

Public Document Pack

18 September 2017

Our Ref Licensing and Appeals Sub-
Committee/6.9.17
Your Ref.
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To: Members of the Committee: Councillor Jean Green, Councillor Gerald Morris and Councillor Mike Rice

You are invited to attend a

MEETING OF THE LICENSING AND APPEALS SUB-COMMITTEE

to be held in the

**MEETING ROOM 1, TOWN LODGE, GERON ROAD,
LETCWORTH GARDEN CITY**

On

WEDNESDAY, 6TH SEPTEMBER, 2017 AT 10.00 AM

Yours sincerely,



David Miley
Democratic Services Manager

Agenda **Part I**

Item		Page
1.	HEARING PROCEDURE	(Pages 1 - 2)
2.	APPLICATION FOR A STANDARD TEMPORARY EVENT NOTICE FOR THE KHOI KHOI BAR AND VINO, 31 HITCHIN STREET, BALDOCK, HERTS. SG7 6AQ REPORT OF THE LICENSING OFFICER	(Pages 3 - 42)

**NORTH HERTFORDSHIRE DISTRICT COUNCIL
LICENSING ACT 2003
TEMPORARY EVENT NOTICE
HEARING PROCEDURE**

1. Chair's Welcome Introduction of: <ul style="list-style-type: none">• Councillors sitting on Sub-Committee (Sub-Committee);• legal advisor;• licensing officer;• Responsible Authorities; and• the 'premises user' (the applicant).	
2. The Chair will outline the procedure for the hearing	
3. The Chair will ask the Legal Advisor to outline the matters for consideration during the course of the hearing	

<u>The Licensing Officer's report</u> 4. The Chair will ask the Licensing Officer if they have anything to add to their report to the Sub-Committee; if there has been any changes to the application, and if so, if both parties have been made aware of the changes. 5. The Chair will ask if there are any questions of fact of the licensing officer 6. The Sub-Committee may ask questions of the licensing officer	
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<u>The Responsible Authorities submit their case</u> 7. The Chair will ask the Responsible Authorities to present their submissions to the Sub-Committee 8. The Chair will ask the premises user if there have any questions for the Responsible Authorities 9. The Sub-Committee may ask questions of the Responsible Authorities	P.T.O
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<p><u>The Applicant's case</u></p> <p>10. The Chair will ask the applicant to present their submissions to the Sub-Committee</p> <p>11. The Chair will ask if there are any questions of fact of the applicant</p> <p>12. The Sub-Committee may ask questions of the applicant</p>	
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<p><u>Closing statements</u></p> <p>13. The Licensing Officer may make final submissions to the Sub-Committee</p> <p>14. The Responsible Authorities may make final submissions to the Sub-Committee</p> <p>15. The Applicant may make final submissions to the Sub-Committee</p>	
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<p><u>Conclusion</u></p> <p>16. The Legal Advisor will summarise any legal points that have arisen during the hearing and will answer any legal questions from the Sub-Committee.</p> <p>17. The Sub-Committee will close the hearing and retire to make a decision.</p> <p>18. Where possible, the Chair will announce the Sub-Committee's decision and will give reasons for the decision.</p>	
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LICENSING AND APPEALS SUB-COMMITTEE
Wednesday 6th September 2017

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

LICENSING ACT 2003

**NOTIFICATION BY HERBIE NYATHI OF A STANDARD TEMPORARY EVENT
NOTICE IN RESPECT OF KHOI KHOI BAR AND VINO, 31 HITCHIN STREET,
BALDOCK, HERTFORDSHIRE, SG7 6AQ.**

REPORT OF THE LICENSING OFFICER

1. BACKGROUND

- 1.1 The premises currently holds a premises licence which is attached as Appendix A.

2. TEMPORARY EVENT NOTICE APPLICATIONS

- 2.1 The notification is for a standard temporary event notices under section 100 of the Licensing Act 2003.
- 2.2 The notification is for the sale of alcohol on the 8th, 9th and 10th September 2017. The notification requested hours from 15:00hrs to 01:30hrs on each day.
- 2.3 The notification is attached as Appendix B.

3. NOTIFICATION PROCESS

- 3.1 On 19th August 2017, Herbie Nyathi submitted a notification for a standard temporary event notice.
- 3.2 Herbie Nyathi made his application electronically. North Hertfordshire District Council served copies of the notification to Hertfordshire Constabulary and NHDC Environmental Protection. There is no requirement to serve copies on any other responsible authority.
- 3.3 There is no requirement for public advertising of the notifications and members of the public may not submit representations.

4. REPRESENTATIONS

- 4.1 Hertfordshire Constabulary and NHDC Environmental Protection have the ability to object to the notifications if they consider that they would undermine one or more of the licensing objectives.
- 4.2 Objection Notices must be received by the licensing authority no later than the end of the third working day following the day the notification is given.

- 4.3 On the 23rd August 2017, Hertfordshire Constabulary issued an Objection Notice under section 104 of the Licensing Act 2003 in respect of the notification. A copy of the Objection Notice is attached as Appendix C.
- 4.4 Herbie Nyathi has been served with a copy of the Objection Notices as part of this report.
- 4.5 Herbie Nyathi 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 whether or not to issue a Counter Notice for each notification, the sub-committee must have regard to the Objection Notices and take such steps as it considers appropriate for the promotion of the licensing objectives.

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

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

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

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

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

5.4 The licensing authority must:

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

Constabulary and NHDC Environmental Protection notice of the decision and a separate statement setting out the conditions.

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

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

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

6. LICENSING POLICY CONSIDERATIONS

- 6.1 The following paragraphs from the Council's Statement of Licensing Policy 2011 may be relevant to this application. This section does not prevent the sub-committee from considering other paragraphs of the Statement of Licensing Policy where they deem it appropriate.

D13.3

The vast majority of these events will not present any problems, for example special occasions in a pub or community hall or charitable fundraising events. A temporary event notice is a light-touch approach to these events and the Council expects that representations will only be made in exceptional circumstances where compelling evidence exists of the effect or likely effect on the licensing objectives.

D13.4

That said, the Council does not expect licence holders to utilise temporary event notifications as a method of avoiding restrictions imposed on an authorisation by way of conditions. The Council is aware that existing licence conditions can be transposed onto a temporary event notice where a Licensing Sub-Committee deem it appropriate based on any relevant representations.

