

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

Date of Hearing	Thursday, 5 March 2009
Members of Panel	Councillors A. Bardett, M. Kirkland & M. Weeks
Applicant(s) Name	Sound Base Studios Trust
Premises Address	Sub Zero, 23 Churchgate, Hitchin, Herts. SG5 1DN
Date of Application	13 th January 2009
APPLICATION FOR VARIATION	<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>The application is <u>approved</u> subject to the conditions and hours as are set out below.</p> <p>1. <u>OPENING HOURS</u></p> <p>The permitted opening hours are:</p> <p>Monday to Wednesday 1000hrs to 2230hrs Thursday to Saturday 1000hrs to 2345hrs</p> <p>These hours are to apply each day of the year with the exception of:</p> <ul style="list-style-type: none">• Xmas Eve,• New Years Eve. <p>On all these days the hours will be from 1000hrs to 0045hrs the following morning.</p> <p>2. <u>LICENSABLE ACTIVITIES</u></p> <p>The licensable activities applied for are:</p> <ul style="list-style-type: none">• PART A – Plays (Indoors)• PART B – Films (Indoors)• PART C – Indoor Sporting Events• PART E – Live Music (Indoors)• PART F – Recorded Music (Indoors)• PART G – Performance of a Dance (Indoors)• PART H – Anything of a Similar Nature – Parts E, F or G (Indoor)

- PART I – Provision of Facilities for Making Music (Indoors)
- PART J – Provision of Facilities for Dancing (Indoors)
- PART K – Provision of Facilities for Entertainment of a Similar Description – Parts I or J (Indoor)

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

PART A – Plays (Indoors)

Monday to Wednesday 1000hrs to 2215hrs
Thursday to Saturday 1000hrs to 2300hrs

These hours are to apply each day of the year with the exception of:

- Xmas Eve,
- New Years Eve.

On Xmas Eve the hours will be from 1000hrs to 0030 hrs the following morning, and on New Years Eve the hours will be from 1000hrs to 0045hrs

PART B – Films (Indoors)

Monday to Wednesday 1000hrs to 2215hrs
Thursday to Saturday 1000hrs to 2300hrs

These hours are to apply each day of the year with the exception of:

- Xmas Eve,
- New Years Eve.

On Xmas Eve the hours will be from 1000hrs to 0030 hrs the following morning, and on New Years Eve the hours will be from 1000hrs to 0045hrs

PART C – Indoor Sporting Events

Monday to Wednesday 1000hrs to 2215hrs
Thursday to Saturday 1000hrs to 2300hrs

These hours are to apply each day of the year with the exception of:

- Xmas Eve,
- New Years Eve.

On Xmas Eve the hours will be from 1000hrs to 0030 hrs the following morning, and on New Years Eve the hours will be from 1000hrs to 0045hrs

PART E – Live Music (Indoors)

Monday to Wednesday 1000hrs to 2215hrs
Thursday to Saturday 1000hrs to 2300hrs

These hours are to apply each day of the year with the exception of:

- Xmas Eve,
- New Years Eve.

On Xmas Eve the hours will be from 1000hrs to 0030 hrs the following morning, and on New Years Eve the hours will be from 1000hrs to 0045hrs

PART F – Recorded Music (Indoors)

Monday to Wednesday 1000hrs to 2215hrs
Thursday to Saturday 1000hrs to 2300hrs

These hours are to apply each day of the year with the exception of:

- Xmas Eve,
- New Years Eve.

On Xmas Eve the hours will be from 1000hrs to 0030 hrs the following morning, and on New Years Eve the hours will be from 1000hrs to 0045hrs

PART G – Performance of a Dance (Indoors)

Monday to Wednesday 1000hrs to 2215hrs
Thursday to Saturday 1000hrs to 2300hrs

These hours are to apply each day of the year with the exception of:

- Xmas Eve,
- New Years Eve.

On Xmas Eve the hours will be from 1000hrs to 0030 hrs the following morning, and on New Years Eve the hours will be from 1000hrs to 0045hrs

PART H – Anything of a similar nature to Parts E, F or G (Indoor)

Monday to Wednesday 1000hrs to 2215hrs
Thursday to Saturday 1000hrs to 2300hrs

These hours are to apply each day of the year with the exception of:

- Xmas Eve,
- New Years Eve.

