesses and jobs.”

22. Since 2008, as demonstrated above, Shepherd Neame has invested considerable capital and other resources in the face of extremely challenging market conditions, high taxes and regulatory burden, to ensure that its tenants compete and that their and our businesses remain viable and can adapt to the changing consumer environment. Our efforts are recognised by increased applicants, longer tenure and increased satisfaction from our tenanted business partners.

23. The essential reason for this was recognised by the OFT in their response to the CAMRA Super-Complaint:

“If pub companies do not ensure that their lessees are well placed to provide a competitive offer to customers, those pubs risk losing custom to other tied, free house and managed pubs in their locality. ... we do not consider that it would be sustainable for pub companies to set prices and rents at a level that would compromise the competitive position of pubs within their estates ... to that extent, **pub companies’ commercial interests would appear to be aligned with the interests of their lessees and it would not appear to be profitable for pub companies to inflate beer prices and rents charged to lessees to a level that would undermine their lessees’ ability to compete effectively.**”

24. Since all of our tenants can leave within six months from now, it is overwhelmingly in the company’s interests to treat our licensees fairly to support their business development, to adapt to the changing market, and to invest in order to grow the business.

Since 2008, at a corporate level, Shepherd Neame’s operating margin has fallen by circa 3%, as we have invested to support our tenants’ businesses by way of increased commercial support services and margin investment in rent and beer. This does not include the increased capital investment referred to above.

25. This on going debate has focused on anecdote, rumour, misinformation and untruths, and biased emotive language. No company, and certainly not Shepherd Neame, can condone or support abuse of the tie. But, if there is a legitimate complaint, as may occur from time to time, then the voluntary Code and, in particular, establishment of PIRRS and PICAS, provide more than adequate relief for individual applicants.

26. The perception built over many years seems to be summarised in the letter sent by Dr Vince Cable MP to one of our tenanted pubs in his constituency in 2008.

SHEPHERD NEAME PUB
TEDDINGTON (see letter attached)

I have been told by local pub landlords about the worries they face due to increasing costs, in particular those pubs that are in a tied lease agreement. Pub companies have been raising rents and the price of beer, forcing some tenant landlords and publicans into heavy debt. I am very concerned about this issue, as I understand that currently an average of 27 pubs a week in Britain are closing.

My party and I feel that the pub companies need to be held to account for their high prices, and hope to bring some relief to the tenant publican. We have pushed this issue into the spotlight, tabling a parliamentary motion which received widespread support. We have also raised the issue with the Department of Business Enterprise and Regulatory Reform.

I am pleased to say that a parliamentary investigation is being launched into pub chains, and in particular the pub "tie".

I will continue to support the "Fair Pint" Campaign, and do what I can to support the future of the local pub. Please do not hesitate to contact me if I can be of any assistance on this or any other issue."

We now hope that the outcome of this Consultation will ensure a proper objective review of facts and evidence, rather than rely on ill-informed anecdote and opinion.

Response to Government Consultation Specific Questions

1 Should there be a Statutory Code?

We believe that there is no justification for the imposition of a Statutory Code within the context of traditional tenancies. **There is no evidence of abuse or unfair treatment of licensees within this sector.** We do not accept the allegations contained in 3.4 of the consultation. We have demonstrated our record of consensual rent review process. We reject the allegation of providing misleading estimates of sales.

A Statutory Code would represent unwarranted and unnecessary state intervention into a business sector which is functioning well. It would create "red tape" at a time when the Government is committed to reducing such burden on business.

Considerable time and resource has been invested in generating the Voluntary Code Version 6, which is operating very well. Compliance with Version 6 ensures that the allegations in 3.5 cannot arise. Potential tenants are required to take independent professional advice and business/financial plans are reviewed critically before an offer of tenancy is made. It is a fact that on occasions we decline to proceed with applications on the basis that the applicant has an unreasonably optimistic plan.

We find the statement in 3.6, "although the tie is not universally bad", astonishing, when followed by the statement of a 70% satisfaction rate. As above, this rate is higher for Shepherd Neame tenants.

We do not accept the conclusion in 3.7. It is clear that within the context of traditional tenancies, the relationship is carefully balanced, with the landlord bearing the property risk and providing 90% of the business funding (freehold cost and subsequent capital investment), whilst the tenant bears the operational risk and provides entrepreneurial flair, which in turn, can provide an annual return in excess of 100% of their investment. In order to optimise the outcome for the tenant, the landlord further invests in considerable operational support (SCORFA). We believe this is a very "level playing field".

It is absolutely in the interest of both parties to the traditional tenanted agreement that operators have a successful business and to this end, we are constantly seeking to improve our levels of support.

