

**North Hertfordshire District Council  
Licensing Act 2003  
Decision Notice**

Date of Hearing	Monday, 28 April 2008
Members of Panel	Councillors D. Barnard, J. Cunningham & L. Kercher
Applicant(s) Name	Remix Lease Ltd.
Premises Address	Remix Nightclub, 20/21 Hermitage Road, Hitchin, Herts. SG5 1BT
Date of Application	6 March 2008
<b>APPLICATION FOR VARIATION</b>	<p>This is an application for variation of a Premises Licence under Section 34 of the Licensing Act 2003.</p> <p>The Sub-Committee have read the material presented to us and have listened to all the evidence and submissions. The Sub-Committee has considered the National Guidance and the Statement of Licensing Policy and has come to the following decision:</p> <p>1. The application is <b>rejected in part and allowed in part</b>. The conditions on the licence shall be modified as set out below.</p> <p><b>1. <u>OPENING HOURS</u></b></p> <p>The permitted opening hours are:</p> <p>Sunday to Wednesday 12 Noon to 12 Midnight  Thursday 12 Noon to 0100hrs the following morning  Friday and Saturday 12 Noon to 0200hrs the following morning</p> <p><b>2. <u>LICENSABLE ACTIVITIES</u></b></p> <p>The licensable activities applied for are:</p> <ul style="list-style-type: none"> <li>• <input type="checkbox"/> PART C – Indoor Sporting Events</li> <li>• <input type="checkbox"/> PART D – Boxing or Wrestling Entertainment</li> <li>• <input type="checkbox"/> PART E – Live Music</li> <li>• <input type="checkbox"/> PART F – Recorded Music</li> <li>• <input type="checkbox"/> PART G – Performance of a Dance</li> <li>• <input type="checkbox"/> PART H – Anything of a Similar Nature – Parts E, F or G</li> <li>• <input type="checkbox"/> PART I – Provision of Facilities for Making Music</li> <li>• <input type="checkbox"/> PART J – Provision of Facilities for Dancing</li> <li>• <input type="checkbox"/> PART K – Provision of Facilities for Entertainment of a Similar Description – Parts I or J</li> <li>• <input type="checkbox"/> PART L – Late Night Refreshment</li> <li>• <input type="checkbox"/> PART M - Supply of alcohol</li> </ul>

The hours during which the licensable activities may take place are:

**PART C – Indoor Sporting Events**

Sunday to Wednesday 12 Noon to 12 Midnight  
Thursday 12 Noon to 0100hrs the following morning  
Friday and Saturday 12 Noon to 0200hrs the following morning

**PART D - Boxing or Wrestling Entertainment**

Sunday to Wednesday 12 Noon to 12 Midnight  
Thursday 12 Noon to 12 Midnight  
Friday and Saturday 12 Noon to 0200hrs the following morning

**PART E – Live Music**

Sunday to Wednesday 12 Noon to 12 Midnight  
Thursday 12 Noon to 0100hrs the following morning  
Friday and Saturday 12 Noon to 0200hrs the following morning

**PART F – Recorded Music**

Sunday to Wednesday 12 Noon to 12 Midnight  
Thursday 12 Noon to 0100hrs the following morning  
Friday and Saturday 12 Noon to 0200hrs the following morning

**PART G - Performance of a Dance**

Sunday to Wednesday 12 Noon to 12 Midnight  
Thursday 12 Noon to 0100hrs the following morning  
Friday and Saturday 12 Noon to 0200hrs the following morning

**PART H – Anything of a Similar Nature – Parts E, F or G**

Sunday to Wednesday 12 Noon to 12 Midnight  
Thursday 12 Noon to 0100hrs the following morning  
Friday and Saturday 12 Noon to 0200hrs the following morning

**PART I – Provision of Facilities for Music Making**

Sunday to Wednesday 12 Noon to 12 Midnight  
Thursday 12 Noon to 0100hrs the following morning  
Friday and Saturday 12 Noon to 0200hrs the following morning

**PART J – Provision of Facilities for Dancing**

Sunday to Wednesday 12 Noon to 12 Midnight  
Thursday 12 Noon to 0100hrs the following morning  
Friday and Saturday 12 Noon to 0200hrs the following morning

