

Public Document Pack

27 October 2017

Our Ref Licensing and Appeals Sub-
Committee/13.11.17
Your Ref.
Contact. Ian Gourlay (01462) 474403
Direct Dial. (01462) 474403
Email. ian.gourlay@north-herts.gov.uk

To: Members of the Committee: Councillor David Barnard, 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

**LOWER HALL, ICKNIELD CENTRE, ICKNIELD WAY,
LETCWORTH GARDEN CITY**

On

MONDAY, 13TH NOVEMBER, 2017 AT 7.00 PM

Yours sincerely,



David Miley
Democratic Services Manager

Agenda **Part I**

Item		Page
1.	HEARING PROCEDURE	(Pages 1 - 2)
2.	REVIEW OF A PREMISES LICENCE IN RESPECT OF KHOI KHOI BAR AND VINO, 31 HITCHIN STREET, BALDOCK, HERTS. SG7 6AQ REPORT OF THE LICENSING OFFICER	(Pages 3 - 62)

**NORTH HERTFORDSHIRE DISTRICT COUNCIL
LICENSING ACT 2003
HEARING PROCEDURE**

<p>1. Chair's Welcome</p> <p>Introduction of:</p> <ul style="list-style-type: none">• Councillors sitting on Sub-Committee (Sub-Committee);• legal advisor;• licensing officer;• officers of responsible authorities;• interested parties (objectors); and• the Premises Licence Holder.	
<p>2. The Chair will outline the procedure for the hearing</p>	
<p>3. The Chair will ask the Legal Advisor to outline the matters for consideration during the course of the hearing</p>	

<p><u>The Licensing Officer's report</u></p> <p>4. The Chair will ask the Licensing Officer if they have anything to add to their report to the Sub-Committee</p> <p>5. The Chair will ask if there are any questions of fact of the Licensing Officer</p> <p>6. The Sub-Committee may ask questions of the Licensing Officer</p>	
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<p><u>The responsible authorities submit their case</u></p> <p>7. The Chair will ask the responsible authorities, in turn, to present their submissions to the Sub-Committee</p> <p>8. The Chair will ask if there are any questions of fact of the responsible authority</p> <p>9. The Sub-Committee may ask questions of the responsible authority</p> <p>The above process will be repeated if there is more than one responsible authority</p>	
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<p><u>The interested parties submit their case</u></p> <p>10. The Chair will ask the interested parties, in turn, to present their submissions to the Sub-Committee</p> <p>11. The Chair will ask if there are any questions of fact of the interested parties</p> <p>12. The Sub-Committee may ask questions of the interested parties</p>	
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<p><u>The Premises Licence Holder's case</u></p> <p>13. The Chair will ask the Premises Licence Holder to present their case to the Sub-Committee</p> <p>14. The Chair will ask if there are any questions of fact of the Premises Licence Holder</p> <p>15. The Sub-Committee may ask questions of the Premises Licence Holder</p>	
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<p><u>Closing statements</u></p> <p>16. The Licensing Officer may make final submissions to the Sub-Committee</p> <p>17. The responsible authorities, in turn, may make final submissions to the Sub-Committee</p> <p>18. The interested parties, in turn, may make final submissions to the Sub-Committee</p> <p>19. The Premises Licence Holder may make final submissions to the Sub-Committee</p>	
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<p><u>Conclusion</u></p> <p>20. 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>21. The Sub-Committee will close the hearing and retire to make a decision.</p> <p>22. 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 13 November 2017

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

REVIEW OF A PREMISES LICENCE FOLLOWING A REQUEST FROM RESPONSIBLE AUTHORITY IN RESPECT OF KHOI KHOI BAR AND VINO, 31 HITCHIN STREET, BALDOCK, HERTFORDSHIRE, SG7 6AQ

REPORT OF THE LICENSING OFFICER

1. CURRENT LICENCE ISSUED UNDER THE LICENSING ACT 2003

- 1.1 The existing premises licence was granted by North Hertfordshire District Council during the transitional period on 25 August 2005. A copy of the licence is included as Appendix A.
- 1.2 Herbie Nyathi was specified as the DPS for the licence on 23 December 2016.

2. REVIEW APPLICATION

- 2.1 The application is for a review of a premises licence following a request by a responsible authority under Section 51 of the Licensing Act 2003.
- 2.2 On the 18 September 2017, the licensing authority received an application for the review of the premises licence from a responsible authority on the grounds:

“Persistent evidence of the premises causing a public nuisance”

- 2.3 The application for review relates to the following licensing objective:

- 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's website.
- 2.5 The application for a review is attached as Appendix B.

3. THE CONSULTATION PROCESS

- 3.1 On the 18 September 2017, the licensing authority received an application for the review of the premises licence from a responsible authority.
- 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 19 September 2017 and 16 October 2017 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 as Appendix C.
- 4.2 No representations were received from any other responsible authority.
- 4.3 One (1) representation was received from 'other persons' (previously known as interested parties) and is attached as Appendix D.
- 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, Environmental Health, Hertfordshire Constabulary and the other person have been invited to attend the hearing to present their respective cases. They have been advised that they may be legally represented and of the committee hearing procedure.

5. OBSERVATIONS

- 5.1 In determining this application, the sub-committee must have regard to the representations and take such steps, as it considers appropriate for the promotion of the licensing objectives.
- 5.2 In making its decision, the sub-committee must act with a view to promoting the licensing objectives. It must also have regard to the licensing authority's Statement of Licensing Policy and National Guidance.
- 5.3 The 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.

D2.9

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

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

D6.2

The Council recognises that each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and activities concerned. This is essential to avoid the imposition of disproportionate and overly burdensome

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

D6.3

Conditions will only be imposed when they are appropriate for the promotion of the licensing objectives and will focus upon matters within the control of the individual licensee such as the premises, places or events being used for licensable activities or the surrounding areas of the premises, places or events. Conditions are likely to be focused towards the direct impact of those activities on persons living in, working in or visiting areas affected by, or likely to be affected by, those activities.

D7.3

The Council does not expect the designated premises supervisor to be available at the premises at all times, however he/she is expected to exercise control over day-to-day management of the premises. In the absence of the designated premises supervisor, a senior member of staff should be authorised, preferably in writing, to deputise for the designated premises supervisor and the deputy's role should be made known to all staff.

D7.4

At a review of a premises where relevant representations are received in relation to ineffective management of the premises when alcohol is available to the public, the Council will consider imposing a condition requiring a personal licence holder to be present at all times whilst alcohol is being supplied.

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.

D11.9

NHDC's Environmental Protection & Housing Team, the designated responsible authority leading on public nuisance, may request a review in order to address the licensing objective of prevention of public nuisance when other control measures are unsuccessful or inappropriate, or in situations where a premises is continually causing issues, for example following the serving of a noise abatement notice.

E3.1.1

Licensed premises may have significant potential to impact adversely on communities through public nuisances that arise from their operation. The Council interprets 'public nuisance' in its widest sense and takes it to include such things as noise, light, odour, litter and anti-social behaviour, where matters arising at licensed premises impact on those living, working or otherwise engaged in activities in the locality. Ordinarily, the Council's Environmental Protection & Housing Team, in their role as a responsible authority, would take the lead in respect of nuisance issues.

E3.2.1

This may include noise from live or recorded music, human voices (both amplified and unamplified) and other forms of entertainment (i.e. indoor sporting events).

Measures to prevent a public nuisance may include, but are not limited to:

- *installation of soundproofing;*
- *installation of noise-limiting devices;*
- *provision of acoustic lobbies;*
- *no externally played music;*
- *restrictions on the times and types of entertainment;*
- *keeping windows and doors closed (i.e. with self-closing devices).*

E3.2.2

Soundproofing and other structural modifications may be identified as a requirement following an acoustic survey of the premises. Such a survey may be requested if the building is old and/or insufficiently insulated, very close or adjacent to neighbouring properties and/or the type of entertainment could be considered unsuitable for the premises without additional noise mitigation measures being implemented.

E3.2.3

Noise-limiting devices may be requested, in particular, where the entertainment takes place with sound systems not provided in-house (i.e. brought in by a hired DJ), where the premises is in a residential area or where the premises has a history of noise issues. Before imposing conditions requiring a noise-limiting device, the Council will give consideration to paragraph 2.16 of the Guidance which states:

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. 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.

