

LICENSING AND APPEALS SUB-COMMITTEE 10 September 2015

*PART 1 – PUBLIC DOCUMENT	AGENDA ITEM No.
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LICENSING ACT 2003

**REVIEW OF A PREMISES LICENCE FOLLOWING A RESPONSIBLE AUTHORITY
REQUEST IN RESPECT OF ROCABESSA OF 23 CHURCHGATE, HITCHIN,
HERTFORDSHIRE, SG5 1DN**

REPORT OF THE LICENSING OFFICER

**1. CURRENT LICENCE ISSUED BY THE LICENSING AUTHORITY UNDER
THE LICENSING ACT 2003**

- 1.1 The existing Premises Licence was granted by North Hertfordshire District Council on 30 November 2012. A copy of the licence is enclosed as follows:

2. REVIEW APPLICATION

- 2.1 The application is for a Review of a Premises Licence following a request by the Licensing Manager acting as a responsible authority under Section 51 of the Licensing Act 2003.
- 2.2 On the 15 July 2015, the licensing authority received an application for the review of the Premises Licence from the Licensing Manager of North Hertfordshire District Council on the grounds:
 - 2.2.1 There has been a history of non-compliance at Rocabessa since Mr Campbell became premises licence holder culminating in him entering a guilty plea on 3 July 2015 at Magistrates Court against three charges of non-compliance with his premises licence conditions.
 - 2.2.2 In the period between the interviews under caution for the offences and the subsequent court appearance, Mr Campbell continued to breach his licence conditions.
 - 2.2.3 Previous attempts by the licensing authority and the police to work with Mr Campbell and secure compliance with his licence failed despite assurances from Mr Campbell that he understood the terms of his licence and would comply.
 - 2.2.4 Despite a Counter Notice having been issued preventing a proposed event at Rocabessa, as confirmed by an officer of the council in a meeting with Mr Campbell, Mr Campbell chose to continue with the event.
 - 2.2.5 Consideration has been given to requesting the removal of Mr Campbell as designated premises supervisor; however, the fact that any new designated premises supervisor would be employed and directed by Mr Campbell would not solve the problem as Mr Campbell would still remain in control of the premises.
 - 2.2.6 Consideration has been given to additional conditions that may resolve the problems however Mr Campbell's history of non-compliance with licence conditions suggests that further conditions would be ineffective and are unlikely to receive Mr Campbell's compliance.
 - 2.2.7 The repeated nature and seriousness of the breaches, as demonstrated by the formal court action, are such that the licensing authority does not believe Mr Campbell will comply with his licence and now have no alternative other than to seek its revocation.
- 2.3 The application for review relates to the following licensing objectives:
 - 2.3.1 The prevention of crime and disorder
 - 2.3.2 Public Safety
 - 2.3.3 The prevention of public nuisance
 - 2.3.4 The protection of children from harm
- 2.4 As required by the Licensing Act 2003, the licensing authority displayed notices of the review at the premises and on the council website. A copy of the notice was also placed on the Council's notice board at the Council offices.

- 2.5 In accordance with the s.182 Guidance, we can confirm that the provisions of 9.18 and 11.6 have been adhered to with regards to the separation of roles by officers.

9.18 states:

In these cases, licensing authorities should allocate the different responsibilities to different licensing officers or other officers within the local authority to ensure a proper separation of responsibilities. The officer advising the licensing committee (i.e. the authority acting in its capacity as the licensing authority) must be a different person from the officer who is acting for the responsible authority. The officer acting for the responsible authority should not be involved in the licensing decision process and should not discuss the merits of the case with those involved in making the determination by the licensing authority. For example, discussion should not take place between the officer acting as responsible authority and the officer handling the licence application regarding the merits of the case. Communication between these officers in relation to the case should remain professional and consistent with communication with other responsible authorities. Representations, subject to limited exceptions, must be made in writing. It is for the licensing authority to determine how the separate roles are divided to ensure an appropriate separation of responsibilities. This approach may not be appropriate for all licensing authorities and many authorities may already have processes in place to effectively achieve the same outcome.

11.6 states:

Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities. Further information on how licensing authorities should achieve this separation of responsibilities can be found in Chapter 9, paragraphs 9.13 to 9.19 of this Guidance.

- 2.6 The application for a review is attached below:

3. THE CONSULTATION PROCESS

- 3.1 On the 15 July 2015, the licensing authority received an application for a review of the premises licence from NHDC Licensing Manager.
- 3.2 As the application for review was served electronically, the licensing authority served notice of the application to the premises licence holder and the other responsible authorities.
- 3.3 A paper copy of this application was also served by the Licensing Manager to the Licensing Authority.
- 3.4 A public notice was displayed on the premises and was exhibited for a period of 28 days between 16 July 2015 and 12 August 2015 inclusive. Officers visited the premises periodically to ensure that the notice was continually displayed.