D13.5

The Council acknowledges that licensed premises can, and often do, enter into informal arrangements with the police in order to ensure that the crime and disorder objective is met. Whilst a temporary event notice giver may offer conditions and/or commitments to mitigate any concerns arising from notification, the Council is aware that they cannot be imposed on the temporary event notice and are not enforceable.

D13.8

For events of national significance, for example a sporting world cup, the Council encourages co-operation between licence holders and the police in order to ensure the licensing objectives are met. Voluntary agreements to employ additional door staff or to use plastic drinking vessels are two such examples. Where a police objection to a temporary event notice has been received in such circumstances, the Council is likely to issue a Counter Notice preventing the event from taking place where voluntary agreements have been sought by the police but not entered into by the applicant.

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 (April 2017 version) may be relevant to this application. This section does not prevent the sub-committee from considering other paragraphs of the Guidance where they deem it appropriate and the determination should be based upon consideration of the full document.

1.3

The licensing objectives are:

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

1.4

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

1.5

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

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).

7.5

If a TEN is sent electronically via GOV.UK or the licensing authority's own facilities, the licensing authority must notify the Police and EHA as soon as possible and no later than the first working day after the TEN is given.

7.6

The Police or EHA ("relevant persons" for the purposes of TENs) may intervene to prevent such an event taking place by sending an objection to the licensing authority, which the licensing authority must consider on the basis of the statutory licensing objectives and decide whether the event should go ahead. A relevant person may also intervene by agreeing a modification of the proposed arrangements directly with the TENs user (see paragraph 7.36). If a relevant person sends an objection, this may result in the licensing authority imposing conditions on a TEN but only where the venue at which the event is to be held has an existing premises licence or club premises certificate. When giving a TEN, the premises user should consider the promotion of the four licensing objectives. The licensing authority may only otherwise intervene if the statutory permitted limits on TENs would be exceeded (see paragraphs 7.15-7.22).

7.28

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

7.29

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

7.32

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

7.33

If the Police or EHA believe that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives, they must give the premises user and the Licensing Authority an objection notice. The objection notice must be given within the period of three working days following the day on which they received the TEN.

7.34

Where a standard TEN was given, the Licensing Authority must consider the objection at a hearing before a counter notice can be issued. At the hearing, the Police, EHA and the premises user may make representations to the Licensing Authority. Following the hearing, the Licensing Authority may decide to impose conditions which already apply to an existing premises licence or club premises certificate at the venue, or issue a counter notice to prevent the event going ahead. As noted above, there is no scope for hearings in respect of late TENs and if objections are raised by the Police or EHA in relation to a late TEN, the notice will be invalid and the event will not go ahead.

7.36

As noted above, the police or EHA (as "relevant persons") may contact the premises user to discuss their objections and try to come to an agreement which will allow the proposed licensable activities to proceed. The TEN can be modified (for example, by changing the details of the parts of the premises that are to be used for the event, the description of the nature of the intended activities or their duration). The other relevant person has to agree for the modification to be made. There is no scope under the 2003 Act for the modification of a late TEN.

7.37

The 2003 Act provides that only the Licensing Authority can impose conditions to a TEN from the existing conditions on the premises licence or club premises certificate at the venue. The Licensing Authority can only do so:

- If the Police or the EHA have objected to the TEN;*
- If that objection has not been withdrawn;*
- If there is a licence or certificate in relation to at least a part of the premises in respect of which the TEN is given;*
- And if the Licensing Authority considers it appropriate for the promotion of the licensing objectives to impose one or more conditions.*

7.38

This decision is one for the Licensing Authority alone, regardless of the premises user's views or willingness to accept conditions. The conditions must be notified to the premises user on the form prescribed by regulations.

7.39

Section 105 of the 2003 Act is clear that a Licensing Authority must hold a hearing to consider any objections from the Police or EHA unless all the parties agree that a hearing is not necessary. If the parties agree that hearing is not necessary and the Licensing Authority decides not to give a counter notice on the basis of the objection, it may impose existing conditions on the TEN.

9.12

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

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 March 2015, 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, March 2015 and April 2017 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:

9.43

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.

9.44

Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the

authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

8.5 It is anticipated that, in due course, case law will provide clarity on the meaning of 'appropriate' as referred to in paragraphs 9.42 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. The requirement is therefore binding on all licensing authorities to that extent. However, the guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood the Guidance, they may depart from it if they have reason to do so as long as they are able to provide full reasons. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

1.10

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

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

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.
- 8.11 The magistrates court case of *Koultis 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 2.38). It was also suggested that, given that certain residents were not disturbed, this did not amount to public nuisance within the meaning of para 2.33 of the Guidance as approved by Burton J in the Hope and Glory case.
- 8.13 The District Judge held that there was ample evidence of public nuisance, and that section 4 of the Act gave the licensing authority a positive duty to deal with it proportionately. In this case, no less interventionist way of dealing with the nuisance had been suggested. He held that not only was the authority not wrong, but that it was in fact right to reduce the hours as it had. The appeal was therefore dismissed.
- 8.14 As this was a decision of the Magistrates Court it would not be binding on other courts, however, it could be considered as persuasive.

Date of Hearing

- 8.15 The Licensing Act 2003 (Hearings) Regulations 2005 specify the timescales within which a hearing must be commenced and, in the case of an objection notice to a TEN, that period is no later than seven working days beginning with the day after the end of the period within which an objection notice can be given.
- 8.16 Ordinarily, therefore, the hearing should have been held no later than 5 September 2017 however the applicant has been abroad and is due to return to the UK at around lunchtime that day leaving little time to prepare for the hearing and being dependant on no flight delays. Additionally, it was likely that the police licensing officer could not attend on 5 September 2017.
- 8.17 Regulation 11 of the Licensing Act 2003 (Hearings) Regulations 2005 allows a licensing authority to extend the prescribed timescales when it believes it is necessary to do so in the public interest provided notice of such a decision is served on all parties.
- 8.18 In order to ensure that the sub-committee had all relevant personnel in attendance to allow appropriate questioning and to ensure that the applicant

had sufficient time to prepare, without being dependant on flight arrival times, it was decided that it was in the public interest to delay the hearing by one day. Both the applicant and the police consented to this delay and have been served notice by way of this report.

