

LICENSING AND APPEALS SUB-COMMITTEE 19 September 2016
--

*PART 1 – PUBLIC DOCUMENT	AGENDA ITEM No.
----------------------------------	------------------------

LICENSING ACT 2003

**REVIEW OF A PREMISES LICENCE FOLLOWING A REQUEST FROM AN
'OTHER PERSON' IN RESPECT OF SUMMER SOUL, FISH HILL SQUARE,
ROYSTON.**

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 18 June 2015. It was revised on 17 June 2016 following a full variation application. 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 an 'other person' under Section 51 of the Licensing Act 2003.

2.2 On the 25 July 2016, the licensing authority received an application for the review of the Premises Licence from an 'other person' on the grounds:

There was unacceptable public nuisance and prevention of disorder surrounding the Ad Hoc Summer Soul event which took place on Saturday July 9, 2016.

2.3 The application for review relates to the following licensing objectives:

- The prevention of crime and disorder
- The prevention of public nuisance

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.

2.5 The application for a review is attached below:

3. THE CONSULTATION PROCESS

- 3.1 On the 25 July 2016, the licensing authority received an application for a review of the premises licence from an 'other person'.
- 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 public notice was displayed on the premises and was exhibited for a period of 28 days between 26 July 2016 and 23 August 2016 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 Two (2) representations were received from 'other persons' (previously known as interested parties) and are attached below:

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

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.

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.

D2.6

Where problems with a direct causal link to premises exist in relation to the promotion of the licensing objectives but they cannot be mitigated by the imposition of appropriate conditions, a Licensing Sub-Committee will seriously consider refusal of the application. For example, patrons from a licensed premise that are causing disorder in a town centre after leaving the premises cannot be controlled by conditions, however the problem may be resolved by the refusal of the application or revocation of the licence.

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.*

D11.1

Any responsible authority or other person has 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. At a review hearing, the options available to the Licensing Sub-Committee are:

- (i) to take no action;
- (ii) to modify the conditions of the licence;
- (iii) to exclude one or more licensable activities from the scope of the licence;
- (iv) to remove the designated premises supervisor;
- (v) to suspend the licence for a period not exceeding three months; or
- (vi) to revoke the licence.

D11.5

The Council recognises the importance of partnership working between the licensing authority, licence holders, responsible authorities and other persons 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.

D11.6

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 adduced at a review hearing is such that other options may prove inappropriate.

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.

G6.1.1

Large scale events, in particular music festivals, have the potential to significantly impact on the prevention of crime and disorder objective for reasons such as, but not limited to:

- a significant number of event attendees being attracted to North Hertfordshire and the creation of 'an event community', often the size of small town;
- disorder associated with travel to and from the venue;
- potential criminal elements being attracted to the event, particularly multi-day events; and
- the additional pressures on police resources associated with the event.

G6.1.2

In preparing an application, applicants are encouraged to have early discussions with the police about the potential for crime and disorder associated with or at the event in order that any concerns can be addressed in the operating schedule.

G6.1.3

Given the potential impact on the licensing objectives of a large scale event, the Council will place significant weight on any representation received from the police and will give serious consideration to refusing the application unless the concerns raised in the representation are fully addressed.

G6.3.1

The Council is strongly of the view that it is not the responsibility of the police to provide a free security service for event organisers. The responsibility for security at events rests solely with the event organiser.

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

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

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.

2.6

Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder

objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

2.7

A number of matters should be considered in relation to public safety. These may include:

- Fire safety;*
- Ensuring appropriate access for emergency services such as ambulances;*
- Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts (see paragraph 2.4 above);*
- Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;*
- Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);*
- Ensuring appropriate and frequent waste disposal, particularly of glass bottles;*
- Ensuring appropriate limits on the maximum capacity of the premises (see paragraphs 2.11-2.12, and Chapter 10; and*
- Considering the use of CCTV in and around the premises (as noted in paragraph 2.3 above, this may also assist with promoting the crime and disorder objective).*

2.11

"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

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.

2.18

Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.

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.

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.

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.

11.17

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.

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.

Case law

- 8.7 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.
- 8.8 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.
- 8.9 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.
- 8.10 The recent magistrates court case of *Kouttis v London Borough of Enfield, 9th September 2011* considered this issue.
- 8.11 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.
- 8.12 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.

Evidence not to consider

- 8.13 There are comments made in some representations referring to “substantial monetary loss” and “lost in excess of £750 in commissions”. It is recommended that the sub-committee do not attach any weight to these comments as they are not deemed relevant to the licensing objectives (see below).
- 8.14 There are comments made in some representations referring to “profit for one business was put before residents of the town centre”. It is recommended that the sub-committee do not attach any to these comments as they are not deemed relevant to the licensing objectives (see below).
- 8.15 The licensing objectives for the sub-committee to consider and base the outcome on are as follows:
- The prevention of crime and disorder;
 - Public safety;
 - The prevention of public nuisance; and
 - The protection of children from harm.
- 8.16 There are comments made in some representations regarding a lack of notification regarding the event that took place on 9 July 2016. The act prescribed a notification process as part of making an application for a premises licence which the premises licence holder complied with. There is no obligation to go beyond these requirements and consult with individuals that might be affected individually.
- 8.17 If these items are brought up by other persons during the hearing they should be informed that the items aren't relevant to the licensing objectives and therefore will not be discussed.

Right of Appeal

- 8.18 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.*

- 8.19 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

- 9.1 Colin Broadhurst
Licensing Officer
01462 474381