As a matter of record, we have serious concerns about the biased nature of the on line survey that BIS has conducted and support the BBPA position following the report from ComRes.

2 Should a Code apply to those companies with more than 500 pubs?

If there were to be a Statutory Code, we would support this limit as it would remove traditional tenancies from the scope of the Code. Any lower limit would result in excessive red tape and impose a disproportionate burden on smaller companies. We are, however, concerned that a Statutory Code containing the current proposals, such as abolition of machine tie, provision of guest beer and free of tie option, would result in material distortion of the market.

We do not consider that managed houses should be included in the calculation of the 500 pub limit.

3 Should all non-managed pubs fall under the Code?

No – agreements of one year or less duration should not fall within the remit of the Code. See also comments concerning franchises.

4 Should franchises be included?

We consider that agreements and pubs operated under agreements, which are specifically accredited by the British Franchise Association, should not be covered by the Code.

5 Assessment of likely costs and benefits of these proposals on pubs and pub sector

We do not believe there would be any benefit arising from the proposed Statutory Code for individual traditional tenanted pubs over and above that arising from the Voluntary Code.

If radical intervention, such as abolition of machine tie, Guest Beer and Mandatory Free of Tie, were introduced, there would be a significant reduction in this sector, which provides a low cost entry for individual operators. This intervention would result in an uneven playing field. The loss of “wet rent” for the landlord would be balanced by a reduction in the rental discount provided. This would increase fixed costs for licensees and most likely result in a significant proportion of tied houses ceasing to be viable.

These proposals would **add cost for smaller companies, reducing the funds available to invest in individual pubs.**

6 Views on future of self-regulation

We believe that self-regulation is working extremely well and should be allowed to continue to do so. It is clear that PIRRS is functioning well and provides a uniquely low cost rent resolution service. PICA-Service is a relatively new body to resolve operational disputes under the Code. This should be given time to prove its effectiveness. There may well be scope for further refinement of Version 6 as market conditions continue to evolve.

7 Should the Code be based on the two overarching principles?

i Principle of Fair and Lawful Dealing

This principle is in our DNA and forms the basis of our relationship with our licensees.

ii Principle that Tied Tenant should be no worse off than Free of Tie Tenant

This proposed principle is meaningless within the context of traditional tenancies, as **there is no such thing as a Free of Tie tenant**, whose landlord bears the property risk without recharge to the tenant. Therefore, the proposed principle is meaningless as a reference point for traditional tied tenancies.

A Free of Tie Lease is a straightforward commercial agreement where the landlord funds and provides the building in return for payment of an open market rent, whilst the lessee bears the property risk (maintenance repairs and insurance), pays rent and funds the fixtures and fittings required for the operation of the business.

The traditional tenancy is a much more complex and fruitful relationship. The landlord provides the building, but also carries the property risk. Beyond this, he also invests in development of the building in order to provide the tenant with an enhanced business opportunity. The landlord charges a lesser (circa 70%) rent than under the Free of Tie model, but shares in the retail trade generated (wet rent). The tenant bears the operational risk and funds part of the fixtures and fittings (generally not the fixed elements, such as wiring, piping and services, etc). However, because both landlord and tenant share in the retail trade, the landlord also provides operational support to enable the tenant to maximise his trade.

One of the outcomes of this unique commercial relationship is that the landlord is clearly aligned to the success of the tenant. The Free of Tie landlord has no interest whatsoever in the well-being of his lessee, whereas the landlord of the tied tenant will generally have a strong personal relationship with the tenant and a very real concern for his well-being. We set out below the differences between the "Free of Tie" and "Traditional Tied" landlords:

RELATIONSHIP WITH LANDLORD

Traditional Brewery Tied Tenancy

Free of Tie FRI 10 Year Commercial Lease

Property SCORFA	Bears property risk	Passes property risk to lessee
	Pays for building insurance with no insurance rent	Does not share insurance discount
	Revenue Property Repairs/Building Insurance	
Retail Support SCORFA	Actively involved in supporting/building retail trade	Has no interest in development of trade
	Retail Trade Support (Marketing/Training/Consultancy, etc)	
Capital Investment SCORFA	Provides maintenance Capex	Provides no capital support
	Provides development Capex	
	Provides architect/surveyor services	
	Capital Investment Support – interest not charged	
Rent	Provides premises	Provides premises
	Provides subsidised rent (70%)	Charges full market rack rent
	Rent can reduce on review	UORR
	Interim downwards review if MCC	
	Rental Subsidy	
Intangibles	Partnership approach to maximising retail turnover	Essence of relationship
		Submission of quarterly rent demand
	Peace of Mind Low Risk/Easy Exit Family Brewer Experience Bulk Purchasing Schemes, eg food and utilities	

We believe that a recent report, issued by the largest operator of a **Free of Tie** estate, raises **serious questions as to whether this model is working effectively in all cases**. Wellington Pub Company operates a Free of Tie estate of 798 pubs. The report identifies that as of September 2012, 55 of these pubs were vacant (7% of the estate) and that overall, 159 (20%) were not let on the long leasehold tenure that is an essential element of the model. Disturbingly, during the previous year, 73 (9% and close to 1 in 10) of the pubs had been repossessed.

