

LICENSING AND APPEALS SUB-COMMITTEE 08 April 2014
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*PART 1 – PUBLIC DOCUMENT	AGENDA ITEM No.
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LICENSING ACT 2003

**APPLICATION BY JD WETHERSPOONS PLC FOR THE GRANT OF A PREMISES
LICENCE IN RESPECT OF WETHERSPOONS (FORMER HITCHIN
CONSERVATIVE CLUB), 5 SUN STREET, HITCHIN, SG5.**

REPORT OF THE LICENSING OFFICER

1. BACKGROUND

- 1.1 No premises licence under the Licensing Act 2003 is currently in place for the premises.
- 1.2 The premises was previously occupied by the Hitchin Concervative Club who operated under a club premises certificate which has been surrendered.

2. APPLICATION

- 2.1 The application is for the grant of a premises licence under Section 17 of the Licensing Act 2003.
- 2.2 The licensable activities and hours applied for are as follows:

3. APPLICATION PROCESS

- 3.1 On 12 February 2014, JD Wetherspoon plc made an application for the grant of a Premises Licence.
- 3.2 The Applicant served copies of this application to the Police Authority and the other Responsible Authorities
- 3.3 A public notice was displayed on the premises for a period of not less than twenty-eight (28) days in accordance with the requirements of the Licensing Act 2003.
- 3.4 A newspaper advertisement was placed in a local newspaper in accordance with the Act.

4. REPRESENTATIONS

- 4.1 A representation was received from Hertfordshire Constabulary and is enclosed below:

- 4.2 During the consultation period following negotiations with North Hertfordshire District Council Environmental Protection and Housing team, the applicant agreed to amend the application to include the following conditions:
- 1 There shall be no use by customers of the outside area referred to as "Area 2" on approved premises licence drawing number 13017/L01 Revision B after 2100 hours and before 0900 the following day and outside these hours the premises licence holder will ensure that customers are unable to access this area except when necessary in the case of emergency.*
 - 2 There shall be no use for the consumption of food or drink of the outside area referred to as "Area 1" on approved premises licence drawing number 13017/L01 Revision B after 2300 until close.*
 - 3 The premises licence holder will ensure that all doors at the premises will be closed after 2300 except for the purpose of access and egress.*
 - 4 The Designated Premises Supervisor or some other responsible person shall manage 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.*
 - 5 Clear and legible notices shall be displayed at all exits and in external and other circulatory areas requesting patrons to respect the needs of local residents and to keep noise to a minimum.*
 - 6 No glass bottles shall be emptied into the waste bins at the rear of the premises between 2200 and 0800 hours, Monday to Sunday.*
 - 7 Deliveries and waste collections relating to premises shall only take place between 0800 and 2000, Monday to Sunday.*
- 4.3 These amendments were made during the consultation period and should now be considered part of the application before the sub - committee
- 4.4 No representations were received from any other Responsible Authority.
- 4.5 52 representations were received from Other Persons.
- 4.6 The Council's Scheme of Delegation in respect of the Licensing Act 2003 requires the Licensing Officer to determine whether representations is relevant as specified by the Act.
- 4.7 After reading through all the submitted representations, it was deemed that 50 were relevant representations and are enclosed below:

- 4.8 Where representations include paragraphs that are not relevant to the Licensing Act 2003, these paragraphs have been clearly crossed through and marked as 'not relevant' by the Licensing Officer and should not be considered as part of the determination process. Other persons must not refer to these paragraphs in any oral presentation at the hearing.
- 4.9 Whilst the Licensing Officer has determined which representations are relevant; it is for the Sub-Committee to determine what weight to apportion to each representation.
- 4.10 The Applicant has been served with a copy of the representations as part of this report.
- 4.11 The Applicant, Hertfordshire Constabulary and other interested parties 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 appropriate 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 as made
 - ii) Grant the Application with conditions; conditions should only be added where they are appropriate to promote the Licensing Objectives.
 - iii) Refuse the Application.

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

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.

In seeking to promote the above stated aims, the Council will support local and national schemes designed at raising and/or maintaining high standards in licensed premises such as 'Challenge 21', 'Challenge 25', Pubwatch and 'Safer Pubs and Clubs'. The Council will work with the licence holders to achieve these goals offering advice and support either through trade forums or trade newsletters.