E3.3.1

This may include noise and disturbance from customers on the premises and customers in outdoor areas such as terraces, beer gardens and smoking areas. It will also include noise, disturbance and obstruction from customers in the vicinity of premises smoking and/or drinking and customers arriving at, leaving or queuing outside premises. Measures to prevent a public nuisance may include, but are not limited to:

- *use of time restrictions on specified areas of the premises (different times can apply to different areas);*
- *cessation of the use of certain areas of the premises;*
- *supervision of outdoor areas, entrances and exits;*
- *suitably worded, clear and prominent signage;*
- *restriction of seating in outdoor areas of the premises;*
- *restriction of times that drinks can be taken in specified outdoor areas of the premises;*
- *restriction of the number of customers permitted in specified outdoor areas of the premises, including time-specific restrictions (different numbers and times can apply to different areas).*

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.

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.

1.17

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).

2.15

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.

2.16

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.

2.17

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.

2.18

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.

2.19

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.

2.21

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.

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.

9.42

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.

10.28

The 2003 Act does not require a designated premises supervisor or any other personal licence holder to be present on the premises at all times when alcohol is sold. However, the designated premises supervisor and the premises licence holder remain responsible for the premises at all times including compliance with the terms of the 2003 Act and conditions attached to the premises licence to promote the licensing objectives.

10.35

It must be remembered that while the designated premises supervisor or a personal licence holder may authorise other individuals to sell alcohol in their absence, they are responsible for any sales that may be made. Similarly, the premises licence holder remains responsible for ensuring that licensing law and licence conditions are observed at the premises.

11.1

The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.

11.17

The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

11.18

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

11.19

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

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example,

by reducing the hours of opening or by requiring door supervisors at particular times;

- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

11.20

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

11.21

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

11.22

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

11.23

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

13.10

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

16.55

On a review of a premises licence or club premises certificate, section 177A(3) of the 2003 Act permits a licensing authority to lift the suspension and give renewed effect to an existing condition relating to music. Similarly, under section 177A(4), a licensing authority may add a condition relating to music as if music were regulated entertainment, and as if that premises licence or club premises certificate licensed the

music. In both instances the condition should include a statement that Section 177A does not apply to the condition.

16.56

An application for a review in relation to relevant premises can be made by a licensing authority, any responsible authority or any other person. Applications for review must still be relevant to one or more of the licensing objectives and meet a number of further requirements.

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, 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. 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 9.42 and 9.44 of the Guidance. The Sub-Committee is therefore advised to give 'appropriate' its ordinary meaning, as expanded upon by paragraph 9.44 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 2.16 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 2.21 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 *Koultis 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.

New evidence

- 8.13 Responsible authorities and 'other persons' must restrict their oral submissions to the issues raised within their representations, although they can expand on the representations by way of examples, further information, etc.. They cannot raise new issues not mentioned within the written representation, for example if they have only raised issues of crime and disorder, they cannot introduce issues of public safety orally at the hearing.
- 8.14 Any new documentation not circulated in advance to all parties within the hearing paperwork cannot be introduced at the hearing or presented to the sub-committee without all party consent.

Removal of Music De-regulation

- 8.15 An amendment to the Licensing Act 2003 de-regulated live and recorded music on a licensed premises between the hours of 08:00 and 23:00. The effect of the de-regulation was that no licence was required for live and recorded music between those hours and any conditions on the premises licence that related solely to live and/or recorded music did not have effect during the de-regulation.
- 8.16 At a review hearing, if appropriate based on the evidence presented, the sub-committee can seek to remove the de-regulation. The effect of removing the de-regulation is that live and recorded music on a licenced premises can be subject to licence conditions as though the music was regulated entertainment. Additionally, any premises licence condition relating to live and/or recorded music does have effect.
- 8.17 With the de-regulation removed, controls can be applied to live and/or recorded music at any time whilst the premises is open to the public by way of a licence condition, including licence conditions restricting the hours during which music is permitted. **Any condition should include a statement that Section 177A of the Licensing Act 2003 does not apply to the condition.**

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. Appendices

- 9.1 Appendix A Existing premises licence
9.2 Appendix B Premises licence review application form
9.3 Appendix C Representation received from Hertfordshire Constabulary
9.4 Appendix D Relevant representation from an 'other person'

10. CONTACT OFFICERS

- 10.1 Hannah Sweetman
Licensing Officer
01462 474231

Appendix

A

Licensing Act 2003
Part A
Format of premises licence

North Hertfordshire District Council
Council Offices, Gernon Road, Letchworth Garden City, Hertfordshire, SG6 3JF

Original grant date: 25 August 2005
Current issue date: 23 December 2016

.....
Authorised signatory

Premises licence number: 4849

Part 1 – premises details

Postal address of premises, or if none, ordinance survey map reference or description
Khoi Khoi Bar and Vino
31 Hitchin Street, Baldock, Hertfordshire, SG7 6AQ

Where the licence is time limited the dates
This licence is granted in perpetuity

Licensable activities authorised by the licence
Section E: Live Music:(Indoors)
Section F: Recorded Music:(indoors)
Section H: Anything of a similar description to that falling within (E), (F) or (G):(Indoors)
Section J: Sale or Supply of Alcohol

The times the licence authorises the carrying out of licensable activities

Section E: Live Music:(Indoors)

Day	Start Time	End Time
Monday	n/a	n/a
Tuesday	n/a	n/a
Wednesday	n/a	n/a
Thursday	18:00	21:00
Friday	20:30	23:00
Saturday	20:30	23:00
Sunday	18:00	22:00

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

Section F: Recorded Music:(Indoors)

Day	Start Time	End Time
Monday	11:00	23:00
Tuesday	11:00	23:00
Wednesday	11:00	23:00
Thursday	11:00	23:00
Friday	11:00	23:00
Saturday	11:00	23:00
Sunday	11:00	22:30

Section H: Anything of a similar description to that falling within (E), (F) or (G):(Indoors)

Day	Start Time	End Time
Monday	n/a	n/a
Tuesday	n/a	n/a
Wednesday	n/a	n/a
Thursday	19:00	21:30
Friday	n/a	n/a
Saturday	n/a	n/a
Sunday	18:00	21:30

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

Section J: Sale or Supply of Alcohol

Day	Start Time	End Time
Monday	10:00	23:00
Tuesday	10:00	23:00
Wednesday	10:00	23:00
Thursday	10:00	23:00
Friday	10:00	23:00
Saturday	10:00	23:00
Sunday	10:00	22:30

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

Christmas Day
On this day, the permitted hours will be 12:00hrs - 15:00hrs and 19:00hrs - 22:30hrs

Good Friday
On this day, the permitted hours will be 10:00hrs - 22:30hrs

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

The opening hours of the premises		
Day	Start Time	End Time
Monday	n/a	n/a
Tuesday	n/a	n/a
Wednesday	n/a	n/a
Thursday	n/a	n/a
Friday	n/a	n/a
Saturday	n/a	n/a
Sunday	n/a	n/a

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

Where the licence authorises supplies of alcohol whether these are on and/or off supplies
For consumption on the premises

Part 2
 Name, (registered) address, telephone number and email (where relevant) of holder of the premises licence
Mr D C Plant
43, Larkins Close, Baldock, Herts, SG7 6DG

Registered number of holder, for example company number, charity number (where applicable)
 n/a

Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol
Herbert Nyathi

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises the supply of alcohol
Licence Number: 1934
Issuing authority: North Hertfordshire District Council

Annex 1 – Mandatory conditions

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.

Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

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.

"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.

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
- (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, 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.

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).

The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

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.

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. 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.

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
- (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.

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.

Annex 2 – Conditions consistent with the operating schedule

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.

