

LICENSING AND APPEALS SUB-COMMITTEE
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18 April 2016

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

**APPLICATION BY HERTSC FOR THE GRANT OF A PREMISES LICENCE IN
RESPECT OF BALDOCK ROAD RECREATION GROUND, LETCHWORTH
GARDEN CITY, HERTFORDSHIRE, SG6 2EL.**

REPORT OF THE LICENSING OFFICER

1. BACKGROUND

- 1.1 No premises licence under the Licensing Act 2003 (“the Act”) is currently in place for the premises.
- 1.2 Whilst premises licences granted under the Act ordinarily run in perpetuity, the application seeks to restrict the premises licence to one event in 2016 only.
- 1.3 A previous application has been submitted by the applicant for the same venue which was refused by a licensing sub-committee.
- 1.4 The Act and statutory guidance are clear that each application must be determined on its own merits; the sub-committee must make their determination based on the written and oral evidence presented to this hearing regarding this application.

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 originally applied for are attached as Appendix A.
- 2.3 Accompanying the application is an event management plan that is to be considered as part of the application. The sub-committee are reminded that this a ‘live’ document that will evolve throughout the application and event planning process. Some of the responsible authorities have agreed licence conditions with the applicant, should the application be successful, that will require the event management plan to be updated in accordance with the conditions’ requirements.

3. APPLICATION PROCESS

- 3.1 On 22 February 2016, Dale Mabert acting on behalf of HertsSC made an application for the grant of a premises licence.

- 3.2 The applicant served copies of this application to Hertfordshire Constabulary 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) consecutive days in accordance with the requirements of the Act.
- 3.4 A newspaper advertisement was placed in The Comet in accordance with the requirements of the Act.

4. REPRESENTATIONS

- 4.1 Hertfordshire Constabulary had initial concerns with the application and entered into negotiations with the applicant during the consultation period. The applicant subsequently amended the application to include additional operating schedule conditions which resolved the police concerns. The amendments made following negotiations with the police are attached as Appendix B.
- 4.2 NHDC Environmental Protection had initial concerns with the application and entered into negotiations with the applicant during the consultation period. The applicant subsequently amended the application to include additional operating schedule conditions which resolved the officer's concerns. The amendments made following negotiations with the environmental protection officer are attached as Appendix C.
- 4.3 NHDC's Licensing Manager, acting on behalf of the licensing authority as a responsible authority, had initial concerns with the application and entered into negotiations with the applicant during the consultation period. The applicant subsequently amended the application to include additional operating schedule conditions which resolved the licensing manager's concerns. The amendments made following negotiations with the licensing manager are attached as Appendix D.
- 4.4 NHDC Environmental Health had initial concerns with the application and entered into negotiations with the applicant during the consultation period. The applicant subsequently amended the application to include additional operating schedule conditions which resolved the officer's concerns. The amendments made following negotiations with the environmental health officer are attached as Appendix E.
- 4.5 Despite the amendments to the application made by the applicant following negotiation with NHDC Environmental Health, additional concerns arose during the consultation process resulting in a further representation being made. An agreement resolving the environmental health officer's additional concerns could not be reached therefore a representation was made. The representation is attached as Appendix F.
- 4.6 As the applicant made a number of amendments to the original application adding additional operating schedule conditions, some of the conditions are repetitive or conflicting. The licensing authority has a duty to interpret operating schedule conditions and ensure that they are appropriate, proportionate and enforceable.
- 4.7 In order to assist the sub-committee, a summary of the revised application incorporating all amendments is attached as Appendix G. **It is the revised**

application contained within Appendix G that the sub-committee are being asked to determine.

