

<b>LICENSING AND APPEALS SUB-COMMITTEE</b> <b>Monday 28 January 2019</b>
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<b>*PART 1 – PUBLIC DOCUMENT</b>	<b>AGENDA ITEM No.</b>
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**LICENSING ACT 2003**

**APPLICATION BY SAUSAGE AND GOBBLER PRODUCTIONS LTD  
FOR THE GRANT OF A PREMISES LICENCE IN RESPECT OF  
TODD IN THE HOLE, BURY WOOD, TODDS GREEN, STEVENAGE, SG1 2JE.**

<b>REPORT OF THE LICENSING OFFICER</b>
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**1. BACKGROUND**

- 1.1 No premises licence under the Licensing Act 2003 (“the Act”) is currently in place for the premises.
- 1.2 In 2018 a time specific premises licence was granted for a two (2) day event that took place on 21 and 22 July 2018.
- 1.3 Representations were received in relation to the 2018 event and, following a hearing, a licence was granted with conditions.

**2. APPLICATION**

- 2.1 The application is for the grant of a premises licence under Section 17 of the Act.
- 2.2 The licensable activities and hours applied for, including operating schedule conditions, are as attached as **Appendix A**.

**3. APPLICATION PROCESS**

- 3.1 On 1 November 2018 Sausage and Gobbler Productions Ltd made an application for the grant of a premises licence however due to an error made by the applicant within the newspaper advertisement the licence application was rejected by the licensing authority.
- 3.2 On 6 December 2018 a new application was made for the grant of a premises licence. The prescribed consultation period was from 7 December 2018 until 3 January 2019.
- 3.2 The application was received electronically so copies were served by the Council to Hertfordshire Constabulary and the other responsible authorities.

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

#### **4. REPRESENTATIONS**

- 4.1 No representation was received from Hertfordshire Constabulary as conditions were agreed with the applicant. These conditions are included in the operating schedule which forms part of the application.
- 4.2 No representations were received from any other responsible authority as conditions were agreed with the applicant. These conditions are included in the operating schedule which forms part of the application.
- 4.3 Ten (10) representations were received from 'other persons' against the application and are attached as **Appendix B**
- 4.4 The Council's Scheme of Delegation requires the licensing officer to determine whether a representation is relevant as specified within the Act.
- 4.5 Where representations include comments that are not relevant to the Act, these comments have been clearly redacted by the licensing officer and should not be considered as part of the determination process. **Other persons must not refer to these paragraphs in any oral presentation at the hearing (see sections 8.14 – 8.25).**
- 4.6 Where the licensing officer has determined that the representations are relevant, it is for the sub-committee to determine what weight to apportion to each representation.
- 4.7 The applicant has been served with a copy of all representations by way of this report.
- 4.8 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.

## 6. LICENSING POLICY CONSIDERATIONS

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

*B6*

*Our vision is:*

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

*B7*

*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.*

*B8*

*The Council encourages greater live music, dance, theatre and other forms of entertainment for the benefit of the community. Where activities require a licence, the Council will seek to balance the potential for disturbance of local residents and businesses against the wider community and cultural benefits.*

*D1.5*

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

*8.33*

*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.*

#### 8.34

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

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

#### 8.35

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

#### 8.36

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

#### D1.6

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

#### 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.*

#### **D6.2**

*The Council recognises that each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and activities concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises. A standardised approach to imposing conditions must be avoided and conditions will only be lawful where they are deemed appropriate to promote the licensing objectives in response to relevant representations.*

*D6.3*

*Conditions will only be imposed when they are appropriate for the promotion of the licensing objectives and will focus upon matters within the control of the individual licensee such as the premises, places or events being used for licensable activities or the surrounding areas of the premises, places or events. Conditions are likely to be focused towards the direct impact of those activities on persons living in, working in or visiting areas affected by, or likely to be affected by, those activities.*

*D6.7*

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

*D6.8*

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

*D6.9*

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

*D8.1*

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

*D8.2*

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

*D8.3*

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

*E2.1*

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

## *E2.2*

*The Council is aware that applicants are legally responsible for complying with a range of public safety legislation, for example the Health and Safety at Work Act 1974 and the Regulatory Reform (Fire Safety) Order 2005, and for conducting suitable risk assessments in relation to their premises. Failure to comply with these requirements may lead to representations from responsible authorities when public safety is put at risk.*

### *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.*

### *E3.3.1*

*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.*

#### *E3.8.1*

*Measures to prevent a public nuisance may include:*

- entering into a waste contract agreement;*
- provision of external litter bins for customers;*
- regular litter picks in the immediate surrounding area of the premises.*

#### *E3.8.2*

*The Council is aware that it would be unreasonable and disproportionate to require licence holders to be responsible for littering associated with their products when patrons have gone beyond their control. The Council will, however, expect licence holders to take responsibility for ensuring that the immediate surrounding area is regularly cleared of litter associated with their business operation.*

#### *E3.9.2*

*The provision of well-managed and controlled entertainment will be encouraged to promote the vision, however the potential disturbance to residents and businesses will need to have been adequately considered by applicants as part of their operating schedule.*

#### *E3.9.3*

*Should disturbance from licensed premises become unreasonable, any review proceedings will seek to impose suitable control measures in the first instance. Should control measures prove ineffective or are deemed inappropriate then the restriction of licensable activity timings, removal of licensable activities, suspension or revocation of the licence will be seriously considered.*

