

LICENSING AND APPEALS SUB-COMMITTEE
8 December 2023

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

LICENSING ACT 2003

**APPLICATION BY ANTONIO MICELI
FOR THE VARIATION OF A PREMISES LICENCE IN RESPECT OF
UVA HITCHIN WINE BAR AND SHOP (ALSO KNOWN AS LET'S PARTY)
26 BUCKLESBURY, HITCHIN, HERTS, SG5 1BG.**

REPORT OF THE LICENSING OFFICER

1. BACKGROUND

- 1.1 There is a licence granted under the Licensing Act 2003 (“the Act”) currently in place for the premises, it was granted to the property on 28 November 2018.
- 1.2 A copy of the current premises licence is attached as **Appendix A**.

2. APPLICATION

- 2.1 The application is for the variation of a premises licence under Section 34 of the Act.
- 2.2 The licensable activities and hours originally applied for, including operating schedule conditions, are as attached as **Appendix B**.

3. APPLICATION PROCESS

- 3.1 On 17 October 2023, Antonio Miceli made an application to North Hertfordshire District Council for the Variation of a premises licence. The application was amended on 23 October 2023, the amendment is to live music times to be in line with the request for recorded music, that being 01:30 on Friday & Saturday nights. The consultation period did not change, so the last date for representation was still 14 November 2023.
- 3.2 The prescribed consultation period was from 18 October 2023 until 14 November 2023 inclusive.
- 3.3 The application was received via email, so copies were served by the Council to all the responsible authorities.
- 3.4 A public notice was displayed on the premises for a period of not less than twenty-eight (28) consecutive days in accordance with the requirements of the Act.
- 3.4 On two (2) occasions through the consultation period, the notice was checked to be on site for all persons to see.
- 3.5 A newspaper advertisement was placed in The Comet in accordance with the requirements of the Act.

4. REPRESENTATIONS

- 4.1 A representation was received from Hertfordshire Constabulary. Shown in **Appendix C**.
- 4.2 A representation was received from NHDC Environmental Protection. Shown in **Appendix D**.
- 4.3 Six (6) representations were received from other persons against the application. One (1) was withdrawn. The accepted objections are attached as **Appendix E**.
- 4.4 An objection was received from the Planning Team after the consultation had closed, which cannot be considered.
- 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 (see sections 8.6 – 8.8).**
- 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 applicant has been served with a copy of all representations by way of this report.
- 4.9 The applicant and 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.

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) Grant the application as made
 - ii) Grant the application with conditions and/or amendments to the licensable activities and/or timings (conditions should only be added where they are appropriate to promote the licensing objectives).
 - iii) Refuse the application.
- 5.4 Whilst the representations refer to issues relating to the existing hours, the sub-committee can only consider the application to vary. No amendments can be made to the existing timings, activities, or conditions.

6. LICENSING POLICY CONSIDERATIONS

- 6.1 The following paragraphs from the Council's Statement of Licensing Policy 2021 – 2026 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.”

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.

D1.4

When determining applications, the Council will have regard to this Statement of Licensing policy, relevant legislation and any Guidance issued by the Home Office pursuant to section 182 of the Act. If relevant representations are made, the Licensing and Appeals Committee or its sub-committee, will balance its decision against all other factors for and against the application.

D1.5

The Council expects applicants to address the licensing objectives in their operating schedule and have due regard to this policy. To achieve this, the Council supports the principles set out in sections 8.41 – 8.44 of the Statutory Guidance which state:

8.41

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

these matters. However, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application.

8.42

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

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

8.43

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

8.44

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

D1.6

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

D1.8

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

D2.1

Each licence application will be decided by reference to this policy, the National Guidance issued by the Secretary of State, relevant legislation and to the individual circumstances of the particular application. The Council may depart from the policy where the individual circumstances of any application merit such a decision in the interests of the promotion of the Licensing Objectives. Full reasons will be given for decisions taken by the Council when undertaking its licensing functions.

D2.4

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.*

D3.4

The Council also recognises that licensing hours should not inhibit the development of a thriving and safe evening and night-time economy, which is important for local investment, employment and tourism. The Council will not seek to restrict the trading hours of any particular premises unless this is necessary to promote one or more of the licensing objectives.

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 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.