6.1

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.

6.2

The Council recognises that arbitrary restrictions would undermine the principle of flexibility and should be avoided; the Licensing Objectives will be the paramount consideration at all times.

6.3

Generally, when the Council's discretion is engaged, the presumption will be to grant the hours requested unless there are representations raised by responsible authorities and/or interested parties that demonstrate an adverse effect or likely effect on the Licensing Objectives.

6.4

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.

6.7

The Council are aware of the R v Guildford Borough Council [2006] EWHC 815 (Admin) case that held that it was possible for a policy to presume against longer licensing hours where there was evidence that it was necessary in terms of the Licensing Objectives to do so. The Council have no evidence that suggests such an approach would be appropriate, however, the situation will be kept under review and the Council would consider amending the Policy accordingly if necessary.

7.1.2

Conditions may be imposed on premises licences requiring supervision by door supervisors in order to reduce crime and disorder or public nuisance in order to address the Licensing Objectives. The conditions may provide that door supervisors must be employed at the premises at all times, at specific times, or at such times when certain licensable activities are being carried out.

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.*

10.1

The Council recognises the diversity of premises that will be licensed under the Act. The premises will include theatres, cinemas, restaurants, pubs, nightclubs, cafes, take-away shops, community halls and schools. The Council will not ordinarily seek to limit the access by children to any premises unless it is considered necessary for the prevention of physical, moral or psychological harm to them

11.1

'Cumulative Impact' means the potential impact on the promotion of the Licensing Objectives of a significant number of licensed premises concentrated in one area. An example of this impact would be the increase in crime and disorder or public nuisance in a town centre resulting from a large concentration of licensed premises in one area over and above the impact of the individual premises themselves.

11.2

The Cumulative Impact of licensed premises on the promotion of the Licensing Objectives is a matter which the Council can properly consider in developing its Licensing Policy Statement.

11.3

The Council recognises that there is a difference between the commercial need and the Cumulative Impact of premises in an area. Commercial need is the commercial demand for another licensed premises and is a matter for planning consideration and market forces. It does not form part of this Licensing Policy Statement.

11.4

The Council will not operate a quota of any kind, nor will it ordinarily seek to impose general limitations on trading hours in particular areas

11.5

In considering issues of Cumulative Impact the Council will be mindful that, in addition to the licensing functions, there are a number of other mechanisms, both within and outside the licensing regime, for addressing nuisance and disorder. These include:

- (i) planning controls;*
- (ii) positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority;*
- (iii) the provision of CCTV surveillance in town centres, ample taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols;*
- (iv) powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly;*
- (v) police enforcement of the general law concerning disorder and antisocial behaviour, including the issuing of fixed penalty notices;*
- (vi) the prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk;*
- (vii) the confiscation of alcohol from adults in designated areas;*
- (viii) the confiscation of alcohol from children;*
- (ix) police powers to close down instantly for up to 24 hours any licensed premises or temporary event on grounds of disorder, the likelihood of disorder or noise emanating from the premises causing a nuisance;*
- (x) the power of the Police, other responsible authorities or a local resident or business to seek a review of the licence or certificate in question; and*
- (xi) other local initiatives that similarly address these problems*

12.1

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. A standardised approach to imposing conditions must be avoided and will only be lawful where they are deemed appropriate to promote the Licensing Objectives in response to relevant representations.

12.2

Conditions will only be imposed when they are appropriate 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 licensing 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.

16.6

Where an application for a licence under the Licensing Act 2003 is received and there are no details within 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.

24.2

The Council may give due consideration to wider strategic issues when dealing with applications. The Council's Licensing and Appeals Committee may receive reports, when appropriate, on the:

- (i) needs of the local tourist economy;*
- (ii) cultural strategies for the area;*
- (iii) employment situation and the need for local investment; and*
- (iv) planning considerations that may affect licensed premises.*

24.3

The Council recognises that licensing applications should not be seen as a re-run of the planning application process and that there should be a clear separation between the planning and licensing regimes to avoid duplication and inefficiency.

