

**LICENSING AND APPEALS SUB-COMMITTEE
10 AUGUST 2020**

***PART 1 – PUBLIC DOCUMENT**

LICENSING ACT 2003

**APPLICATION BY HITCHIN INITIATIVE LIMITED
FOR A VARIATION TO A PREMISES LICENCE IN RESPECT OF
HITCHIN TOWN CENTRE**

(covering Hitchin Market Place, Churchyard, Sun Street, Bucklersbury, Brand Street, Bancroft, High Street, Hermitage Road and Bancroft Recreation Ground)

REPORT OF THE LICENSING OFFICER

1. BACKGROUND

1.1 This is an application to vary an existing premises licence.

2. APPLICATION

2.1 The application is for a full variation to a premises licence under section 34 of the Licensing Act 2003 and is attached as **Appendix A**.

3. APPLICATION PROCESS

3.1 On the 17 June 2020, Hitchin Initiative Ltd made an application for a full variation of an existing premises licence.

3.2 The application was received electronically by NHDC and was circulated to Hertfordshire Constabulary and the other responsible authorities

3.3 A public notice was displayed on the premises for a period of not less than twenty-eight (28) consecutive days in accordance with the requirements of the Act.

3.4 A newspaper advertisement was placed in The Comet newspaper in accordance with the requirements of the Act.

4. REPRESENTATIONS

4.1 Hertfordshire Constabulary had concerns with the application and entered into negotiations with the applicant during the consultation period.

4.2 The applicant and Hertfordshire Constabulary could not reach agreement during the consultation period or resolve the Constabulary's concerns. As a result, Hertfordshire Constabulary made a relevant representation attached as **Appendix B**.

- 4.3 Hertfordshire Constabulary's position is that the application should not be granted without the amended timings and additional operating schedule conditions included within their representation. This does not preclude the sub-committee from considering other options where appropriate for the promotion of the licensing objectives.
- 4.4 NHDC Environmental Health has made a relevant representation which is attached as **Appendix C**.
- 4.5 NHDC Environmental Health's position is that the application should be refused as the operating schedule does not include sufficient detail to demonstrate that the licensing objective of public safety is adequately promoted.
- 4.6 The applicant and the responsible authorities making relevant representations have been invited to attend the hearing to present their respective cases. They have been advised that they may be legally represented and of the committee hearing procedure.

5. OBSERVATIONS

- 5.1 In determining this application, the sub-committee must have regard to the representation and take such steps, as it considers appropriate for the promotion of the licensing objectives.
- 5.2 In making its decision, the sub-committee must act with a view to promoting the licensing objectives. It must also have regard to the licensing authority's Statement of Licensing Policy and National Guidance issued by the Home Office.
- 5.3 The sub-committee has the following options when making their determination:
- i) Grant the application as made
 - ii) Grant the application with amended timings and/or licensable activities
 - iii) Grant the application (as made or as amended) with conditions
(conditions should only be added where appropriate to promote the licensing objectives)
 - iv) Refuse the application.

6. LICENSING POLICY CONSIDERATIONS

- 6.1 The following paragraphs from the Council's Statement of Licensing Policy 2016 may be relevant to this application. This section does not prevent the sub-committee from considering other paragraphs of the Statement of Licensing Policy where they deem it appropriate.

B6

Our vision is:

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

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.

B10

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

C4.2

The Council has a duty under the Act to carry out its functions and responsibilities with a view to promoting the prescribed 'licensing objectives'. Each objective has equal importance and they are of paramount importance at all times. The objectives are:

- (i) the prevention of crime and disorder;*
- (ii) public safety;*
- (iii) the prevention of public nuisance; and*
- (iv) the protection of children from harm.*

D1.6

Applicants should be aware that if they fail to have due regard to this Policy it is more likely that the licensing authority or responsible authorities may deem it appropriate to make a representation. If representations are made as a result of the applicants' failure to address this Policy in its operating schedule, the Licensing and Appeals Sub-Committee may take this into consideration when determining the application.

D1.8

Whilst there is no requirement for applicants to consult with the responsible authorities prior to submitting an application the Council encourages pre-application dialogue to take place.

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.

