

<b>LICENSING AND APPEALS SUB-COMMITTEE</b> <b>25th March 2011</b>
--

<b>*PART 1 – PUBLIC DOCUMENT</b>	<b>AGENDA ITEM No.</b>
----------------------------------	------------------------

**LICENSING ACT 2003**

**APPLICATION BY GREENE KING RETAILING LIMITED FOR THE VARIATION OF  
A PREMISES LICENCE IN RESPECT OF THE VICTORIA, 1 ICKLEORD ROAD,  
HITCHIN, HERTFORDSHIRE, SG5 1TJ.**

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

**1. BACKGROUND**

- 1.1 The existing premises licence was granted by North Hertfordshire District Council during the transitional period on 9<sup>th</sup> August 2005, following a Licensing and Appeals Sub-Committee hearing. A copy of the licence is enclosed as follows:

**2. APPLICATION**

2.1 The application is for the variation of a premises licence under Section 34 of the Licensing Act 2003.

2.2 The licensable activities and hours applied for are as follows:

### **3. APPLICATION PROCESS**

- 3.1 On 28<sup>th</sup> January 2011, Greene King Retailing Limited made an application for the variation of a Premises Licence.
- 3.2 The Applicants served copies of this application to the Police Authority and the other Responsible Authorities
- 3.3 A public notice was displayed on the premises in accordance with the requirements of the Licensing Act 2003 and was exhibited for a period of not less than twenty-eight (28) days. A newspaper advertisement was placed in a local newspaper in accordance with the Act.

### **4. REPRESENTATIONS**

- 4.1 No representation was received from Hertfordshire Constabulary.
- 4.2 A representation was received from North Hertfordshire District Council's Environmental Protection Officer and is enclosed below:

- 4.3 No representations were received from any other Responsible Authority.
- 4.4 No representations were received from Interested Parties.
- 4.5 The Council's Scheme of Delegation in respect of the Licensing Act 2003 requires the Licensing Officer to determine whether a representation is relevant as specified by the Act.
- 4.6 The Applicants have been served with a copy of the representation.
- 4.7 The Applicants and the Council's Environmental Protection Officer have been invited to attend the hearing to present their respective cases. They have been advised that they may be legally represented and of the Committee Hearing procedure.

## **5. OBSERVATIONS**

- 5.1 In determining this application, the Sub-Committee must have regard to the representations and take such steps, as it considers necessary for the promotion of the Licensing Objectives.
- 5.2 In making its decision, the Licensing and Appeals Sub-Committee must act with a view to promoting the Licensing Objectives. It must also have regard to the Licensing Authority's Statement of Licensing Policy and National Guidance.
- 5.3 The Licensing and Appeals Sub-Committee has the following options when issuing the Decision Notice:
  - i) Grant the application in whole or in part;
  - ii) Modify, add to, or omit conditions of the licence; or
  - iii) Refuse the application in whole or in part.

## **6. LICENSING POLICY CONSIDERATIONS**

- 6.1 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.

### **5.1**

*The Council recognises 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.*

## 5.9

*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

### 9.1

*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. Ordinarily, the Council's Environmental Protection Team, in their role as a responsible authority, would take the lead in respect of nuisance issues.*

### 9.2

*Where there is evidence of public nuisance and its powers are engaged the Council may impose conditions on licences to prevent unnecessary Public Nuisance to local residents. The conditions may include, but are not limited to:*

- (i) sound proofing requirements;*
- (ii) keeping doors and windows closed after a specific time;*
- (iii) restrictions on times when music or other licensable activities may take place;*
- (iv) technical restrictions on sound levels at the premises, by the use of sound limiting devices;*
- (v) limiting the hours of regulated entertainment;*
- (vi) limiting the hours of open-air entertainment and the use of outdoor areas, gardens, patios, and smoking shelters; or*
- (vii) 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:*

- (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.*

### 9.5

*The Council recognises 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.*

### 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*

14.1

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

14.2

*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.*

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.'*

## **7. RELEVANT EXTRACTS OF STATUTORY GUIDANCE**

- 7.1 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.*

2.32

*The 2003 Act requires licensing authorities (following receipt of relevant representations) and responsible authorities, through representations, to make judgements about what constitutes public nuisance and what is necessary to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.*

### 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.*

### 2.36

*Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from midevening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise in the immediate vicinity of the premises may also prove necessary to address any disturbance anticipated as customers enter and leave.*

## **8. LICENSING OFFICER COMMENTS**

- 8.1 There are no additional comments from the Licensing Officer.

## **9. CONTACT OFFICERS**

- 9.1 Steve Cobb  
Senior Licensing and Enforcement Officer  
01462 474833.