

LICENSING AND APPEALS SUB-COMMITTEE
11th January 2011

ADDENDUM

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

LICENSING ACT 2003

**APPLICATION BY HING (ALUN) LAU TO VARY A PREMISES LICENCE IN
RESPECT OF THE DRAGON INN, LONDON ROAD, ST IPPOLYTS, HITCHIN,
HERTFORDSHIRE, SG4 7NL.**

**REPORT OF THE STRATEGIC DIRECTOR OF
PLANNING, HOUSING AND ENTERPRISE**

7. LICENSING POLICY CONSIDERATIONS

- 7.1 The following paragraphs from the Council's Statement of Licensing Policy 2011 may be relevant to this application. This section does not prevent the Sub-Committee from considering other paragraphs of the Statement of Licensing Policy where they deem it appropriate.

5.6

The Council acknowledges that the licensing process can only seek to control measures within the direct control of the licensee and 'in the vicinity' of the premises. The Council does not consider that the term 'vicinity' can be generically defined and will consider its definition relative to the specific circumstances of each application. Generally, to be considered to be 'in the vicinity' of the premises, an interested party will need to demonstrate a causal link between the problems or likely problems caused at the premises, or in the immediate vicinity of the premises, in relation to the licensing objectives. For example, an interested party may be able to see patrons leaving the premises and causing a nuisance immediately outside the premises.

5.9

The Council will carry out its licensing functions in the promotion of the Licensing Objectives and, in addition, will support the stated aims of the Act which are as follows:

- (i) the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting places of entertainment;*
- (ii) the introduction of better and more proportionate regulation to give businesses greater freedom and flexibility to meet their customers' expectations;*
- (iii) greater choice for consumers, including tourists, about where, when and how they spend their leisure time;*
- (iv) the encouragement of more family friendly premises where younger children can be free to go with the family;*
- (v) the further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns; and*

- (vi) *the regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring.*

9 *Prevention of Public Nuisance*

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:

- (i) *effective and responsible management of the premises;*
- (ii) *appropriate instruction, training and supervision of those employed or engaged to prevent incidents of Public Nuisance;*
- (iii) *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, or Code of Practice for Outdoor Events produced by the Noise Council;*
- (iv) *fully assess the potential for public nuisance on the locality. This may involve a competent noise consultant undertaking a detailed noise survey/assessment of the premises, etc;*
- (v) *management of arrangements for the collection and disposal of litter;*
and
- (vi) *effective ventilation / extract systems.*

The Council encourages applicants to seek early engagement with the Environmental Protection Team when preparing an operating schedule.

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 may be avoided for smaller venues and community premises, where it is appropriate to do so.

12.2

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.

12.7

The Council, based on the legislation and existing case law, interpret section O of the application, hours premises open to the public, as part of the operating schedule. These hours, therefore, form conditions of the licence operating schedule and restrict the hours during which members of the public can be on the licensed premises irrespective of whether licensable activities are taking place. Applicants are advised to consider any necessary 'drinking-up time' or wind-down period at the end of normal licensable activities when completing this section of the application

14.3

The Council will ordinarily avoid any measure which deters live music, dancing and theatre by imposing indirect costs of a substantial nature (for example, noise limiting devices for smaller or community premises). The Council acknowledges, however, that on occasions the imposition of necessary conditions with cost implications may be the only alternative to refusing an application where there is sufficient evidence in relation to the Licensing Objectives.

16.6

Where an application for a licence under the Licensing Act 2003 is received and there are no details with section N, adult entertainment, or a comment such as 'none' is entered, a licensing condition consistent with this part of the operating schedule would be imposed on the licence as follows;

'No adult entertainment will be permitted on this premises unless under the authorisation of a Sexual Entertainment Venue licence.'

8. RELEVANT EXTRACTS OF STATUTORY GUIDANCE

- 8.1 The following paragraphs from the Guidance issued by the Home Office under section 182 of the Licensing Act 2003 (October 2010) may be relevant to this application. This section does not prevent the Sub-Committee from considering other paragraphs of the Guidance where they deem it appropriate.

1.16

The licensing authority should only impose conditions on a premises licence or club premises certificate which are necessary and proportionate for the promotion of the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the premises licence holder or club. It is only where additional and supplementary measures are necessary to promote the licensing objectives that necessary, proportionate conditions will need to be attached to a licence.

2.4

The essential purpose of the licence or certificate in this context is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives. Conditions attached to licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff or agents, but can directly impact on the behaviour of customers on, or in the immediate vicinity of, the premises as they seek to enter or leave.

2.33

Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.

2.34

Conditions relating to noise nuisance will normally concern steps necessary to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time in the evening to more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions necessary to promote the prevention of public nuisance should be tailored to the style and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid unnecessary or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.

2.35

As with all conditions, it will be clear 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. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be necessary.

9. LICENSING OFFICER COMMENTS

- 9.1 During the consultation period, the applicant agreed some additional operating schedule conditions with the Council's Environmental Protection Officer which enabled her to withdraw her representation. The agreed conditions, as listed on pages 24 and 25 of the Report, now form part of the application that is being considered.
- 9.2 The application was advertised in accordance with the statutory requirements of the Act.
- 9.3 The application makes no reference to times for the supply of alcohol under section M as the premises licence already includes this provision and there is no application to amend the existing alcohol hours.
- 9.4 The applicant has made reference to "seasonal variations" in each of the regulated entertainment sections for New Year's Eve, Chinese New Year, Valentines' Day and Mothers' Day. No alternative hours were listed under these sections, however, and so the hours as applied for Monday to Sunday would apply to these days, as appropriate, if the application were granted as applied for.