D6.6

The Council interprets Section L of the application form, "Hours premises are open to the public", as an integral part of the operating schedule. In assessing an application, responsible authorities and other persons are likely to read those hours as though they were part of the operating schedule and tailor their representations based on that interpretation. These hours, therefore, form conditions of the licence operating schedule and restrict the hours during which members of the public can be on the licensed premises at the conclusion of trading irrespective of whether licensable activities are taking place. Applicants are advised to consider any necessary 'drinking-up time' or wind-down period at the end of normal licensable activities when completing this section of the application.

D6.7

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

D6.8

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

D6.9

Operating schedules and licence conditions should be drafted in such a way that it is clear to licence holders exactly what is required of them and these requirements should be concise and well-worded to assist the licence holder in managing their premises. The Council is strongly of the view that the imposition of a substantial list of conditions in order to grant an application calls into question the suitability of the applicant to hold a licence.

Where a licensing sub-committee determines that it is appropriate to impose a substantial list of conditions to the extent that they are effectively determining the day-to-day management of the premises, they will give serious consideration to refusing the application.

D8.1

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

D8.2

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

D8.3

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

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.

E1.4.1

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.

E2.5.2

Venues that provide facilities for music and dancing, in particular nightclubs, should consider additional measures that may be appropriate such as, but not limited to:

- *air conditioning and ventilation*
- *cloakroom facilities (any charges kept to a reasonable amount)*

- quiet areas away from the music and dancing
- prevention of overcrowding, particularly on the dance floor
- regular collection of used drinking vessels

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.

E3.1.3

The Council encourages applicants to seek early engagement with the Environmental Protection & Housing Team when preparing an operating schedule, ideally before submitting an application. The following examples of control measures is not an exhaustive or exclusive list but is given to assist applicants when preparing their operating schedules, having regard to their particular type of premises and/or licensable activities:

- (i) appropriate instruction, training and supervision of those employed or engaged in the business (such as external DJs, performers, etc.) to prevent incidences of public nuisance; and*
- (ii) adoption of best practice guidance such as, but not limited to:*
 - *the Good Practice Guide on the Control of Noise from Pubs and Clubs produced by the Institute of Acoustics;*
 - *Safer Clubbing: The National Alcohol Harm Reduction Strategy Toolkit;*
 - *the British Beer and Pub Association's Guide on Effective Management of Noise from Licensed Premises; and*
 - *the Code of Practice on Environmental Noise Control at Concerts produced by the Noise Council.*

E3.2.1

This may include noise from live or recorded music, human voices (both amplified and unamplified) and other forms of entertainment (i.e. indoor sporting events). Measures to prevent a public nuisance may include, but are not limited to:

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

E3.2.2

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

E3.2.3

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

2.17

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. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.

E3.3.1

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

use of time restrictions on specified areas of the premises (different times can apply to different areas);

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

E3.9.1

The Council is fully aware of the nuisance that can be caused by poorly managed or inappropriately located premises, however, will seek to strike an appropriate balance with its vision of promoting a diverse and vibrant 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

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.

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 (July 2023 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.

2.20

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.

2.21

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.

2.22

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.

2.23

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.

2.24

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.

2.25

Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.

2.26

Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in antisocial behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night

8.41

In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge

of their local area when describing the steps they propose to take to promote the licensing objectives. Licensing authorities and responsible authorities are expected to publish information about what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. However, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application.

8.42

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

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

8.43

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

8.44

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

8.47

Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.

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.

10.10

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. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that evidence of a right to work check, either physical or digital (e.g. copy of any document checked or a clear copy of the online right to work check) is retained at the licensed 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.

10.13

The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can

conduct licensable activities as part of the implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

10.14

Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested

8. LICENSING OFFICER COMMENTS

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

Definition of ‘appropriate’

- 8.2 When determining applications, licensing authorities must ensure that their decision is based on what is ‘appropriate’ for the promotion of the licensing objectives.
- 8.3 The Guidance explains ‘appropriate’ as:

9.43

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

9.44

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

- 8.4 The sub-committee should also be aware that their decision must be proportionate to the evidence received in respect of the application and representation. Proportionality is a key factor in assisting with the definition of ‘appropriate’.

Evidence not to consider.

