

**LICENSING AND APPEALS SUB-COMMITTEE**  
**4 October 2024**

**\*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 (LET'S PARTY)**  
**26 BUCKLESBURY, HITCHIN SG5 1BG**

**REPORT OF THE LICENSING OFFICER**

**1. BACKGROUND**

- 1.1 The existing premises licence was granted by North Hertfordshire District Council, under the Licensing Act 2003 ("the Act") which is currently in place for the premises, it was granted and issued to Antonio Miceli 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 application form showing the licensable activities and hours originally applied for, including operating schedule conditions, are as attached as **Appendix B**.
- 2.3 A Noise Management Plan was also submitted by the applicant. **Appendix C**.

**3. APPLICATION PROCESS**

- 3.1 On Friday 9 August 2024, Tony Miceli made an application to North Hertfordshire District Council for the variation of a Premises Licence.
- 3.2 The application was received electronically so copies of this application were served by the Council to Hertfordshire Constabulary and the other Responsible Authorities.
- 3.3 The prescribed consultation period was from 9 August 2024 6 September 2024 inclusive.
- 3.4 A public notice was displayed on the premises in accordance with the requirements of the Act and was exhibited for a period of not less than twenty-eight (28) consecutive days. A newspaper advertisement was placed in The Comet on 15 August 2024 in accordance with the requirements of the Act.
- 3.5 The Council's website published the notice for 28 consecutive days.

#### 4. REPRESENTATIONS

- 4.1 Hertfordshire Constabulary agreed conditions with the applicant attached as **Appendix D**
- 4.2 A representation was received from NHDC Environmental Protection and is attached as **Appendix E**
- 4.3 No representations were received from any other Responsible Authority.
- 4.3 Three representations were received from Other Persons against the application and are attached as **Appendix F**
- 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 8.8 – 8.13).**
- 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's representative requested and was served with a copy of all representations prior to 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 in whole or in part
  - 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.

## 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.*

C1.3

*Where premises have caused problems to local residents, the police, trading standards and NHDC environmental health have successfully address issues relating to anti-social behaviour, noise and underage alcohol sales through the review process.*

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 Licensing and Appeals Sub-Committee may take this into consideration when determining the application.

#### 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.*

#### *D2.11*

*The Council is aware that applicants sometimes request longer hours or more licensable activities than they would ordinarily want in order to provide some room for negotiation to obtain their actual requirements. Whilst the Council cannot, nor would seek to, limit the content of an application, this approach is counter-productive in that it may attract more representations. Additionally, it is unnecessary as each application is assessed on its own merits with the option of appearing before a sub-committee if negotiations with a responsible authority are unsuccessful.*

#### *D3.1*

*The Council recognises that fixed and artificially early closing times previously established under the Licensing Act 1964 were one of the main causes of rapid binge drinking prior to closing times and one of the causes of disorder and disturbance when large numbers of customers were required to leave premises simultaneously. These concentrations of people leaving can result in friction at places such as late night food outlets, taxi ranks and other sources of transport. The aim through the promotion of the licensing objectives will be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through flexible opening times where appropriate.*

#### *D3.2*

*The Council recognises that arbitrary restrictions would undermine the principle of flexibility and should be avoided; the licensing objectives will be the paramount consideration at all times. That said, if there is a proliferation of disorder and/or disturbance related to licensed premises in a specific location, for example a town centre, the Council may determine that a fixed terminal hour to mitigate the problems may be appropriate if no other control method has resolved the problem.*

### *D3.3*

*Generally, when the Council's discretion is engaged, the presumption will be to grant the hours requested unless there are representations raised by responsible authorities and/or other persons that demonstrate an adverse effect or likely effect on the licensing objectives*

### *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 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.*

### *D6.4*

*Where appropriate the Council will draw upon the pool of model conditions attached at Appendix A. The pool of model conditions relates specifically to the four licensing objectives (see section F7) and are indicative of condition wording that may address identifiable issues. Licensing sub-committees are reminded that they should ensure that the wording of any condition is appropriate and proportionate to address any concerns raised in respect of the specific issues at the premises.*

