

LICENSING AND APPEALS SUB-COMMITTEE
Tuesday 19 January 2021

LICENSING ACT 2003

APPLICATION BY M LEE
FOR THE REVIEW OF A PREMISES LICENCE IN RESPECT OF
THE JOCKEY, BALDOCK STREET, ROYSTON, HERTFORDSHIRE, SG8 5BD.

REPORT OF THE LICENSING OFFICER

1. BACKGROUND

- 1.1 The existing premises licence was granted by the licensing authority in August 2005 and has been subject to various amendments since.
- 1.2 The current licence holders Yindee Thai Ltd acquired the licence in April 2010 by way of transfer.
- 1.3 In July 2018 a minor variation application was made by the licence holder to amend the premise plan following renovations to the premises.
- 1.4 The current premises licence is attached as **Appendix A**.

2. REVIEW APPLICATION

- 2.1 The application is for a review of a premises licence following a request from an Other Person under Section 51 of the Licensing Act 2003 ("the Act").
- 2.2 On 23 November 2020, the licensing authority received an application for the review of the premises licence from Ms Melanie Lee on the grounds that:

The grounds for review are that the protection of public nuisance, the prevention of crime and disorder, protection of children from harm and public safety licensing objectives are not being adequately promoted by this premises, by causing nuisance, distress and crime and disorder to nearby residents, specifically patron noise, foul language and disorder from the outdoor areas of the premises namely the garden and the public footway parallel to The Jockey public house.

The application relates specifically to the following licensing objectives:

- The prevention of public nuisance
- The prevention of crime and disorder
- The protection of children from harm
- Public Safety

Once an application for review has been made representations can be made for any of the four licensing objectives.

2.3 As required by the Act, the licensing authority displayed notices of the review at the premises in accordance with the prescribed regulations. The application was also published on the Council's website on the Licensing Register.

2.4 The application for a review is attached as **Appendix B**.

3. CONSULTATION PROCESS

3.1 On 20 November 2020, the licensing authority received an application for a review of the premises licence from an Other Person.

3.2 As the application was served electronically, the licensing authority served notice of the application to the premises licence holder and the responsible authorities.

3.3 Public notices were displayed on the premises for a period of twenty-eight (28) consecutive days between 24 November 2020 and 21 December 2020 in accordance with the requirements of the Act. Officers visited the premises periodically to ensure that the notices were continually displayed.

3.4 A newspaper advertisement is not required by the Act for an application for a review.

4. REPRESENTATIONS

4.1 One representation was received from Hertfordshire Constabulary. This is attached as **Appendix C**.

4.2 No representations were received from any other responsible authority.

4.3 No representations were received by any other persons.

4.4 The Council's Scheme of Delegation requires the licensing officer to determine whether a representation is relevant as specified within the Act.

4.5 Where representations include comments that are not relevant to the Act, these comments have been clearly redacted by the licensing officer and should not be considered as part of the determination process. **Other Persons must not refer to these paragraphs in any oral presentation at the hearing.**

4.6 Where the licensing officer has determined that the representations are relevant, it is for the sub-committee to determine what weight to apportion to each representation.

4.7 The premises licence holder has been served with a copy of all representations by way of this report.

4.8 The applicant for the review, the premises licence holder and Hertfordshire Constabulary have been invited to attend the hearing to present their cases respectively. They have been advised that they may be legally represented and of the hearing procedure.

4.9 This report and all appendices have been published on the Council's website and all hearing invitations have included a link to the relevant web page.

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, removing live and recorded music deregulation, 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 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."

6. LICENSING POLICY CONSIDERATIONS

- 6.1 The following paragraphs from the Council's Statement of Licensing Policy 2021 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 licensed venues and community and cultural activities within a safe and enjoyable environment, in both the daytime and night-time economy."

B7

The Council recognises that national and worldwide events may impact on its ability to promote this vision, particularly during pandemics and the impact of exiting the EU. The vision detailed in paragraph B6 will always underpin licensing policy however the Council may need to adapt to measures introduced by Government to stimulate the economy or protect public safety. Under these circumstances, temporary measures may not always be within the control of the licensing authority

however the Council will always seek to strike a reasonable balance between achieving its vision and promoting the licensing objectives.

B8

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. 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.

D2.4

In determining applications, the Council will focus primarily on the direct impact of the proposed activities on persons that may be adversely affected in relation to the licensing objectives. The scope of those persons that may be affected will be determined on a case by case basis taking into account all relevant factors.

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.

