

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

Date of Hearing	Wednesday, 23 September 2009
Members of Panel	Councillors D. Barnard, G. Grindal and M. Muir
Applicant(s) Name	Daniel Alder
Premises Address	Mother Brown's, 24 Queen Street, Hitchin, Herts. SG4 9TN
Date of Application	24 July 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 <i>rejected</i>. The Sub-Committee has found that the licensing objective of the prevention of public nuisance has not been met by this application. It considers that additional conditions are however necessary to promote the licensing objectives.</p> <p>1. <u>OPENING HOURS</u></p> <p>The permitted opening hours are:</p> <p>Monday to Thursday 1100hrs to 12 Midnight Friday and Saturday 1100hrs to 0030hrs the following morning Sunday 1100hrs to 12 Midnight</p> <p>These hours are to apply each day of the year with the exception of the following dates: Christmas Eve, Boxing Day, Maundy Thursday, Good Friday, Easter Saturday, Easter Sunday, Easter Monday. The Friday, Saturday and Sunday and Monday of all Bank Holiday weekends. On these days the premises will be permitted to remain open for one additional hour to the standard permitted terminal hour. This will not affect the existing provision in respect of pre-existing New Year's Eve / New Year's day Permitted Hours.</p> <p>2. <u>LICENSABLE ACTIVITIES</u></p> <p>The licensable activities applied for are:</p> <ul style="list-style-type: none"> • PART E – Live Music • PART F – Recorded Music • PART H – Anything of a Similar Nature – Parts E, F or G • PART J – Provision of Facilities for Dancing

- PART K – Provision of Facilities for Entertainment of a Similar Description – Parts I or J
- PART M - Supply of alcohol

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

PART E – Live Music

Monday to Thursday 1100hrs to 2330hrs
 Friday and Saturday 1100hrs to 12 Midnight
 Sunday 1100hrs to 2230hrs

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

Christmas Eve, Boxing Day, Maundy Thursday, Good Friday, Easter Saturday, Easter Sunday, Easter Monday. The Friday, Saturday and Sunday and Monday of all Bank Holiday weekends. On these days the premises will be permitted to remain open for one additional hour to the standard permitted terminal hour. This will not affect the existing provision in respect of pre-existing New Year's Eve / New Year's day Permitted Hours.

PART F – Recorded Music

Monday to Thursday 1100hrs to 2330hrs
 Friday and Saturday 1100hrs to 12 Midnight
 Sunday 1100hrs to 2230hrs

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

Christmas Eve, Boxing Day, Maundy Thursday, Good Friday, Easter Saturday, Easter Sunday, Easter Monday. The Friday, Saturday and Sunday and Monday of all Bank Holiday weekends. On these days the premises will be permitted to remain open for one additional hour to the standard permitted terminal hour. This will not affect the existing provision in respect of pre-existing New Year's Eve / New Year's day Permitted Hours.

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

Monday to Thursday 1100hrs to 2330hrs
 Friday and Saturday 1100hrs to 12 Midnight
 Sunday 1100hrs to 2230hrs

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

Christmas Eve, Boxing Day, Maundy Thursday, Good Friday, Easter Saturday, Easter Sunday, Easter Monday. The Friday, Saturday and Sunday and Monday of all Bank Holiday weekends. On these days the premises will be permitted to remain open for one additional hour to the standard permitted terminal hour. This will not affect the existing provision in respect of pre-existing New Year's Eve / New Year's day Permitted Hours..

PART J – Provision of Facilities for Dancing

Monday to Thursday 1100hrs to 2330hrs
Friday and Saturday 1100hrs to 12 Midnight
Sunday 1100hrs to 2230hrs

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

Christmas Eve, Boxing Day, Maundy Thursday, Good Friday, Easter Saturday, Easter Sunday, Easter Monday. The Friday, Saturday and Sunday and Monday of all Bank Holiday weekends. On these days the premises will be permitted to remain open for one additional hour to the standard permitted terminal hour. This will not affect the existing provision in respect of pre-existing New Year's Eve / New Year's day Permitted Hours.

