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| LICENSING AND APPEALS SUB-COMMITTEE 16th December 2013 |
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| *PART 1 – PUBLIC DOCUMENT | AGENDA ITEM No. |
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LICENSING ACT 2003

**NOTIFICATION BY JAGJIT SAMRA OF TWO STANDARD TEMPORARY
EVENT NOTICES IN RESPECT OF THE BEDFORD ARMS,
13–17 BEDFORD ROAD, HITCHIN, HERTFORDSHIRE, SG5 2TP.**

REPORT OF THE SENIOR LICENSING AND ENFORCEMENT OFFICER

1. BACKGROUND

- 1.1 Jagjit Samra currently holds the premises licence under the Licensing Act 2003 for The Bedford Arms, which was issued by North Hertfordshire District Council on 16th August 2005 following an application for conversion and variation of an existing licence during the transitional period.
- 1.2 Jagjit Samra is the designated premises supervisor at The Bedford Arms.
- 1.3 The premises licence was the subject of a review hearing on 15th October 2013 following which the sub-committee amended the hours of regulated entertainment and imposed a series of conditions to address the issues arising at the review.
- 1.4 Jagjit Samra has lodged an appeal against the sub-committee decision which will be heard by Hertford Magistrates Court on 10th February 2014. Until that appeal has been determined, the sub committee decision does not have effect.

2. PREMISES LICENCE

- 2.1 The hours and activities permitted by the premises licence are as follows:

3. TEMPORARY EVENT NOTICE APPLICATIONS

- 3.1 The notifications are for two standard temporary event notices under section 100 of the Licensing Act 2003.
- 3.2 The first notification is for an extension of hours for regulated entertainment and the sale of alcohol on Christmas Eve. The notification initially requested an extension of hours from 22:30hrs to 01:00hrs the following morning, however, the existing premises licence does not permit regulated entertainment on Christmas Eve. The notification was amended to request regulated entertainment from 21:00hrs to 01:00hrs the following morning but remains unchanged for the sale of alcohol.
- 3.3 The second notification is for an extension of hours for regulated entertainment and the sale of alcohol on New Year's Eve. The existing premises licence permits regulated entertainment and the sale of alcohol until 01:00hrs on New Year's Day, the notification requests to extend this provision until 02:00hrs.
- 3.4 Both notifications state that a minimum of two Security Industry Authority door supervisors will be provided during the extended hours, however, this would not form part of the temporary event notice were it to be granted. A temporary event notice only authorises activities and hours, there is no provision to include conditions other than those already in place on the premises licence.
- 3.5 The two notifications are as follows:

4. NOTIFICATION PROCESS

- 4.1 On 6th December 2013, Jagjit Samra submitted two notifications for standard temporary event notices.
- 4.2 Jagjit Samra served copies of the notifications to Hertfordshire Constabulary and NHDC Environmental Protection. There is no require to serve copies on any other responsible authority.
- 4.3 There is no requirement for public advertising of the notifications and members of the public may not submit representations.

5. REPRESENTATIONS

- 5.1 Hertfordshire Constabulary and NHDC Environmental Protection have the ability to object to the notifications if they consider that they would undermine one or more of the licensing objectives.
- 5.2 Objection Notices must be received by the licensing authority no later than the end of the third working day following the day the notification is given.
- 5.3 On 11th December 2013, Hertfordshire Constabulary issued an Objection Notice under section 104 of the Licensing Act 2003 in respect of both notifications. A copy of the Objection Notice is attached as follows:

5.4 On 10th December 2013, NHDC Environmental Protection issued an Objection Notice under section 104 of the Licensing Act 2003 in respect of both notifications. A copy of the Objection Notice is attached as follows:

5.5 Jagjit Samra has been served with a copy of the Objection Notices as part of this report.

5.6 Jagjit Samra, Hertfordshire Constabulary and NHDC Environmental Protection 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.