D2.8

The Council recognises that the exercise of its licensing function is only one of a number of means of securing the promotion of the licensing objectives. The exercise, by the Council, of its licensing function should not be seen as a panacea for all problems within the community. The Council will encourage co-operation between its licensing function, planning function and environmental health

functions to ensure that any problems are addressed using the most appropriate means and that its licensing function does not duplicate any other statutory responsibilities.

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.

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.

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.

D11.2

In determining whether or not an application for a review is relevant, the Council will have due regard to the Guidance in relation to whether an application is frivolous, vexatious or repetitious. The Council acknowledges that the Act precludes a representation by a responsible authority from being deemed frivolous, vexatious or repetitious.

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.

E1.1.2

Conditions may be imposed on licensed premises requiring supervision by door supervisors in order to reduce crime and disorder and/or public nuisance in order to address the licensing objectives. The conditions may provide that door supervisors must be employed at the premises at all times, at specific times, or at such times when certain licensable activities are being carried out.

E1.3.1

The Council understands that the setting of capacity limits for the purposes of fire safety is not permitted, however, it may be appropriate to restrict capacity in premises in order to help control overcrowding and disorder.

E1.3.2

Where a condition is imposed restricting capacity to promote the prevention of crime and disorder objective, it is likely that a condition requiring door supervisors will also be appropriate to manage capacity.

E1.3.3

If it is deemed appropriate to restrict or manage capacity to promote the prevention of crime and disorder objective, it may be appropriate to impose a condition specifying the ratio of tables and chairs to patrons and for areas to be allocated as permanent seating areas in order to prevent overcrowding which in turn could lead to violence and disorder.

E1.4.1

The Council encourages the use of CCTV recordings, with appropriate warning signage, where they would assist with the promotion of the licensing objectives.

E1.4.2

Equally, the Council is mindful that a blanket CCTV requirement without assessing its appropriateness and proportionality to the individual premises would be an unnecessary financial burden on the premises.

E1.4.3

Where there is insufficient evidence to demonstrate that CCTV is an appropriate and proportionate requirement at a premises, or where CCTV is sought for problems not related specifically to the licensable activities at the premises, CCTV conditions will not be imposed by a licensing sub-committee.

E1.4.4

Where there is evidence of disorder or likely disorder, the Council may deem it appropriate to impose conditions relating to CCTV in order to promote the licensing objectives. Each case will be

determined on its own specific circumstances however, considerations may include, but are not limited to:

- the type of camera and number of cameras
- the locations of the cameras
- the recording capability of the cameras in terms of providing evidence quality images
- the times during which the cameras should be operational
- procedures for repairing the cameras should they become inoperable
- staffing requirements in respect of a working knowledge of the equipment
- storage requirements for recordings
- date/time stamping of recordings
- provision of recordings to the police on request

Consideration will be given to the minimum requirements for CCTV to limit the financial burden on a business whilst ensuring the system remains fit-for-purpose.

E1.4.5

The Council acknowledges that licence holders using CCTV recording equipment have responsibilities for handling the data appropriately and must be satisfied that any request for recordings meet any Data Protection responsibilities.

E1.4.6

Ordinarily, the provision of CCTV should be restricted to the minimum requirements to cover entrances, exits and till areas to a standard enabling facial recognition. Higher levels of coverage, based on factors such as the type and location of the premises, premises history and risk of serious crime and/or disorder may be appropriate at specific premises. In such circumstances, before imposing conditions requiring a higher level of coverage, the Council would expect the police to indicate why the higher CCTV requirements were appropriate to the individual premises and details of the suggested CCTV solution.

E1.4.7

Conditions requiring the provision of CCTV should be specific and easily understandable to allow the licence holder to ensure compliance. A condition requiring the provision of CCTV “to the satisfaction of the police”, or similar, will be avoided as it is non-specific and allows for varying opinions from different police officers.

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.

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.

E3.1.4

The Council recognises that conditions relating to noise nuisance may not be appropriate in certain circumstances where the provisions of other legislation (for example, the Environmental Protection Act 1990, the Noise Act 1996, or the Clean Neighbourhoods and Environment Act 2005) adequately protect those living in the areas surrounding the premises. That said, the approach of the Council

will be one of prevention and it will consider each application on its own merits, having due regard to the avoidance of duplication balanced against the effectiveness or otherwise of the other legislative provisions.

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).*

E3.3.1

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.*

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 daytime and 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.

