

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

Date of Hearing	Thursday, 30 <sup>th</sup> October 2008
Members of Panel	Councillors A. Bardett, J.M. Cunningham and M. Kirkland
Applicant(s) Name	Anthony Roach
Premises Address	The Banyers of Royston, 16 Melbourn Street, Herts. SG8 7BZ
Date of Application	29 August 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 them 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><b>The application is <u>rejected</u>.</b> The Sub-Committee has found that the licensing objective of the prevention of public nuisance has not been met by the application and is not satisfied that any conditions attached to the licence could ensure the licence meets these objectives.</p> <p><b>1. <u>OPENING HOURS</u></b></p> <p>The opening hours applied for and rejected are:</p> <p>Monday to Thursday 0700hrs to 0030hrs the following morning  Friday and Saturday 0700hrs to 0130hrs the following morning  Sunday 0700hrs to 0030hrs 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 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 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 M - Supply of Alcohol</li> </ul> <p>The hours during which the licensable activities may take place are:</p> <p><b>PART D – Boxing or Wrestling Entertainment</b></p> <p>Friday to Sunday 1200hrs to 0100hrs the following morning</p>

	<p><b>PART E – Live Music</b></p> <p>Friday to Sunday 1200hrs to 0100hrs the following morning</p> <p><b>PART F – Recorded Music</b></p> <p>Friday and Saturday 1200hrs to 0100hrs the following morning  Sunday 1200hrs to 2300hrs</p> <p><b>PART G – Performance of a Dance</b></p> <p>Friday to Sunday 1200hrs to 0100hrs the following morning</p> <p><b>PART I – Provision of Facilities for Music Making</b></p> <p>Friday to Sunday 1200hrs to 0100hrs the following morning</p> <p><b>PART J – Provision of Facilities for Dancing</b></p> <p>Friday to Sunday 1200hrs to 0100hrs the following morning</p> <p><b>PART M - Supply of Alcohol</b></p> <p>Monday to Thursday 1000hrs to 12 Midnight  Friday and Saturday 1000hrs to 0100hrs the following morning  Sunday 1000hrs to 12 Midnight</p>
<p><b>CONDITIONS DEEMED NECESSARY FOR THE PROMOTION OF THE LICENSING OBJECTIVES</b></p>	<p>None</p>
<p><b>CONDITIONS PROPOSED BY THE RESPONSIBLE AUTHORITIES</b></p>	<p>The following condition has been recommended by the <b>NHDC Building Control Service</b>:</p> <p>1. The following information should be provided to the NHDC Building Control Service at least 28 days prior to the erection of the marquee:</p> <ul style="list-style-type: none"> <li>• <input type="checkbox"/> Structural design details, including loading limitations, particularly wind loading;</li> <li>• <input type="checkbox"/> Method of monitoring wind conditions whilst marquee is in position and proposed action should excessive wind speeds occur;</li> <li>• <input type="checkbox"/> Details of fire retardency of marquees fabric and drape materials etc.;</li> <li>• <input type="checkbox"/> Full details of temporary structures i.e. stages etc., if any proposed;</li> <li>• <input type="checkbox"/> Full details of proposed occupancy and method of monitoring numbers;</li> </ul>

	<ul style="list-style-type: none"> <li>•□□ Full details of fire exits i.e. widths, siting and exit fastenings; and</li> <li>•□□ Full details of emergency lighting.</li> </ul> <p>This condition is considered <b><u>unnecessary</u></b> for the promotion of one of the four licensing objectives, namely public safety</p>
<p><b>CONDITIONS PROPOSED BY APPLICANT</b></p>	<p>This licence will be subject to the conditions, that are consistent with the terms offered by the applicant in order to promote the four licensing objectives set out in Part P of their application.</p>
<p><b>EFFECT OF FAILING TO COMPLY WITH CONDITIONS EXPLAINED TO APPLICANT</b></p>	<p>Not Applicable</p>
<p><b>STATEMENT OF LICENSING POLICY</b></p>	<p>The Sub-Committee has taken into account the North Hertfordshire District Council's Statement of Licensing Policy in reaching their decision. They have found the following sections to be of particular relevance in reaching this decision.</p> <p><b>4. Regulating Licensing</b></p> <p>4.1 <i>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.</i></p> <p>4.2 <i>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.</i></p> <p>4.3 <i>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.</i></p> <p>4.4 <i>The Council do not consider that the term "vicinity" can be generically defined and will consider it's 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</i></p>

*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.*

## **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:

- effective and responsible management of the premises;
- appropriate instruction, training and supervision of those employed or engaged to prevent incidents of Public Nuisance;
- 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;
- management of arrangements for the collection and disposal of litter; and
- effective ventilation systems.

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.

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.

## **10. Live Music, Dancing and Theatre**

10.1 The Council recognises the need to encourage and promote

	<p><i>live music, dancing and theatre for the wider cultural benefit of the community.</i></p> <p>10.2 <i>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.</i></p> <p>10.3 <i>The Council will avoid any measure which deters live music, dancing and theatre by imposing indirect costs of a substantial nature.</i></p> <p>10.4 <i>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:</i></p> <p><i>Butts Close, Hitchin</i>  <i>Howard Gardens, Letchworth</i>  <i>Broadway Gardens, Letchworth</i></p>
<p><b>RATIONALE FOR DECISION</b></p>	<p>The Sub-Committee has been mindful of the need to promote the licensing objective of the Prevention of Public Nuisance, and the Guidance, with particular reference to paragraphs 2.33 – 2.36. Evidence has been supplied by Environmental Health and the Interested Parties that a noise nuisance would exist if this application were permitted. The Sub-Committee was not satisfied that Conditions could satisfactorily address the evidence supplied by Environmental Health and the Interested Parties. The Sub-Committee considers that it has not heard compelling factual evidence from the Applicant to address the evidence and concerns introduced by Environmental Health and the Interested Parties, that persuades it to vary the terms of the Licence originally granted.</p> <p>The Sub-Committee found it unfortunate that the Applicant had not taken proactive responsibility to engage fully with the Responsible Authorities or the Interested Parties prior to the Hearing.</p> <p>The Sub Committee was mindful that the Applicant made representations during the hearing regarding reducing the hours applied for and his intention to engage sound experts. However the current failure by the Applicant to have this information available at the time of the hearing, or to have produced a proactive Noise Management Plan or other suitable evidence for consideration by the Sub Committee and Responsible Authority, meant that the licensing objective of public nuisance would be unsatisfactorily compromised even with the reduced hours offered.</p> <p>The Sub-Committee noted the representation of Building Control, but considers that this should be dealt with by other mechanisms already in place, and noted that the Applicant confirmed in the Hearing that he was prepared to supply the requested information to Building Control.</p>

	<p>The Sub-Committee has been mindful of the evidence that the Application Premises makes a positive contribution in Royston, however it is not satisfied that any commercial arguments are adequately relevant given the weight of evidence regarding noise nuisance.</p>
<p><b>COMMENCEMENT DATE</b></p>	<p>This decision will come into effect from today.</p>
<p><b>RIGHTS OF REVIEW</b></p>	<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>