24.4

In order to avoid duplication with other regulatory regimes the Council will not, as far as reasonably possible, attach conditions to licences unless they are in promotion of the Licensing Objectives and inadequately covered by other legislation. Conditions will generally be considered unnecessary if they are already adequately covered by other legislation.

24.6

The decision of one statutory authority (for example, the Licensing Authority or the Planning Authority) is no indication of the likely decision of the other. Indeed, statutory authorities may make representations to each other under each Authority's legislation

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 (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.

1.5

However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work.

They include:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;*
- giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;*
- recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;*
- providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and*
- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.*

1.7

This Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality

1.16

Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as "must", "shall" and "will" is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;*
- must be precise and enforceable;*
- must be unambiguous and clear in what they intend to achieve;*
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;*
- must be tailored to the individual type, location and characteristics of the premises and events concerned;*
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;*
- should not replicate offences set out in the 2003 Act or other legislation;*
- should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);*
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and*
- should be written in a prescriptive format.*

1.17

The licensing authority should only impose conditions on a premises licence or club premises certificate which are appropriate and proportionate for the promotion of the licensing objectives. If other existing law already places certain statutory responsibilities on an employer at or operator of a premises, it cannot be appropriate

to impose the same or similar duties on the premises licence holder, or club. It is only where additional and supplementary measures are appropriate to promote the licensing objectives that there will be a requirement for appropriate, proportionate conditions to be attached.

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).

2.3 (bold highlight included within the Guidance)

Conditions should be targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

2.4

The inclusion of radio links and ring-round phone systems should be considered an appropriate condition for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. These systems allow managers of licensed premises to communicate instantly with the police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises.

2.5

In the context of crime and disorder and public safety, the preservation of order on premises may give rise to genuine concerns about the ability of the management team with responsibility for the maintenance of order. This may occur, for example, on premises where there are very large numbers of people and alcohol is supplied for consumption, or in premises where there are public order problems.

2.6 (bold highlight included within the Guidance)

Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.

2.11

Licence holders should make provision to ensure that premises users safely leave their premises. Measures that may assist include:

- Providing information on the premises of local taxi companies who can provide safe transportation home; and
- Ensuring adequate lighting outside the premises, particularly on paths leading to and from the premises and in car parks.

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.

2.22

Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening 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 immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave.

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.*

2.28

Applicants must be clear in their operating schedules about the activities and times at which the events would take place to help determine when it is not appropriate for children to enter the premises. Consideration should also be given to the proximity of premises to schools and youth clubs so that applicants take appropriate steps to ensure that advertising relating to their premises, or relating to events at their premises, is not displayed at a time when children are likely to be near the premises.

2.29

Licensing authorities and responsible authorities should expect applicants, when preparing an operating schedule or club operating schedule, to set out the steps to be taken to protect children from harm when on the premises.

2.30

Conditions, where they are appropriate, should reflect the licensable activities taking place on the premises. In addition to the mandatory condition regarding age verification, other conditions relating to the protection of children from harm can include:

- restrictions on the hours when children may be present;*
- restrictions or exclusions on the presence of children under certain ages when particular specified activities are taking place;*
- restrictions on the parts of the premises to which children may have access;*
- age restrictions (below 18);*
- restrictions or exclusions when certain activities are taking place;*
- requirements for an accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and*
- full exclusion of people under 18 from the premises when any licensable activities are taking place.*

2.32

Licensing authorities should give considerable weight to representations about child protection matters.

8.13

Whilst any of these persons may act in their own right, they may also request that a representative makes the representation to the licensing authority on their behalf. A representative may include a legal representative, a friend, a Member of Parliament, a Member of the Welsh Government, or a local ward or parish councillor who can all act in such a capacity.

8.33

In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives. Licensing authorities and responsible authorities are expected to publish information about what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. However, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application.

8.34

Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:

- the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;*
- any risk posed to the local area by the applicants' proposed licensable activities;*
- and*
- any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.*

8.35

Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.

8.36

It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider how this impact upon their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application.

8.38

While applicants are not required to seek the views of responsible authorities before formally submitting their application, they may find them to be a useful source of expert advice on local issues that should be taken into consideration when making an application. Licensing authorities may wish to encourage co-operation between applicants, responsible authorities and, where relevant, local residents and

businesses before applications are submitted in order to minimise the scope for disputes to arise.