By way of contrast within the tied estate operated by Shepherd Neame, as at 1st June 2013, 5 houses (1.7% of estate) were un-let and a further 5 houses were let on non-substantive terms

8 Proposed Provisions

i Right to request rent review after five years

We would agree with this proposal in general. However, the Landlord and Tenant may have entered into a specific rental agreement over a longer period than five years in order to reflect capital investment, in which case, this provision would not be appropriate.

ii Significant increases in drink prices or event occurs outside the tenant's control

It is not in the interest of Shepherd Neame to increase prices significantly, as this would undermine the profitability of our tenants. We have absorbed significant cost increases in the production of beer, which have not been passed onto licensees.

The principle of review in the event of material change of circumstances is already enshrined in Version 6.

Shepherd Neame, as a consequence of the close relationship outlined above, have always listened to licensee concerns and, as such, have been prepared to reduce rent or provide other operational support when trading at an individual house has been significantly impacted by events outside the control of a licensee. Such events may be short term, eg road closure, or more structural, eg closure of major businesses within a catchment area.

Assistance may take the form of a temporary or permanent reduction in rent, investment in the building to create different business opportunities or promotional/trade building support. In extreme cases, the house may cease to be viable and we would seek to relocate the licensee to a more fruitful trading environment.

All of the above should be compared with the Free of Tie lease, where the landlord, protected by UORR, would provide no assistance whatsoever to the lessee.

We support both principles, but in both cases, careful drafting would be required to prevent unintended circumstances.

iii Requirement to produce parallel “tied” and “free of tie” rent assessments

We believe such requirement to be inappropriate and effectively impossible within the context of traditional tenancies as there is no reference point for so called “free of tie” assessments. **The lack of comparable evidence would make valuation fraught with difficulty.** There is no market within which the landlord provides the property, carries the property risk and provides on going further investment, whilst charging a below market rent and receiving no share in the retail trade. There is no such market – as such, an arrangement would not be viable for the landlord.

This requirement does not recognise the huge differential in risk, both in terms of capital invested and on going liability, which is inherent in the different forms of tenure.

Consequently, the proposed requirement would be meaningless. It would only serve to confine tenants and impose a significant workload (and cost) on the landlord in carrying out an entirely pointless and unverifiable exercise for the benefit of no one.

Ultimately, the market will dictate which terms of agreement and positioning of rent are attractive to potential licensees. Market forces dictate that the landlord generates fair rental assessments, as the balance of power in fact lies in favour of the tenant who can issue six months’ notice at any time and relocate with a better landlord.

iv Abolish machine tie and mandate so products other than drinks may be tied

We endorse the view of the BBPA in respect of the machine tie.

We believe that wholesale release of the AWP tie would give rise to widespread **fraud, money laundering, tax evasion and criminal activity, with consequential loss of income to HMRC.** No consideration has been given to the unintended consequences of abolishing this tie.

We reject the proposal for other products than drink. This would be a clear illustration of the damaging consequences arising from governmental interference with consensually conducted business. Shepherd Neame are able to provide significant purchasing benefits for licensees as a consequence of bulk purchasing. This includes food and catering equipment procurement, utilities and coffee dispense equipment.

As the licensed trade constantly evolves there may be other areas where a “tying” mechanic can generate substantial benefits for all those involved. Given that a “tie” cannot be introduced on a retrospective basis and can therefore only be entered into on an entirely voluntary basis, it is difficult to understand what the purpose of this proposal could be.

v Provide a Guest Beer in all tied pubs

We do not agree with this proposal, which could **result in many pubs ceasing to be viable under the traditional tenancy system**. It would result in loss of community wet led premises and could damage the viability of the Brewery itself.