D2.5

The Council acknowledges that the licensing process can only seek to impose conditions that are within the direct control of the licence holder. The Council does not consider that the term 'direct control' can be generically defined and will consider its definition relative to the specific circumstances of each application. For example, licensed premises at the end of road leading to a car park may be able to control its patrons leaving the premises and using the car park. In general terms, to be considered to be under the 'direct control' of a licence holder, there will need to be a direct causal link between the problems or likely problems and the specific premises.

D2.6

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

D2.7

Where a consultation period has closed and relevant representations have been received, the Council encourages dialogue between the applicant and those making representations to attempt to resolve any issues to all parties' satisfaction. Where a resolution is reached by way of amendments to the application and/or operating schedule conditions and all parties, including the Council acting as a responsible authority, agree a hearing is not necessary the Council will accept the applicant's amendments and grant the application as amended.

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

D6.7

The Council strongly believes that a carefully considered operating schedule that fully considers the impact of the proposed activities in relation to the promotion of the licensing objectives, having regard to this Policy and the Guidance, is less likely to result in the imposition of conditions by a Licensing Sub-Committee following representations.

D6.8

It is the Council's view that the imposition of conditions should be restricted to those that are proportionate in addressing any concerns in relation to the promotion of the licensing objectives. Conditions should not be used as a tool to attempt to mitigate every possible scenario; this will serve only to place undue burden on applicants and is not consistent with the general principles of the Guidance.

D6.9

*Operating schedules and licence conditions should be drafted in such a way that it is clear to licence holders exactly what is required of them and these requirements should be concise and well-worded to assist the licence holder in managing their premises. **The Council is strongly of the view that the imposition of a substantial list of conditions in order to grant an application calls into question the suitability of the applicant to hold a licence.** Where a Licensing Sub-Committee determines that it is appropriate to impose a substantial list of conditions to the extent that they are effectively determining the day-to-day management of the premises, they will give serious consideration to refusing the application*

D8.1

The Council recognises the need to encourage and promote live music, dancing and theatre for the wider cultural benefit of the community.

D8.2

Only appropriate, proportionate and reasonable licensing conditions will be imposed on licences so as not to discourage the promotion of entertainment. Conditions will relate to the minimum needed to ensure the promotion of the licensing objectives.

D8.3

The Council will ordinarily avoid any measure which deters live music, dancing and theatre by imposing indirect costs of a substantial nature (for example, noise limiting devices for smaller or community premises). The Council acknowledges, however, that on occasions the imposition of appropriate conditions with cost implications may be the only alternative to refusing an application where there is sufficient evidence in relation to the effect, or likely effect on the licensing objectives.

E2.1

The Council recognises that the public safety objective is concerned with the physical safety of the people using the relevant premises and not with public health, which is dealt with in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning.

E2.3

The Council takes its responsibility for public safety seriously and is aware of a growing trend nationally to encourage alcohol consumption by adding substances to alcohol to make them more attractive to customers either in appearance or by increasing the speed of alcohol ingestion, for example liquid nitrogen in cocktails. This practice is strongly discouraged due to the inherent risks to public safety and the Council will actively use its regulatory powers where premises licence/club premises certificate holders ignore this advice.

E2.4.1

“Safe capacities” should only be imposed on licences where necessary for the promotion of public safety or the prevention of disorder. If a capacity has been imposed through other legislation it would be unnecessary to reproduce it as a licence condition. It would also be wrong to impose conditions that conflict with other legislation. If no safe capacity has been imposed by other legislation, however, a responsible authority may consider it necessary for a new capacity to be attached. For example, a capacity limit may be necessary to prevent disorder as overcrowded premises can increase the risk of crowds becoming frustrated and hostile.

E2.7.1

The Council expects premises licence holders and applicants to undertake a public safety risk assessment to ensure the safety of persons using their premises. The assessment should consider issues such as, but not limited to:

- safe capacities in identifiable areas of the premises that can be evacuated quickly in the case of an emergency*
- policies in relation to persons wishing to smoke at the premises, including provision of identified areas and separation from admission queues*
- policies in relation to admission and readmission particularly control of capacity and queuing*
- policies in relation to the safe dispersal of patrons from the premises and locality*
- sufficient basic first aid provision and responsibilities for contacting the emergency services.*

E2.7.2

In order to assist applicants with promoting the public safety licensing objective, NHDC's Commercial Team has compiled the following table of considerations. This table is not exhaustive and does not supersede or replace any other statutory obligations. The level of detail required will be proportionate to the size of the premises and the requested activities.