- 4.8 No representations were received from any other responsible authority.
- 4.9 Given the quantity of representations and the fact that a document had been circulated to residents, by person(s) unknown, containing false information the licensing officer forwarded all representations to the applicant to facilitate negotiations based on factual information. This information took place electronically although no personal email addresses were forwarded to the applicant. The email exchanges detailing the negotiations that took place have not been included unless they substantially amend the original representation.
- 4.10 Thirty eight (38) representations were received from other persons against the application however five (5) were subsequently withdrawn following negotiations with the applicant facilitated by the licensing officer. A further four (4) representations were deemed 'not relevant' by the licensing officer and one (1) representation was received outside of the consultation period so could not be considered. The remaining twenty-eight (28) relevant representations against the application are attached as Appendix H
- 4.11 Seven (7) representations were received from other persons in support of the application however three (3) were deemed not relevant by the licensing officer as they did not contain the other person's address. The remaining four (4) relevant representations in support of the application are attached as Appendix I.
- 4.12 The Council's Scheme of Delegation in respect of the Licensing Act 2003 requires the licensing officer to determine whether a representation is relevant as specified by the Act.
- 4.13 Where representations include paragraphs that are not relevant to the Act, 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.**
- 4.14 Where the licensing officer determined that the representations are relevant, it is for the sub-committee to determine what weight to apportion to each representation.
- 4.15 The applicant has been served with a copy of all representations during the consultation period to facilitate negotiations and to correct false information circulating in the vicinity of the proposed location.
- 4.16 The applicant, the environmental health officer and the other persons making relevant representations 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 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 issued by the Home Office.
- 5.3 The sub-committee has the following options when making their determination:
- i) Grant the application as made
 - ii) Grant the application with amended timings and/or licensable activities
 - iii) Grant the application (as made or as amended) with conditions
(conditions should only be added where appropriate to promote the licensing objectives)
 - iv) Refuse the application.

6. LICENSING POLICY CONSIDERATIONS

- 6.1 The following paragraphs from the Council's Statement of Licensing Policy 2016 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.

B6

Our vision is:

“To ensure that North Hertfordshire continues to offer a diverse range of well managed entertainment venues and community and cultural activities within a safe and enjoyable environment.”

B7

The Council is committed to the continued promotion of the diverse cultural and community activities within the district and providing a safe and sustainable night-time economy for residents and visitors alike. Licensing Policy will be approached with a view to encouraging new and innovative forms of entertainment that promote this vision and are consistent with the four licensing objectives.

B8

The Council encourages greater live music, dance, theatre and other forms of entertainment for the benefit of the community. Where activities require a licence, the Council will seek to balance the potential for disturbance of local residents and businesses against the wider community and cultural benefits.

B9

In making a balanced decision, the Council accepts that those living in town centre environments are likely to experience a degree of disturbance associated with a vibrant night-time economy but this must be managed in such a way to limit its impact beyond that which is reasonable. The Council will at all times consider the wider benefits to and impacts on the community as a whole and will take a proportionate view on the weight to apply to representations.

B10

The Council will seek to encourage cultural and community events in the district by allowing the appropriate use of its own public spaces and encouraging Town Centre Managers to obtain premises licences for town centres to remove the burden of community groups having to obtain their own permissions.

D1.5

The Council expects applicants to address the licensing objectives in their operating schedule and have due regard to this Policy. To achieve this, the Council supports the principles set out in sections 8.33 – 8.36 of the Statutory Guidance.....

D2.1

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.

D2.9

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

- (i) protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;*
- (ii) 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;*
- (iii) 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;*
- (iv) 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*
- (v) encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.*

D6.2

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 conditions will only be lawful where they are deemed appropriate to promote the licensing objectives in response to relevant representations.

D6.3

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 or the surrounding areas of the premises, places or events. Conditions are likely to be focused towards the direct impact of those activities on persons living in, working in or visiting areas affected by, or likely to be affected by, those activities.

E3.9.1

The Council is fully aware of the nuisance that can be caused by poorly managed or inappropriately located premises, however will seek to strike an appropriate balance with its vision of promoting a diverse and vibrant night-time economy.

E3.9.2

The provision of well-managed and controlled entertainment will be encouraged to promote the vision, however the potential disturbance to residents and businesses will need to have been adequately considered by applicants as part of their operating schedule

E3.9.3

Should disturbance from licensed premises become unreasonable, any review proceedings will seek to impose suitable control measures in the first instance. Should control measures prove ineffective or are deemed inappropriate then the restriction of licensable activity timings, removal of licensable activities, suspension or revocation of the licence will be seriously considered.

F8.1

The Council acknowledges that conditions cannot be imposed on an authorisation where it would be either impracticable or impossible for the licence holder to comply with such conditions when customers have left the premises and are beyond the control of the licence holder.

F8.2

That said, if behaviour of customers beyond the control of the licence holder can be causally linked to a specific premises and it is causing crime and disorder or a nuisance it is wrong to assume that the Act cannot address this; section 4 of the Act gives the Council a positive duty to deal with it proportionately. Whilst conditions would be inappropriate in these scenarios, the Council is strongly of the view that activities and/or operating times of an authorisation should be restricted, or an authorisation refused or revoked, where appropriate for the promotion of the licensing objectives.