**PART K – Provision of Facilities for Entertainment of a Similar Description – Parts I or J**

	<p>Sunday to Wednesday 12 Noon to 12 Midnight  Thursday 12 Noon to 0100hrs the following morning  Friday and Saturday 12 Noon to 0200hrs the following morning</p> <p><b>PART L – Late Night Refreshment</b></p> <p>Sunday to Wednesday 2300hrs to 12 Midnight  Thursday 2300hrs to 0100hrs the following morning  Friday and Saturday 2300hrs to 0200hrs the following morning</p> <p><b>PART M - Supply of Alcohol</b></p> <p>Sunday to Wednesday 12 Noon to 2340hrs  Thursday 12 Noon to 0040hrs the following morning  Friday and Saturday 12 Noon to 0140hrs the following morning</p>
<p><b>CONDITIONS DEEMED NECESSARY FOR THE PROMOTION OF THE LICENSING OBJECTIVES</b></p>	<p>The Sub-Committee recognises that conditions will <u>only</u> be imposed on a licence where conditions are necessary for the promotion of one of the four licensing objectives. The Sub-Committee will only impose conditions on a licence where relevant representations have been made and they consider that it is necessary to impose conditions as a result of these representations.</p> <p>The following conditions are each considered necessary by the Sub-Committee to promote the licensing objectives:</p> <p>The condition(s) are:</p> <ol style="list-style-type: none"> <li>1. The conditions on the existing licence shall remain except that the application (the content of which is set out at pages 32 to 33 of the application and supporting papers) for a variation of the following conditions is allowed to the following extent:</li> </ol> <p>The variation of Condition e) of the operating schedule is allowed and the variations to Condition 9, Condition 10, Condition 11, Condition 16, Condition 17, Condition 20 imposed at the previous hearing are allowed as per the application.</p> <p>The application for variation of Condition 19 is allowed in part and rejected in part. Condition 19 shall read:</p> <p>‘No entry or re-entry to the premises after 01.00 hours other than for persons permitted to leave the premises for the purposes of smoking. On such occasions no more than 10 persons shall be permitted exit from the premises at any one time and no such person shall be permitted re-entry unless with a valid permit for re-entry’</p> <p>This condition is deemed necessary for the promotion of one of the licensing objectives, namely the prevention of public nuisance.</p> <p>Condition 22 shall be modified to read:</p> <p>‘To minimise disturbance to nearby properties bottles shall only be disposed of into external receptacles between the hours of 9am and 1800 hours.’</p>

	<p>This condition is deemed necessary for the promotion of one of the licensing objectives, namely the prevention of public nuisance.</p>
<p><b>CONDITIONS PROPOSED BY THE RESPONSIBLE AUTHORITIES</b></p>	<p>The following conditions proposed by North Hertfordshire Environmental Health were considered unnecessary to promote the objective of one of the four licensing objectives namely, the prevention of public nuisance as the Sub-Committee has decided not to vary the terminal hour of any of the licensable activities and that the existing conditions as varied are such as to ensure the promotion of this licensing objective.</p> <ol style="list-style-type: none"> <li>1. Management are to ensure that the acoustic engineer returns to adjust the noise limiters, they are to ensure that Environmental Health is informed in sufficient time to provide a presence during this visit.</li> <li>2. Management should consider the following measures to reduce noise:       <ol style="list-style-type: none"> <li>a. Reviewing the type of music being played;</li> <li>b. Reducing the bass content of the music;</li> <li>c. Reviewing the location, direction and number of speakers;</li> <li>d. Informing performers of any noise problems and associated controls and monitor their compliance;</li> <li>e. Relocation and/or isolation of speakers which are adjacent to ceiling mounted extractor fans;</li> <li>f. Mounting speakers on rubber or similar material to reduce transmission into the main building structure.</li> </ol> </li> <li>3. Management should consider the employment of an acoustic consultant to install specialist sound insulation measures and other changes to the building structure, design and layout to sufficiently control noise. The following are to be considered:       <ol style="list-style-type: none"> <li>a. Assessment of the existing sound insulation of the building fabric;</li> <li>b. Sound insulation measures to prevent airborne and structural transmission of noise and vibration to adjacent premises;</li> <li>c. Attenuation measures to minimise noise breakout, and to prevent noise disturbance to the surrounding area;</li> <li>d. Alteration of the building layout to prevent noise escape;</li> <li>e. Installation of acoustic doors or lobbies;</li> <li>f. Other measures to reduce structural transmission of noise and vibration.</li> </ol> </li> <li>4. The management should consider the installation of an air conditioning system in the club to prevent the need for patrons to open doors and windows during the warmer months. This will prevent the escape of noise from the club leading to complaints from nearby residents.</li> <li>5. The noise from chillers and ventilation plants could cause noise problems to nearby residents, management should consider the type of plant installed and their location.</li> <li>6. Refuse and empty bottle/barrel storage areas should be positioned away from residential properties and preferably screened or enclosed.</li> </ol>