### *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.*

#### E1.3.1

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

#### E1.3.2

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

#### E1.3.3

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

#### E2.5.1

*Where venues providing entertainment use equipment or special effects that may affect public safety, such as strobe lighting, smoke machines, etc., the Council will expect the premises licence holder to have carried out risk assessments and taken the necessary Statement of Licensing Policy 2021 - 2026 Page 29 of 92 v1 07/01/2021 actions to safeguard patrons at the premises.*

#### E2.7.1

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

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

#### 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.*

### *E3.1.4*

*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.*

### *E3.1.5*

*Where there is the potential for public nuisance and the applicant's operating schedule does not fully address the concerns, NHDC's Environmental Protection & Housing Team may request the applicant to volunteer additional conditions to avoid the need for a representation. Example conditions are included in the attached appendix of Model Conditions to assist applicants with the wording of suitable conditions. The applicant is under no obligation to agree to the suggested conditions if they believe they are not appropriate or proportionate. If the applicant does not wish to volunteer the suggested conditions then a representation may be made which will result in the matter being referred to a licensing sub-committee for determination.*

### *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.

#### E3.2.4

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.

#### E3.3.1

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.

#### E3.7.1

This can include external lighting, security lighting and lighting displays. Measures to prevent a public nuisance may include: Statement of Licensing Policy 2021 - 2026 Page 34 of 92 v1 07/01/2021

- suitably selected lighting installations (i.e. luminaires without excessive power output and with appropriate shielding);
- suitably located and directed lighting installations.

#### 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.

#### *F3.4*

*The Council acknowledges that a minority of customers will behave badly and unlawfully once away from well-managed licensed premises. Whilst the Council cannot use its licensing function to directly control the behaviour of customers once they are away from licensed premises, it can place control measures on customers in the immediate surrounding areas of the premises where they remain within the licence holder's control. Where customers move beyond the control of the licence holder, other control measures outside the licensing function include:*

- planning policy and controls;*
- the power to ban alcohol consumption in designated areas and police powers to confiscate alcohol within these areas;*
- police enforcement of the law relating to anti-social behaviour and disorder, including the use of dispersal powers, fixed penalty notices and the new powers introduced under the Anti-social Behaviour, Crime and Policing Act 2014 (such as Statement of Licensing Policy 2021 - 2026 Page 39 of 92 v1 07/01/2021 Community Protection Notices, Public Space Protection Orders and Criminal Behaviour Orders); and*
- positive measures to create and maintain a safe night-time economy in partnership with local businesses, transport providers and trade bodies (such as Business Improvement District Companies).*

#### *F3.5*

*The Council will work with partner agencies to integrate its licensing function with other local strategies by establishing best working practices and utilising some of the controls available to the Council under the licensing function such as:*

- powers to close down licensed premises immediately for up to twenty-four hours on the grounds of disorder, the likelihood of disorder or excessive noise associated with the premises;*
- powers for responsible authorities or residents to request a review of an existing authorisation under the Act;*
- targeted joint agency enforcement against premises failing to promote the licensing objectives or contravening legislation;*
- promoting Challenge 25 (or equivalent) proof of age schemes; and*
- supporting an information sharing agreement between responsible authorities to ensure timely targeted action against problem premises.*

#### *F6.1.1*

*The Council is aware that businesses often wish to encourage a 'café culture' within towns and villages and provide tables and chairs outside of their premises for the consumption of food and drink. If these areas are within the control of the applicant they should be clearly marked on the plan accompanying an application and the management of these areas should be fully considered within the operating schedule.*

#### *F6.1.2*

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

#### *F7.4*

*To assist applicants and licensing sub-committees with this process the Council has included an appendix to this policy detailing model licence conditions. The conditions Statement of Licensing Policy 2021 - 2026 Page 42 of 92 v1 07/01/2021 included in Appendix A have been developed since the introduction of the Act and represent best practice and effective existing conditions. F7.4 Appendix A is not intended as a 'wish list' for licensing sub-committees to select conditions or as a list of requirements for applicants to replicate in order to obtain a licence. The pool of model conditions is provided in order to assist with the drafting of conditions that are proportionate, reasonable and enforceable where it has been deemed appropriate to impose a condition. Any conditions drawn from the pool of model conditions will*

*be tailored to the individual premises and activities specific to each application and will still be subject to the need to promote the licensing objectives and be appropriate and proportionate to address concerns raised through representations.*