6. OBSERVATIONS

6.1 In determining whether or not to issue a Counter Notice for each notification, the sub-committee must have regard to the Objection Notices and take such steps as it considers appropriate for the promotion of the licensing objectives.

6.2 The Licensing and Appeals Sub-Committee has the following options when issuing the Decision Notice:

- i) Approve the notification as made;
- ii) Refuse the notification and issue a Counter Notice preventing the notification from taking effect; or
- iii) Approve the notification and impose one or more of the conditions in existence on the current premises licence relating to the premises.

6.3 The sub-committee can only impose conditions on the notification if section 106A(2) of the Licensing Act 2003 is satisfied, which states:

106(2) The relevant licensing authority may impose one or more conditions on a standard temporary event notice if:

- (a) the authority considers it appropriate for the promotion of the licensing objectives to do so,*
- (b) the conditions are also imposed on a premises licence or club premises certificate that has effect in respect of the same premises, or any part of the same premises, as the temporary event notice, and*
- (c) the conditions would not be inconsistent with the carrying out of the licensable activities under the temporary event notice.*

6.4 The licensing authority must:

- (a) in a case where it decides not to give a Counter Notice under section 105 of the Licensing Act 2003, give the premises user, Hertfordshire Constabulary and NHDC Environmental Protection notice of the decision;
- (b) in a case where it decides to issue a Counter Notice under Section 105 of the Licensing Act 2003, give the premises user, Hertfordshire Constabulary and NHDC Environmental Protection a Counter Notice and a notice stating the reasons for the decision; or
- (c) in a case where it decides not to give a Counter Notice under section 105 of the Licensing Act 2003 but impose conditions from an existing premises licence for the same premises under Section 106A of the Licensing Act 2003, give the premises user, Hertfordshire Constabulary and NHDC Environmental Protection notice of the decision and a separate statement setting out the conditions.

6.5 Any notice issued by the licensing authority under sections 105 or 106A of the Licensing Act 2003 must be given in the prescribed format and no later than twenty-four hours prior to the commencement of the event period stated in the notification.

6.6 There is a right of appeal available to all parties to the hearing which is detailed in Schedule 5 Part 3 Paragraph 16 which states:

- 16 (1) *This paragraph applies where—*
- (a) *a standard temporary event notice is given under section 100, and*
 - (b) *a relevant person gives an objection notice in accordance with section 104(2).*
- (2) *Where the relevant licensing authority gives a counter notice under section 105(3), the premises user may appeal against that decision.*
- (3) *Where that authority decides not to give such a counter notice, the relevant person may appeal against that decision.*
- (4) *An appeal under this paragraph must be made to a magistrates' court.*
- (5) *An appeal under this paragraph must be commenced by notice of appeal given by the appellant to the designated officer for the magistrates' court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.*
- (6) *But no appeal may be brought later than five working days before the day on which the event period specified in the temporary event notice begins.*
- (7) *On an appeal under sub-paragraph (3), the premises user is to be the respondent in addition to the licensing authority.*
- (8) *In this paragraph—*
“objection notice” has the same meaning as in section 104;
“relevant licensing authority” has the meaning given in section 99;
and
“relevant person” has the meaning given in section 99A.

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.

5.1

Each licence application will be decided by reference to this Policy, the National Guidance issued by the Secretary of State, relevant legislation and to the individual circumstances of the particular application. The Council may depart from the Policy where the individual circumstances of any application merit such a decision in the interests of the promotion of the Licensing Objectives. Full reasons will be given for decisions taken by the Council when undertaking its licensing functions.

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.

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 (June 2013 version) 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 and the determination should be based upon consideration of the full document.

1.3

The licensing objectives are:

- *The prevention of crime and disorder;*
- *Public safety;*
- *The prevention of public nuisance; and*
- *The protection of children from harm.*

1.4

Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.

2.1 (bold highlight included within the Guidance)

Licensing authorities should look to the police as the main source of advice on crime and disorder. *They should also seek to involve the local Community Safety Partnership (CSP).*

2.18

The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate 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 the effect of the licensable activities at the specific premises on persons living and

working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.19

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 other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

2.24 (bold highlight included within the Guidance)

Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.