G2.1

Occasional and/or large scale events can be authorised by a one-off, a time-specific, or a permanent licence/certificate. Applicants are encouraged to seek advice on the most appropriate type of application from the Council's licensing team.

G2.2

These events have significant potential to considerably undermine the promotion of the licensing objectives, due to their sheer size, complexity and the potential implications for the planning of a safe event. The Council strongly believes that this risk can only be adequately mitigated by the early submission of an up to date and detailed operating schedule that is specific to the proposed event on each separate occasion.

G2.3

The Council acknowledges that it is inherent in the Act that responsible authorities and other persons should be given the opportunity to make representations related to the nature of the individual event which is planned. The potential for adverse effects on the promotion of the licensing objectives can vary significantly between events, even when similar events are held on a regular basis. In order to support the promotion of the licensing objectives, the Council believes that responsible authorities have a role in ensuring the safety of every large scale event, in particular when annual or multiple events are held under a single permanent premises licence.

G2.4

Additionally, the Council's Enforcement Policy may be less effective because of the short duration and occasional nature of these events. The Council's incremental and proportionate response to problems arising may not be as effective in resolving issues on an occasional and irregular basis, particularly with changing event personnel. This paragraph should not be construed as meaning that the Enforcement Policy does not apply, or will not be applied, to large scale events.

G2.5

Whilst the Council acknowledges the applicant's right to submit a one-off or time specific licence/certificate application, it encourages applicants to submit an application for a permanent licence/certificate. This provides the applicant with the flexibility of a licence that would allow the submission of an up to date and detailed operating schedule on each occasion the event is to be held, but safeguards the rights of responsible authorities and other persons to hold the licence/certificate holder to account by way of an application for a review.

G2.6

Sites for large occasional events are not usually purpose built for the variety of licensable activities that can take place, therefore there is considerable work involved before, during and after such events in planning and organising the event as well as co-ordinating and ensuring the full involvement of all the emergency services to

ensure a safe and well managed event. The Council believes that this can only be adequately achieved by the full and ongoing involvement of the licensing authority and responsible authorities in liaising with the applicant, whilst they are compiling the operating schedule for each individual event.

G2.7

For these reasons, the Council considers that where an applicant attempts to submit an operating schedule that may refer to a series of events, potentially over a period of years, the detail and relevance of this important document is likely to be critically diluted unless it includes time-specific conditions relative to each event to allow the responsible authorities to consider the potential impact on the licensing objectives of each event.

G2.8

The Council acknowledges that it is under a statutory obligation to administer and enforce the licensing regime to promote the licensing objectives. The organiser of an event, however, has additional and fundamentally different considerations in planning, organising and managing their event including financial concerns (the amount of profit made for either charitable or private gain) and satisfying the demands of those attending the event (for example, music sound levels to meet the expectations of the audience). These considerations and other matters can conflict with the priorities of the Council in terms of the promotion of the licensing objectives.

G2.9

Whilst the Council can only consider the application before them based on the individual merits of the case, the Act allows an application for the transfer of any such licence / certificate. In these circumstances, only the police may object and then only in respect of the prevention of crime and disorder objective. This clearly does not permit consideration of the potential impact of the new management structure upon the other equally important licensing objectives. This is of particular concern to the Council given the high level of organisational and management skills required in connection with providing such events. Additionally, the Council is aware that a review application is not necessarily suitable to mitigate such a high risk due to the length of time required to hold a review and the burden of proof required in making the case.

G2.10

Whilst the ability to request a review has the potential to deal with problems arising with a licence/certificate, the Council recognises that the aim of the Act is to prevent problems arising at the outset rather than merely reacting to actual or anticipated problems at a later date.