- 8.5 Several points made in the representations have been deemed not relevant by the licensing officer. The points have been redacted and cannot be seen. The following paragraphs 8.6 to 8.8 are a summary of the redacted points which, for clarity, should not be discussed during the hearing.
- 8.6 One representation refers to a breach of the peace. A breach of the peace is covered by other existing legislation and predominately relates to crime and disorder matters. It is not relevant to the consideration of public nuisance from noise emanating from, or arising outside, the premises which is permitted as part of this determination.
- 8.7 Reference is made to criminal damage at the top of Bucklersbury but does not link it causally to the premises. Speculation that extended opening hours will cause further damage is not relevant given the lack of evidence associated with the existing opening hours.
- 8.8 Reference is made to not having to complain about other nearby premises. This is not relevant as each individual premises should be considered on their own merits and evidence.

Consumption of alcohol

- 8.9 The sub-committee are reminded that the consumption of alcohol is not a licensable activity, it is the sale that is licensable.
- 8.10 The current premises licence has the supply of alcohol on and off the premises.
- 8.11 The representation from Hertfordshire Constabulary refers to drinks being taken from the premises to a barber shop. There is a condition on the current licence that states:

"The premises licence holder and/or designated premises supervisor (DPS) will ensure that patrons are not allowed to leave the premises with any open vessels."

If the sub-committee are satisfied, on the balance of probabilities, that this condition has been breached it can be considered as evidence relating to the applicant's ability to responsibly manage his premises.

Usage of first floor function room conditions

- 8.12 The sub-committee are reminded that the current premises licence has the following conditions in relation to the first-floor function room:
- *The premises licence holder and/or designated premises supervisor (DPS) will ensure that adequate sound proofing must be installed to the party wall separating the upstairs function room on the 1st floor, as indicated on the plan, and the neighbouring property at 27a Bucklersbury.*
 - *The premises licence holder and/or designated premises supervisor (DPS) will ensure that the upstairs function room on the 1st floor, as indicated on the plan, shall only be licensed until 22:00hrs and open to the public until 22:30hrs.*
 - *The premises licence holder and/or designated premises supervisor (DPS) will ensure that the function room on the first floor, as indicated on the plan shall not be used for licensable activities unless two (2) customer toilets are available on the premises for use by customers.*

- *The premises licence holder and/or designated premises supervisor (DPS) will ensure that the first floor should not be used until an emergency lighting system has been installed to meet the requirements of BS5266.*

8.13 If the sub-committee are satisfied that, on the balance of probabilities, that these conditions are not being complied with they can consider this as evidence of the applicant's ability to responsibly manage the premises.

8.14 Whilst the representation from Hertfordshire Fire & Rescue Service was out of time, it is relevant to the sub-committee's deliberations that they have required the applicant to remove some unsuitable cladding fixed to internal walls that was intended as sound insulation.

Compliance with conditions

8.15 There are allegations that the applicant is not complying with existing licence conditions and that entertainment is currently being provided unlawfully outside the deregulated hours.

8.16 These matters are currently being investigated and could be subject to formal enforcement action including, but not limited to, a licence review or prosecution.

8.17 Whilst the sub-committee cannot amend the existing licence, they are entitled to consider any such evidence when determining whether they believe the applicant will comply with any further conditions should the application for variation be granted.

Review of a premises licence

8.18 Should the sub-committee be minded to grant the variation the revised licence will exist in perpetuity however there is a safeguard within the Act.

8.19 Any responsible authority or other person may apply to the licensing authority for the review of a premises licence if they can demonstrate that the premises are not adequately promoting the licensing objectives. In the case of other persons, they would need to demonstrate the direct impact on their household of licensable activities at the premises in terms of one or more of the licensing objectives.

8.20 If accepted by the licensing authority, an application for review would result in a twenty-eight (28) day consultation period advertised at the premises and on the licensing authority website where any responsible authority or other person could submit a representation.

8.21 A licensing sub-committee would hold a hearing to assess the representations and the oral submissions of the licence holder before considering what, if any, action was appropriate. The options available to the sub-committee would be:

- i) to take no action;
- ii) to modify the conditions of the premises licence (modify includes adding new conditions, altering or omitting existing conditions, or altering permitted timings of licensable activities);
- iii) to exclude a licensable activity from the premises licence;
- iv) to remove the designated premises supervisor from the premises licence;
- v) to suspend the premises licence for a period not exceeding three months; or
- vi) to revoke the premises licence.

9. APPENDICES

- 9.1 Appendix A Current premises licence
- 9.2 Appendix B Application to vary an existing licence
- 9.3 Appendix C Representation from Hertfordshire Constabulary
- 9.4 Appendix D Representation from NHC Environmental Protection
- 9.5 Appendix E Representations from Other Persons

10. CONTACT OFFICER

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