**F7.5**

*The Council acknowledges that this pool of model conditions must not fetter the discretion of the decision maker but must instead be used solely to ensure consistency of approach where the particular circumstances of an application merit the imposition of a condition.*

**F8.1**

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

**F8.2**

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

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

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

**O1.1**

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

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

**O4.2.1**

*In order for a representation to be relevant it must be:*

- (i) made during the prescribed consultation period;*
- (ii) relate to the effect or likely effect on the licensing objectives;*
- (iii) not be frivolous or vexatious [other persons only]; and*
- (iv) in the case of reviews, not be repetitious [other persons only]*

## **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 (December 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.*

1.7

*This Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.*

1.8

*The police remain key enforcers of licensing law. This Guidance does not bind police officers who, within the parameters of their force orders and the law, remain operationally independent. However, this Guidance is provided to support and assist police officers in interpreting and implementing the 2003 Act in the promotion of the four licensing objectives.*

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;*
- *cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and*
- *should be written in a prescriptive format*

1.17

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

#### 2.21

*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.*

#### 2.22

*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.*

#### 2.23

*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*

#### 2.24

*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.*

#### 2.25

*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 Revised Guidance issued under section 182 of the Licensing Act 2003 I 11 emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.*

#### 2.27

*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 62 | Revised Guidance issued under section 182 of the Licensing Act 2003 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*

#### **8.44**

*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 Revised Guidance issued under section 182 of the Licensing Act 2003 | 63 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.*

#### **9.15**

*It is also reasonable for licensing authorities to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority. For example, the police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each responsible authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other responsible authority.*

#### **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 any 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 82 | Revised Guidance issued under section 182 of the Licensing Act 2003 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. 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 may also wish to consider placing additional conditions on licences to safeguard patrons against spiking, if deemed appropriate and proportionate for a specific venue where there is evidence to justify such action (a definition of spiking can be found in para 2.7). 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.*

*10.61*

*Under section 21 of the 2003 Act, when a condition is included in a premises licence that at specified times an individual must be present at the premises to carry out a security activity (as defined in section 21(3)(a) by reference to the Private Security Industry Act 2001 ("the 2001 Act")), the licence must include a condition requiring that individual to be licensed by the Security Industry Authority ("the SIA") under the 2001 Act, or be entitled to carry out that activity by virtue of section 4 of the 2001 Act.*

*10.62*

*A premises licence need not require a person to hold a licence granted by the SIA if that person benefits from an exemption under section 4 of the 2001 Act. For example, certain employees benefit from an exemption when carrying out conduct in connection with a certified sports ground (section 4(6) to (12)). Furthermore, in certain circumstances persons benefit from an exemption where they operate under the SIA's Approved Contractor Scheme (section 15).*

*10.63*

*Conditions under section 21 of the 2003 Act should only relate to individuals carrying out security activities defined by section 21(3)(a) of the 2003 Act. Therefore, they should only relate to an activity to which paragraph 2(1)(a) of Schedule 2 to the 2001 Act applies (certain manned guarding activities) and which is licensable conduct within the meaning of section 3(2) of that Act. The requirement does not relate to individuals performing non-security related activities, and section 21 should not be used in relation to any such activities.*

*10.64*

*Section 21 of the 2003 Act continues to ensure that a premises licence need not impose such a requirement in relation to those licensed premises which the 2001 Act treats as unlicensed premises. Those are:*

- premises in respect of which there is in force a premises licence authorising a performance of a play or an exhibition of a film;*
- casinos or bingo halls licensed under the Gambling Act 2005;*
- premises where a club certificate is in force when activities are being carried on under the authority of that certificate. See paragraph 8(3) of Schedule 2 to the 2001 Act for full details.*

*10.65*

*It should be noted, however, that the 2001 Act will require contractors and a small number of employees (those managing/supervising and those supplied under contract) to be licensed as manned guards (rather than door supervisors) when undertaking licensable conduct on premises to which paragraph 8(3) of Schedule 2 to the 2001 Act applies.*

*10.66*

*It is therefore important that if a licensing authority intends that individuals must be present to carry out security activities (as defined by section 21(3)(a) of the 2003 Act) this should be*