	<p>Management should also consider not using the area after 21:00 hours.</p> <p>7. Licences can be held to account for noise problems arising from patrons both on their premises and in the vicinity of licensed premises. Controlling the impact of noise from patrons is usually a careful mix of location, design, operation and management of licensed premises. Patron noise tends to be less of a problem for premises that attract a mixed clientele, compared to premises targeted only at young persons. Management should consider the following measures:</p> <ol style="list-style-type: none"> <li>a. The use of lobbied doorways can help control noise escape from the premises, as they are directly under the control of the licensee and provide a calming transitional phase between the noisy interior and exterior;</li> <li>b. Playing calmer type music at lower volume towards closing time to encourage patrons to leave in a less rowdy manner;</li> <li>c. Providing notices at exits requesting the co-operation of patrons can also help to reduce noise.</li> </ol> <p>8. Management should be encouraged to build and maintain a good working relationship with local people and be proactive about controlling noise from the premises not reactive. Methods should also be set up for logging and responding to noise complaints from local residents within appropriate time limits.</p> <p>9. Staff should be provided with general advice and training on noise control and made aware of internal procedures for assessing and controlling noise and dealing with complaints.</p> <p>10. Consideration must be given to noise levels within the premises in order to prevent damage to hearing. Venue owners should provide the public with clear information on noise levels to make them aware of the risks. Where reasonably practicable, offer quieter “chill-out” areas within the venue. Where noise may be an issue, ear plugs should be provided to staff and members of the public. A noise assessment of the premises is required by the Noise at Work Regulations 2005 from 1<sup>st</sup> April 2008.</p> <p>11. The existing late closing times should remain at 02:00 hours or be reduced until management is able to operate the Remix Night Club without noise impacting on nearby residents. This should remain in place over an extended period of one year.</p>
<p><b>CONDITIONS PROPOSED BY APPLICANT</b></p>	<p>The Variation application has been addressed above.</p>
<p><b>EFFECT OF FAILING TO COMPLY WITH CONDITIONS EXPLAINED TO APPLICANT</b></p>	<p>The Sub-Committee has explained to the applicant the effect of failure to comply with any of the conditions attached to the licence or certificate is a criminal offence, which upon conviction, would result in a fine of up to £20,000 or up to six months imprisonment or both.</p>
<p><b>STATEMENT OF LICENSING</b></p>	<p>The Sub-Committee has taken into account the North Hertfordshire District Council’s Statement of Licensing Policy in reaching their</p>

## **POLICY**

decision. They have found the following sections to be of particular relevance in reaching this decision.

### **4. Regulating Licensing**

4.1 *Licensing is about regulating the carrying on of licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the Act. The Council may attach conditions to licences issued under the Act and these must be focussed on matters which are within the control of the individual licence holders and others in possession of relevant authorisations.*

4.2 *The Council recognises that licensing law is not the primary mechanism for the general control of individuals once they are away from a licensed premises and, therefore, beyond the direct control of the licensee(s) or certificate holder(s). Beyond the vicinity of the premises, an individual who engages in anti-social behaviour is accountable under law in their own right. Nonetheless, it is a key aspect of such control and licensing law will always be part of a holistic approach to the management of the evening and night-time economy in North Hertfordshire.*

4.3 *In addressing these matters the Council will primarily focus on the direct impact of the activities taking place on, or in the immediate vicinity of, the licensed premises on members of the public living, working or otherwise engaged in activities in the vicinity.*

4.4 *The Council do not consider that the term "vicinity" can be generically defined and will consider its definition in the specific circumstances of each application. To be considered in the vicinity of a premises, an interested party must be able to demonstrate a causal link to activities on or in the immediate vicinity of the premises in relation to the licensing objectives. For example, an interested party may be able to hear music from the premises within their property or they may see patrons leaving the premises and causing a nuisance near their property.*

4.5 *The Council recognise that unless relevant representations are received from responsible authorities or interested parties, there is no provision for a licensing authority to impose conditions on a licence other than those volunteered by the applicant as part of the operating schedule included in the application. In addition, there is no provision for a licensing authority itself to make representations. If no relevant representations are received in respect of an application, the licensing authority must issue the licence on the terms sought.*

### **5. Licence Conditions**

5.1 *The Council recognise that each application must be considered on its own merits and any conditions attached to licences and*