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

Monday to Thursday 1100hrs to 2330hrs
Friday and Saturday 1100hrs to 12 Midnight
Sunday 1100hrs to 2230hrs

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

Christmas Eve, Boxing Day, Maundy Thursday, Good Friday, Easter Saturday, Easter Sunday, Easter Monday. The Friday, Saturday and Sunday and Monday of all Bank Holiday weekends. On these days the premises will be permitted to remain open for one additional hour to the standard permitted terminal hour. This will not affect the existing provision in respect of pre-existing New Year's Eve / New Year's day Permitted Hours.

PART M – Supply of Alcohol

Monday to Thursday 1100hrs to 2330hrs
Friday and Saturday 1100hrs to 12 Midnight
Sunday 1100hrs to 2330hrs

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

Christmas Eve, Boxing Day, Maundy Thursday, Good Friday, Easter Saturday, Easter Sunday, Easter Monday. The Friday, Saturday and Sunday and Monday of all Bank Holiday weekends. On these days the premises will be permitted to remain open for one additional hour to the standard permitted terminal hour. This will not affect the existing provision in respect of pre-existing New Year's Eve / New Year's day Permitted Hours.

**CONDITIONS
DEEMED
NECESSARY FOR
THE PROMOTION
OF THE**

The Sub-Committee recognises that conditions will only 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. These conditions are considered

LICENSING OBJECTIVES

necessary to promote the Licensing Objective of the Prevention of Public Nuisance.

1. The SIA Door staff shall wear high visibility jackets and shall ensure that their identification and registration documents remain visible at all times when on duty.
2. A minimum of two SIA Door Staff approved to be on duty at the premises between the hours of 21.00hrs and time of closing to the public at all times with the exception of the following occasions where a minimum of three SIA Door Staff approved to be on duty at the premises between the hours of 21.00hrs and time of closing to the public:
 - a. On every Friday and Saturday;
 - b. On Christmas Eve, Boxing Day and New Year's Eve;
 - c. On Maundy Thursday, Easter Saturday, Easter Sunday and Easter Monday; and
 - d. On every Saturday, Sunday and Monday of all Bank Holiday weekends.
3. A Professional Consultant specialising in sound surveys mutually agreed between the Applicant and the Environmental Health Officer is to be appointed within 28 days from the date of this Decision Notice in order to undertake a Sound Survey at the Premises, the remit of which is to be advised by the Consultant. Any recommendations arising from this must be undertaken within a timescale agreed by the Environmental Health Officer.
4. No deliveries are to be made to the Premises before 0830am.
5. No drinks containers (including bottles but without prejudice to all other drink containers) are to be disposed outside of the Premises between the hours of 2200 and 0900hrs the following morning.

CONDITIONS PROPOSED BY THE RESPONSIBLE AUTHORITIES

The following conditions have been recommended by the **NHDC Environmental Protection Service**.

During the course of the Hearing the Applicant agreed to offer the following conditions with the exception of numbers 1, 7, 10, 14, 17, 18 which were amended by the Committee after the Hearing.

1. An environmental noise control device shall be installed in the premises, calibrated and set in accordance and agreement with an Environmental Protection Officer of North Hertfordshire District Council within 28 days from the date of this Decision Notice. The device once set will be made available for inspection by an officer of the Environmental Protection Team, North Hertfordshire District Council at any reasonable time.

This condition is considered ***necessary*** (as amended) for the

promotion of one of the four licensing objectives, namely prevention of public nuisance.

2. The environmental noise control device shall be secured in a robust lockable case or similar to prevent unauthorised access to and tampering with the controls.

This condition is considered **necessary** for the promotion of one of the four licensing objectives, namely prevention of public nuisance.

3. The volume of amplified sound used in connection with the entertainment provided shall at all times be under the control of the DPS/Management and the controlling mechanism shall be operated from a part of the Premises not accessible to the public.

This condition is considered **necessary** for the promotion of one of the four licensing objectives, namely prevention of public nuisance.

4. All amplifier equipment must be routed through the environmental noise control device and this device must be used during licensable activities.

This condition is considered **necessary** for the promotion of one of the four licensing objectives, namely prevention of public nuisance.

5. A noise limitation or sound management device is installed to control the system to which all amplification equipment is fitted. This device will be regularly maintained to ensure that the noise produced within the premises will not exceed the limit agreed by the Environmental Protection Officer of North Hertfordshire District Council.