7.27

If the licensing authority receives an objection notice from the police or EHA that is not withdrawn, it must (in the case of a standard TEN only) hold a hearing to consider the objection (unless all parties agree that this is unnecessary). The licensing committee may decide to allow the licensable activities to go ahead as stated in the notice. If the notice is in connection with licensable activities at licensed premises, the licensing authority may also impose one or more of the existing licence conditions on the TEN (insofar as such conditions are not inconsistent with the event) if it considers that this is appropriate for the promotion of the licensing objectives. If the authority decides to impose conditions, it must give notice to the premises user which includes a statement of conditions (a "notice (statement of conditions)") and provide a copy to each relevant party. Alternatively, it can decide that the event would undermine the licensing objectives and should not take place. In this case, the licensing authority must give a counter notice.

7.28

Premises users are not required to be on the premises for the entire duration of the event authorised by the TEN, but they will remain liable to prosecution for certain offences that may be committed at the premises during the period covered by it. These include, for example, the offences of the sale of alcohol to a person who is drunk; persistently selling alcohol to children; and allowing disorderly conduct on licensed premises.

7.29

In the case of an event authorised by a TEN, failure to adhere to the requirements of the 2003 Act, such as the limitation of no more than 499 being present at any one time, would mean that the event was unauthorised. In such circumstances, the premises user would be liable to prosecution.

7.31

The system of permitted temporary activities gives police and EHAs the opportunity to consider whether they should object to a TEN on the basis of any of the licensing objectives.

7.32

Such cases might arise because of concerns about the scale, location, timing of the event or concerns about public nuisance. However, in most cases, where (for example) alcohol is supplied away from licensed premises at a temporary bar under

the control of a personal licence holder, (for example, at weddings with a cash bar or small social or sporting events) this should not usually give rise to the use of these powers.

7.33

The police and EHA have the right under sections 109(5) and (6) of the 2003 Act to request the premises user to produce the TEN for examination. If the police do not intervene when a TEN is given, they will still be able to rely on their powers of closure under Part 8 of the 2003 Act should disorder or noise nuisance be expected or arise.

7.34

If the police or EHA believe that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives, they must give the premises user and the licensing authority an objection notice. The objection notice must be given within three working days of their receipt of the TEN.

7.35

Where a standard TEN was given, the licensing authority must consider the objection at a hearing before a counter notice can be issued. At the hearing, the police, EHA and the premises user may make representations to the licensing authority. Following the hearing, the licensing authority may decide to impose conditions where there is an existing premises licence or club premises certificate at the venue or issue a counter notice to prevent the event going ahead. If the police, EHA or both give an objection to a late TEN, the TEN will not be valid.

7.36

As noted above, the police or EHA (as “relevant persons”) may contact the premises user to discuss their objections and try to come to an agreement which will allow the proposed licensable activities to proceed. The TEN can be modified (for example, by changing the details of the parts of the premises that are to be used for the event, the description of the nature of the intended activities or their duration). The other relevant person has to agree.

9.12

In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should be the licensing authority’s main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regard to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

9. SENIOR LICENSING OFFICER COMMENTS

- 9.1 The comments within this section of the report are provided by the Senior Licensing and Enforcement Officer to assist the sub-committee with the interpretation of the Act, the Guidance and existing case law. It is for the Sub-Committee to determine what weight they attach to this advice.

Definition of ‘appropriate’

- 9.2 The previous Statutory Guidance first issued in July 2004 and subsequently updated up until April 2012, specifically required Licensing Sub-Committees to ensure that their decisions were based on measures that were ‘necessary’ for the promotion of the licensing objectives. This placed a burden on the

licensing authority to demonstrate that no lesser steps would satisfy the promotion of the licensing objectives and any conditions imposed on a licence would only be those necessary for the promotion of the licensing objectives with no opportunity to go any further.