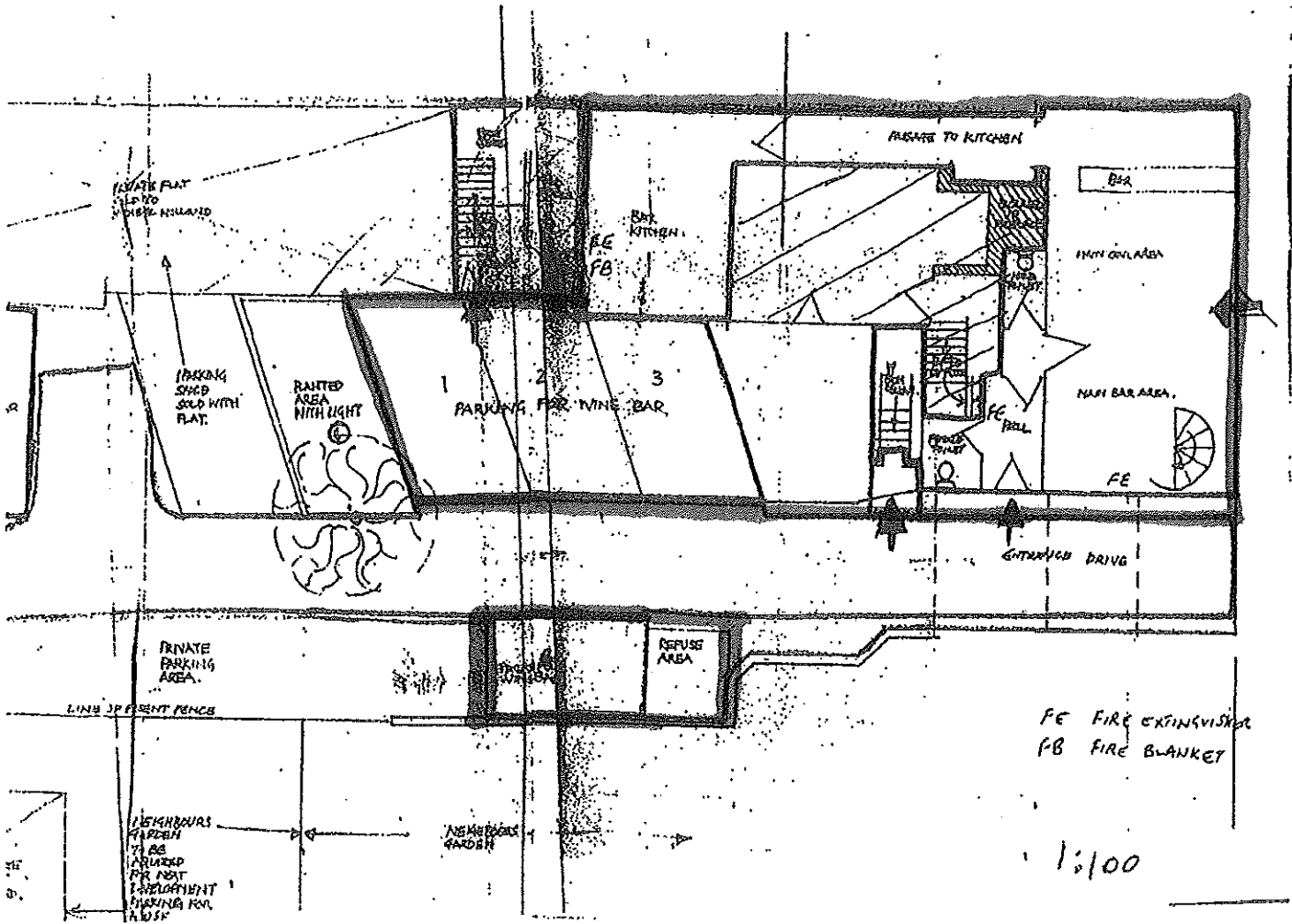
The premises licence holder will ensure that all children under sixteen (16) years of age are only permitted on the premises if accompanied by an adult.

Annex 3 – Conditions attached after a hearing by the licensing authority

None

Annex 4 – Plans

See attached



Appendix

B

[Insert name and address of relevant licensing authority and its reference number (optional)]

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.
If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

I Rory Cosgrove

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Khoi Khoi Bar and Vino 31 Hitchin Street	
Post town Baldock	Post code (if known) SG7 6AQ

Name of premises licence holder or club holding club premises certificate (if known) Mr D C Plant

Number of premises licence or club premises certificate (if known) LC/4849 (LICPR/14517/05)

Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)

2) a responsible authority (please complete (C) below)

3) a member of the club to which this application relates (please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick ✓ yes

Mr Mrs Miss Ms Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick ✓ yes

**Current postal
address if
different from
premises
address**

Post town

Post Code

Daytime contact telephone number

**E-mail address
(optional)**

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Mr Rory Cosgrove Environmental Protection & Housing Team North Hertfordshire District Council Council Offices Gernon Road Letchworth SG6 3JF
Telephone number (if any) [REDACTED]
E-mail address (optional) [REDACTED]

This application to review relates to the following licensing objective(s)

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

Please tick one or more boxes ✓

-
-
-
-

Please state the ground(s) for review (please read guidance note 2)

Please see attached report for the grounds for review.

Please provide as much information as possible to support the application (please read guidance note 3)

Please see attached report for supporting information.

Please tick yes

Have you made an application for review relating to the premises before

If yes please state the date of that application

Day Month Year

1	1	1	1	1	1	1	1	1
---	---	---	---	---	---	---	---	---

If you have made representations before relating to the premises please state what they were and when you made them

N/A

Please tick ✓ yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant’s solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature 

Date 15/09/2017

Capacity Acting Environmental Protection & Housing Manager

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)	
As above.	
Post town	Post Code
Telephone number (if any)	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)	

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

Committee report in support of an application by NHDC's Environmental Protection & Housing Team to review a Premises Licence- 15th September 2017

Re: Khoi Khoi Bar and Vino, 31 Hitchin Street, Baldock, Herts, SG7 6AQ (licence reference LC/4849 or LICPR/14517/05)

Introduction:

- This report is submitted in support of an application by North Hertfordshire District Council's (NHDC) Environmental Protection & Housing Team (EPHT) to review the premises licence for Khoi Khoi Bar and Vino, 31 Hitchin Street, Baldock. The current licence holder is Mr D C Plant and the current Designated Premises Supervisor (DPS) is Mr Herbert Nyathi who is also the owner of the premises.
- The application to review the licence relates to the licensing objective: the prevention of public nuisance.
- The application to review the licence follows the service of a noise abatement notice (NAN) under the Environmental Protection Act (EPA) 1990 on Mr Nyathi, the DPS and person responsible, on 11th September 2017 for a statutory noise nuisance arising from the playing of live and recorded music.
- The application to review the licence is considered to be the most appropriate course of action to ensure the prevention of a public nuisance and this will be explained later in the report. The application seeks to remove the exemption under the Live Music Act 2012 which deregulates live and recorded music between 08:00 and 23:00 for the premises and also seeks to impose a number of additional conditions and restrictions under the prevention of public nuisance licensing objective.

Noise complaints

NHDC first received a noise complaint via The Noise App about loud music at the premises from co-habiting residents living above on 18th February 2017 who were subsequently advised by the case officer in the EPHT to keep a diary of these noisy events for a number of weeks. A further Noise App recording was sent in on 5th March 2017 which resulted in a warning letter being sent by the case officer to Mr Nyathi on 9th March 2017.

Mr Nyathi responded to the warning letter on 17th March 2017 outlining his commitment to resolving the issue informally. He did claim that the residents had not complained to him directly which was contrary to what they said. Throughout the remainder of March 2017 there was various correspondence between the case officer and both other parties.

The complainants were advised to use NHDC's Weekend Noise Service (WNS) in order for evidence to be gathered to substantiate the noise complaints as an officer could visit in person and the complaints related to loud music at weekends from the premises. The complainants lodged complaints on the following dates in 2017 (some of which included Noise App recordings):

- Saturday 31st March at 23:35 via the WNS- loud music from the premises all night. Officer did not visit as it went quieter after the complainant messaged the DPS. Although not witnessed, this time indicated that live or recorded music was taking place without a licence. The complainant was previously advised by the case officer to email licensing about unlicensed activities.

- Saturday 22nd April at 23:00 via the WNS- loud live music since 21:00. The WNS officer visited at 23:24 and confirmed a statutory noise nuisance which ceased 23:33 although the jukebox was still audible after this time but was not deemed to be at nuisance level. A NAN was not served on the DPS due to the short time that a nuisance was witnessed. Live and recorded music was witnessed that was not licensed and this was passed onto the licensing team.
- Saturday 27th April at 00:30 via the WNS- loud music. When the WNS officer called at 00:32 the complainant advised that it had gone quiet due to a fight at the premises so no visit was made. A further warning was issued to Mr Nyathi on 4th May as a result.
- Thursday 4th and Monday 8th May- further noise complaints made using The Noise App.
- Friday 5th May via the WNS- loud music. No visit made.