*certificates must be tailored to the individual style and characteristics of the premises and activities concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises. Standardised conditions must be avoided and will only be lawful where they are deemed necessary to promote the licensing objectives in response to relevant representations.*

5.2 *Conditions will only be imposed when they are necessary for the promotion of the Licensing Objectives and will focus upon matters within the control of the individual licensee such as the premises, places or events being used for licensable activities. Conditions are likely to be focused towards the direct impact of those activities on persons living, working or otherwise engaged in activities in the vicinity.*

5.3 *Where appropriate the Council will draw upon the pool of model conditions issued under the Act. A copy of the current pool of model conditions can be found on the Council's website at [www.north-herts.gov.uk](http://www.north-herts.gov.uk). The pool of model conditions relate to:*

- the prevention of crime and disorder;*
- public safety (including fire safety);*
- the promotion of public safety in theatres, cinemas, concert halls and similar places;*
- the prevention of public nuisance; and*
- the protection of children from harm.*

5.4 *Any conditions drawn from the pool of model conditions will be tailored to the individual premises and events concerned and determined at the time the application is being considered.*

## **7. Licensing Hours**

7.1 *The Council recognises that fixed and artificially early closing times previously established under the Licensing Act 1964 were one of the main causes of rapid binge drinking prior to closing times and one of the causes of disorder and disturbance when large numbers of customers were required to leave premises simultaneously. These concentrations of people leaving can result in friction at places such as late night food outlets, taxi ranks and other sources of transport. The aim through the promotion of the licensing objectives will be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through flexible opening times. The Council recognise that arbitrary restrictions would undermine the principle of flexibility and should be avoided. The licensing objectives will be the paramount consideration at all times.*

7.2 *The Council also recognises that licensing hours should not inhibit the development of a thriving and safe evening and night time economy, which is important for local investment, employment and tourism. The Council will not seek to restrict the trading hours of any particular premises unless this is necessary to promote one or more of the Licensing Objectives.*

7.3 *The Council has no intention to introduce the zoning of licensing hours. Experience in other areas has shown that this can lead to significant movement of people across boundaries in search of premises opening later and places greater pressure on town centres than is necessary. In addition, the Council recognise that zoning of licensing hours would undermine the principle of determining each application on it's own merits.*

7.4 *With regards to shops, stores and supermarkets that provide sales of alcohol for consumption off the premises, the Council would normally expect to grant the sale of alcohol at any time the premises is open to the public, unless representations give good reason to restrict the hours in relation to the licensing objectives.*

## **8. Children and Licensed Premises**

8.1 *The Council recognises the diversity of premises that will be licensed under the Act. The premises will include theatres, cinemas, restaurants, pubs, nightclubs, cafes, take-away shops, community halls and schools. The Council will not ordinarily seek to limit the access by children to any premises will not be limited unless it is considered necessary for the prevention of physical, moral or psychological harm to them.*

8.2 *When deciding whether to limit access by children to premises, the Council will judge each application on its individual merits.*

8.3 *Premises where concern for the protection of children may arise, include:*

- *where entertainment of an adult or sexual nature are commonly provided;*
- *where there is a strong element of gambling on the premises;*
- *where there is a known association with drug taking or dealing;*
- *where current staff members have been convicted for serving alcohol to minors;*
- *where there is evidence of underage drinking; and*
- *where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.*

8.4 *There are a range of alternatives which the Council may consider for limiting the access of children, which include:*

- *a limit on the hours when children may be present;*
- *a limitation or exclusion when certain activities are taking place;*
- *the requirement to be accompanied by an adult;*
- *limited access to parts of the premises; and*
- *full exclusion of those people under 18 from the premises when any licensable activities are taking place.*



8.5 Any licensed premises used for film exhibitions will be subject to conditions restricting children from viewing age restricted films in accordance with recommendations given by the British Board of Film Classification. Where a BBFC classification does not exist, the Council will classify the film in accordance with BBFC guidelines.

8.6 Conditions requiring the admission of children to premises cannot be attached to licences or certificates. Where no restriction or limitation is imposed the issue of access will remain a matter of discretion of the individual licensee or club or holder of a temporary event notice.

8.7 The Council recognises the Hertfordshire Area Child Protection Committee as being competent to advise on matters relating to the protection of children from harm.

8.8 The Council supports the Portman Group Code of Practice on the naming, packaging and promotion of alcoholic drinks. Alcohol should be packaged and promoted in a socially responsible manner so as not to encourage drinking amongst those who are under 18 years old. A copy of the Code can be found at [www.portman-group.co.uk](http://www.portman-group.co.uk).