Administrative Error relating to the Applicant’s Premises Licence

- 8.19 The sub-committee should be aware of the fact that an application to vary the existing premises licence was submitted to the licensing authority on 24 August 2016 which, due to administrative errors in the application, was rejected on 22 September 2016.
- 8.20 During that period, an application to vary the designated premises supervisor to Herbie Nyathi was received and granted with a new premises licence issued on 5 October 2016. Unfortunately, the case officer failed to remove the revised timings applied for as part of the rejected application therefore the premises licence was issued with incorrect timings as follows:

Section E - Performance of Live Music (Indoors)

Thursday	18:00hrs - 21:00hrs
Friday	20:30hrs - 23:00hrs
Saturday	20:30hrs - 23:00hrs
Sunday	18:00hrs - 22:00hrs

Performances of live music are restricted to a maximum of two (2) performers at any one time

Section F - Playing of Recorded Music (Indoors)

Monday	11:00hrs - 23:00hrs
Tuesday	11:00hrs - 23:00hrs
Wednesday	11:00hrs - 23:00hrs
Thursday	11:00hrs - 23:00hrs
Friday	11:00hrs - 24:30hrs
Saturday	11:00hrs - 24:30hrs
Sunday	11:00hrs - 23:00hrs

Section H - Entertainment Similar to Music or Dance (Indoors)

Thursday	19:00hrs - 21:30hrs
Sunday	18:00hrs - 21:30hrs

These hours are restricted to one (1) day per calendar month

Section J - Sale or Supply of Alcohol (For Consumption On the Premises)

Monday	11:00hrs - 23:00hrs
Tuesday	11:00hrs - 23:00hrs
Wednesday	11:00hrs - 23:00hrs
Thursday	11:00hrs - 23:00hrs
Friday	11:00hrs - 01:00hrs
Saturday	11:00hrs - 01:00hrs
Sunday	11:00hrs - 23:00hrs

Hours Premises Open to the Public

Monday	11:00hrs - 23:20hrs
Tuesday	11:00hrs - 23:20hrs
Wednesday	11:00hrs - 23:20hrs
Thursday	11:00hrs - 23:20hrs
Friday	11:00hrs - 01:20hrs

Saturday
Sunday

11:00hrs - 01:20hrs
11:00hrs - 23:20hrs

- 8.21 The incorrect timings were identified on 22 February 2017 and Herbie Nyathi was issued with an amended premises licence, as attached at Appendix A.
- 8.22 The case officer is confident that Herbie Nyathi was advised of the rejected application in September 2016 however the sub-committee should consider what weight, if any, to give to the fact that between 5 October 2016 and 22 February 2017 Herbie Nyathi was in possession of an incorrect licence detailing the timings in paragraph 8.20 above.

9. CONTACT OFFICERS

- 9.1 Hannah Sweetman.
Licensing Officer
01462 474231

APPENDIX

A

Licensing Act 2003

Premises Licence No: LICPR/14517/05

Khoi Khoi Bar and Vino
31 Hitchin Street, Baldock, SG7 6AQ
07980 553189

Authorised Licensable Activities

Section E - Performance of Live Music (Indoors)
Section F - Playing of Recorded Music (Indoors)
Section H - Entertainment Similar to Music or Dance (Indoors)
Section J - Sale or Supply of Alcohol (On the Premises)

Premises Licence Holder

David Charles Plant
43 Larkins Close, Baldock, Herts, SG7 5DG
Registered Number: na
07980 553189

Designated Premises Supervisor

Herbert Nyathi

~~Bedford Road, Leichworth Garden City, Hertfordshire, SG6 1B~~

Personal Licence No: LICPL/02274/16
Issued by: North Hertfordshire District Council

Signed on behalf of the Licensing Authority

Date Granted: 08 July 2005
Date Revised: 23 December 2016

.....
Authorised Officer

Licensable Activities

Section E - Performance of Live Music (Indoors)

Thursday	18:00hrs - 21:00hrs
Friday	20:30hrs - 23:00hrs
Saturday	20:30hrs - 23:00hrs
Sunday	18:00hrs - 22:00hrs

Plus

Performances of live music are restricted to a maximum of two (2) performers at any one time

Section F - Playing of Recorded Music (Indoors)

Monday	11:00hrs - 23:00hrs
Tuesday	11:00hrs - 23:00hrs
Wednesday	11:00hrs - 23:00hrs
Thursday	11:00hrs - 23:00hrs
Friday	11:00hrs - 23:00hrs
Saturday	11:00hrs - 23:00hrs
Sunday	11:00hrs - 22:30hrs

Section H - Entertainment Similar to Music or Dance (Indoors)

Sunday	18:00hrs - 21:30hrs
Thursday	19:00hrs - 21:30hrs

Plus

These hours are restricted to one (1) day per calendar month

Section J - Sale or Supply of Alcohol (On the Premises)

Monday	10:00hrs - 23:00hrs
Tuesday	10:00hrs - 23:00hrs
Wednesday	10:00hrs - 23:00hrs
Thursday	10:00hrs - 23:00hrs
Friday	10:00hrs - 23:00hrs
Saturday	10:00hrs - 23:00hrs
Sunday	10:00hrs - 22:30hrs

Plus

These hours are to apply each day of the year with the exception of:

Christmas Day

On this day, the permitted hours will be 12.00 - 15.00 and 19.00 - 22.30

Good Friday

On this day, the permitted hours will be 10.00 - 22.30

New Year's Eve / New Year's Day

On these days, the permitted hours will extend from the standard terminal hour on New Year's Eve until the start of the standard permitted hour on New Year's Day

Hours Premises Open to the Public

There are no restrictions on the hours the premises may open to the public for non-licensable activities by virtue of this premises licence

Licence Conditions

Mandatory Conditions

- 1) No supply of alcohol may be made under this licence:
 - (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
 - (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
- 2) Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- 3) The admission of children, that is persons under eighteen (18) years of age, to the exhibition of any film shall be restricted in accordance with any recommendation made by the British Board of Film Classification (BBFC) or by the Licensing Authority.
- 4) Any one or more individuals at the premises for the purpose of carrying out a security activity (an activity to which paragraph 2(1)(a) of Schedule 2 of the Private Security Industry Act 2001 applies and which is licensable conduct for the purposes of that Act) must:
 - (a) be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or
 - (b) be entitled to carry out that activity by virtue of section 4 of that Act.
- 5) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises. In this condition, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises:
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to:
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted price to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;

Mandatory Conditions (Cont'd)