On Xmas Eve the hours will be from 1000hrs to 0030 hrs the following morning, and on New Years Eve the hours will be from 1000hrs to 0045hrs

PART I – Provision of Facilities for Music Making (Indoors)

Monday to Wednesday 1000hrs to 2215hrs

	<p>Thursday to Saturday 1000hrs to 2300hrs</p> <p>These hours are to apply each day of the year with the exception of:</p> <ul style="list-style-type: none"> • Xmas Eve, • New Years Eve. <p>On Xmas Eve the hours will be from 1000hrs to 0030 hrs the following morning, and on New Years Eve the hours will be from 1000hrs to 0045hrs</p> <p>PART J - Provision of Facilities for Dancing (Indoors)</p> <p>Monday to Wednesday 1000hrs to 2215hrs Thursday to Saturday 1000hrs to 2300hrs</p> <p>These hours are to apply each day of the year with the exception of:</p> <ul style="list-style-type: none"> • Xmas Eve, • New Years Eve. <p>On Xmas Eve the hours will be from 1000hrs to 0030 hrs the following morning, and on New Years Eve the hours will be from 1000hrs to 0045hrs</p> <p>PART K - Provision of Facilities for Entertainment of a Similar Description – Parts I or J (Indoor)</p> <p>Monday to Wednesday 1000hrs to 2215hrs Thursday to Saturday 1000hrs to 2300hrs</p> <p>These hours are to apply each day of the year with the exception of:</p> <ul style="list-style-type: none"> • Xmas Eve, • New Years Eve. <p>On Xmas Eve the hours will be from 1000hrs to 0030 hrs the following morning, and on New Years Eve the hours will be from 1000hrs to 0045hrs</p>
<p>CONDITIONS DEEMED NECESSARY FOR THE PROMOTION OF THE LICENSING OBJECTIVES</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 objective of Prevention of Public Nuisance</p> <p>The condition(s) are:</p> <ol style="list-style-type: none"> 1. The Club will be operated on an under 18 membership only

	<p>basis, which will be available through local schools.</p> <ol style="list-style-type: none"> 2. Each member may sign in one under 18 guest per event. The guest's name and address and age will be registered in a guest's signing in book. 3. Each guest must provide photographic ID as proof of age in the form of passport, photocopy of passport, driving licence or a PASS accredited ID card scheme or other similar photographic ID. 4. Entry will be restricted to patrons who can prove membership and signed in guests. 5. The noise from the premises shall not exceed levels agreed with Environmental Protection within the nearby commercial premises such levels to be agreed within three months of the commencement of the licence. <p>The following conditions are removed from the licence as they are superseded by the conditions above:</p> <ul style="list-style-type: none"> • The Club will be operated on a membership only basis, which will be available through local schools. • Entry will be restricted to patrons who can prove membership <p>Conditions 5, 6 and 7 of the Additional Operating Schedule Conditions are removed from the licence as they are considered unnecessary to ensure the promotion of one of the four licensing objectives, namely the Prevention of Public Nuisance.</p> <p>All other conditions remain unchanged.</p>
<p>CONDITIONS PROPOSED BY THE RESPONSIBLE AUTHORITIES</p>	<p>The following condition has been recommended by NHDC Environmental Protection:</p> <ol style="list-style-type: none"> 1. A noise survey must be carried out by a competent acoustic consultant with experience in dealing with licensed premises. A noise mitigation scheme designed to minimise the impact of the noise shall be submitted to the Licensing Authority. The approved measures shall be fully implemented and maintained in accordance with the approved details thereafter. <p>This condition is considered <u>unnecessary</u> to ensure the promotion of one of the four licensing objectives, namely the Prevention of Public Nuisance.</p>
<p>EFFECT OF FAILING TO COMPLY WITH CONDITIONS EXPLAINED TO APPLICANT</p>	<p>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>STATEMENT OF LICENSING</p>	<p>The Sub-Committee has taken into account the North Hertfordshire District Council's Statement of Licensing Policy in reaching their</p>

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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 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 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. 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.

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 it's own merits.*

10. Live Music, Dancing and Theatre

10.1 *The Council recognises the need to encourage and promote live music, dancing and theatre for the wider cultural benefit of the community.*

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>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>RATIONALE FOR DECISION</p>	<p>The Sub-Committee recognises the importance of the applicant's project to North Hertfordshire. However this decision is solely made with full regard to the licensing objectives, the guidance, the valid representations made by Environmental Health and the representations of the applicant. The Sub-Committee took into account that if there are issues relating to Public Nuisance in the future there is a review process under the Licensing Act.</p>
<p>COMMENCEMENT DATE</p>	<p>This licence will come into effect from the date of this decision.</p>
<p>RIGHTS OF REVIEW</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>