Successful organisations adapt to changing market conditions and this is evidenced by the growth over the past five years in the range of beer provided for licensees by Shepherd Neame:

Category	2008 pa	2013 pa
Own Cask Conditioned Ale	10	22
Guest Cask Conditioned Ale	0	30
Keg Ales	5	3
Stout	1	1
Draught/Keg Cider	1	4
Draught Lager	4	9
Total	21	69

Beer product range has increased by over 300% in five years.

vi Flow Monitoring Equipment

We do not agree with this proposal. Version 6 of the Code has a requirement that action, further to breach of contract in respect of the tie, can only be taken when flow meter evidence is corroborated by further empirical evidence.

The background to this proposal (5.20) is naïve at best, as it totally fails to acknowledge the fact that existing channels and means of distribution would be unrecognisable in the 18th Century. Indeed, it is the Luddite approach to evolving technologies which would oppose the introduction of HawkEye to cricket. Does the Government seriously believe that pubs should not utilise modern till systems because they could function without this technology in the 18th Century?

Shepherd Neame is investing in flow monitoring equipment as we believe it can assist licensees in maintaining beer quality, organising staff rotas and controlling stock, as well as providing useful management information.

There is a compliance element to the installation of this equipment, but Shepherd Neame have never and would never use flow monitor data as the sole ground for levying buying out charges as a consequence of a breach of contract.

9 Draft Statutory Code

We believe that the draft Code, attached to the consultation, is significantly flawed in as much as it fails to recognise the fundamental difference between traditional tenancies and FRI leases. This distinction is dealt with well by the existing Code Version 6. Specifically, we would comment:

Interpretation:

- **“Free of Tie Tenant”**: As demonstrated above, **there is no such person**. We would consequently suggest “Free of Tie Lessee”.
- **“Pub”**: The phrase “used principally for retail sales of alcohol” is open to wide interpretation. Is it the intention that any licensed premises, where the sale of alcoholic products represents less than 50% of turnover, be specifically excluded from the Code?

- **Objective:** 2(b) is over and beyond principles established in the IFC. Within the context of traditional tenancies, **it is unverifiable and as such meaningless.**

- **Part 2:** There are elements here which should not apply to the traditional tenanted model, eg:

6(a)(iii) Property advice.

9(a)(v) Traditional tenancies are not assignable.

9(b) This is not included in the tenanted section of the IFC.

9(c)(v) This is not relevant to traditional tenancies where the landlord bears the property risk.

9(e) As above and this would be a waste of the prospective tenant's funds.

9(f) It is unclear what sort of servicing is referred to here.

- **Part 3:**

10(b) The requirement for "sign off" by qualified RICS valuers would be extremely onerous for smaller companies. As explained above, the principle "that a Tied Tenant should be no worse off than a Free of Tie Tenant" is unverifiable, meaningless and unenforceable within the context of a traditional tied tenancy.

16(b) There would need to be a definition of "significant" for this clause to be effective. It is symptomatic of the lack of intellectual vigour throughout the consultation document that this issue has not been considered or addressed.

18 The requirement for a rent assessment statement within three months of request, under Paragraph 16, is contradicted in Paragraph 17 above, which sets a requirement of six months.

It is not clear how an FMT rent assessment would be relevant when addressing a material event of a temporary nature.

20 This provision is included in Version 6. However, it would not apply in respect of Free of Tie Lease Rents to which comparison is to be made.

- **Part 4:**

22-24 As above – these requirements are meaningless, unverifiable and unenforceable within the context of a Traditional Tied Tenancy.

27 As above – this proposal would destroy the balance achieved within the Traditional Tied Tenancy model. As such, it would result in the loss of a low cost low risk business opportunity within the licensed trade to the detriment of customers, potential licensees and the wider community within which many smaller pubs are located.

29 As above – this proposal would eliminate the potential for innovative consensual arrangements, designed to benefit licensees.

- 30 As above – no justification has been provided. Version 6 of the Code ensures that additional evidence be obtained before enforcement action is taken as a consequence of a breach of covenant.
- **Part 5:**
- 31 This goes well beyond the requirements of Version 6 and would impose disproportionate cost on smaller companies. There are relatively few qualifications available for Business Development Managers. There is no indication of how CPD might be monitored and this is a concept limited to professional bodies such as RICS. There is no such body for Business Development Managers.
- **Part 6:**
- 33 Version 6 of the Code, once accredited, will be applicable to and enforceable by all of our tenants, regardless of the timing of rent review.
- 37 This would transfer property risk to tenants and thus destroy the balance of the Traditional Tied Tenancy to the detriment of the tenant.
- **Part 7:**
- 42 There is no indication of how the Code should be provided to tenants. Printed and costed would be environmentally unsound and a significant cost burden. It would be preferable for the Code to be provided by way of email or prominent location on the company website.
- **Part 8:** This section would impose disproportionate and unjustifiable cost on smaller companies.
- **Annexe A** As above – the hypothetical Free of Tie option has no reference point within the real world.