- (c) provision of free or discounted alcohol, or any other thing, as a prize to encourage or reward the purchase and consumption of alcohol over a period of twenty-four (24) hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.
- 6) The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than when that other person is unable to drink without assistance by reason of a disability).
- 7) The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
- 8) (a) The premises licence holder or club premises certificate holder must ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
- (b) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (c) The policy must require individuals who appear to the responsible person to be under eighteen (18) years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either:
- (i) a holographic mark; or
 - (ii) an ultraviolet feature.
- 9) The responsible person must ensure that:
- (a) where any of the following alcoholic drinks are sold or supplied for consumption on the premises (other than alcohol drinks sold or supplied having been made up in advance ready for sale or supply in securely closed containers) it is available to customers in the following measures:
- (i) beer or cider: half pint;
 - (ii) gin, rum, vodka or whisky: 25ml or 35ml; and
 - (iii) still wine in a glass: 125ml;
- (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

Mandatory Conditions (Cont'd)

- (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.
- (10) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
In this condition:
- (a) "permitted price" is the price found by applying the formula $P = D + (D \times V)$ where:
 - (i) "P" is the permitted price;
 - (ii) "D" is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol; and
 - (iii) "V" is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
 - (b) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
 - (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence:
 - (i) the holder of the premises licence;
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
 - (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enable the member or officer to prevent the supply in question; and
 - (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

Where the permitted price would not be a whole number of pennies, the permitted price shall be taken to be the price rounded up to the nearest penny.

Where the permitted price on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax, the permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of fourteen (14) days beginning on the second day.

Mandatory Conditions (Cont'd)

"Responsible person" means the holder of the premises licence, the designated premises supervisor, or any other person over the age of eighteen (18) years who has been authorised to sell alcohol at the licensed premises

Embedded Restrictions

- 1) This licence is subject to all embedded restrictions on the use of the premises under:

The Children and Young Persons Act 1933;
The Cinematograph (Safety) Regulations 1955;
The Licensing Act 1964; and
The Sporting Events (Control of Alcohol) Act 1985.

The restrictions will not be attached, however, where:

- (a) The licensing authority has specified that they will be excluded;
- (b) They are inconsistent with any condition offered by the applicant in the operating schedule;
- (c) They are duplicative of existing statutory provisions; or
- (d) They restrict the conditions attached by the licensing authority.

General Conditions

- 3) This licence does not prohibit the consumption of alcohol during the first twenty (20) minutes after the end of the permitted hours for the sale of alcohol.
- 1) All of the standard conditions attached to the existing licence(s) will be attached to the premises licence/club premises certificate. The conditions will not be attached, however, where:
 - (a) The licensing authority has specified that they will be excluded;
 - (b) They are inconsistent with any condition offered by the applicant in the operating schedule;
 - (c) They are duplicative of existing statutory provisions; or
 - (d) They restrict the conditions attached by the licensing authority.
- 2) This licence is issued without prejudice to any other statutory requirements of North Hertfordshire District Council.

Operating Schedule Conditions

a) General - all four licensing objectives (b, c, d, e)

None

b) The prevention of crime and disorder

- (i) The premises licence holder will ensure that a closed circuit television (CCTV) system is installed at the premises covering the cellar and the courtyard. The CCTV system shall be in full working order at all times the premises is open to the public for licensable activities.

c) Public safety

None

d) The prevention of public nuisance

None

e) The prevention of children from harm

- (i) The premises licence holder will ensure that all children under sixteen (16) years of age are only permitted on the premises if accompanied by an adult.

Conditions attached at a Hearing

None

APPENDIX

B



* required Information

Section 1 of 9

You can save the form at any time and resume it later. You do not need to be logged in when you resume.

System reference

Not Currently In Use

This is the unique reference for this application generated by the system.

Your reference

Balstock Music Festival/Charity event

You can put what you want here to help you track applications if you make lots of them. It is passed to the authority.

Are you an agent acting on behalf of the applicant?

- Yes No

Put "no" if you are applying on your own behalf or on behalf of a business you own or work for.

Applicant Details

First name

Herbie

Family name

Nyathi

E-mail address

[REDACTED]

Main telephone number

[REDACTED]

Include country code.

Other telephone number

[REDACTED]

- Indicate here if you would prefer not to be contacted by telephone

Are you:

- Applying as a business or organisation, including as a sole trader
 Applying as an individual

A sole trader is a business owned by one person without any special legal structure. Applying as an individual means you are applying so you can be employed, or for some other personal reason, such as following a hobby.

Applicant Business

Is your business registered in the UK with Companies House?

- Yes No

Note: completing the Applicant Business section is optional in this form.

Registration number

10192700

Business name

Khoi Khoi Bar and Vino

If your business is registered, use its registered name.

VAT number

BG 257739951

Put "none" if you are not registered for VAT.

Legal status

Private Limited Company

Continued from previous page...

Your position in the business

Home country

The country where the headquarters of your business is located.

Registered Address

Address registered with Companies House.

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Section 2 of 9

APPLICATION DETAILS (See also guidance on completing the form, general notes and note 1)

Have you had any previous or maiden names?

- Yes No

Your date of birth / /
dd mm yyyy

Applicant must be 18 years of age or older

National Insurance number

This box need not be completed if you are an individual not liable to pay UK national insurance.

Place of birth

Correspondence Address

Is the address the same as (or similar to) the address given in section one?

- Yes No

If "Yes" is selected you can re-use the details from section one, or amend them as required. Select "No" to enter a completely new set of details.

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Continued from previous page...

Additional Contact Details

Are the contact details the same as (or similar to) those given in section one?

Yes

No

If "Yes" is selected you can re-use the details from section one, or amend them as required. Select "No" to enter a completely new set of details.

E-mail

Telephone number

Other telephone number

Section 3 of 9

THE PREMISES

I, the proposed user, hereby give notice under section 100 of the Licensing Act 2003 of my proposal to carry out a temporary activity at the premises described below.

Give the address of the premises where you intend to carry on the licensable activities or if it has no address give a detailed description (including the Ordnance Survey references). (See also guidance on completing the form, note 2)

Does the premises have an address?

Yes

No

Address

Is the address the same as (or similar to) the address given in section one?

Yes

No

If "Yes" is selected you can re-use the details from section one, or amend them as required. Select "No" to enter a completely new set of details.

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Does a premises licence or club premises certificate have effect in relation to the premises (or any part of the premises)?

Neither

Premises licence

Club premises certificate

Premises licence number

Location Details

Provide further details about the location of the event

We are taking part in Balstock Music Festival in Baldock Town; a charity event which raises money to different charities chosen by organizers of the event. The live music will be staged in the Bar during late evenings and at the rear Bar Courtyard between 3pm to 22.30 hrs subject to weather conditions.

Continued from previous page...