E4.1

The Council recognises that the protection of children from harm objective relates primarily to children accessing or using licensed premises, or being exposed to activities taking place without having to access the premises (for example, underage alcohol sales, exposure to performances or advertising of an adult nature whether within or outside a premises).

E4.2

The Council welcomes the diversity of premises that will be licensed under the Act. The premises may include theatres, cinemas, restaurants, pubs, nightclubs, cafes, take-away shops, community halls and schools. The Council will not ordinarily seek to limit the access by children to any premises unless it is considered appropriate for the prevention of physical, moral or psychological harm to them.

E4.3

When deciding whether to limit access by children to premises, the Council will judge each application on its individual merits.

E4.4

The Council believes that it is totally unacceptable to sell alcohol to children or expose them to entertainment of an adult or inappropriate nature. Premises where concern for the protection of children may arise include, but are not limited to, premises where:

- entertainment of an adult or sexual nature is provided;*
- there is a strong element of gambling on the premises;*
- there is a known association with drug taking or dealing;*
- a member or members of the current management have been convicted for serving alcohol to children;*
- it is known that unaccompanied children have been permitted access to the premises;*
- there is evidence of heavy, binge or underage drinking at the premises; or*
- the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.*

E4.5

There are a range of alternatives which the Council may consider for limiting the access of children which include, but are not limited to:

- a limit on the hours when children may be present;*
- a limitation or exclusion when certain activities are taking place;*
- the requirement to be accompanied by an adult;*
- limited access to parts of the premises; and*
- full exclusion of those people under 18 from the premises when any licensable activities are taking place.*

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.

F4.3

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 that an authorisation under the Licensing Act 2003 removes this responsibility.

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.

Examples of behaviour falling within this paragraph include, but are not limited to:

- *noise associated with customers once they have left the premises*
- *anti-social behaviour of customers such as unlawful parking, criminal damage, intimidatory behaviour, or any alcohol-related criminality*

O1.1

The Council accepts that it can only consider matters in relation to the four licensing objectives when determining licensing applications, however as a public body it also has a statutory duty to consider the following legislative requirements:

- (i) *Crime and Disorder Act 1998*
Local authorities are required to have due regard to the crime and disorder implications of any decision it makes.
- (ii) *Human Rights Act 1998*
Local authorities are required to implement the Act in a manner consistent with the Human Rights Act 1998 by giving due consideration to the European Convention on Human Rights and Fundamental Freedoms.
- (iii) *Equality Act 2010*
Local authorities are required to implement the Act in a manner consistent with its responsibilities to consider the equality implications of any decision it makes.

O2.2

Any licence/certificate is issued without prejudice to any other consent, licence, approval or other authorisation required by other functions or responsibilities of the Council or any other statutory body. The possession of a licence/certificate under the Act does not supersede or replace any other statutory provision.

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:

1.3

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

The licensing authority should only impose conditions on a premises licence or club premises certificate which are appropriate and proportionate for the promotion of the licensing objectives. If other existing law already places certain statutory responsibilities on an employer at or operator of a premises, it cannot be appropriate to impose the same or similar duties on the premises licence holder, or club. It is only where additional and supplementary measures are appropriate to promote the licensing objectives that there will be a requirement for appropriate, proportionate conditions to be attached.

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).

2.2

In the exercise of their functions, licensing authorities should seek to co-operate with the Security Industry Authority ("SIA") as far as possible and consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed.

2.3

Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

2.12

"Safe capacities" should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.

2.15

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 16). 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.

2.22

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)....

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.*

2.27

Conditions, where they are appropriate, should reflect the licensable activities taking place on the premises. In addition to the mandatory condition regarding age verification, other conditions relating to the protection of children from harm can include:

- restrictions on the hours when children may be present;
- restrictions or exclusions on the presence of children under certain ages when particular specified activities are taking place;
- restrictions on the parts of the premises to which children may have access;
- age restrictions (below 18);
- restrictions or exclusions when certain activities are taking place;
- requirements for an accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and
- full exclusion of people under 18 from the premises when any licensable activities are taking place.

2.32

Licensing authorities are expected to maintain close contact with the police, young offenders' teams and trading standards officers (who can carry out test purchases under section 154 of the 2003 Act) about the extent of unlawful sales and consumption of alcohol by minors and to be involved in the development of any strategies to control or prevent these unlawful activities and to pursue prosecutions. Licensing authorities, alongside the police, are prosecuting authorities for the purposes of these offences, except for the offences under section 147A (persistently selling alcohol to children). Where, as a matter of policy, warnings are given to retailers prior to any decision to prosecute in respect of an offence, it is important that each of the enforcement arms should be aware of the warnings each of them has given.