<p><u>Planning and Management</u> The applicant should have a written explanation of the management arrangements of the premises, including cover during periods of absence. The maximum capacity of the premises, including individual room capacities, based on available space excluding fixtures, fittings and furniture, number of available exits and exit widths and stairs and other hazards. The applicant should have a means of accurately counting the total number of customers and staff on the premises. The applicant should have arrangements for supervising contractors on the premises, including the ability to act on poor performance.</p>
<p><u>Venue Design</u> The premises should be designed so any change in level is clearly indicated by contrasting colour nosings (or similar) to reduce the risk of tripping.</p>
<p><u>People Management</u> Where a premises employs door supervisors there needs to be an effective means of communication between staff.</p>
<p><u>Transport Access</u> Pedestrian and vehicle access routes need to be clearly separated wherever possible</p>
<p><u>Barriers</u> Any barriers must be of an appropriate type and installed by a competent person in accordance with an appropriate risk assessment.</p>
<p><u>Temporary Demountable Structures</u> Any temporary structure (for example marquees, stages, etc.) should be installed and signed-off as 'fit for purpose' by a competent person. The structure should be monitored throughout its use by a competent person to ensure the safety of staff, performers and customers at the premises.</p>
<p><u>Electrical Installations and Lighting</u> Needs to be checked and maintained by a competent person in accordance with national standards. Temporary electrical installations needs to be suitable for the intended use and checked in accordance with national standards.</p>
<p><u>Water Supply</u> If extending the water supply network outside of fixed premises, please seek advice from Environmental Health.</p>
<p><u>Special Effects</u> Any special effects (for example, lasers, smoke machines, pyrotechnics, etc.) should be installed and operated by a competent person in accordance with manufacturers' instructions.</p>
<p><u>LPG</u> Any LPG containers should be stored, used and disposed of in accordance with manufacturers' instructions.</p>

F1.3

It is the Council's clear intention that this Policy is read as one complete document rather than a series of individual sections. Reading individual sections in isolation may not fully explain the consistent threads running throughout the policy or the relationship of an individual section with other aspects of the policy. **The Council strongly recommends that applicants read the entire policy as part of any application process.**

F4.1

In order to avoid duplication with other regulatory regimes the Council will not, as far as reasonably possible, attach conditions to licences unless they are appropriate for the promotion of the licensing objectives and inadequately covered by other legislation. Ordinarily, conditions will be considered unnecessary if they are already adequately covered by other legislation.

F4.2

Notwithstanding the above, it is the responsibility of the applicants to ensure that they have all necessary consents, whether statutory or otherwise, and it should not be assumed

F6.1.2

If the area used for the provision of tables and chairs is not part of the curtilage of the premises and falls within the definition of the 'highway', permission must be sought from Hertfordshire County Council pursuant to Part VIIA of the Highways Act 1980. The Council recommends that applicants seek advice from Hertfordshire County Council as to what constitutes the highway.

F8.1

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

F8.2

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

G1.1

This section of the Policy deals with events with an intended capacity of five hundred and above. Capacities below that figure can be dealt with ordinarily by way of a temporary event notice which applies a 'light touch' approach to licensing, however, this does not preclude an application for a premises licence/club premises certificate.

G1.2

This section is to be read in conjunction with and supplementary to all others sections of the Policy.

G1.3

This section of the Policy is designed to assist applicants, responsible authorities, the public and Licensing Sub-Committees with applications in relation to large-scale events provided outdoors. Events such as music festivals, community fun days, etc. which take place on land open to the air but with the use of temporary demountable structures are considered to be outdoor events for the purposes of this Policy.

G1.5

The Council acknowledges that unless its discretion is engaged by means of relevant representations, the application must be granted as applied for subject only to mandatory conditions or conditions consistent with the operating schedule supplied as part of the application. This section details the method of determination used by the Council once its discretion has been engaged and a hearing takes place.

G5.1

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

G5.2

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

G5.3

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

G5.4

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

G5.5

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

G6.1.3

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

H2.1

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

H2.2

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

H2.3

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

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 2018 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.

1.2

The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.