During May 2017 the complainants met with Mr Nyathi and then the case officer met with him to try and find a resolution. Mr Nyathi had the jukebox speakers relocated to try and resolve the recorded music issue. The complainant was contacted on 15th June and emailed the case officer to say that the music noise level had been ok for the past few weeks.

Further noise complaints were received after this time as follows:

- Friday 23rd June via the WNS (the following day) - live music outside the venue in the courtyard until 04:00. As the WNS officer was not called on the night no visit could be made but the licensing team were advised to see if a Temporary Event Notice (TEN) was in place to be able to have live music outdoors until this time.
- Saturday 24th June at 20:05 and 22:25 via the WNS- live music outside the venue in the courtyard. The WNS officer was unable to visit due to other calls but was advised that the music went of at 23:45. The licensing team were advised that this may have been live music taking place without a licence. This weekend resulted in two other residents complaining.

Through discussions between the case officer and Mr Nyathi, the issue did seem to be resolved until the main complainant contacted NHDC on 21st July to say it is an issue again and that they would use the WNS to get the noise witnessed.

Further noise complaints were received after this time as follows:

- Weekend of Friday 21st and Saturday 22nd July- complaints of loud music via The Noise App but the WNS not called.
- Monday 28th August at 22:01- loud live music for 2 hours.
- Friday 1st September at 22:50 via the WNS- loud music but the complainant called too late for the WNS officer to visit.
- Saturday 2nd September at 21:40 via the WNS- the WNS officer visited at 22:15 and confirmed that both the live music and recorded music (jukebox) amounted to a statutory noise nuisance.
- Friday 8th September at 21:00 via the WNS- the WNS officer visited at 22:10 until 23:20 and confirmed both the live music and recorded music (jukebox) amounted to a statutory noise nuisance. The licensing team were advised that this may have been live music taking place without a licence.
- Saturday 9th September via the WNS- the WNS officer visited at 22:50 until 23:10. There was live music outdoors in the courtyard and recorded music (jukebox) indoors, both of which finished at 23:05. The WNS officer confirmed

both the live music and recorded music (jukebox) amounted to a statutory noise nuisance.

In parallel with using the WNS to make noise complaints, the main complainant had noise monitoring equipment installed in their property from 8th – 24th August. The analysis of the recordings confirmed that there was a statutory noise nuisance from live and recorded music at the premises. The raised voices from patrons was also quite audible but it was noted that the insulation between the ground and first floor was poor and that this was at a normal noise level for a bar.

Formal enforcement action

NHDC served a NAN on the DPS and person responsible, Mr Herbert Nyathi, on 11th September 2017 under the EPA 1990 following the analysis of noise recordings made by the complainant and several visits by Council officers who had witnessed a statutory noise nuisance (as detailed in the previous section). NHDC decided upon this formal enforcement action because an informal resolution to the issue had been ongoing for many months with no long term improvement to the problem. The residents were still being disturbed most weekends and continued to complain.

The notice outlines that the nuisance had arisen from the playing of live and recorded music at such a level as to cause a nuisance to occupiers of adjacent properties. The notice requires that the nuisance be abated and prohibits the recurrence of the same with immediate effect. A copy of the notice can be seen in Appendix A.

Proximity of residential properties to the premises

For the benefit of the committee, it is important to describe the proximity of the residents to the premises. There are dozens of properties on Hitchin Street, Baldock within a 25m radius of the premises.

The closest property is a flat which is located directly above the premises and therefore there is only a single floor separation between the main area of the premises and the residents living there. There are a number of other residential properties either side of the premises which front onto Hitchin Street but there are also several set back from the road and are situated in the courtyard area where the premises holds outdoor live music on occasion. See Appendix B for more detail.

Relevant history

The premises was formerly known as The Broken Drum. NHDC served a NAN on the previous DPS under this premises name on 24th June 2015 for a statutory noise nuisance arising from live and recorded music, the same type of noise as in this case. This demonstrates that issue with live and recorded music taking place at the premises and causing a nuisance to nearby residents is not solely to do with the management of said entertainment but also concerns the suitability of the venue in relation to its proximity to residents. It is clear to the EPHT that there is poor insulation between the premises and the flat above and therefore it shows that the venue is wholly unsuitable for regular, loud and sustained live and recorded music until the late hours given that both the previous DPS and current DPS have both been served with NANs for the same reasons.

Rationale for applying to review the premises licence

The EPHT, acting as a responsible authority, consider that applying to review the premises licence for Khoi Khoi Bar and Vino is the most appropriate course of action in order to ensure the prevention of public nuisance, following the service of a NAN on Mr Nyathi.

Whilst the NAN requires the nuisance to be abated and prohibits its recurrence, there are no specified works and holding live and recorded music events at the premises in the same manner as has been done this year is likely to both breach the NAN and cause a persistent public nuisance. Furthermore, if evidence were to be gathered confirming breaches of the NAN, a prosecution for non-compliance would likely follow. This would take many months and the residents would still be subjected to a noise nuisance. If a prosecution were successful it would still allow the same activities to take place at the premises so it is important to address the root cause of the problem which are the permissions allowed on the premises licence to have live and recorded music.

It is therefore considered that reviewing the premises licence is the most effective course of action to deal with the public nuisance in both the long and short term as it allows for a restriction of certain licensable activities which are contributing to a public nuisance as well as the opportunity to impose conditions on a licence in order to promote the licensing objectives. In this case, there are a number of recommendations that will be outlined to achieve this. A review can impose restrictions and conditions on a licence within a few months of an application which can ensure that the noise problem is resolved, thus acting as a better short term solution.

Recommendations

The first recommendation to the committee, based on the above evidence, is that the exemption under the Live Music Act 2012 which deregulates live and recorded music between 08:00 and 23:00 for this premises be removed. This will result in said regulated entertainment becoming licensable again between these hours and will enable the following recommended restrictions and conditions to be imposed and enforced.

Restriction of live and recorded music

Should the above exemption be removed from the premises licence, it would automatically allow the premises to have the following regulated entertainment (as is currently stated on the licence):

- Recorded music (indoors only) Monday to Saturday between 11:00 and 23:00 and Sunday between 11:00 and 22:30.
- Live music (indoors only) with a maximum of two performers at any one time on Thursday between 18:00 and 21:00, Friday and Saturday between 20:30 and 23:00 and Sunday between 18:00 and 22:00.

It is recommended that the days and hours permitted above for recorded music (indoors only) are retained but that a noise limiting device is installed in the premises so that all equipment for recorded music is routed through this device (see recommended conditions below). This device will be required to be set by the EPHT so that recorded music cannot be played above a level which is reasonable and

appropriate enough to prevent a public nuisance. This will allow the jukebox to be used for most of the hours the premises is open to the public.

It is recommended that the days and hours permitted for live music (indoors only) are restricted to take place only on Friday and Saturday between 19:00 and 22:00 but with restrictions on their frequency depending on if it is a full live set or is acoustic only (see recommended conditions below). The live music at the premises has been confirmed to be much more of a noise nuisance and therefore it needs to be restricted more heavily. It is not being proposed that the noise limiting device must be used for live (amplified) music since the probable acceptable level for recorded music, which the device will be set for, will be much lower and therefore it will negatively impact on a live set to the point that the amplified aspects will directly conflict with the unamplified aspects and create an uneven and unsatisfactory acoustic environment. This will mean that the live music will be loud and probably disturbing to the residents above but the limitations on the frequency should ensure that the problem is not regular enough to create a public nuisance.

The premises has been able to hold live and recorded music events outdoors in the courtyard using the aforementioned exemption but would no longer be able to if the exemption is removed. It is recommended that no additional provision is made to allow live and recorded music outdoors if the committee are minded to remove the exemption as such an event would likely cause a public nuisance given that the courtyard is right next to a number of residential properties. If the licensee wishes to hold live or recorded music outdoors at the premises then a TEN application could be submitted and reviewed by the EPHT for its suitability on a case by case basis.