9.3 The revised Statutory Guidance issued on 25th April 2012 and subsequently amended in October 2012 and June 2013 has amended the 'necessary' test to one of 'appropriate'. This has changed the threshold which licensing authorities must consider when determining applications by requiring that they make decisions which are 'appropriate' for the promotion of the licensing objectives.

9.4 The Guidance explains 'appropriate' as:

9.39

The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

9.40

Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

9.5 It is anticipated that, in due course, case law will provide clarity on the meaning of 'appropriate' as referred to in paragraphs 9.39 and 9.40 of the Guidance. The Sub-Committee is therefore advised to give 'appropriate' its ordinary meaning, as expanded upon by paragraph 9.40 of the Guidance, subject to the over-riding requirement on all local authority decisions of reasonableness.

9.6 This approach, of allowing the courts to provide clarity, is reflected in the following paragraphs of the Guidance:

1.9

Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, the guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood the Guidance, they may depart from it if they have reason to do so as long as they are able to provide full

reasons. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

1.10

Nothing in this Guidance should be taken as indicating that any requirement of licensing law or any other law may be overridden (including the obligations placed on any public authorities under human rights legislation). The Guidance does not in any way replace the statutory provisions of the 2003 Act or add to its scope and licensing authorities should note that interpretation of the 2003 Act is a matter for the courts. Licensing authorities and others using the Guidance must take their own professional and legal advice about its implementation.

- 9.7 The Sub-Committee should also be aware that their decision must be proportionate to the evidence received in respect of the application and representation. Proportionality is a key factor in assisting with the definition of 'appropriate'.

NHDC Statement of Licensing Policy

- 9.8 The council's statement of Licensing Policy was adopted on 11th November 2010 since which there have been several changes to legislation and re-issued Guidance. Whilst the Policy still remains fit for purpose in that its intentions are clear, it does contain reference to some terminology that no longer applies, in this particular case:

- (i) necessary
amended to 'appropriate'

Case Law

- 9.9 As paragraph 2.33 of the Guidance confirms, public nuisance under the Licensing Act 2003 has a wide interpretation and it is for the Sub-Committee to determine, based on the evidence, whether they consider these issues to be a public nuisance.
- 9.10 The Guidance states at paragraph 2.24 that conditions relating to public nuisance beyond the vicinity of the premises are not appropriate and the Council's Statement of Licensing Policy supports that view. Conditions that it would be either impracticable or impossible for the licence holder to control would clearly be inappropriate.
- 9.11 That said, if behaviour beyond the premises can be clearly linked to a premises and it is causing a public nuisance, it is wrong to say that the Licensing Act 2003 cannot address this. Whilst conditions may well be inappropriate, if the evidence deems it necessary, times and/or activities under the licence could be restricted or, indeed, the application could be refused.
- 9.12 The magistrates court case of *Kouttis v London Borough of Enfield*, 9th September 2011 considered this issue.
- 9.13 In a summary of the case provided by the Institute of Licensing it is reported that District Judge Daber considered an appeal against a decision of the local authority to restrict the hours of musical entertainment of a public house to

mitigate the noise from patrons as they left the premises in response to representations from local residents. The appellant relied on the sections of the Guidance that state that “beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right” (para 2.38). It was also suggested that, given that certain residents were not disturbed, this did not amount to public nuisance within the meaning of para 2.33 of the Guidance as approved by Burton J in the Hope and Glory case.

- 9.14 The District Judge held that there was ample evidence of public nuisance, and that section 4 of the Act gave the licensing authority a positive duty to deal with it proportionately. In this case, no less interventionist way of dealing with the nuisance had been suggested. He held that not only was the authority not wrong, but that it was in fact right to reduce the hours as it had. The appeal was therefore dismissed.
- 9.15 As this was a decision of the Magistrates Court it would not be binding on other courts, however, it could be considered as persuasive.

10. CONTACT OFFICERS

- 10.1 Steve Cobb
Senior Licensing and Enforcement Officer
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