4. REPRESENTATIONS

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

- 4.2 No representations were received from any other responsible authority.
- 4.3 No representations were received from Other Persons (previously known as Interested Parties).
- 4.4 The premises licence holder has been served with a copy of the request for a review and all relevant representations as received.
- 4.5 The premises licence holder, the Licensing Manager of North Hertfordshire District Council and Hertfordshire Constabulary 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) to take no action;
 - ii) to modify the conditions of the premises licence (modify includes adding new conditions, altering or omitting existing conditions, or altering permitted timings of licensable activities);
 - iii) to exclude a licensable activity from the premises licence;
 - iv) to remove the designated premises supervisor from the premises licence;
 - v) to suspend the premises licence for a period not exceeding three months; or
 - vi) to revoke the premises licence.

- 5.4 National Guidance Section 11.20 states:

"In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review."

6. LICENSING POLICY OBSERVATIONS

- 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 and the determination should be based upon consideration of the full document.

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.

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.*

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.

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.

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 necessary to promote the Licensing Objectives in response to relevant representations.

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.

13.4

At a review of a premises where relevant representations are received in relation to ineffective management of the premises when alcohol is available to the public, the Council will consider, in addition to its options detailed within section 19.3 of this Policy, requiring a personal licence holder to be present at all times whilst alcohol is being supplied.

20.1

Any interested party or responsible authority have the right to ask the Council for a review of a premises licence or club premises certificate, using a Government prescribed application form, if they believe that one or more of the four Licensing Objectives are not being met.

20.2

In determining whether or not an application for a review is relevant, the Council will have due regard to the Secretary of State's Guidance in relation to whether an application is frivolous, vexatious or repetitious. A representation by a responsible authority cannot be deemed as frivolous, vexatious or repetitious.

20.3

At a review hearing, the options available to the Sub-Committee are:

- (i) to modify the conditions of the licence,*
- (ii) to exclude a licensable activity from the scope of the licence,*
- (iii) to remove the designated premises supervisor,*
- (iv) to suspend the licence for a period not exceeding three months, or*
- (v) to revoke the licence*

20.5

The council recognises the importance of partnership working between the licensing authority, licence holders, responsible authorities and interested parties in achieving the promotion of the Licensing Objectives. The council will endeavour to give licence holders an early warning of any potential problems at premises in order to resolve them informally where possible.

20.6

When a review is requested in circumstances where the crime prevention objective is not being met, revocation of the licence may be considered as the first step if the seriousness of the evidence is such that the other options may prove inadequate.

21.5

Reviews of existing premises licences/club premises certificates may also be used by responsible authorities and interested parties as a means of enforcement.

- 6.2 For reference, paragraphs 9.1, 9.2 and 9.5 have been referred to above following evidence given by the Licensing Manager that officers from Environmental Protection had received noise complaints on the 3 August 2014 and the 7 September 2014 and from Hertfordshire Constabulary on the 5 August 2014, 30 August 2014 and 28 September 2014 in their evidence being considered.

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 (March 2015 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.

1.17

Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

2.1 (bold emphasis added as part of 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 emphasis added as part of 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.

2.5 (bold emphasis added as part of 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 (bold emphasis added as part of the Guidance)

“Safe capacities” should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.

2.14

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.

2.15

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 may 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.

2.16 (bold emphasis added as part of the Guidance)

Conditions relating to noise nuisance will usually concern steps appropriate 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, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 15). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.

2.17

As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area 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 appropriate.

2.20 (bold emphasis added as part of 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, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

2.21

The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment). Licensing authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions.

2.22

The Government believes that it is completely unacceptable to sell alcohol to children. Conditions relating to the access of children where alcohol is sold and which are appropriate to protect them from harm should be carefully considered. Moreover, conditions restricting the access of children to premises should be strongly considered in circumstances where:

- *adult entertainment is provided;*
- *a member or members of the current management have been convicted for serving alcohol to minors or with a reputation for allowing underage drinking (other than in the context of the exemption in the 2003 Act relating to 16 and 17 year olds consuming beer, wine and cider when accompanied by an adult during a table meal);*
- *it is known that unaccompanied children have been allowed access;*
- *there is a known association with drug taking or dealing; or*
- *in some cases, the premises are used exclusively or primarily for the sale of alcohol for consumption on the premises.*

2.26

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.*

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 area⁵. 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.

9.41

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.

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. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. 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.

11.2

At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.

11.5

Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder or the sexual exploitation of children. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.

11.10

Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

11.17

The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such

informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

11.18

However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.

11.19

Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- *modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;*
- *exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);*
- *remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
- *suspend the licence for a period not exceeding three months;*
- *revoke the licence.*

11.20

In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

11.21

For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.22

Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

11.23

Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

11.25

Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

- 7.2 For reference, paragraphs 2.14, 2.15, 2.16 and 2.17 have been referred to above following evidence given by the Licensing Manager that officers from Environmental Protection received noise complaints on the 3 August 2014 and the 7 September 2014 and from Hertfordshire Constabulary on the 5 August 2014, 30 August 2014 and 28 September 2014 in their evidence being considered.