Recommended conditions

1. Live music constituting regulated entertainment which is either amplified and/or non-acoustic shall only take place on one (1) day per calendar month.
2. Live music constituting regulated entertainment which is acoustic only shall only take place on one (1) day per calendar week.
3. Live music constituting regulated entertainment shall not take place on consecutive days.
4. All windows and doors at the premises shall remain closed when live music constituting regulated entertainment is taking place except for ingress, egress and in the case of an emergency.
5. A suitable environmental noise control device shall be installed in the premises, calibrated and set to the satisfaction of the Council's Noise Control Officer. The device must be set at an appropriate time in the presence of the aforementioned Officer. No recorded music constituting regulated entertainment shall take place until this device has been installed and set in accordance with this condition.
6. Once the environmental noise control device has been installed, calibrated and set to the satisfaction of the Council's Noise Control Officer it must not be removed, adjusted or replaced:
 - (a) without twenty-eight (28) days prior notification to the Council's Noise Control Officer and;

(b) without the written consent that the removal, adjustment or replacement of the device is permitted and that documentation stating this is received from the Council's Noise Control Officer.

7. Following the receipt of the documentation stated in condition 6(b), all the requirements of the Council's Noise Control Officer must be carried out. Use of all noise equipment for recorded music constituting regulated entertainment taking place is not permitted until such a time that the premises licence holder has received confirmation from the Council's Noise Control Officer that it is permitted.

8. In the event of a malfunction of the environmental noise control device, the Council's Noise Control Officer shall be notified within two (2) working days of the problem and the remedial action proposed. No recorded music constituting regulated entertainment shall take place until the environmental noise control device is properly functioning and, if appropriate, has been reset, calibrated and set to the satisfaction of the Council's Noise Control Officer and/or the Council's Noise Control Officer has received and approved the necessary documentation confirming this.

9. The environmental noise control device shall be secured in a manner approved by the Council's Noise Control Officer so as to prevent unauthorised access to and tampering with the controls.

10. All noise equipment used for recorded music constituting regulated entertainment taking place must be routed through the environmental noise control device and this device must be operational during such licensable activities.

Conclusion

The EPHT considers that there is an ongoing public nuisance at Khoi Khoi Bar and Vino due to the regular, prolonged and noise intensive live and recorded music events taking place there. From the EPHT's noise nuisance investigation, a NAN was served on Mr Nyathi which demonstrates the extent of the noise issues.

It is considered that in order for Mr Nyathi to promote the licensing objective of the prevention of public nuisance, a combination of licence restrictions and conditions for live and recorded music are needed, all of which require the exemption under the Live Music Act 2012 to be removed in order for them to be enforceable.

Whilst the restrictions and conditions proposed are quite severe, they are considered proportionate to the level of public nuisance that has occurred as detailed above. They also represent what is deemed by the EPHT to be the maximum permissions allowed on the premises licence to ensure a public nuisance is not caused and this is a result of the type of premises and its very close proximity to residential properties.

Rory Cosgrove
Acting Environmental Protection & Housing Manager
North Hertfordshire District Council
15th September 2017

Appendix A – Noise Abatement Notice

NORTH HERTFORDSHIRE DISTRICT COUNCIL

Ref: SR 3296
EC/11-SEP-17

ENVIRONMENTAL PROTECTION ACT 1990
Section 80

To: Herbert Nyathi
Khoi Khoi Bar and Vino
31, Hitchin Street,
Baldock,
SG7 6AQ

 **COPY**

NOTICE IN RESPECT OF STATUTORY NUISANCE

Take notice that under the provisions of the Environmental Protection Act 1990 the NORTH HERTFORDSHIRE DISTRICT COUNCIL ("the Council") are satisfied of the existence and likely recurrence of a statutory nuisance under Section 79(1)(g) of that Act at the premises known as:

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

within the district of the said Council arising from:

The playing of live and recorded music at such a level as to cause a nuisance to occupiers of adjacent properties.

whereas you are the person responsible for the said nuisance the Council hereby require you to abate the nuisance and PROHIBIT the recurrence of the same with immediate effect from the service of this Notice.

In the event of an appeal this notice shall NOT be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council, the expenditure which would be incurred by any person in carrying out works in compliance with this notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

If you contravene without reasonable excuse any requirement of this notice you will be guilty of an offence under Section 80(4) of the Environmental Protection Act 1990 and on summary conviction will be liable to a fine. The Council may also take proceedings in the High Court for securing the abatement, prohibition or restriction of the nuisance.

Dated: 11th September 2017

Signed: 

Designation: Environmental Health Technical Officer

Correspondence to: Housing & Public Protection Service
North Hertfordshire District Council
Town Lodge
Gernon Road
Letchworth
SG6 3HN

N.B. The person served with this notice may appeal against the notice to a magistrates' court within twenty-one days from service of the notice. See notes on the reverse of this form.

Appendix B – Location Map

★ = Indicates nearest residential properties

✦ = Indicates the courtyard area



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	No	<u>Brief details / cross reference</u> Mr Nyathi (DPS) applied for a TEN which Police objected to under crime & disorder and public nuisance objectives. This was due to identifying breaches namely operating outside permitted hours.

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
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Signed on behalf of Hertfordshire Constabulary Sergeant 1706 Sammy Doak

Date: Thursday 5th October 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

KHOI KHOI, 31 HITCHIN STREET, BALDOCK – REVIEW LODGED BY ENVIRONMENTAL HEALTH

Police are lodging a representation as supporting evidence to the review that has been submitted by Environmental Health. The police representation is under two of the licensing objectives, those being crime and disorder and public nuisance.

Police and Environmental Health have had a number of noise complaints from local residents regarding the noise from music and patrons. Police have further concerns due to a number of breaches in relation to operating outside permitted hours, which have been addressed with Mr Nyathi.

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 – Dairy 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 – Dairy 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 – Dairy 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 - Dairy 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.
Monday 21.08.17 – During evening patrols around Baldock, PC Deal confirmed that the bar was closed on time and lights out. So was every other pub in Baldock. Very few people out during the early part of the week.

Tuesday 22.08.17 – During evening patrols around Baldock, PC Deal confirmed that the bar was closed on time and lights out. So was every other pub in Baldock. Very few people out during the early part of the week.

Saturday 26.08.17 at 2.26am – Noise complaint from local resident stating that they had just been woken up by someone/people leaving Khoi Khoi.

Monday 28.08.17 (Bank Holiday Monday) at 9.54pm and Tuesday 29.08.17 – Local resident made Environmental Health Officer (Ellice Cundall) aware on Tuesday 29.08.17 at 9.54pm that they had to call the out of hours service on Monday 28.08.17 to report noise. The local resident stated that they had been down to the bar this evening and asked them to turn the music down.

Saturday 02.09.17 at 10.15pm – Report from Environmental Officer Darren Greene regarding a visit he did: I did visit on Saturday evening and did view the music to be unacceptably loud. I visited at 22:15hrs, which was when I was called by the local resident. I left just before 11pm as I had another call to go to.

Saturday 02.09.17 – Report from PC Deal (SNT Baldock): Closed on time. The three parking spaces at the rear for use of patrons have all been turned into tables and seating. That makes the volume of noise outside much louder. Staff now constantly have tables and chairs on the pavement at the front. That blocks the pavement and adds to the level of noise out the front as the front door is constantly open.

Sunday 03.09.17 – Report from PC Deal (SNT Baldock): Closed on time, no issues. Every pub in Baldock was closed early. Very few people out tonight.

Friday 08.09.17 at 11.08pm – Police received a call from local resident reporting excessive noise levels. The caller stated that EHO were at the scene at the time of this call but the officer was about to leave. IP stated she has been told to log this complaint with us.

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.

Friday 08.09.17 at approx. 11.35pm – Report from PC Deal (SNT Baldock): I attended this in real time (23:35hrs). There was no noise, no music and the bar was empty. No alcohol being served. DPS seen.

Saturday 09.09.17 at 11.03pm – Police received a call from local resident reporting that premises were breaching their licence. Caller stated that EHO were currently at their house due to the level of noise, but the caller was reporting to police that the premises breached their licence.