## **9. The Prevention of Public Nuisance**

9.1 Licensed premises may have significant potential to impact adversely on communities through public nuisances that arise from their operation. The Council interprets 'Public Nuisance' in its widest sense and takes it to include such things as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in activities in the vicinity of a particular premises.

9.2 The Council may impose conditions on licences to prevent unnecessary Public Nuisance to local residents. The conditions may include:

- sound proofing requirements;
- restrictions on times when music or other licensable activities may take place;
- technical restrictions on sound levels at the premises, by the use of sound limiting devices;
- limiting the hours of regulated entertainment;
- limiting the hours of open-air entertainment and the use of outdoor areas, gardens, patios, and smoking shelters; or
- requiring the display of signs both inside and outside the premises reminding customers to leave the premises quietly and to respect the rights of nearby residents.

9.3 The following examples of control measures are given to assist applicants when preparing their Operating Schedules, having regard to their particular type of premises and/or activities. These are not exhaustive but include:

	<ul style="list-style-type: none"> <li>• effective and responsible management of the premises;</li> <li>• appropriate instruction, training and supervision of those employed or engaged to prevent incidents of Public Nuisance;</li> <li>• adoption of best practice guidance such as the Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by the Institute of Acoustics; Safer Clubbing and the National Alcohol Harm Reduction Strategy Toolkit;</li> <li>• management of arrangements for the collection and disposal of litter; and</li> <li>• effective ventilation systems.</li> </ul> <p>9.4 Conditions relating to noise nuisance will normally concern steps necessary to control the levels of noise emanating from premises. The Council are aware of the need to avoid unnecessary or disproportionate measures that could deter valuable community activities such as live music. Conditions that are likely to be a significant financial burden will be avoided, where possible, for smaller venues.</p> <p>9.5 The Council recognise that conditions relating to noise nuisance may not be necessary in certain circumstances where the provisions of the Environmental Protection Act 1990, the Noise Act 1996, or the Clean Neighbourhoods and Environment Act 2005 adequately protect those living in the vicinity of the premises. That said, the approach of the Council will be one of prevention and will consider each application on its own merits.</p> <p><b>10. Live Music, Dancing and Theatre</b></p> <p>10.1 The Council recognises the need to encourage and promote live music, dancing and theatre for the wider cultural benefit of the community.</p> <p>10.2 Only necessary, proportionate and reasonable licensing conditions will be imposed on relevant licences so as not to discourage the promotion of entertainment. Conditions will relate to the promotion of the Licensing Objectives.</p> <p>10.3 The Council will avoid any measure which deters live music, dancing and theatre by imposing indirect costs of a substantial nature.</p> <p>10.4 The Council will seek to encourage cultural and community events by licensing its own public spaces. The following public spaces are currently licensed for regulated entertainment:</p> <p style="padding-left: 40px;">Butts Close, Hitchin Howard Gardens, Letchworth Broadway Gardens, Letchworth</p>
<b>RATIONALE FOR</b>	The application to extend the terminal hour in respect of all the licensable activities is refused. The Sub-Committee consider that on the

<b>DECISION</b>	<p>evidence they have heard from all the parties the extension would not promote the licensing objective of the prevention of public nuisance and that the concerns of local residents and Environmental Health have not yet been satisfactorily addressed. The variation to Condition e) of the operating schedule is allowed as the Sub-Committee heard satisfactory evidence that this variation would not detract from the promotion of the licensing objective of the protection of children from harm. The variations to the Condition imposed at the hearing namely conditions 9,10,11,16,17 and 20 as the Sub- Committee were satisfied that these variations would not detract from the promotion of the licensing objective of the prevention of crime and disorder or public nuisance. The variation to Condition 19 has been refused in part as the Sub-Committee was of the view that increasing the amount of persons smoking outside the venue at any one time would fail to promote the licensing objective of the prevention of public nuisance. The variation to Condition 19 was allowed in part as the Sub-Committee was of the view that extending the time for admission by one hour would allow more gradual ingress and reduce queuing levels and thereby promote the licensing objective, the prevention of public nuisance.</p>
<b>COMMENCEMENT DATE</b>	<p>This licence will come into effect from the date of this decision.</p>
<b>RIGHTS OF REVIEW</b>	<p>At any stage, following the grant of a premises licence, a responsible authority, such as the Police or an interested party, such as a resident living in the vicinity of the premises may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives. The review is a request for the Council to look at the existing licence and decide whether its conditions are adequate to meet the four licensing objectives defined under the Licensing Act 2003.</p>