This condition is considered **necessary** for the promotion of one of the four licensing objectives, namely prevention of public nuisance.

6. No regulated entertainment or music shall be played, relayed or amplified outside the premises at any time.

This condition is considered **necessary** for the promotion of one of the four licensing objectives, namely prevention of public nuisance.

7. Only the Designated Premises Supervisor (D.P.S.) Premises License holder or their agent or a sound engineer is permitted to alter the settings on the environmental noise control device. Additionally, this will only take place in the presence of or with written approval by and at levels agreed by an Environmental Protection Officer of North Hertfordshire District Council.

This condition is considered **necessary** (as amended) for the promotion of one of the four licensing objectives, namely the prevention of public nuisance.

8. None of the windows to the premises shall be open whilst regulated entertainment is taking place.

This condition is considered **necessary** for the promotion of one of the four licensing objectives, namely prevention of public nuisance.

9. All the fire exit doors to the premises, shall remain closed whilst regulated entertainment is taking place, except in the case of an emergency.

This condition is considered **necessary** for the promotion of one of the four licensing objectives, namely prevention of public nuisance.

10. Install audible and amber strobe alarms on all fire exit doors, which notifies the security staff when the doors are opened.

This condition is considered **necessary** as amended for the promotion of one of the four licensing objectives, namely prevention of public nuisance.

11. A senior member of staff (manager) will assess the impact of any noise activities on neighbouring residential premises at the start of the activity/entertainment and periodically throughout the activity/ entertainment to ensure levels of noise have not increased, and will act within 10mins upon discovery.

This condition is considered **necessary** for the promotion of one of the four licensing objectives, namely prevention of public nuisance.

12. A diary of the noise assessments must be kept on site and made available to an Officer of the Council on request. The diary must contain the time the assessment was undertaken, the details of the person carrying out the assessment, the subjective observations and any remedial action undertaken to reduce the noise levels if any is needed, including the time this took place.

This condition is considered **necessary** for the promotion of one of the four licensing objectives, namely prevention of public nuisance.

13. Clearly visible signs must be placed prominently at all the exits. The signs must request patrons to leave quickly and quietly.

This condition is considered **necessary** for the promotion of one of the four licensing objectives, namely prevention of public nuisance.

14. The SIA registered door staff shall manage any entry queues, manage the 'Smoking Area', and the dispersal of patrons from the premises so as to ensure that noisy or rowdy behaviour is prevented and therefore noise disturbance to local residents is minimised and that the licensing objectives are met. The Smoking Area is a designated area identified by way of a red line on the plan attached to this Decision Notice.

This condition is considered **necessary** as amended for the promotion of one of the four licensing objectives, namely the prevention of public nuisance.

15. There shall be a biometric device in place at the premises for monitoring persons using the outside of the premises for the purposes of smoking and for setting and monitoring a time limit for smoking after 22:00hours. Any person leaving the premises to smoke or otherwise after this time, will not be permitted re-entry after a period of ten minutes.

This condition is considered **necessary** for the promotion of one of the four licensing objectives, namely prevention of public nuisance.

16. Signage setting out the policy and conditions for re-admission shall be prominently and clearly displayed at the front of the premises.

This condition is considered **necessary** for the promotion of one of the four licensing objectives, namely prevention of public nuisance.

17. Patrons are not permitted to smoke at the sides or rear of the premises. Smoking must be limited to the allocated and defined Smoking Area. A location for smoking to take place will be agreed with an Environmental Protection Officer of North Hertfordshire District Council.

This condition is considered **necessary** as amended for the promotion of one of the four licensing objectives, namely the prevention of public nuisance.

18. The number of people allowed to smoke in the defined Smoking Area is not to exceed 10 persons at any one time.

This condition is considered **necessary** as amended for the promotion of one of the four licensing objectives, namely the prevention of public nuisance.

19. Alcoholic and other drinks may not be removed from the premises in open containers and no consumption of such is permitted in any external area.

This condition is considered **necessary** for the promotion of one of the four licensing objectives, namely the prevention of public nuisance.

20. Regulated entertainment is not permitted after 23:30 Monday to Thursday, 00:00 on Fridays and Saturdays and until 22:30 on Sundays.

This condition is considered **unnecessary** for the promotion of one of the four licensing objectives, namely the prevention of public nuisance.