1.3

The licensing objectives are:

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

1.4

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

1.5

However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:

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

1.16

Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:

- *must be appropriate for the promotion of the licensing objectives;*
- *must be precise and enforceable;*
- *must be unambiguous and clear in what they intend to achieve;*
- *should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;*
- *must be tailored to the individual type, location and characteristics of the premises and events concerned;*
- *should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;*
- *should not replicate offences set out in the 2003 Act or other legislation;*
- *should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);*
- *cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and*
- *should be written in a prescriptive format.*

1.17

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

2.1

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).*

2.5

Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.

2.7

Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

2.8

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

- Fire safety;
- Ensuring appropriate access for emergency services such as ambulances;
- Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts (see paragraph 2.4 above);
- Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;
- Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);
- Ensuring appropriate and frequent waste disposal, particularly of glass bottles;
- Ensuring appropriate limits on the maximum capacity of the premises (see paragraphs 2.12-2.13, and Chapter 10; and
- Considering the use of CCTV in and around the premises (as noted in paragraph 2.3 above, this may also assist with promoting the crime and disorder objective).

2.9

The measures that are appropriate to promote public safety will vary between premises and the matters listed above may not apply in all cases. As set out in Chapter 8 (8.38-8.46), **applicants should consider when making their application which steps it is appropriate to take to promote the public safety objective and demonstrate how they achieve that.**

2.22

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

2.23

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

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

8.41

In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives. Licensing authorities and responsible authorities are expected to publish information about what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. However, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application.

8.42

Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:

- *the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;*
- *any risk posed to the local area by the applicants' proposed licensable activities; and*
- *any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.*

8.43

Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.

8.44

It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application.

8.46

While applicants are not required to seek the views of responsible authorities before formally submitting their application, they may find them to be a useful source of expert advice on local issues that should be taken into consideration when making an application. Licensing authorities may wish to encourage co-operation between applicants, responsible authorities and, where relevant, local residents and businesses before applications are submitted in order to minimise the scope for disputes to arise.

9.38

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- *the steps that are appropriate to promote the licensing objectives;*
- *the representations (including supporting information) presented by all the parties;*
- *this Guidance;*
- *its own statement of licensing policy*

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.

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.

10.8

The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. This provision also applies to minor variations.

10.9

It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.

10.10

The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

8. LICENSING OFFICER COMMENTS

- 8.1 The comments within this section of the report are provided by the licensing officer to assist the sub-committee with the interpretation of the Act, the Guidance and existing case law. It is for the sub-committee to determine what weight they attach to this advice.

Pre-application advice

- 8.2 The applicant did engage with the licensing team and Hertfordshire Constabulary prior to submitting this application and was given pre-application advice. However, the applicant chose not to include all aspects of the given advice in their application.

Operating schedule attached to the application

- 8.3 The operating schedule supplied as part of the application is insufficient in its current format. The applicant hasn't adequately demonstrated how they intend to uphold the licensing objectives and has relied heavily on the use of external bodies such as the Safety Advisory Group (SAG) and Hertfordshire Constabulary. The following section of Council Policy makes it clear that a fully detailed operating schedule is expected:

D1.5

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

8.34

Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:

- the layout of the local area and physical environment including crime and disorder hotspots, proximity to local residential premises and proximity to areas where children may congregate;*
- any risk posed to the local area by the applicants' proposed licensable activities; and*
- any local initiatives (for example, local crime reduction initiatives or voluntary schemes including taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.*

8.35

Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.

8.36

It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application.

D1.6

Applicants should be aware that if they fail to have due regard to this Policy it is more likely that the licensing authority or responsible authorities may deem it appropriate to make a representation. If representations are made as a result of the applicants' failure to address this Policy in its operating schedule, the Licensing and Appeals Sub-Committee may take this into consideration when determining the application.

- 8.4 If the sub-committee have concerns that the licensing objectives will not be adequately promoted by the application and these concerns haven't been addressed in the operating schedule as required by Council Policy and the Guidance, the sub-committee would be entitled to refuse the application. This would not preclude the applicant from further engagement with the responsible authorities and the submission of a more comprehensive application addressing the concerns raised in the hearing.

Proposed amendment by the applicant

- 8.5 Following the end of the consultation period the applicant informed the licensing authority that they wished to reduce the applied for area limiting the licensable area to the Market Square and the High Street.
- 8.6 This was deemed a significant change to the original application and was refused by the licensing officer as the revised proposal should be subject to full public consultation.