If you intend to use only part of the premises at this address or intend to restrict the area to which this notice applies, give a description and details below (see also guidance on completing the form, note 3)

Describe the nature of the premises below (see also guidance on completing the form, note 4)

Khoi Khoi Bar and Vino has main Bar arrear and a Courtyard for outside garden events

Describe the nature of the event below (see also guidance on completing the form, note 5)

The event is an annual music festival whereby all Pubs in Baldock Town host a number of Bands and solo artists to raise money for charity causes.

Section 4 of 9

LICENSABLE ACTIVITIES

State the licensable activities that you intend to carry on at the premises (see also guidance on completing the form, note 6):

- The sale by retail of alcohol

- The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club

- The provision of regulated entertainment

- The provision of late night refreshment

- The giving of a late temporary event notice

Late notices can be given no later than 5 working days but no earlier than 9 working days before the event.
(See also guidance on completing the form, note 7).

Event Dates

There must be a period of at least 10 working days between the date you submit this form and the date of the earliest event when you will be using these premises for licensable activities.

State the dates on which you intend to use these premises for licensable activities

(see also guidance on completing the form, note 8)

Event start date

08	/	09	/	2017
dd		mm		yyyy

The maximum period for using premises for licensable activities under the authority of a temporary event notice is 168 hours or seven days.

Event end date

10	/	09	/	2017
dd		mm		yyyy

Continued from previous page...

State the times during the event period that you propose to carry on licensable activities (give times in 24 hour clock) (see also guidance on completing the form, note 9)

from 15.00hrs to 01.30hrs on the 8th, 9th, and 10th September 2017

State the maximum number of people at any one time that you intend to allow to be present at the premises during the times when you intend to carry on licensable activities, including any staff, organisers or performers (see also guidance on completing the form, note 10)

150

Note that the maximum number of people cannot exceed 499.

If the licensable activities will include the supply of alcohol, state whether the supplies will be for consumption on or off the premises, or both (see also guidance on completing the form, note 11):

- On the premises only
- Off the premises only
- Both

Section 5 of 9

RELEVANT ENTERTAINMENT (See also guidance on completing the form, note 12)

State if the licensable activities will include the provision of relevant entertainment. If so, state the times during the event period that you propose to provide relevant entertainment

The activities are mainly to serve alcoholic and non alcoholic drinks during Music Festival.

Section 6 of 9

PERSONAL LICENCE HOLDERS (See also guidance on completing the form, note 13)

Do you currently hold a valid personal licence? Yes No

Provide the details of your personal licence below.

Issuing licensing authority

Licence number

Date of issue / /
dd mm yyyy

Any further relevant details

Continued from previous page...

Section 7 of 9

PREVIOUS TEMPORARY EVENT NOTICES (See also guidance on completing the form, note 14)

Have you previously given a temporary event notice in respect of any premises for events falling in the same calendar year as the event for which you are now giving this temporary event notice?

Yes No

Have you already given a temporary event notice for the same premises in which the event period:

- a) Ends 24 hours or less before; or
b) Begins 24 hours or less after the event period proposed in this notice?
- Yes No

Section 8 of 9

ASSOCIATES AND BUSINESS COLLEAGUES (See also guidance on completing the form, note 15)

Has any associate of yours given a temporary event notice for an event in the same calendar year as the event for which you are now giving a temporary event notice?

Yes No

Has any associate of yours already given a temporary event notice for the same premises in which the event period:

- a) Ends 24 hours or less before; or
b) Begins 24 hours or less after the event period proposed in this notice?
- Yes No

Has any person with whom you are in business carrying on licensable activities given a temporary event notice for an event in the same calendar year as the event for which you are now giving a temporary event notice?

Yes No

Continued from previous page...

Has any person with whom you are in business carrying on licensable activities already given a temporary event notice for the same premises in which the event period:

Yes No

- a) Ends 24 hours or less before; or
- b) Begins 24 hours or less after the event period proposed in this notice?

Section 9 of 9

CONDITION (See also guidance on completing the form, note 17)

It is a condition of this temporary event notice that where the relevant licensable activities described in Sections 4 and 5 above include the supply of alcohol that all such supplies are made by or under the authority of the premises user.

PAYMENT DETAILS

This fee must be paid to the authority. If you complete the application online, you must pay it by debit or credit card.

This formality requires a fixed fee of £21

DECLARATION (See also guidance on completing the form, note 18)

* The information contained in this form is correct to the best of my knowledge and belief

* I understand that it is an offence:

- (i) to knowingly or recklessly make a false statement in connection with this temporary event notice and that a person is liable on summary conviction for such an offence to a fine of any amount; and
- (ii) to permit an unauthorised licensable activity to be carried on at any place and that a person is liable on summary conviction for any such offence to a fine of any amount, or to imprisonment for a term not exceeding six (6) months, or to both.

Ticking this box indicates you have read and understood the above declaration

This section should be completed by the applicant, unless you answered "Yes" to the question "Are you an agent acting on behalf of the applicant?"

Full name

Herbie Nyathi

Capacity

Bar owner

Date

19 / 08 / 2017
dd mm yyyy

Add another signatory

Once you're finished you need to do the following:

1. Save this form to your computer by clicking file/save as...
2. Go back to <https://www.gov.uk/apply-for-a-licence/temporary-event-notice/north-hertfordshire/apply-1> to upload this file and continue with your application.

Don't forget to make sure you have all your supporting documentation to hand.

OFFICE USE ONLY

Applicant reference number	Balstock Music Festival/Charity event
Fee paid	
Payment provider reference	
ELMS Payment Reference	
Payment status	
Payment authorisation code	
Payment authorisation date	
Date and time submitted	
Approval deadline	
Error message	
Is Digitally signed	<input type="checkbox"/>

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APPENDIX

C



**HERTFORDSHIRE
CONSTABULARY**

Licensing Act 2003

REPRESENTATION FORM FROM RESPONSIBLE AUTHORITIES

[NORTH HERTS DISTRICT COUNCIL] LICENSING AUTHORITY

Responsible Authority: Police

Your Name	Sammy Doak
Job Title	Sergeant
Postal address	Hitchin Police Station College Road Hitchin Herts SG5 1JX
Email Address	[REDACTED]
Contact telephone number	
Facsimile Number	

Name of the premises you are making a representation about	Khoi Khoi	
Address of the premises you are making a representation about	31 Hitchin Street Baldock	
Details of the individual you are making representations about	Name	Address
	Date & Place of Birth	
Is this the first objection in respect of this individual or these premises	Yes	Brief details / cross reference

Licensing Objections

Which of the four licensing Objectives does your representation relate to?	Yes Or No	Evidence supporting representation or reason for representation. Please use continuation sheet as required
To prevent crime and disorder	Yes	See attached report

Public safety	No	
To prevent public nuisance	Yes	See attached report
To protect children from harm	No	

Suggested conditions that could be added to the licence to remedy your representation or other suggestions you would like the Licensing Sub Committee to take into account. Please use separate sheets where necessary and refer to checklist.	See attached report
---	----------------------------

Signed on behalf of Hertfordshire Constabulary Sergeant 1706 Sammy Doak

Date: Wednesday 23rd August 2017

Please submit this form along with any additional sheets to: [insert name and address] or email to [Insert email address]

This form must be returned within the Statutory Period.