G2.11

The Council has therefore adopted the following policy that will apply to large scale events when relevant representations have been made and the application is referred to a Licensing Sub-Committee for determination:

- (i) In respect of an application for a one-off, time-specific or permanent licence/certificate for the holding of occasional and/or large scale events the Council will consider, amongst other matters, whether the operating schedule:
 - (a) defines the events proposed with sufficient certainty to enable responsible authorities and the Council to adequately consider the risks to the licensing objectives arising from the event; and*
 - (b) defines the measures proposed to avert those risks with sufficient certainty to enable responsible authorities and the Council to make a balanced judgment as to whether the measures will be sufficient to mitigate those risks.**

- (ii) *The Council will generally require a high degree of certainty before deciding that the operating schedule fulfils this requirement, but will decide that matter on the individual merits of each case.*
- (iii) *In cases where the Council determines that the operating schedule is not drafted with sufficient certainty, the application will normally be refused, save in exceptional circumstances. It is unlikely that the circumstances will be considered exceptional unless the applicant gives assurances and safeguards that the licensing objectives will be met despite the lack of certainty in the operating schedule and suitable conditions can be imposed on the licence to mitigate this risk.*
- (iv) *In cases where the Council determines that the operating schedule is drafted with sufficient certainty then, in determining the application, the Council will consider any relevant risks arising from the temporary nature of the events proposed in the application in relation to the promotion of the licensing objectives.*

G4.1

The Council is aware that responsible authorities, and sometimes other persons, often engage with applicants prior to submission of an application until sometimes after an event has taken place. This concept is referred to in the Guidance, as it would assist in promoting the licensing objectives by fostering a partnership approach. The Council supports this concept, but with an additional caveat. Prior to such engagement, applicants are expected to consider, and to make reference in their operating schedule to:

- (i) *relevant technical advice from any professionals they employ/involve in the planning of the event (such as Health & Safety Consultants, Event Management Companies, etc.);*
- (ii) *relevant National Guidance (such as The Event Safety Guide, MUTA's Best Practice Guide, etc.); and*
- (iii) *relevant professional advice from agencies that are not responsible authorities under the Act (such as the Highways Authority, local transport providers, medical service providers, etc.)*

G4.2

The Council's reasons for this policy principle are the following:

- (i) *The demands on the responsible authorities can be disproportionate to their resources, particularly in light of the Council's policy of encouraging cultural activities such as music, dancing and theatre. This may place undue pressure on such bodies, undermining the level of scrutiny of such applications.*
- (ii) *It must be considered that the legal responsibilities connected to holding such events rests primarily with the organiser and land owner. Where an application does not contain reference to such guidance and expertise, statutory bodies may be placed in an untenable position where they may be open to litigation due to the level of input/advice they may have to provide, and by implication may have taken an inappropriate degree of legal responsibility/liability in connection with the event. The Council believes it is pertinent, therefore, to attempt to avoid such a problem arising.*
- (iii) *Where an applicant does not consider such advice and guidance before making an application, this can place responsible authorities and/or other persons in a difficult position due to the fact that many aspects of an application may be lacking and it may not allow full and proper consideration of the proposals during the consultation period. This may undermine their full and proper consideration of an application.*

G5.1

In addition to encouraging applicants for occasional/annual events to apply for a permanent premises licence, the Council actively encourages applicants to build flexibility into their operating schedules. This allows for the event to evolve and incorporate best practice without undo restrictions on the management of the event and the site layout.

G5.2

The Council recommends an operating schedule that contains basic management control conditions that would apply from event to event but with the majority of event management details to be incorporated into an Event Management Plan (EMP). One of the basic management control conditions can then link the final EMP to the operating schedule making it an enforceable operating schedule condition.

G5.3

The content of the EMP can be defined by an operating schedule condition, ordinarily under generic headings, with any specific requirement of a responsible authority included as sub-headings. Varying timescales for each responsible authority and the provision of specified information can be incorporated within the EMP ensuring flexibility for the licence holder to develop the event and react to evolving issues such as ground/weather conditions or the availability of products/service providers.

G5.4

The Council encourages an applicant to include an operating schedule condition stating required timescales for the issue of a draft EMP and the final EMP, ideally a specified number of days prior to the commencement of event build-up on site or the opening of the event to the public. This condition should also include any consequence of the failure to meet this requirement, for example, certain licensable activities are not permitted until compliance has been achieved or the event will not be permitted without the express approval of the licensing authority.

G5.5

This type of EMP operating schedule condition (in effect a 'promise to provide' licence) allows the applicant flexibility to amend the details and layout for each event without the need to vary the premises licence whilst maintaining suitable control measures for the responsible authorities and the Council to ensure the promotion of the licensing objectives. As the EMP would be attached as a licence condition, failure to comply with its content would render the licence holder liable for operating otherwise than under an authorisation (section 136 of the Act).