Saturday 09.09.17 at approx. 11.10pm – Report from PC Deal (SNT Baldock): Music was off and bar closed by 11.10pm. Music was off at 11pm. I was outside and the music was finished. There were still people in the rear area where the music was but that was within drinking up time, so perfectly legitimate. Between 11.15pm and 11.35pm I was outside on foot monitoring any late alcohol sales. There were none that I could see. Premises cleared promptly.

Sunday 10.09.17 at 11.20pm – Police received call from local resident reporting bar still has customers. The caller stated that they are not allowed to serve alcohol after 10.30pm and has to close at 11pm. The caller stated that there are still customers in the pub.

Sunday 10.09.17 – Report from PC Deal (SNT Baldock): Closed on time Sunday night, no issues. No breaches. I was confronted by a male barman when I was checking at 11pm. He stated I was 'creeping-out' his customers and no-one likes the Police. The DPS made no representations.

Monday 11.09.17 at 10am - Diary Sheet to NHDC EH (Ellice Cundall) from local resident: Noise started at 10am and noise stopped at 11.30am. Type of noise: music from jukebox.

Monday 11.09.17 at 8pm - Diary Sheet to NHDC EH (Ellice Cundall) from local resident: Noise started at 8pm and noise stopped at 10pm. Type of noise: music, people shouting, banging feet, slamming of front door.

Tuesday 12.09.17 at 10am - Diary Sheet to NHDC EH (Ellice Cundall) from local resident: Noise started at 10am and noise stopped at 12.30pm. Type of noise: music, banging of front door.

Friday 15.09.17 at 11.30pm – Police received a call from local resident reporting noise coming from pub. Caller called stating that noise is still coming from the bar so wanted this logged. Caller did not ring EH call out service number as they could not wait up for someone to come round, which is why they called police. The caller stated it wasn't loud, loud but could still hear it. No police attendance.

Thursday 21.09.17 at 11am – Meeting held with My Nyathi. During this meeting the following persons were present: Kuljit Sangha – Police Licensing Officer, PC Deal – SNT Officer and Colin Broadhurst – NHDC Licensing Officer. Meeting held to discuss a number of breaches in relation operating outside permitted hours between the following period: September 2016 to August 2017. Mr Nyathi issued with a written warning and advised a copy would also be forwarded onto the premises licence holder Mr David Plant. See Appendix 1 – Written Warning Letter.

SUMMARY:

There have been numerous attempts by the local Safer Neighbourhood Officer PC 75 Deal to offer advice to Mr Nyathi in relation to operating hours, as well as to his staff, who appear to be running the premises during Mr Nyathi's absence. Police also believe that Mr Nyathi is not fully in control of the premises and allows staff and customers to operate the business. His children predominately manage the bar (all over 18) but Mr Nyathi has not been present during a number of visits conducted by PC 75 Deal. 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.

Police wish to take the opportunity to work with Mr Nyathi to resolve the concerns and breaches that have been raised as above. Therefore based on the evidence submitted by Police and to assist Mr Nyathi to remain within the operating hours, we are asking the sub-committee to consider the following conditions:

- On Monday, Tuesday, Wednesday, Thursday, Friday and Saturday the Hours Premises Open to the Public will be from 10:00hrs to 23:30hrs.
- On Sunday the Hours Premises Open to the Public will be from 10:00hrs to 23:00hrs.

- DPS/Premises Licence Holder will ensure that no customers shall remain on the licensed premises, except for drinking up period of 30 minutes following the termination of licensable activities.
- DPS/Premises Licence Holder will ensure all customers are made aware during last orders that drinking up time is 30 minutes and will be asked to leave straight after this time.
- DPS/Premises Licence Holder will ensure that both DPS and staff are aware of the operating hours.
- DPS/Premises Licence Holder will ensure that all staff including family members that are working at the premises, are trained on the licensing legislation including knowledge of the operating hours.
- DPS/Premises Licence Holder will ensure that written training records relating to staff will be kept and made available for inspection upon request by Police Licensing Officer, Police Officers, Police Community Support Officers (PCSO) and Local Authority Licensing Officer.
- DPS/Premises Licence Holder will nominate other persons who will deputise for DPS/Premises Licence Holder when he/she are absent from the premises. DPS/Premises Licence Holder will ensure that any nominated deputy is a personal licence holder. DPS will ensure that the identity of the deputy is known by all other staff at such times.
- DPS/Premises Licence Holder or at least one nominated deputy will be present at all times when the premises are open to the public.
- DPS/Premises Licence Holder will ensure that there are prominent, clear and legible notices displayed at all exits requesting customers to respect the needs of local residents and to leave the premises and the area quietly.

Thursday 5th October 2017

Report Submitted by Kuljit Sangha, Police Licensing Officer
 Hitchin Police Station
 College Road
 Hitchin
 SG5 1JX



**HERTFORDSHIRE
CONSTABULARY**

Mr Herbie Nyathi
Khoi Khoi
31 Hitchin Street
Baldock
Herts
SG7 6AQ

Date: Thursday 20th September 2017
Our Ref: Written Warning – Khoi Khoi, Baldock
Yours Ref: Khoi Khoi, Baldock
Contact: Mrs Kuljit Sangha (8250)
Direct Line: [REDACTED]
E mail: [REDACTED]

Dear Mr Nyathi,

Re: Khoi Khoi, 31 Hitchin Street, Baldock - Written Warning Letter

I am writing to you in your capacity as the Designated Premises Supervisor of the above named premises.

A meeting was held on Thursday 20th September 2017. Present during this meeting was you, Kuljit Sangha – Police Licensing Officer, PC 75 Deal – Safer Neighbourhood Team and Colin Broadhurst – NHDC Licensing Officer. The reason for this meeting was to discuss a number of breaches that have taken place over a period of time and the conduct of the premises, which have been highlighted below as follows:

- **Sunday 11.09.2016 at 11.05pm** – Report of pub breaking music licence. PC 75 Deal (Safer Neighbourhood Team) attended and established that 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. 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'. Licensing hours and conditions were pointed out. The pavement was eventually cleared and the music ended at 11.35pm.
There was no TEN (Temporary Event Notice) in place for this event. Therefore in breach of your operating hours.
- **Sunday 19.02.2017 at 1.35pm** – Report received from a member of staff stating that the bar serves past licence hours. Reporting person was a member of staff who called in about a male that had been in to her work place (Khoi Khoi) on several occasions and given her verbal abuse. The incident took place on Thursday 16.02.2017 at approx. 10.40pm, where the male came in and 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 to become abusive towards her at which point she text her

management asking for some more staff to come in as she was serving alone. It appears this message was ignored by management. This member of staff was contacted on Sunday 19.02.17 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.

- **Saturday 24.06.2017 at 8am** – Diary sheet from local resident stating noise started at 8am and noise stopped at 12pm. The noise was live TV and customer noise as the pub was televising rugby. I can confirm that on this day there was an international rugby game on (the Lions Tour 2017 from New Zealand: The Lions v All Blacks in Auckland. Kick off time 8.35am. Live on Sky Sports 1 from 7.30am). ***There was no TEN (Temporary Event Notice) in place for this event. Therefore you were in breach of your operating hours.***
- **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. ***There was no TEN (Temporary Event Notice) in place for this event. Therefore you were in breach of your operating hours.***
- **Saturday 08.07.2017 at 12.07am** – Report received from a local resident 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) in place for this event. Therefore you were in breach of your operating hours.***
- **Saturday 08.07.17 at 8am** – Diary sheet from local resident stating noise started at 8am and noise stopped at 11am. Type of noise: tv noise along with customers re rugby. I can confirm that on this day there was an international rugby game (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) in place for this event. Therefore you were in breach of your operating hours.***
- **Saturday 08.07.17 at 11am** - Diary sheet from local resident stating noise started at 11am and noise stopped at 2am. Type of noise: music and shouting. ***There was no TEN (Temporary Event Notice) in place for this event. Therefore you were in breach of your operating hours.***
- **Saturday 08/07/17 at 10pm** – Diary sheet from local resident stating noise started at 10pm and noise stopped at 1.30am. Type of noise: noise from customers smoking outside complainant's bedroom window. The complainant text the owner at 1.25am and at 1.27am. ***There was no TEN (Temporary Event Notice) in place for this event. Therefore you were in breach of your operating hours.***

Sunday 09.07.17 at 1.30am – Local resident 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.