**HERTFORDSHIRE
CONSTABULARY**

TEMPORARY EVENT NOTICE (TEN): KHOI KHOI, 31 HITCHIN STREET, BALDOCK

Police are making representations to this TEN under two of the licensing objectives, those being crime and disorder and public nuisance.

Mr Herbie Nyathi, the Designated Premises Supervisor (DPS) at Khoi Khoi, 31 Hitchin Street, Baldock, has applied for a Temporary Event Notice (TEN) to extend hours where he will be hosting a number of bands and solo artists, in conjunction with the annual music festival known as 'Balstock'.

The operating hours for these premises are as follows:

Live Music (Indoors):

- Thursday: 18:00hrs – 21:00hrs
- Friday: 20:30hrs – 23:00hrs
- Saturday: 20:30hrs – 23:00hrs
- Sunday: 18:00hrs – 22:00hrs

Recorded Music (Indoors):

- Monday: 11:00hrs – 23:00hrs
- Tuesday: 11:00hrs – 23:00hrs
- Wednesday: 11:00hrs – 23:00hrs
- Thursday: 11:00hrs – 23:00hrs
- Friday: 11:00hrs – 23:00hrs
- Saturday: 11:00hrs – 23:00hrs
- Sunday: 11:00hrs – 22:30hrs

Sale or Supply of Alcohol (On the Premises):

- Monday: 10:00hrs – 23:00hrs
- Tuesday: 10:00hrs – 23:00hrs
- Wednesday: 10:00hrs – 23:00hrs
- Thursday: 10:00hrs – 23:00hrs
- Friday: 10:00hrs – 23:00hrs
- Saturday: 10:00hrs – 23:00hrs
- Sunday: 10:00hrs – 22:30hrs

Hours Premises Open to the Public:

There are no restrictions on the hours the premises may open to the public for non-licensable activities by virtue of this premises licence.

I can confirm that in the time that Mr Nyathi has been the DPS at Kho Khoi he has not previously applied for a TEN for this particular event, which is an annual event or for any other event. Mr Nyathi also suggests in the TEN that 'live music will be staged in the bar during late evenings and at the rear bar courtyard between 3pm and 10.30pm subject to weather conditions.

Police and Environmental Health have had a number of noise complaints from local residents regarding the noise from music and patrons. It appears that Mr Nyathi's customers have complete disregard for the local residents that live within the vicinity of Khoi Khoi. Police have further concerns due to a number of breaches in relation to operating outside permitted hours, which will be addressed with him in due course.

Below Police submit the following evidence to the Sub-Committee:

Sunday 11.09.2016 at 11.05pm – Call from local resident (Hitchin Street, Baldock) reporting that pub is breaking music licence and happens every night. Caller went on to say that there was a band in there. This complaint was from the weekend of Balstock event. There was no TEN for this event. The following is a report from PC 75 Deal (Safer Neighbourhood Team):

Sunday 11/09/2016 @ 23:25hrs –Khoi Khoi Bar & Vino (formerly Broken Drum), 31 Hitchin Street, Baldock: Officers received a verbal noise complaint during BALSTOCK music festival from a local resident. At 23:25hrs there was still live music within the premises. The front door was open to the pavement and the noise level was very loud. There were tables and seating positioned on the pavement with around 20 patrons drinking and smoking outside, blocking the pavement to other pedestrians. The DPS Herbie Nyathi was present and the breaches were pointed out. He was reluctant to clear the pavement of patrons to the rear smoking area and told the officer he was not in the 'spirit of Balstock'. His licensing hours and conditions were pointed out. The pavement was eventually cleared and the music ended at 23:35hrs.

Tuesday 13.09.2016 – Warning letter was issued by Environmental Health regarding noise due to noise complaints from a local resident. Police have no further details as to the content of this letter.

Saturday 16.10.2016 at 10.48pm – Noise complaint from local resident (Hitchin Street, Baldock) reporting that every weekend music noise from pub. Stated that that the music was very loud. This report was forwarded onto Environmental Health.

Sunday 19.02.2017 at 1.35pm – Call received from member of staff that bar serves past licence hours. Caller who was a member of staff called in wishing to complain about a male that had been in to her work place on several occasions and given her verbal abuse. The male came in on Thursday 16.02.2017 at approx. 10.40pm, where the member of staff refused to serve him as he had been rude/aggressive previously. The staff member stated that she had the right not to serve anyone and didn't feel comfortable serving him so he was told the bar was closed. The male started calling her a nut case, saying she was fucking out of order, absolutely thick and called her an idiot. The staff member then text her management asking for some more staff to come in as she was serving alone, they ignored this message. This staff member was contacted today by the

pub where they were firing her as they didn't want any confrontation with this male. The member of staff felt that there was no support from the management.

Thursday 23.03.2017 – Environmental Health received a noise app complaint regarding Khoi Khoi from a local resident. Environmental health sent out dairy sheets to the complainant.

Saturday 24.06.2017 at 8am – Diary sheet from local resident (Hitchin Street, Baldock) sent to Environmental Health at NHDC states the following: noise started at 8am and noise stopped at 12pm. The noise was live TV and customer noise as the pub was televising rugby.

It appears that this was the international rugby - the Lions Tour 2017 from New Zealand. The Lions v All Blacks in Auckland. Kick off time 08:35hrs. Live on Sky Sports 1 from 07:30hrs. There was no TEN (Temporary Event Notice) applied for.

BREACHED PREMISES LICENCE OPERATING HRS: Saturday: 10:00hrs – 23:00hrs (sale of alcohol) / There are no restrictions on the hours the premises may open to the public for non-licensable activities by virtue of this premises licence.