9.12

Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, 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 usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities 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.

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. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises. 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.

10.46

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. This must as a minimum require individuals who appear to the responsible person (see paragraph 10.39) to be under the age of 18 years of age to produce on request, before being served alcohol, identification bearing their photograph, date of birth, and either a holographic mark or ultraviolet feature. The Home Office encourages licensed premises to accept cards bearing the Proof of Age Standards Scheme (PASS) hologram as their preferred proof of age, while acknowledging that many other forms of identification meet the requirements of the mandatory condition.

10.47

The premises licence holder or club premises certificate holder must ensure that staff (in particular, staff who are involved in the supply of alcohol) are made aware of the existence and content of the age verification policy which applies by the premises.

10.48

The designated premises supervisor (where there is one) must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy. This means that the DPS has personal responsibility for ensuring that staff are not only aware of, but are also applying, the age verification policy.

10.49

It is acceptable, and indeed encouraged, for premises to have an age verification policy which requires individuals who appear to the responsible person to be under an age greater than 18 to produce such identification on request. For example, if premises have a policy that requires any individual that appears to be under the age of 21 to produce identification that meets the criteria listed above, this is perfectly acceptable under the mandatory code.

11.10

Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

11.17

The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting 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.

11.19

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)¹⁰;*
- 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.

11.23

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.

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.

Case law

8.2 As 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.

8.3 The Guidance states at paragraph 2.20 that conditions relating to public nuisance beyond the vicinity of the premises are not appropriate and the Council's Statement of Licensing Policy supports that view. Conditions that it would be either impracticable or impossible for the licence holder to control would clearly be inappropriate.

8.4 That said, if behaviour beyond the premises can be clearly linked to a premise 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.

8.5 The magistrates court case of *Kouttis v London Borough of Enfield*, 9th September 2011 considered this issue.

8.6 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.

8.7 The District Judge held that there was ample evidence of public nuisance relating to the specific premises, and that section 4 of the Act gave the licensing authority a positive duty to deal with it proportionately. In this case, no less interventionist way of dealing with the nuisance had been suggested. He held that not only was the authority not wrong, but that it was in fact right to reduce the hours as it had. The appeal was therefore dismissed.

Evidence not to consider

8.8 Reference to previous applications and positions of public notices are not relevant to this application and should not be considered.

New evidence

8.9 The applicant must restrict their oral submissions to the relevant issues raised within their representations although they may expand on their written submission by way of examples or further linked information. The applicant has submitted further evidence by way of written email to the licensing officer and photographs of the rear garden and persons at the front of the premises. This is contained within **Appendix A**. The applicant 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.

8.10 Unlike the applicant, the premises licence holder is not restricted to advanced written representations and may raise any relevant issues orally at the hearing.

8.11 Any new documentation not circulated in advance of the hearing to all parties within the hearing paperwork cannot be introduced during the hearing or presented to the sub-committee without all party consent.

8.12 New documentation received in advance of the start of the hearing may be accepted at the discretion of the licensing manager provided:

- (i) it is circulated to all parties present prior to the start of the hearing
- (ii) adequate time is given prior to the start of the hearing for parties to consider the documentation
- (iii) the late admission or refused admission of the documentation does not unduly prejudice any party to the hearing

8.13 At the time of publication of this report the premise licence holder Yindee Thai Ltd has not communicated with the licensing officer.

8.14 Two individuals, Mr Sidney Austin and Mr Kieron Paul, have made contact with the licencing officer, both having purported to be acting on behalf of the business and management of The Jockey PH. Neither individual is named on the premises licence and we have no evidence to suggest that they are associated with the premises licence holder.

8.15 Whilst Mr Kieron Paul has made a written statement of the measures (**Appendix D**) he will take to mitigate the raised concerns, it is for the sub-committee to determine if these measure will be sufficient in resolving the concerns of the applicant and the police given that Mr Paul is not the licence holder and has no apparent control over the business.

8.16 The licencing officer has concerns that the premises is not being run or managed by the licence holder or the current DPS. Despite continued efforts to engage in contact with the licence holders and for no communication to be received from them in relation to this matter is not only usual but also particularly worrying given the issues that have arisen and caused this review.

9. APPENDICES

9.1 Appendix A Current premises licence

9.2 Appendix B Application for the review

9.3 Appendix C Representations from Hertfordshire Constabulary.

9.4 Appendix D Written communication from Mr Kieron Paul

10. CONTACT OFFICER

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