There was no TEN (Temporary Event Notice) in place for this event. Therefore you were in breach of your operating hours.

Sunday 16.07.17 at 1.27am – Local resident 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 12.15am. 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) in place for this event. Therefore you were in breach of your operating hours.

- **Tuesday 18.07.2017 at 9pm** – Diary sheet from local resident stating noise started 9pm and noise stopped at 12am. Type of noise: music.
There was no TEN (Temporary Event Notice) in place for this event. Therefore you were in breach of your operating hours.
- **Friday 28.07.17 at 8pm** - Diary sheet from local resident stating noise started at 8pm and noise stopped at 12am. Type of noise: music.
There was no TEN (Temporary Event Notice) in place for this event. Therefore you were in breach of your operating hours.
- **Saturday 29.07.2017 at 7pm** - Diary sheet from local resident stating noise started at 7pm and noise stopped at 12am. Type of noise: music. ***There was no TEN (Temporary Event Notice) in place for this event. Therefore you were in breach of your operating hours.***
- **Saturday 05.08.2017 at 11.40pm** – During routine patrol PC 75 Deal conducted a licencing check at the premises. DPS was not present and there were two bar staff present. Patrons were clearly still sitting at a table within the bar area all with alcoholic drinks in front of them. As the officer was entering, 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. PC Deal also pointed out the smoking area was at the rear not on the public pavement. The officer entered the main bar area and spoke to the female staff member, she was asked if she realised the time and that she was in breach of the terms of her licence. The officer pointed at the four people sitting with drinks at the table, she said something along the lines 'I have tried to gee them up'. She was advised that it was her responsibility to ensure they left on time and at that stage the time was 11.45pm. 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. She was informed her that the premises should be

cleared and closed. The four at the table accepted the advice but clearly annoyed, one of them even called the officer rude. One further male customer had walked in and out twice oblivious to the presence of the officer. The staff did not tell him the bar was closed.

There was no TEN (Temporary Event Notice) in place for this event. Therefore you were in breach of your operating hours.

- **Sunday 06.08.17 at 11.20pm** – During routine patrol by PC 75 Deal conducted a licensing check. DPS was not present. Present during this visit was Mr Nyathi's son aged 19 years old. The son at the time of the visit did not know the licencing hours but had been told by his father to shut at 11pm. It was noted that the front door was unlocked and one of the regulars, called Gary, was going in and out smoking. The officer informed the son behind the bar the front door should be locked to stop members of the public walking in expecting to be served. The male named Gary was slightly drunk, he stated to the officer that 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. 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. There was no music, no noise.
- **Saturday 12.08.17 at 11.44pm** – Call received from local resident stating that the premises are still serving a packed bar. Police did attend at 12.40am, approximately an hour after the call was received and the pub was shut. However that doesn't mean that prior to 12.40am it was shut.
There was no TEN (Temporary Event Notice) in place for this event. Therefore a possible breach of your operating hours.
- **Saturday 26.08.17 at 2.26am** – Report received stating they had been woken up by someone/ people leaving Khoi Khoi.
There was no TEN (Temporary Event Notice) in place for this event. Therefore you were in breach of your operating hours.

The above evidence has clearly identified a number of breaches of the premises licence conditions in relation to operating hours. I must also point out the following criminal offences under Section 136, Section 146 and Section 176 of the Licensing Act 2003:

Section 136 - Unauthorised Licensable Activities

(1) A person commits an offence if:

- (a) he carries on or attempts to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation, or***
- (b) he knowingly allows a licensable activity to be so carried on***

(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £20,000, or to both.

You have been advised during the meeting that you must continue to operate within accordance of your premises licence.

I would like to take the opportunity to advise you of the following in your role as the Designated Premises Supervisor (DPS), which is implemented as an action plan for you to take into account:

- DPS will ensure that all operating hours are adhered to, please refer to your premises licence (date revised 23.12.16).
- DPS will ensure that no customers shall remain on the licensed premises, except for drinking up period following the termination of licensable activities.
- DPS will allow your customers 30 minutes drinking up time after last orders are taken for sale of alcohol, please refer to your premises licence (date revised 23.12.16) regarding sale or supply of alcohol times.
- DPS will ensure all customers are made aware during last orders that drinking up time is 30 minutes and will be asked to leave straight after the drinking up time.
- DPS will ensure that both DPS and staff are aware of the operating hours.
- DPS will ensure that all staff including family members that are working at the premises, are retrained on the licensing legislation including knowledge of the operating hours.
- DPS will ensure that written training records relating to staff will be kept and made available for inspection upon request by Police Licensing Officer, Police Officers, Police Community Support Officers (PCSO) and Local Authority Licensing.
- DPS will nominate other persons who will deputise for DPS when he/she are absent from the premises. DPS will consider that any nominated deputy is a personal licence holder. DPS will ensure that the identity of the deputy is known by all other staff at such times.
- DPS or at least one nominated deputy will be present at all times when the premises are open to the public.
- DPS will ensure that there are prominent, clear and legible notices displayed at all exits requesting the customers to respect the needs of local residents and to leave the premises and the area quietly.

Please treat this letter as written confirmation that you are in receipt of a written warning from the Police in relation to breaching the conditions of your premises licence, as stated above. This warning has been recorded and should any further offences of this nature be committed in the future Hertfordshire Constabulary will seriously consider their options in respect of reviewing your Premises Licence.

A copy of this letter has been forwarded to North Herts District Council and a copy will also be sent to the premises licence holder Mr David Charles Plant.

Yours sincerely



Mrs Kuljit Sangha
Police Licensing Officer
Hitchin Police Station

cc: Colin Broadhurst (NHDC Licensing Enforcement Officer), North Herts District Council,
Gernon Rd, Letchworth Garden City, Herts, SG6 3HF

Appendix

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Hannah Sweetman

From: Jodie Cannon [REDACTED]
Sent: 12 October 2017 12:10
To: Licensing
Subject: Khoi Khoi Bar and Vino

Follow Up Flag: Follow up
Flag Status: Completed

This is my representation regarding the above licensed property.

I feel that they have been breaking the licensing principle, Prevention of Public Nuisance on many occasions. This has led to myself having severe mental health issues due to extreme stress and anxiety, which has led to me being on medication, being signed off of work for a period of time and being under the HPFT Wellbeing Team receiving CBT meetings once a week.

Myself and my cousin have lived above the named property since May 2012, which was then known as the Broken Drum. We both understood that when we moved into the property part of our building was above the bar, which had a license to serve alcohol and play live and recorded music.

For the first three years of living in our flat when Mr Plant was running the bar, I did have to contact him via telephone on a handful of occasions to turn the recorded music down, which was done promptly and with an apology. On the very rare occasions I had no reply I did go down to the bar and speak to Mr Plant face to face, where he then turned the music down or off depending on the time of day/evening it was. To my knowledge in those three years there was no live music being played, so we were not affected by any live performances. They may have had Balstock bands but I would normally go away for this.

When Mr Hall and Ms Morgan's then took over the running of the bar, they started to have live music on a Sunday afternoon which would generally finish by 19.00/20.00hrs. As a rule of thumb they never to my knowledge again had live music every Friday and Saturday until late in the evening. This said on occasion I had to go down and ask for the music to be turned down but it was not a regular occurrence, maybe this happened once or twice.

When the Drum was then taken over by Mr Nythai and his wife and turned into the Khoi Khoi it was never very loud to start off with as there was no jukebox as they had had this taken out and was only having acoustic bands playing on a Friday or a Saturday night. This started to change though.

From the beginning of 2017 bands were becoming more regular on Friday and Saturdays and the noise was getting louder. During the week when the jukebox was reinstated I could hear the songs very clearly from the flat, sometimes during the day and the evening. When they had the tv installed and it was the Rugby World Cup on, the noise would start from 08.00am.

To start with myself and Mr Nythai tried to sort these issues out amongst ourselves through texts/telephone conversations but then relations broke down. This is when I started to use the noise app and on occasions had the Environmental Team out to our property. I thought this was the fairest way so it could be recorded or witnessed, and nobody could feel that they were being targeted as there would be evidence from a third party. I also had the noise monitoring equipment set up in my flat as at times the noise was unbearable. I should have used the out of hours team more but due to the location of my front door and the bars garden, customers could see clearly who was walking in and out of my property. Also on occasions we have put up with verbal abuse from customers, being told we 'shouldn't live above a bar', 'they are only trying to earn a living' and we have also had social media abuse.