8.39

Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises

8.40

All parties are expected to work together in partnership to ensure that the licensing objectives are promoted collectively. Where there are no disputes, the steps that applicants propose to take to promote the licensing objectives, as set out in the operating schedule, will very often translate directly into conditions that will be attached to premises licences with the minimum of fuss.

8.41

For some premises, it is possible that no measures will be appropriate to promote one or more of the licensing objectives, for example, because they are adequately covered by other existing legislation. It is however important that all operating schedules should be precise and clear about the measures that are proposed to promote each of the licensing objectives.

9.4

A representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

9.5

It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate

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.

9.38

Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

9.41

Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.

10.4

The conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence or certificate holder, which they should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule, which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public.

10.5

It is not acceptable for licensing authorities to simply replicate the wording from an applicant's operating schedule. A condition should be interpreted in accordance with the applicant's intention.

10.8

The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.

10.9

It is possible that, in certain cases, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions are appropriate to promote the licensing objectives.

10.10

The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives

10.11

The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based

on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

10.12

Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested..

10.46

The premises licence holder or club premises certificate holder must ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. This must as a minimum require individuals who appear to the responsible person (see paragraph 10.38) to be under the age of 18 years of age to produce on request, before being served alcohol, identification bearing their photograph, date of birth, and a holographic mark.

10.47

It is acceptable, and indeed encouraged, for premises to have an age verification policy which requires individuals who appear to the responsible person to be under an age greater than 18 to produce such identification on request. For example, if premises have a policy that requires any individual that appears to be under the age of 21 to produce identification that meets the criteria listed above, this is perfectly acceptable under the mandatory code.

10.48

Licence holders should consider carefully what steps they are required to take to comply with the age verification requirements under the 2003 Act in relation to sales of alcohol made remotely. These include sales made online, by telephone and mail order sales, and alcohol delivery services. Each of these sales must comply with the requirements of the 2003 Act. The mandatory condition requires that age verification takes place before a person is served alcohol. Where alcohol is sold remotely (for example, online) or through a telephone transaction, the sale is made at this point but the alcohol is not actually served until it is delivered to the customer. Age verification measures (for example, online age verification) should be used to ensure that alcohol is not sold to any person under the age of 18. However, licence holders should also consider carefully what steps are appropriate to ensure that age verification takes place before the alcohol is served (i.e. physically delivered) to the customer to be satisfied that the customer is aged 18 or over. It is, therefore, the responsibility of the person serving or delivering the alcohol to ensure that age verification has taken place and that photo ID has been checked if the person appears to be less than 18 years of age.

10.49

The premises licence holder or club premises certificate holder must ensure that staff (in particular staff who are involved in the supply of alcohol) are made aware of the existence and content of the age verification policy applied by the premises.

12.10

It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act.

13.19

“Cumulative impact” is not mentioned specifically in the 2003 Act. In this Guidance, it means the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. The cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for a licensing authority to consider in developing its licensing policy statement.

13.20

In some areas, where the number, type or density of premises selling alcohol is high or exceptional, serious problems of nuisance and disorder may be arising or have begun to arise outside or some distance from those premises. Such problems generally occur as a result of large numbers of drinkers being concentrated in an area, for example when leaving premises at peak times or when queuing at fast food outlets or for public transport.

13.21

Queuing in itself may lead to conflict, disorder and anti-social behaviour. Moreover, large concentrations of people may also increase the incidence of other criminal activities such as drug dealing, pick pocketing and street robbery. Local services such as public transport services, public lavatory provision and street cleaning may not be able to meet the demand posed by such concentrations of drinkers leading to issues such as street fouling, littering, traffic and public nuisance caused by concentrations of people who cannot be effectively dispersed quickly.

13.22

Variable licensing hours may facilitate a more gradual dispersal of customers from premises. However, in some cases, the impact on surrounding areas of the behaviour of the customers of all premises taken together will still be greater than the impact of customers of individual premises. These conditions are more likely to arise in town and city centres, but may also arise in other urban centres and the suburbs, for example on smaller high streets with high concentrations of licensed premises.