Friday 07.07.2017 at 7pm – Diary sheet from local resident (Hitchin Street, Hitchin) sent to Environmental Health at NHDC states the following: Noise started at 7pm and noise stopped at 12 midnight. Type of noise: music and shouting.

Saturday 08.07.2017 at 12.07am – Police received a call from a local resident (Hitchin Street, Baldock) stating that the Khoi Khoi bar is only licenced to sell alcohol up until 11pm, but they are still open. Have been doing this every night and caller is fed up with it. Caller stated that the bar is selling alcohol not in accordance with the licence. There was no TEN (Temporary Event Notice) applied for.

BREACHED PREMISES LICENCE OPERATING HOURS: Friday: 20:30hrs – 23:00hrs (live music – indoors) / 11:00hrs – 23:00hrs (recorded music – indoors). Friday: 10:00hrs – 23:00hrs (sale of alcohol) / There are no restrictions on the hours the premises may open to the public for non-licensable activities by virtue of this premises licence.

Saturday 08.07.17 at 8am – Diary sheet from local resident (Hitchin Street, Hitchin) sent to Environmental Health at NHDC states the following: Noise started at 8am and noise stopped at 11am. Type of noise: tv noise along with customers re rugby. Lions Tour 2017 from New Zealand: The Lions v All Blacks in Auckland (Third Test). Kick off time 8.35am. Live on Sky Sports 1 from 7:30am. There was no TEN (Temporary Event Notice) applied for.

BREACHED PREMISES LICENCE OPERATING HRS: Saturday: 10:00hrs – 23:00hrs (sale of alcohol) / There are no restrictions on the hours the premises may open to the public for non-licensable activities by virtue of this premises licence.

Saturday 08/07/17 at 11am - Diary sheet from local resident (Hitchin Street, Hitchin) sent to Environmental Health at NHDC states the following: Noise started at 11am and noise stopped at 2am. Type of noise: music and shouting. There was no TEN (Temporary Event Notice) applied for.

BREACHED PREMISES LICENCE OPERATING HRS: Saturday: 10:00hrs – 23:00hrs (sale of alcohol) / There are no restrictions on the hours the premises may open to the public for non-licensable activities by virtue of this premises licence.

Saturday 08/07/17 at 10pm – Diary sheet from local resident (Hitchin Street, Hitchin) sent to Environmental Health at NHDC states the following: Noise started at 10pm and noise stopped at 1.30am. Type of noise: noise from customers smoking outside complainants bedroom window. The complainant text the owner at 1.25am and at 1.27am. There was no TEN (Temporary Event Notice) applied for.

BREACHED OPERATING HRS: Saturday: 10:00hrs – 23:00hrs (sale of alcohol) / Live Music (Indoors): Saturday: 20:30hrs – 23:00hrs / Recorded Music (Indoors): Saturday: 11:00hrs – 23:00hrs / There are no restrictions on the hours the premises may open to the public for non-licensable activities by virtue of this premises licence.

Sunday 09.07.17 at 1.30am – Local resident (Hitchin Street, Baldock) contacted DPS Mr Herbie Nyathi making a complaint about the people outside the bedroom window smoking. Mr Nyathi did respond to the text stating it could be people staying in the cottage and that he would call now. It appears Mr Nyathi was not present that evening. The complainant confirmed that it was not the people staying in the cottage as the complainant had already checked. That evening there was no Temporary Event Notice applied for. There was no TEN (Temporary Event Notice) applied for.

BREACHED PREMISES LICENCE OPERATING HOURS: Saturday: 20:30hrs – 23:00hrs (live music – indoors) / 11:00hrs – 23:00hrs (recorded music – indoors) / Saturday: 10:00hrs – 23:00hrs (sale of alcohol) / there are no restrictions on the hours the premises may open to the public for non-licensable activities by virtue of this premises licence.

Saturday 15.07.17 at 8.45pm – Diary sheet from local resident (Hitchin Street, Hitchin) sent to Environmental Health at NHDC states the following: Noise started 8.45pm, noise stopped at 11pm. Type of noise: live band/singer.

Sunday 16.07.17 at 1.27am – Local resident (Hitchin Street, Baldock) contacted DPS Mr Herbie Nyathi making a complaint stating that the music may not be on but the sound of voices is loud enough to wake the complainant up. Mr Nyathi replied stating 'told them to shut at 00.15. Will call now, not to worry my business is dead anyway. The complainant responded by saying that they haven't listened and that his business didn't sound dead. Mr Nyathi responded by stating 'it has just take a closer look. I have called them. If not shut in the next few minutes please call the police'. There was no TEN (Temporary Event Notice) applied for.

BREACHED PREMISES LICENCE OPERATING HOURS: Saturday: 20:30hrs – 23:00hrs (live music – indoors) / 11:00hrs – 23:00hrs (recorded music – indoors) / Saturday: 10:00hrs – 23:00hrs (sale of alcohol) / there are no restrictions on the hours the premises may open to the public for non-licensable activities by virtue of this premises licence.

Tuesday 18.07.2017 at 9pm - Diary sheet from local resident (Hitchin Street, Hitchin) sent to Environmental Health at NHDC states the following: Noise started 9pm and noise stopped at 12am. Type of noise: music. There was no TEN (Temporary Event Notice) for this day.

BREACHED PREMISES LICENCE OPERATING HOURS: Tuesday: 10:00hrs – 23:00hrs (sale of alcohol) / No Live Music for Tuesdays / Recorded Music (Indoors): Tuesday: 11:00hrs – 23:00hrs / There are no restrictions on the hours the premises may open to the public for non-licensable activities by virtue of this premises licence.

Friday 21.07.17 at 8.35pm - Diary sheet from local resident (Hitchin Street, Hitchin) sent to Environmental Health at NHDC states the following: Noise started 8.35pm and noise stopped at 9.45pm. Type of noise: singer. There was no TEN (Temporary Event Notice) for this day.

Friday 28.07.17 at 8pm - Diary sheet from local resident (Hitchin Street, Hitchin) sent to Environmental Health at NHDC states the following: Noise started at 8pm and noise stopped at 12am. Type of noise: music. There was no TEN (Temporary Event Notice) for this day.

BREACHED PREMISES LICENCE OPERATING HRS: Friday: 10:00hrs - 23:00hrs (sale of alcohol) / Live Music (Indoors): Friday: 20:30hrs – 23:00hrs / Recorded Music (Indoors): Friday: 11:00hrs – 23:00hrs / There are no restrictions on the hours the premises may open to the public for non-licensable activities by virtue of this premises licence.