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, June 2013, October 2014 and March 2015 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:

9.42

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.

9.43

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. While 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 9.41 and 9.43 of the Guidance. The Sub-Committee is therefore advised to give 'appropriate' its ordinary meaning, as expanded upon by paragraph 9.43 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. This Guidance is therefore binding on all licensing authorities to that extent. However, this Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this 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). This 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 this Guidance must take their own professional and legal advice about its implementation.

NHDC Statement of Licensing Policy

8.7 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 premise 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' (see paragraphs 8.2 to 8.6 above)

(iii) interested parties

amended to 'other persons'

(iv) stated aims of the Act

paragraph 5.9 of the Policy refers to the stated aims of the Act which have since been amended in the latest Guidance as follows:

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 businesses, 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.*

Case law

- 8.8 As paragraph 2.15 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.
- 8.9 The Guidance states at paragraph 2.20 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.
- 8.10 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, suspended or revoked.
- 8.11 The recent magistrates court case of *Kouttis v London Borough of Enfield, 9th September 2011* considered this issue.
- 8.12 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 2.24). It was also suggested that, given that certain residents were not disturbed, this did not amount to public nuisance within the meaning of para 2.19 of the Guidance as approved by Burton J in the Hope and Glory case.
- 8.13 The District Judge held that there was ample evidence of public nuisance relating to the specific premises, 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.

Representation from Hertfordshire Constabulary

- 8.14 The representation received details the following:
- 2 incidents of crime and disorder (5.4.13 & 6.3.15)
 - 8 incidents of trading past licensing hours/Breach of conditions (5.04.13; 30.08.14; 21.12.13; 28.09.14; 5.04.15; 6.04.15; 25.04.15; 31.05.15)
 - 1 incident of minors being in attendance whilst alcohol was available (6.03.15)
- 8.15 As the Police have stated in their summary, there have been numerous opportunities for Mr Campbell to adhere to his premises licence, both for the operating hours and the conditions as attached to his premises licence.
- 8.16 The Police's view is that the premises licence holder, Mr Campbell, has proven that adhering to his premises licence conditions is not in his nature.
- 8.17 The Police are also of the opinion that they are not convinced, nor do they have confidence that he will continue to adhere to his licence and its associated conditions, and are therefore in support of the view of the Licensing Manager in their application, that the premises licence for Rocabessa should be revoked.
- 8.18 If the Sub-Committee were minded however, to maintain the premises licence that exists for Rocabessa as held by Mr Campbell, they would have to satisfy themselves that he would, not only adhere to his existing licence and its conditions, but any additional conditions and that they may deem appropriate, to address the issues that have been laid before them as part of this review application.
- 8.19 All of the available options that the licensing sub-committee can consider with regards to Mr Campbell's premises licence for Rocabessa have been outlined at 5.3 of this report.

Live Music Act 2012

- 8.20 The Live Music Act 2012 amended the Licensing Act 2003 by deregulating live music under certain circumstances. Where a premises is licensed for the sale of alcohol, live music is deregulated under the following circumstances:
- (i) performances of unamplified live music between 08:00hrs and 23:00hrs; or
 - (ii) performances of amplified live music between 08:00hrs and 23:00hrs in the presence of an audience of no more than 500 persons
- 8.21 Under the circumstances listed in 8.21 above, live music is deregulated and does not need authorisation under a premises licence. Additionally, any licence conditions specifically relating to live music do not apply during the period of deregulated live music.
- 8.22 As a safeguard to local residents, however, the Licensing Act 2003 was further amended so that a Licensing Sub-Committee may remove this deregulation in respect of a specific premise at a licence review hearing where appropriate.

- 8.23 Section 177A(3) of the Licensing Act 2003 allows a Licensing Sub-Committee to remove the suspension of licence conditions and give them renewed effect in relation to all live music.
- 8.24 Section 177A(4) of the Licensing Act 2003 allows a Licensing Sub-Committee to add a condition relating to live music that would have effect at all times when live music is provided.
- 8.25 If the Sub-Committee believe that the removal of the suspension of live music conditions is appropriate based on the evidence relating to this specific application, this must be specifically mentioned as part of the determination.

Right of Appeal

- 8.26 Section 52(11) of the Licensing Act 2003 states:

A determination under this section does not have effect-

- (a) *until the end of the period given for appealing against the decision, or*
- (b) *if the decision is appealed against, until the appeal is disposed of.*

- 8.27 The period given for appealing against a decision is twenty-one (21) days from the receipt of the written decision notice of the licensing authority. For clarity, the decision notice will state when the council deem the decision notice to have been given, by virtue of the Interpretation Act 1978, and the last date for lodging an appeal with the local Magistrates Court.

9. CONTACT OFFICERS

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