13.39

Once away from the licensed premises, a minority of consumers will behave badly and unlawfully. To enable the general public to appreciate the breadth of the strategy for addressing these problems, statements of policy should also indicate the other mechanisms both within and outside the licensing regime that are available for addressing

such issues. For example:

- planning control;*
 - positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority;*
 - the provision of CCTV surveillance in town centres, taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols;*
 - powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly;*
 - the confiscation of alcohol from adults and children in designated areas;*
 - police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices;*
 - prosecution for the offence of selling alcohol to a person who is drunk (or allowing such a sale);*
 - police powers to close down instantly for up to 24 hours (extendable to 48 hours) any licensed premises in respect of which a TEN has effect on grounds of disorder, the likelihood of disorder, or noise emanating from the premises causing a nuisance;*
 - and*
 - the power of the police, other responsible authorities or other persons to seek a review of a licence or certificate.*
- Early Morning Alcohol Restriction Orders (see Chapter 16).*

13.42

With regard to licensing hours, the Government acknowledges that different licensing approaches may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make such decisions based on their local knowledge and in consultation with other responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

13.43

Statements of licensing policy should set out the licensing authority's approach regarding licensed opening hours and the strategy it considers appropriate for the promotion of the licensing objectives in its area. The statement of licensing policy should emphasise the consideration which will be given to the individual merits of an application. The Government recognises that licensed premises make an important contribution to our local communities, and has given councils a range of tools to effectively manage the different pressures that licensed premises can bring. In determining appropriate strategies around licensed opening hours, licensing authorities cannot seek to restrict the activities of licensed premises where it is not appropriate for the promotion of the licensing objectives to do so.

13.44

It is an offence under the 2003 Act to:

- permit children under the age of 16 who are not accompanied by an adult to be present on premises being used exclusively or primarily for supply of alcohol for consumption on those premises under the authorisation of a premises licence, club premises certificate or where that activity is carried on under the authority of a TEN; and*
- to permit the presence of children under 16 who are not accompanied by an adult between midnight and 5am at other premises supplying alcohol for consumption on the premises under the authority of any premises licence, club premises certificate or TEN.*

13.45

Outside of these hours, the offence does not prevent the admission of unaccompanied children under 16 to the wide variety of premises where the consumption of alcohol is not the exclusive or primary activity. This does not mean that children should automatically be admitted to such premises and the following paragraphs are therefore of great importance notwithstanding the offences under the 2003 Act. The expression 'exclusively or primarily' should be given its ordinary and natural meaning in the context of the particular circumstances.

13.46 Where it is not clear that the business is predominately for the sale and consumption of alcohol, operators and enforcement agencies should seek to clarify the position before enforcement action is taken. Mixed businesses may be more difficult to classify and in such cases operators and enforcement agencies should consult where appropriate about their respective interpretations of the activities taking place on the premises before any moves are taken which might lead to prosecution.

13.47

The 2003 Act does not automatically permit unaccompanied children under the age of 18 to have free access to premises where the consumption of alcohol is not the exclusive or primary activity or to the same premises even if they are accompanied, or to premises where the consumption of alcohol is not involved. Subject only to the provisions of the 2003 Act and any licence or certificate conditions, admission will always be at the discretion of those managing the premises. The 2003 Act includes no presumption of giving children access but equally, no presumption of preventing their access to licensed premises. Each application and the circumstances of individual premises must be considered on their own merits.

13.51

Venue operators seeking premises licences and club premises certificates should consider including such prohibitions and restrictions in their operating schedules particularly where their own risk assessments have determined that the presence of children is undesirable or inappropriate

8. LICENSING OFFICER COMMENTS

- 8.1 The comments within this section of the report are provided by the Licensing 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’

- 8.2 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.
- 8.3 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.
- 8.4 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.

8.5 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.

8.6 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.

8.7 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

8.8 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.

(i) vicinity

the restriction to the consideration of representations within the vicinity of a premises has since been removed; representations now only need to demonstrate an impact on the licensing objectives specific to the person making the representation.

(ii) necessary

amended to 'appropriate'

(iii) interested parties

amended to 'other persons'

Case Law

- 8.9 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.
- 8.10 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.
- 8.11 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.
- 8.12 The magistrates court case of *Kouttis v London Borough of Enfield, 9th September 2011* considered this issue.
- 8.13 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.
- 8.14 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.
- 8.15 As this was a decision of the Magistrates Court it would not be binding on other courts, however, it could be considered as persuasive.