G5.6

The Council has encouraged this type of event premises licence for a number of years leading to successful annual events at venues such as Knebworth Park and recommends applicants to enter into pre-application discussions at the earliest opportunity to explore the suitability of this option.

G8.2.1

Large scale outdoor events have significant potential to impact adversely on communities through public nuisance that may arise from their operation, in particular in relation to noise from live or recorded music. The Council expects applicants to seek early engagement with NHDC's Environmental Protection & Housing Team when preparing an operating schedule.

G8.2.2

Where the applicant's operating schedule does not fully address concerns in relation to the prevention of public nuisance objective, NHDC's Environmental Protection & Housing Team will initially request the applicant to volunteer additional conditions to avoid the need for a representation. Example conditions specific to large scale outdoor events are included in the attached appendix of model conditions to assist applicants with the wording of suitable conditions. The applicant is under no obligation to agree to the suggested conditions if he/she believes they are not appropriate or

proportionate to the application. If the applicant does not wish to volunteer the suggested conditions then a representation is likely and the matter will be referred to a Licensing Sub-Committee for determination.

G8.2.3

Applicants should be aware that if a Licensing Sub-Committee is not satisfied that an operating schedule adequately promotes the prevention of public nuisance objective it is likely to impose conditions from the model conditions attached to this Policy. In cases where there are insufficient conditions to fully address the prevention of public nuisance objective or the risk of nuisance is so significant a Licensing Sub-Committee is likely to refuse the application.

G8.8.1

Section G5 of this Policy details the Council's recommendation that an applicant utilises an Event Management Plan as a condition of a premises licence to allow maximum flexibility for multiples events. For the same reasons, the Council also recommends that applicants utilise a Noise Management Plan (NMP) as a condition of a premises licence.

G8.8.2

A NMP gives maximum flexibility for an applicant to adapt the measures required for managing any potential noise nuisance from an event by reacting to amended site plans, differing artist profiles, weather conditions, etc.. It removes the need for inflexible fixed noise levels on a premises licence and allows the applicant to work with environmental protection officers to ensure the most appropriate controls are applied proportionately for each event.

G8.8.3

The Council acknowledges that a NMP cannot be a requirement to enable an applicant to obtain a licence, however it is the Council's preferred option to balance appropriate control and flexibility for the applicant.

G8.8.6

Applicants should be aware that if they volunteer, or a Licensing Sub-Committee imposes, a licence condition requiring a NMP to be approved by NHDC's Environmental Protection & Housing Team, they should submit the NMP with sufficient time for the NMP to be considered and amended where necessary.

H2.1

Whilst the Council accepts that NH SAG has no statutory role within the licensing regime and the responsibility for organising and managing a safe event lies with the event organiser, it strongly believes that NH SAG can provide invaluable experience and advice to applicants.

H2.2

This Policy encourages early discussions between applicants and the responsible authorities prior to the submission of an application and the NH SAG offers applicants access to a wide range of experience and knowledge. This facility is of particular assistance to applicants where an EMP is required as a licence condition. NH SAG can meet regularly with the applicant to review an EMP throughout its development, offering further advice and support where appropriate.

H2.3

No consent or approval of any proposals concerning event management or infrastructure, implied or otherwise, is to be taken from applicant attendance at NH SAG.

H3.1

The Council will not impose any licence conditions requiring applicants to obtain the consent of NH SAG for any aspect of event management or infrastructure.

H3.2

When considering representations, a Licensing Sub-Committee may consider an applicant's willingness or otherwise to liaise with NH SAG as an indication of their commitment to the promotion of the licensing objectives and ability to deliver a safe event.

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.

1.3

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.

1.16

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

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.

2.14

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.

2.20

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.

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 what effect this will have on 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.

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.

10.8

The licensing authority may not impose any conditions unless its discretion has been exercised 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. This provision also applies to minor variations.

10.9

It is possible that in some cases no additional conditions will be 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. 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.

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 following paragraphs from the Council's Statement of Licensing Policy outline the definition of 'appropriate' that the sub-committee should have regard to:

F2.1

There are many references throughout this Policy to the term 'appropriate'. The Act states at section 18(3)(b) that when relevant representations are received the Licensing Sub-Committee has to consider what steps "it considers appropriate for the promotion of the licensing objectives".

F2.2

There is no current legal definition of the term appropriate, however the Guidance states:

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.