- 8.7 Hertfordshire Constabulary was consulted about the proposed amendment but confirmed they would have the same concerns due to the insufficient operating schedule provided by the applicant.

Event Management Plan (EMP) conditions

- 8.8 Council Policy encourages the use of EMP conditions as part of an operating schedule for large-scale events (i.e. any event with a potential capacity of over 500). It should be remembered that all persons within the event site are included in that capacity irrespective of whether they are attending the event or in town for other purposes such as shopping.
- 8.9 The advantage of an EMP for each event is that specific concerns relating to the proposed event can be addressed in the EMP and subject to consultation with all responsible authorities. This approach is suggested within the representation from Hertfordshire Constabulary.
- 8.10 If such a condition were to be considered appropriate by the sub-committee, in order for it to be proportionate and enforceable it should include:
- (i) details of when an EMP is required (for example, a potential capacity exceeding 500 or events where alcohol will be offered for sale);
 - (ii) wording that requires all responsible authorities to be satisfied the EMP is appropriate for the nature of the event in order for the event to proceed; and
 - (iii) wording that attaches the final EMP to the operating schedule as licence conditions.

Street café licence

- 8.11 In order to place tables and chairs on the highway (either carriageway or footway), a street café licence pursuant to Part VII of the Highways Act 1980 is required from Hertfordshire County Council acting as the Highways Authority. Hitchin Market Place is defined as highway land for the purposes of this legislation therefore a licence would be required for the Hitchin Al Fresco Dining Experience.
- 8.12 Hertfordshire Constabulary has included evidence that tables and chairs are being placed on Hitchin Market Place with the consent of Hitchin Initiative however, at the time of writing this report, Hertfordshire County Council has confirmed that a street café licence had not yet been granted as the application was still being considered.
- 8.13 The sub-committee should listen to any evidence offered by the applicant in this regard however are entitled to consider the evidence from Hertfordshire Constabulary as part of their determination, in particular in regard to the likelihood of the applicant complying with licence conditions.

Other considerations

- 8.14 As the sub-committee will be aware from the plan attached to the application in Appendix A, the proposed licensed area is a significant proportion of Hitchin Town Centre. At any time when the premises licence was being used for licensable activities, this whole area would become a licensed premises even if activities were not taking place throughout the entire area.
- 8.15 It is an offence:
- to allow disorderly conduct on a licensed premises
 - to allow the sale of alcohol to any person who is drunk
 - to allow the sale of alcohol to children
 - to allow the purchase of alcohol on behalf of children

All of these potential offences would be the responsibility of the licence holder for the entire area of the licence as all persons within the area marked on the plan would be considered to be on a licensed premises irrespective of whether they were attending the event.

- 8.16 Additionally, it is an offence to allow a premises to be used for licensable activities without an authorisation. Given the large area of the premises, any licensable activity taking place therein without authorisation would be the responsibility of the licence holder.
- 8.17 In order to address the offences detailed in paragraphs 8.15 and 8.16 above the applicant would need to demonstrate how they would enforce the prevention and/or cessation of these activities. Given that the premises would be an area of public space with no ability to require persons to leave the area or cease any activity, the applicant would need to demonstrate how they could effectively deal with these potential issues.
- 8.18 One of the reasons for recommending the approach of EMPs (paragraphs 8.8 - 8.10 above) is that each EMP could reduce the licensable area for each event to the area specifically being used for licensable activities by the substitution of an event specific layout plan.
- 8.19 Whilst this would restrict the area that the licence holder would be responsible for, many of the same issues detailed in paragraphs 8.15 and 8.16 above would apply as the event specific site would remain as public space with minimal ability to control the behaviour of persons in that space irrespective of whether they were event attendees. These issues in a smaller event space may however be able to be adequately mitigated by the use of event security.

Definition of 'appropriate'

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

F2.1

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

F2.2

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

9.39

The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

9.40

Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

F2.3

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

F2.4

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

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

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

F2.5

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

9. APPENDICES

- | | | |
|-----|------------|---|
| 9.1 | Appendix A | Original application |
| 9.2 | Appendix B | Relevant representation from Hertfordshire Constabulary |
| 9.3 | Appendix C | Relevant representation from NHDC Environmental Health |

10. CONTACT OFFICERS

- 10.1 Molly Shiells
Licensing Officer
01462 474233
molly.shiells@north-herts.gov.uk