Other Persons

- 8.16 With the removal of the old 'vicinity' test, Other Persons are not restricted to those that live or work near to the premises. In order for a representation to be relevant it must be made within the prescribed consultation period,

address the impact (or likely impact) on the licensing objectives and not be excluded for being frivolous or vexatious.

- 8.17 The Licensing Officer has determined that the representations included as part of this report, excluding those sections marked “not relevant”, do qualify as relevant representations; it is for the Sub-Committee to determine what weight to attach to those representations as part of their determination.
- 8.18 In considering the representations, the Sub-Committee may wish to consider the weight apportioned to representations that speak on behalf of residents that may be affected by the premises, for example “residents of Jill Grey Place...” The Sub-Committee should have regard to the fact that the application was publicly advertised and residents of the addresses referred to had the opportunity to make their own representations.
- 8.19 The Sub-Committee will be aware that many of the representations received are identical based on a template letter circulated by an Other Person. Whilst this process does not preclude those representations in any way, the Sub-Committee may wish to consider the weight apportioned to those representations in much the same way as they would consider a petition. There is a marked difference in signing a template letter as opposed to putting your own personal feelings and concerns within a representation. That said, some Other Persons may feel that they cannot adequately express their feelings and that the template letter was of assistance to them.
- 8.20 Two of the representations are made by Other Persons that are involved in businesses in Hitchin. Giorgio Caratti is involved with La Bella Vita in Sun Street and Lee Taggart is involved with the George in Bucklersbury. This doesn't preclude them from making representations however, for transparency, the Sub-Committee should be aware of these facts.

Parking

- 8.21 Many of the representations refer to issues of the lack of parking at the premises. Parking is not a licensing objective and it is more appropriate to deal with this issue through the planning process. That said, if the concerns of the Other Persons involving parking can be linked directly to the licensing objectives, for example unlawful parking or the noise associated with persons returning to their vehicles after leaving the premises, then these are issues that the Sub-Committee can consider.

Hearsay Evidence

- 8.22 Some of the representations contain allegations of behaviour associated to Wetherspoons' premises and the management of those premises (hearsay). Whilst the Sub-Committee are concerned specifically with the management of this particular premises and its likely impact on the licensing objectives, the Sub-Committee may wish to have regard to this information as part of their determination.
- 8.23 As these are civil proceedings, hearsay evidence is permitted however the Sub-Committee should give the applicant the opportunity to address these allegations in order to apportion the appropriate weight to this evidence.

Cumulative Impact

- 8.24 North Hertfordshire District Council does not have a Special Policy in relation to cumulative impact however this does not preclude the Sub-Committee from considering such evidence. However, the primary consideration of the Sub-Committee should be the impact or likely impact on the licensing objectives. (see paragraphs 13.19 – 13.22 of the Guidance).
- 8.25 The potential for a new premises to add to cumulative impact is a consideration for the Sub-Committee however it should be balanced against the opportunity for Responsible Authorities or Other Persons to request a review of individual premises that can be identified as adversely impacting on the licensing objectives. Additionally, there are also other measures available for dealing with cumulative impact that may be more appropriate (see paragraph 13.39 of the Guidance).

Public Safety

- 8.26 Some representations make reference to the 'public safety' licensing objective linking it to traffic issues. Public Safety under the Licensing Act 2003 is predominately related to the safety of persons using the premises itself, not generic issues of safety in a town centre.

The Protection of Children from Harm

- 8.27 Some representations make reference to the 'protection of children from harm' licensing objective linking it to issues such as lack of sleep due to noise or the exposure to drunken behaviour in the streets. The Protection of Children from Harm under the Licensing Act 2003 is predominately related to the protection of children using licensed premises, for example age-restricted films, adult entertainment and sales of alcohol to children.
- 8.28 The issues raised in relation to children, however, can be linked to other licensing objectives. For example, drunken behaviour in the streets can be linked to 'the prevention of crime and disorder' and disturbed sleep due to premises noise could be linked to 'the prevention of public nuisance'.

9. CONTACT OFFICERS

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