*explicit, as should the mandatory condition for those individuals to hold an SIA licence or be entitled to carry out that activity by virtue of section 4 of the 2001 Act. On the other hand, where a licensing authority intends that individuals must be present to carry out other activities (for example, activities related to safety or steward activities to organise, advise and direct members of the public), no mandatory condition Revised Guidance issued under section 182 of the Licensing Act 2003 I 95 should be imposed under section 21 of the 2003 Act. In all cases it is important when determining whether or not a condition is to be imposed under section 21 of the 2003 Act to consider whether the activities of any individual working in licensed premises fall within the definition of security activities in section 21(3)(a) of the 2003 Act. (Regardless of whether a condition is imposed under section 21 of the 2003 Act, under the 2001 Act the appropriate SIA licence must be held by any individual performing an activity for which they are licensable under that Act.*

## **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 any 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 82 | Revised Guidance issued under section 182 of the Licensing Act 2003 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 It is anticipated that, in due course, case law will provide clarity on the meaning of ‘appropriate’ as referred to in paragraphs 9.43 and 9.44 of the Guidance. The sub-committee is therefore advised to give ‘appropriate’ its ordinary meaning, as expanded upon by paragraph 9.43 of the Guidance, subject to the over-riding requirement on all local authority decisions of reasonableness.

8.5 This approach, of allowing the courts to provide clarity, is reflected in the following paragraphs of the Guidance:

1.9 *Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. This Guidance is therefore binding on all licensing authorities to that extent. However, this Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.*

1.10 *Nothing in this Guidance should be taken as indicating that any requirement of licensing law or any other law may be overridden (including the obligations placed on any public authorities under human rights legislation). This Guidance does not in any way replace the statutory provisions of the 2003 Act or add to its scope and licensing authorities should note that interpretation of the 2003 Act is a matter for the courts. Licensing authorities and others using this Guidance must take their own professional and legal advice about its implementation.*

8.6 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'.

### **Review of a premises licence**

8.7 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.

8.8 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.

8.9 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.

8.10 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.

### **Deregulation of regulated entertainment**

- 8.11 Since 6 April 2015, regulated entertainment has been deregulated between the hours of 08:00hrs and 23:00hrs for audiences of 500 or less on premises licensed for the sale of alcohol.

### **Focus of determination**

- 8.12 The sub-committee can only consider the effect or likely effect of the variation applied for. It cannot consider amending the existing licence as that would be a matter for a review.
- 8.13 If the application is rejected, the existing licence will continue in its current format.

### **Video evidence**

- 8.14 Video evidence has been provided as part of the objections and the applicant has been shown the videos.
- 8.15 As these videos contain personal data, identifiable images of persons in the street outside the premises, the sub-committee cannot view them in Part 1.
- 8.16 As it is likely that the objectors will wish to discuss the videos during the hearing, and the applicant may wish to comment on them too, it will be helpful for them to be played during the hearing.
- 8.17 In order to view the videos, the sub-committee should resolve to move into Part 2 where the public streaming is suspended, and the videos can be played.
- 8.18 The content of the videos can be discussed generally in Part 1 provided no person is personally identified.

### **Allegations of problems with the existing licence**

- 8.19 There have been allegations made against the existing use of the premises in terms of condition breaches, activities beyond licenced hours, etc however they are not a matter for the sub-committee today.
- 8.20 There is an ongoing investigation into these allegations that will be dealt with as a separate matter and, if necessary, through a licence review hearing.
- 8.21 The sub-committee can consider evidence of non-compliance in their consideration of the likelihood of future compliance with any extended hours granted as part of this application, in particular the proposed conditions and noise management plan.

### **Police agreed conditions**

- 8.22 The sub-committee should be aware that, if they are minded to grant the application, the conditions agreed with the police form part of the amended application.
- 8.23 Without these conditions the police would have lodged an objection therefore the sub-committee should have regard to this if it is minded to amend said conditions.

## **9. APPENDICES**

- 9.1 Appendix A Current premises licence
- 9.2 Appendix B Application
- 9.3 Appendix C Noise Management Plan
- 9.4 Appendix D Hertfordshire Constabulary consultation and agreed conditions
- 9.5 Appendix E Representation from Environmental Protection Authority – Objection
- 9.6 Appendix F Representations from Other Persons

## **10. CONTACT OFFICER**

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