LICENSING SUB-COMMITTEE
Wednesday 27 July 2022

LICENSING ACT 2003

APPLICATION BY MR G POLLOCK
FOR THE REVIEW OF A PREMISES LICENCE IN RESPECT OF
CHICKEN GEORGE,107A-107B BANCROFT, HITCHIN, HERTFORDSHIRE, SG5 1NB.

REPORT OF THE LICENSING OFFICER

1. BACKGROUND

1.1 The existing premises licence was granted by the licensing authority following an application to vary the licence on 6th January 2022.

1.2 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 30 May 2022, the licensing authority received an application for the review of the premises licence from Mr Pollock on the grounds that:

'Since the restaurant opened the residents who live in Ransom Yard, Bancroft, Hitchin SG5 1NB have had continual difficulties in the evenings particularly over weekends accessing and leaving our driveway because Chicken George clientele park in front of the entrance gates despite a number of warning signs and double yellow lines. The Chicken George clientele also occupy the licensed taxi rank there preventing the taxis being able to queue to collect fares.

The restaurant owners have done nothing to help dissuade their clientele from parking illegally and blocking driveways and their clientele often from outside Hitchin have been aggressive when asked to move. This has left residents stranded on the main highway – Bancroft – unable to turn in and access our driveway. This issue has been taken up with local councillors /NHDC/the Police all to no avail and the situation worsens every weekend.

In addition to the above, the litter and noise created during the busy periods has caused other neighbours' sleepless nights and the smell of the frying oil for nearby residents is awful.

I request the licence granted be reviewed and cancelled and alternative premises with local parking be found as this restaurant is creating public nuisance/ traffic dangers/parking violations and potential for public disorder.

Finally, I note that conditions for granting the licence required the applicant to install CCTV inside and outside the restaurant which has not been done and to provide a rubbish bin for their clientele which is not being provided.'

The application relates specifically to the following licensing objectives:

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

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 30 May 2022, 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 1 June 2022 and 29 June 2022 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 No representations were received from any responsible authority.

4.2 As a substantial part of the review application relates to crime and disorder, in particular aggression and illegal parking, the licensing officer checked with the Police Licensing Officer ("the Police Officer") to ensure that she was aware of the review consultation. The Police Officer confirmed that she was aware and would not be submitting a representation. It is for the sub-committee to determine what weight, if any, to attach to that decision.

4.3 Thirteen (13) representations were received from Other Persons supporting the review application and are attached as **Appendix C**.

4.4 Thirty-six (36) representations were received from Other Persons opposing the review application and are attached as **Appendix D**.

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

4.6 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.**

4.7 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.

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

4.9 The applicant for the review, the premises licence holder, the Other Persons making relevant representations 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.

4.10 This report and all appendices have been published on the Council's website and all hearing invitations required to satisfy paragraph 4.9 above 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.

B10
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.

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).*

E3.2.4
The Council is aware that entertainment has been deregulated between the hours of 08:00hrs and 23:00hrs on licensed premises under certain circumstances (see section 16 of the National Guidance). There is a safeguard that, at a review hearing, the deregulation can be removed by a licensing sub-committee if they deem it appropriate in order that entertainment can then be controlled through restrictions of hours or addition of licence conditions.

E3.2.5
A licensing sub-committee will not impose restrictions or licence conditions on a licence/certificate that relate to deregulated entertainment in order that they can automatically apply if deregulation is subsequently removed. At a review hearing where it is decided to remove deregulation, the licensing sub-committee should tailor any restrictions and/or conditions based on the evidence submitted to them at that time.

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.

E3.9.3
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.

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.

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.*

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) *<u>Crime and Disorder Act 1998</u>*
Local authorities are required to have due regard to the crime and disorder implications of any decision it makes.

(ii) *<u>Human Rights Act 1998</u>*
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) *<u>Equality Act 2010</u>*
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.

1.17
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).

2.15
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.

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 area. ***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.

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.