There is no justification for GP% adopted and the illustrative SCORFA is erroneous within the context of the Traditional Tied Tenancy. The calculation fails to reflect differing levels of risk or investment.

10 Periodic Review of Code

We anticipate the voluntary Code will benefit from periodic review in order to reflect changing market conditions.

11 Mandatory Free of Tie Option

Imposition of a mandatory free of tie option would destroy the basis of the traditional tenancy, which is the bedrock of local community pubs and provides a uniquely low cost and low risk entry opportunity to the licensed trade. The (perhaps intended) consequence of this proposal would be reduced investment in pubs, which generates substantial local economic benefit, and consequential loss of new job creation. The loss of operational support would result in declining loss of sales and viability of public houses. At best, this would result in lesser quality pubs less likely to achieve the licensing objectives and contributing less to the national economy. At worst, it would result in **large scale closure of pubs** and loss of community benefit to the detriment of the social well-being of the nation as a whole. An unintended, but entirely foreseeable consequence.

On a local basis, such an option would almost certainly result in the closure of the Shepherd Neame Brewery.

12 Other Suggestions

We do not consider further measures to be appropriate.

13 Appointment of independent adjudicators

We believe that the current IFC provides more than adequate enforcement through PICAS to resolve issues of conduct and PIRRS to resolve disputed rent reviews.

14-17 Concerning the Adjudicator

We endorse the issues expressed by BBPA.

Summary

Shepherd Neame believes that there is neither evidence nor basis for introducing regulation that impacts its business, directly or indirectly, now or into the future:

- Shepherd Neame does not condone any abuse of the tie
- There is no evidence that product choice for consumers is restricted by the tied house system
- There is no evidence of materially different pricing to the consumer in tied houses versus free houses
- The tied house system is not the main cause of pub closures since free houses are closing at a similar rate
- The tied house model is adapting and changing to the new consumer needs, as it has always done
- The voluntary Code provides increased legal protection in the event of disputes and increased transparency for new agreements
- The traditional tenancy provides a low cost and low risk entry to the licensed trade, with significant landlord support, and offers a high return on capital for entrepreneurial licensees
- Traditional tied tenancies and commercial free of tie leases are radically different forms of tenure, which cannot be compared on a see through basis
- Shepherd Neame continues to evolve, adapt and improve its offer and commercial relationship with its tenants as it has done for 300 years and will continue to do so
- There have been 42 Enquiries into this issue since 1969. Each one provides uncertainty and is a major obstacle to investment and job creation.
- The recent duty cut has provided a confidence boost and stimulus. Any Government that is serious about creating jobs and investment and cutting red tape would, in our view, be wrong to intervene in this marketplace at this time, especially so early in the voluntary Code process.
- Any statutory regulation that threatened the traditional tenancy model as operated by Shepherd Neame would result in us suspending investment plans.
- The Statutory Code, as proposed, would radically alter the market for letting pubs and result in accelerated pub closure and the closure of smaller breweries
- The pub market should not be subject to Government intervention, which would distort the market, but should be allowed to continue to evolve in response to market forces and challenges
- Any Government intervention that threatened the basis of the tie would almost certainly result in the closure of the Shepherd Neame brewery.



HOUSE OF COMMONS
LONDON SW1A 0AA



Teddington, TW11 0AU

3rd September 2008

Dear [REDACTED]

I have been told by local pub landlords about the worries they face due to increasing costs, in particular those pubs that are in a tied lease agreement. Pub companies have been raising rents and the price of beer, forcing some tenant landlords and publicans into heavy debt. I am very concerned about this issue, as I understand that currently an average of 27 pubs a week in Britain are closing.

My party and I feel that the pub companies need to be held to account for their high prices, and hope to bring some relief to the tenant publican. We have pushed this issue into the spotlight, tabling a parliamentary motion which received widespread support. We have also raised the issue with the Department for Business Enterprise and Regulatory Reform.

I am pleased to say that a parliamentary investigation is being launched into pub chains, and in particular the pub 'tie'.

I will continue to support the 'Fair Pint' Campaign, and do what I can to support the future of the local pub. Please do not hesitate to contact me if I can be of any assistance on this or any other issue.

Yours Sincerely,

Vince Cable MP

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Whilst your MP will treat as confidential any personal information which you pass on, he will allow authorised staff to see the information if this is needed to help and advise you, and may pass all or some of this information to agencies such as the DSS, Inland Revenue or the local council if this is necessary to help with your case. He may wish to write you from time to time to keep you informed of related issues that you may find of interest. Please let him know if you do not wish to be contacted for this purpose.