When Balstock was on I had people in my front garden, who got quite verbal when I asked them to move off of my property not even believing it was mine. The bar manager then put boards in front of my garden to keep customers

off which I appreciated, but I should not of had to bring it to the bars attention. If they was having entertainment outside then they should of been policing the area and making sure their neighbours were not being disrupted.

I totally understand that they are trying to run a business but I am also trying to live with a certain quality of life. I'm not asking for no music what so ever , what I am putting forward is :

Regulated opening and closing times.

A volume limit for inside recorded music, were if the music goes above the suggested level it cuts off.

That live music is not on every Friday and Saturday and if they do have live bands playing again there is a set noise limit in place.

Outside music is either not aloud or a limit to the noise level again put in place.

I'm trying to be as reasonable as possible but the situation really needs to get sorted for the welfare of everyone involved. I am very happy to work with the bar to resolve issues and hope that we can find a solution that's works for every party.

I have also submitted noise diary sheets, which I'm still having to use, but not as regularly as I was.

Kind regards
Jodie Cannon
1 Vintage Court
Baldock
Herts
SG7 6AQ

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Hannah Sweetman

From: rogermarshall [REDACTED]
Sent: 01 October 2017 11:36
To: licensing@noth-herts.gov.uk
Subject: Khoi-Khoi Bar and Vino - review of premises license

Dear Sir/Madam

I am writing in response to the notice of a review of a premises license for Khoi-Khoi Bar and Vino situated at 31 Hitchin St, Baldock, Herts. SG7 6AQ.

We live next door to the aforesaid premises, at 29 Hitchin St, Baldock. We have lived here since 1976. Since Khoi-Khoi started in business, we have been subjected to extremely loud live and recorded music from the premises and the courtyard of Khoi-Khoi. As a result it has caused us difficulty in being able to sleep at night, read, watch TV, or otherwise relax in our home. On occasions it has been impossible to enjoy our garden during the day. During the summer, the use of a bouncy castle and piped music in the courtyard have been very invasive. The music has continued until the early hours of the morning on several occasions, well past their licensing hours and there are often customers in the bar past midnight. In addition, customers out at the front of the premises, in the gateway and in the courtyard garden cause further disturbance late into the evening.

We have made several approaches to Mr Nyathi, the current tenant, regarding the noise but these have not been acted upon. In addition, we have contacted environmental health on several occasions to deal with the issue. We also filled in a 21 day noise questionnaire on the behest of environmental health. We feel that due to the residential location, Khoi-Khoi should not be allowed to play live and recorded music within the premises and the courtyard. The noise has caused major disruption for us and other residents. My wife and I are both elderly and have lived here for over forty years and have never had to put up with this level of disturbance before.

I look forward to hearing from you in due course.

Your faithfully,

Roger Marshall
29 Hitchin St
Baldock
Hertfordshire
SG7 6AQ

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Addendum to committee report in support of an application by NHDC's Environmental Protection & Housing Team to review a Premises Licence- 3rd November 2017

Re: Khoi Khoi Bar and Vino, 31 Hitchin Street, Baldock, Herts, SG7 6AQ (licence reference LC/4849 or LICPR/14517/05)

This is an addendum to the committee report submitted in support of an application to review the above premises licence. The review hearing is due to take place on 15th November 2017.

The purpose of this addendum is to highlight the need to amend the recommendations included in the original report dated 15th September 2017 as a result of an exercise on 26th October 2017 by the Environmental Protection & Housing Team (EPHT) to assist Mr Nyathi, the DPS, in setting an appropriate noise limit on a noise limiting device that he voluntarily installed following receipt of the review application and supporting committee report by the EPHT.

During the noise limit setting exercise, it quickly became apparent that recorded music which is played using external equipment (i.e. a DJ with his/her own amplifier and speakers) would need to be played at a very low volume which matches that of the in-house equipment in order for the noise level to be appropriate for the EPHT. This is because most noise limiting devices, including the one currently installed, do not allow a differentiation between different types of equipment and/or recorded music and can only be set at one level. The result would be an uneven and unsatisfactory acoustic environment not in keeping with the volume expected from a performing DJ.

The in-house equipment that Mr Nyathi uses to play recorded music during the daytime and evening can be set to a suitable level for both him and the EPHT and this type of recorded music is therefore considered to be suitable to be played during the hours currently on the licence (Monday to Saturday between 11:00 and 23:00 and Sunday between 11:00 and 22:30).

The identified solution to this problem is to amend the recommendations of the previous report so that recorded music using external equipment can take place at an unrestricted level but is restricted in its frequency and duration in the same manner as amplified/non-acoustic live music. Recorded music using in-house equipment is not being recommended to be changed from what is stated in the original report.

Modified recommendations

It is still recommended that the days and hours permitted above for recorded music (indoors only) are retained but that a noise limiting device is installed in the premises so that all in-house equipment for recorded music is routed through this device (see recommended conditions below). Obviously this device is already installed and the conditions will formally require that it remains in place and is set at an appropriate level.

It is also still recommended that the days and hours permitted for live music (indoors only) are restricted to take place only on Friday and Saturday between 19:00 and 22:00 but with restrictions on their frequency depending on if it is a full live set or is acoustic only. It is not possible to distinguish between different types of recorded music on the permitted hours on a premises licence so the above issues surrounding external equipment for recorded music have been dealt with by modifications to the

original recommended conditions (see amended conditions below). The key change is that recorded music using external equipment, therefore not routed through the noise limiting device, is recommended to occur only in replacement of amplified/non-acoustic live music and not in addition to it. This will ensure that there is no increase in the potential for a public nuisance to occur in light of these recommended changes.

Modifications to the previously recommended conditions

1. Amplified/non-acoustic live music or recorded music using external equipment (both constituting regulated entertainment) shall only take place on one (1) day per calendar month.
2. Recorded music using external equipment (constituting regulated entertainment) shall only take place between 19:00 and 22:00.
3. Live music (constituting regulated entertainment) which is acoustic only shall only take place on one (1) day per calendar week.
4. Live music or recorded music using external equipment (both constituting regulated entertainment) shall not take place on consecutive days.
5. All windows and doors at the premises shall remain closed when live music or recorded music using external equipment (both constituting regulated entertainment) is taking place except for ingress, egress and in the case of an emergency.
6. A suitable environmental noise control device shall be installed in the premises, calibrated and set to the satisfaction of the Council's Noise Control Officer. The device must be set at an appropriate time in the presence of the aforementioned Officer. No recorded music using in-house equipment (constituting regulated entertainment) shall take place until this device has been installed and set in accordance with this condition.
7. Once the environmental noise control device has been installed, calibrated and set to the satisfaction of the Council's Noise Control Officer it must not be removed, adjusted or replaced:
 - (a) without twenty-eight (28) days prior notification to the Council's Noise Control Officer and;
 - (b) without the written consent that the removal, adjustment or replacement of the device is permitted and that documentation stating this is received from the Council's Noise Control Officer.
8. Following the receipt of the documentation stated in condition 6(b), all the requirements of the Council's Noise Control Officer must be carried out. Use of all in-house equipment for recorded music (constituting regulated entertainment) taking place is not permitted until such a time that the premises licence holder has received confirmation from the Council's Noise Control Officer that it is permitted.
9. In the event of a malfunction of the environmental noise control device, the Council's Noise Control Officer shall be notified within two (2) working days of the problem and the remedial action proposed. No recorded music using in-house equipment (constituting regulated entertainment) shall take place until the environmental noise control device is properly functioning and, if appropriate, has been reset, calibrated and set to the satisfaction of the Council's Noise Control

Officer and/or the Council's Noise Control Officer has received and approved the necessary documentation confirming this.

10. The environmental noise control device shall be secured in a manner approved by the Council's Noise Control Officer so as to prevent unauthorised access to and tampering with the controls.

11. All in-house equipment used for recorded music constituting regulated entertainment taking place must be routed through the environmental noise control device and this device must be operational during such licensable activities.

Rory Cosgrove
Senior Environmental Health Officer
North Hertfordshire District Council
3rd November 2017

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