16.55
On a review of a premises licence or club premises certificate, section 177A(3) of the 2003 Act permits a licensing authority to lift the suspension74 and give renewed effect to an existing condition relating to music. Similarly, under section 177A(4), a licensing authority may add a condition relating to music as if music were regulated entertainment, and as if that premises licence or club premises certificate licensed the music. In both instances the condition should include a statement that Section 177A does not apply to the condition.

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 premises and it is causing a public nuisance, it is wrong to say that the Licensing Act 2003 cannot address this. Whilst conditions may well be inappropriate, if the evidence deems it necessary, times and/or activities under the licence could be restricted or, indeed, the application could be refused, suspended or revoked.

8.5 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

Parking

8.8 There is existing legislation to deal with parking issues without the need for intervention under the Licensing Act 2003. Civil enforcement officers (parking wardens) for most parking issues under traffic regulation orders and the Police for obstruction of the highway

8.9 For parking to be relevant to this hearing it would have to be causally linked to the premises and there are many other takeaways, restaurants, and licensed premises on Bancroft, most of which open for longer hours and on more days than Chicken George.

8.10 Parking conditions on the licence would not be enforceable as it is outside the control of the licence holder. The licensing team have witnessed several occasions where the licensee has attempted to move people along, but they have refused.

8.11 If the sub-committee were to take action on parking, it would have to be satisfied that the problem is caused only by Chicken George and not the other premises so that the problem wouldn't exist if Chicken George wasn't there

Anti-social behaviour

8.12 Numerous references were made in respect of crime and disorder by way of aggression and threats however the Police could not provide evidence of any allegations made relating to the premises and chose not to support the application for review.

Live and recorded music

8.13 Following deregulation of some licensable activities, businesses are permitted to provide live and recorded music on a premises licensed for the sale of alcohol without the need for a licence between the hours of 08:00hrs and 23:00hrs if the audience is fewer than 500 people.

Restriction of licensed hours

8.14 The decision must be evidence based so any hours not currently being used by the premises cannot be restricted as there is no evidence suggesting that they are causing any adverse impact on the licensing objectives

Kitchen extraction system

8.15 There is existing legislation for Environmental Health to deal with this under their own powers and they have made no representation supporting the residents claims or suggesting that they need any assistance with the matter

Revocation of the premises licence

8.16 Under the current trading hours the premises only require a licence for the sale of alcohol; the removal of the licence would prevent them from continuing with these sales. The decision to remove the sale of alcohol must be evidence based

8.17 Without a premises licence, the premises would still be able to operate as a restaurant between 05:00hrs and 23:00hrs every day of the week as well as providing deregulated live music as a workplace and incidental recorded music

8.18 In the absence of a licence, no controls would exist between 05:00hrs and 23:0hrs every day.

Evidence to consider

8.19 Several references were made in respect of crime and disorder during the consultation period of the initial application for a premises licence. The local residents made a number of statements regarding existing litter and anti-social behaviour problems in the area, specifically on and around the taxi rank. It is clear that there is evidence of the issues currently being considered being present before the current business occupied the premises.

New evidence

8.20 Other Persons 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. They cannot raise new issues not mentioned within the written representation, for example if they have only raised issues of crime and disorder, they cannot introduce issues of public safety orally at the hearing.

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

8.21 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.

8.22 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

(iv) the late admission or refused admission of the documentation does not unduly prejudice any party to the hearing

Enforcement activity

8.23 Prior to the premises opening I received 5 complaints all eventually deemed to be vexatious as I investigated each one immediately, with the complaints being completely unfounded. During the first 2 months of the premises opening, I investigated a further 4 complaints, again completely unfounded.

8.24 In the time that the premises has been open to the public the licensing team have carried out regular unannounced visits and observations of the premises where we have not seen any of the issues referred to

8.25 Complaints have been received for every business that has operated from the premises with a licence and the issues are not unique. It has planning permission to be used in this way and it is in a busy town centre surrounded by other similar premises

9. APPENDICES

9.1 Appendix A Current premises licence

9.2 Appendix B Application for the review

9.3 Appendix C Representations from Other Persons in support of the review

9.4 Appendix D Representations from Other Persons in opposing the review

10. CONTACT OFFICER

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