F2.3

The Council anticipates that, in due course, case law will provide clarity on the meaning of 'appropriate'. Until such time that the courts make a judgement the Council will give 'appropriate' its ordinary meaning as expanded on by paragraphs 9.39 and 9.40 of the Guidance, subject to the over-arching requirement that determinations should be reasonable and proportionate.

F2.4

European case law has defined 'proportionate' as generally requiring a four-step test, namely:

- *there must be a legitimate aim for a measure;*
- *the measure must be suitable to achieve the aim;*
- *the measure must be necessary to achieve the aim (that there cannot be any less onerous way of achieving it); and*
- *the measure must be reasonable, considering competing interests.*

The Council is aware that their determinations must be proportionate to the evidence received in respect of an application and will have regard to this definition.

F2.5

The Council acknowledges that proportionality is a key factor in assisting with the definition of 'appropriate'.

Local Licensing Policy (Large Scale Outdoor events)

- 8.3 Whilst extracts from the council's Statement of Licensing Policy have been included in section 6 of this report, the sub-committee should have regard to the whole of section G of the policy statement as it contains a specific local policy in relation to the type of event proposed in this application.
- 8.4 The sub-committee may have regard to the fact that the applicant has engaged with the council's Safety Advisory Group and has liaised with the responsible authorities as part of the application process.

Parking

- 8.5 Several representations from other persons make reference to the lack of parking at the premises and the impact on the locality of the additional vehicles associated with the event.
- 8.6 The sub-committee should give careful consideration to the weight they apportion to these representations; in particular regard should be given to:
- whether the representations relate to one or more of the four licensing objectives
 - the need to avoid duplication with other controls available to deal with parking issues
 - the need to avoid conditions relating to matters outside the control of the licence holder
- 8.7 If the sub-committee are of the view that parking issues are so significant that they constitute a public nuisance, they can consider parking under the licensing objective of 'the prevention of public nuisance'.

False information

- 8.8 From communication received from other persons during the consultation period it is apparent that an unknown person(s) circulated false information relating to the application to residents in the vicinity of the proposed location.
- 8.9 The sub-committee should only consider representations that relate to the amended factual application attached as Appendix G and may have regard to whether the false information solicited representations that may not otherwise have been made.

Previous application

- 8.10 The Act and Guidance clearly state that each application should be determined on its own merits. The sub-committee should only have regard to the written evidence contained within this report and the oral evidence given at the hearing.
- 8.11 Other persons should not be permitted to re-visit discussions or information given at the previous hearing as it is not relevant to the application being determined today.

Use of the recreation ground

- 8.12 Some of the other persons have referred to what they consider to be the 'inappropriate usage' of the recreation ground and the fact that its normal users will be denied access during the event.
- 8.13 Land usage is not related to any of the licensing objectives and must not be discussed at the hearing or considered as part of the determination.
- 8.14 The decision as to whether or not the land can be used for the event is a matter for the landowner.

Consultation with local residents

- 8.15 Some of the other persons have referred to the lack of engagement with local residents as part of the application process.
- 8.16 The Act prescribes advertising regulations for applications and the applicant has complied with those requirements. This must not be discussed at the hearing or considered as part of the determination.
- 8.17 There is no requirement for an applicant to go beyond the prescribed regulations and the fact that the applicant has chosen not to is not a relevant consideration relating to the licensing objectives.

Charitable status

- 8.18 Representations against and in support of the application make reference to the fact that the purpose of the event is to raise money for charitable purposes.
- 8.19 This is not a consideration for the sub-committee as the application must be determined solely on its ability to promote the licensing objectives irrespective of whether it is for charitable or commercial purposes.
- 8.20 The intended purpose of the event must not be discussed at the hearing or considered as part of the determination.

9. APPENDICES

- 9.1 Appendix A Original application
- 9.2 Appendix B Amendments agreed with Hertfordshire Constabulary
- 9.3 Appendix C Amendments agreed with Environmental Protection
- 9.4 Appendix D Amendments agreed with Licensing
- 9.5 Appendix E Amendments agreed with Environmental Health
- 9.6 Appendix F Representation from Environmental Health
- 9.7 Appendix G Revised application incorporating all amendments
- 9.8 Appendix H Relevant representations from Other Persons against the application

9.9 Appendix I Relevant representations from Other Persons in support of the application

10. CONTACT OFFICERS

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