Saturday 29.07.2017 at 7pm - Diary sheet from local resident (Hitchin Street, Baldock) sent to Environmental Health at NHDC: Noise started at 7pm and noise stopped at 12am. Type of noise: music. There was no TEN (Temporary Event Notice) applied for.

BREACHED PREMISES LICENCE OPERATING HRS: Saturday: 10:00hrs – 23:00hrs (sale of alcohol) / Live Music (Indoors): Saturday: 20:30hrs – 23:00hrs / Recorded Music (Indoors): Saturday: 11:00hrs – 23:00hrs / There are no restrictions on the hours the premises may open to the public for non-licensable activities by virtue of this premises licence.

Sunday 30.07.2017 at 7pm - Diary sheet from local resident (Hitchin Street, Baldock) sent to Environmental Health at NHDC: Noise started at 7pm and noise stopped at 11pm. Type of noise: music.

BREACHED PREMISES LICENCE OPERATING HRS: Sunday: 10:00hrs – 22:30hrs (sale of alcohol) / Live Music (Indoors): Saturday: 6pm – 10pm / Recorded Music (Indoors): Saturday: 11:00hrs – 10.30pm / There are no restrictions on the hours the premises may open to the public for non-licensable activities by virtue of this premises licence.

Saturday 05.08.2017 at 11.40pm – Following report from PC 75 Deal regarding routine patrol visit: I conducted a licencing check at the premises with PC 2250 Little at 23:40hrs Saturday 5th August 2017. Alcohol hours until 23:00hrs, drinking up time 23:30hrs. Herbie, the licensee was not present. Female bar staff x 2. No music playing. Upon arrival there were clearly still patrons sitting at a table within the bar area all with alcoholic drinks in front of them. As I went to enter a female came out through the front door with a full measure of white wine in a glass. She walked to join a male standing on the pavement to the left of the windows. He was drinking from a glass of lager. I spoke to them and asked if they knew the bar should be closed. They looked confused. I

also pointed out the smoking area was at the rear not on the public pavement. I entered the main bar area and spoke to the female staff member. I asked her if she realised the time and that she was in breach of the terms of her licence. I pointed at the four people sitting with drinks at the table. She said something like, 'I have tried to gee them up'. I informed her it was her function to ensure they left on time and it was now 23:45hrs. One of those patrons who was drinking from a bottle of water, but with a glass containing lager in front of her, was slightly challenging. I informed her that the premises should be cleared and closed. The four at the table were accepting of that but clearly annoyed. One called me rude. One further male customer had walked in and out twice oblivious to my presence. The staff did not tell him the bar was closed. There was no TEN (Temporary Event Notice) applied for.

BREACHED PREMISES LICENCE OPERATING HRS: Saturday: 10:00hrs – 23:00hrs (sale of alcohol) / Live Music (Indoors): Saturday: 20:30hrs – 23:00hrs / Recorded Music (Indoors): Saturday: 11:00hrs – 23:00hrs / There are no restrictions on the hours the premises may open to the public for non-licensable activities by virtue of this premises licence.

Sunday 06.08.17 at 11.20pm – Following report from PC 75 Deal regarding routine patrol visit: Attended at 23:20hrs Sunday 6th August 2017. Alcohol hours until 22:30hrs, drinking up until 23:00hrs. DPS not present. Staffed by one 19 year male, who is the son of the DPS, Herbie. He did not know the licencing hours but had been told by his father to shut at 23:00hrs. The front door was unlocked and one of the regulars, called Gary, was going in and out smoking. I informed the lad behind the bar the front door should be locked to stop members of the public walking in expecting to be served. He did not look capable of dealing with a belligerent or drunk customer. Gary was slightly drunk, but had no drink. He stated to me it was his fault they were still in the pub, because he had 'bullied' the 'barman' to let them stay and watch the end of the football. There was a second male seated at the bar with half a pint of beer at his elbow. I did not see him drinking from it but pointed out it was past drinking up time. He was good natured and did not drink anymore. The customer, Gary, seemed to be aware there were complaints about noise etc. He also stated they were waiting with the lad behind the bar until his dad (Herbie) arrived to pick him up to make sure he was safe.....No music, no noise. This is only a minor breach but if staff don't know the licencing hours they can't really know when to lock the front door or refuse to serve someone. There was no TEN (Temporary Event Notice) applied for.

BREACHED PREMISES LICENCE OPERATING HRS: Sunday: 10:00hrs – 22:30hrs (sale of alcohol) / Live Music (Indoors): Saturday: 6pm – 10pm / Recorded Music (Indoors): Saturday: 11:00hrs – 10.30pm / There are no restrictions on the hours the premises may open to the public for non-licensable activities by virtue of this premises licence.

Saturday 12.08.17 at 11.44pm – Call received from local resident (Hitchin Street, Baldock) stating that the premises are still serving a packed bar. Police attended at 12.40am and the pub was shut.

There is overwhelming evidence as above which suggests that Mr Nyathi has been and continues to be in breach of his operating hours and shows no sympathy for the local residents who have to put up with the behaviour that his customers show. My Nyathi has demonstrated throughout the above period that he does not promote the licensing objectives and does not entirely understand his operating hours. There have been numerous attempts by the local Safer Neighbourhood Officer PC 75 Deal to offer advice around his operating hours, as well as to his staff who appear to

be running the premises during Mr Nyathi's absence. It appears that Mr Nyathi truly believes that he can continue to breach his premises licence. Police also believe that Mr Nyathi is not fully in control of the premises and allows staff and customers to do whatever they please. His children predominately manage the bar (all over 18) but Mr Nyathi has not been present during the last three visits conducted by PC 75 Deal. Due to time scales Police have not had the opportunity to speak with Mr Nyathi about the breaches and we will be making arrangements to meet with Mr Nyathi very soon. The TEN stipulates about music in the courtyard at the rear until 22:30hrs. The smoking area at the rear is 10 feet square and not large enough for anything other than standing having a cigarette. The rest of the courtyard is set aside for parking, 3 parking bays for the pub and the rest for local residents. There are 5 terraced properties in the courtyard, therefore any outside music or loud groups of patrons will be directly under the windows, and blocking the only access to the flat above the premises as well as causing a nuisance to local residents. Based on the evidence submitted by Police we are asking the sub-committee to consider refusing the said Temporary Event Notice.

Wednesday 23rd August 2017

Report Submitted by Kuljit Sangha, Police Licensing Officer
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