**CONDITIONS
PROPOSED BY**

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.

APPLICANT

Prevention of Crime and Disorder

1. The Licence Holder and Designated Premises Supervisor will ensure that the premises are equipped with a closed circuit television system, the recordings of which are of a standard that is to the satisfaction of Hertfordshire Constabulary.
2. The Licence Holder and Designated Premises Supervisor will ensure that viewable and un-edited copies of recordings from the CCTV system can be provided to Police no later than 24 hours after request. All recordings will be kept for a minimum of 28 days.
3. The Licence Holder and Designated Premises Supervisor will ensure that the CCTV System adequately covers key and vulnerable parts of the premises, including the entrance and exit to the bar and function room. All other specific key and vulnerable areas to be agreed with Police during an on-site meeting to be held within 28 days of the variation of the Premises Licence.
4. The Licence Holder and Designated Premises Supervisor will ensure that the CCTV System is maintained to the satisfaction of Hertfordshire Constabulary.
5. The Designated Premises Supervisor or Personal Licence Holder shall notify the Police Licensing Department at Stevenage Police Station on any occasion when the CCTV System is to be inoperative for a period in excess of one working day. The notice will include the measures being taken to ensure the system is restored to the standard required by Hertfordshire Constabulary at the earliest opportunity.
6. A minimum of two SIA Door Staff approved to be on duty at the premises between the hours of 21.00hrs and time of closing to the public on the following occasions:
 - On every Friday and Saturday;
 - On Christmas Eve, Boxing Day and New Year's Eve;
 - On Maundy Thursday, Easter Saturday, Easter Sunday and Easter Monday; and
 - On every Saturday, Sunday and Monday of all Bank Holiday weekends.

This condition is considered **unnecessary** for the promotion of one of the four licensing objectives, namely the prevention of public nuisance. The Committee has imposed an alternative Condition that relates to this.

7. The Designated Premises Supervisor shall nominate another person who will deputise for them when absent from the premises on the following occasions:

	<ul style="list-style-type: none"> • On every Friday and Saturday; • On Christmas Eve, Boxing Day and New Year's Eve; • On Maundy Thursday, Easter Saturday, Easter Sunday and Easter Monday; and • On every Saturday, Sunday and Monday of all Bank Holiday weekends. <p>8. It will be a requirement that the Deputy is a Personal Licence Holder. The DPS will ensure that the identity of the Deputy is known by all other staff at such times.</p> <p><u>Condition offered by the applicant</u></p> <p>9. The existing permission for the premises to open outside of the standard permitted hours for a maximum of 20 occasions in one calendar year is removed.</p>
<p>EFFECT OF FAILING TO COMPLY WITH CONDITIONS EXPLAINED TO APPLICANT</p>	<p>The Sub-Committee has explained to the applicant that 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>STATEMENT OF LICENSING POLICY</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>4. Regulating Licensing</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>

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 it’s 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.*

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*

	<i>application on it's own merits.</i>
RATIONALE FOR DECISION	<p>The Committee heard extensive evidence about alleged failings by the Applicant to adhere to the requirements of the current Licence, and ensure that the Premises were effectively managed and operated in line with the Licensing Objectives. However it noted that no formal action had been taken by the Licensing Authority for failure to comply with the Licence conditions. The Committee had careful regard to the evidence presented by the Interested Parties and the Environmental Health Officer.</p> <p>The Committee was encouraged by the commitment of the Applicant to improve the operation of the Premises. In particular the Committee had regard to the Applicant's commitment to replace the Designated Premises Supervisor. It also noted the Applicant's confirmation during the course of the hearing that a second internal lobby was to be created to help address issues of noise nuisance. However notwithstanding the emphasis behind the intention of the Licensing Act to support commercial ventures, the Committee did not consider that an extension of the opening hours could be justified, based on the extensive evidence that had been offered in the Representations and oral evidence of the hearing.</p> <p>In imposing Conditions the Committee had regard to the Guidance, specifically paragraphs 1.16, 2.32, 2.34 and 2.35. It noted that it was lawful to impose additional conditions even though the application for additional hours was not being granted.</p>
COMMENCEMENT DATE	This licence will come into effect from the date of this decision.
RIGHTS OF REVIEW	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.