#### *E4.1*

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

#### *E4.3*

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

#### *F4.1*

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

#### *F4.2*

*Notwithstanding the above, it is the responsibility of the applicants to ensure that they have all necessary consents, whether statutory or otherwise, and it should not be assumed that an authorisation under the Licensing Act 2003 removes this responsibility.*

#### *F8.1*

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



## *F8.2*

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

## *G1.1*

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

## *G1.2*

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

## *G1.3*

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

## *G2.1*

*Occasional and/or large scale events can be authorised by a one-off, a time-specific, or a permanent licence/certificate. Applicants are encouraged to seek advice on the most appropriate type of application from the Council's licensing team.*

## *G2.2*

*These events have significant potential to considerably undermine the promotion of the licensing objectives, due to their sheer size, complexity and the potential implications for the planning of a safe event. The Council strongly believes that this risk can only be adequately mitigated by the early submission of an up to date and detailed operating schedule that is specific to the proposed event on each separate occasion.*

## *G2.3*

*The Council acknowledges that it is inherent in the Act that responsible authorities and other persons should be given the opportunity to make representations related to the nature of the individual event which is planned. The potential for adverse effects on the promotion of the licensing objectives can vary significantly between events, even when similar events are held on a regular basis. In order to support the promotion of the licensing objectives, the Council believes that responsible authorities have a role in ensuring the safety of every large scale event, in particular when annual or multiple events are held under a single permanent premises licence.*

## **G2.5**

*Whilst the Council acknowledges the applicant's right to submit a one-off or time specific licence/certificate application, it encourages applicants to submit an application for a permanent licence/certificate. This provides the applicant with the flexibility of a licence that would allow the submission of an up to date and detailed operating schedule on each occasion the event is to be held, but safeguards the rights of responsible authorities and other persons to hold the licence/certificate holder to account by way of an application for a review.*

## **G2.6**

*Sites for large occasional events are not usually purpose built for the variety of licensable activities that can take place, therefore there is considerable work involved before, during and after such events in planning and organising the event as well as co-ordinating and ensuring the full involvement of all the emergency services to ensure a safe and well managed event. The Council believes that this can only be adequately achieved by the full and ongoing involvement of the licensing authority and responsible authorities in liaising with the applicant, whilst they are compiling the operating schedule for each individual event.*

## **G2.11**

*The Council has therefore adopted the following policy that will apply to large scale events when relevant representations have been made and the application is referred to a Licensing Sub-Committee for determination:*

- (i) In respect of an application for a one-off, time-specific or permanent licence/certificate for the holding of occasional and/or large scale events the Council will consider, amongst other matters, whether the operating schedule:
  - (a) defines the events proposed with sufficient certainty to enable responsible authorities and the Council to adequately consider the risks to the licensing objectives arising from the event; and*
  - (b) defines the measures proposed to avert those risks with sufficient certainty to enable responsible authorities and the Council to make a balanced judgment as to whether the measures will be sufficient to mitigate those risks.**
- (ii) The Council will generally require a high degree of certainty before deciding that the operating schedule fulfils this requirement, but will decide that matter on the individual merits of each case.*
- (iii) In cases where the Council determines that the operating schedule is not drafted with sufficient certainty, the application will normally be refused, save in exceptional circumstances. It is unlikely that the circumstances will be considered exceptional unless the applicant gives assurances and safeguards that the licensing objectives will be met despite the lack of certainty in the operating schedule and suitable conditions can be imposed on the licence to mitigate this risk.*
- (iv) In cases where the Council determines that the operating schedule is drafted with sufficient certainty then, in determining the application, the Council will consider any relevant risks arising from the temporary nature of the events proposed in the application in relation to the promotion of the licensing objectives.*

#### **G5.1**

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

#### **G5.2**

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

#### **G5.3**

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

#### **G5.4**

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

#### **G5.5**

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

#### **G5.6**

*The Council has encouraged this type of event premises licence for a number of years leading to successful annual events at venues such as Knebworth Park and recommends applicants to enter into pre-application discussions at the earliest opportunity to explore the suitability of this option.*

#### **G6.1.1**

*Large scale events, in particular music festivals, have the potential to significantly impact on the prevention of crime and disorder objective for reasons such as, but not limited to:*

- *a significant number of event attendees being attracted to North Hertfordshire and the creation of 'an event community', often the size of small town;*
- *disorder associated with travel to and from the venue;*
- *potential criminal elements being attracted to the event, particularly multi-day events; and*
- *the additional pressures on police resources associated with the event.*

#### **G6.3.1**

*The Council is strongly of the view that it is not the responsibility of the police to provide a free security service for event organisers. The responsibility for security at events rests solely with the event organiser.*

#### **G6.3.2**

*Whilst it can be reasonably expected that the police will undertake their normal duties in support of an event, this service would be in addition to on-site security deployed by the event organiser.*

#### **G6.3.3**

*The Council is aware of existing case law in regard to the payment for policing resources at events and recognise the financial impact for event organisers. That said, if a police presence at an event is appropriate for the promotion of the licensing objectives, the Council accept that, save for exceptional circumstances, the need to secure the promotion of the licensing objectives outweighs the financial burden on the applicant.*

#### **G6.3.4**

*Where appropriate based on the evidence and/or any perceived risk, the Council may consider the imposition of conditions requiring a formal resourcing agreement with the police, including the advanced payment for such resourcing, to be entered into and complied with in order for the event to proceed.*

#### **G6.6.1**

*Large numbers of event attendees give rise to pressures on local transport networks, particularly main and local roads, railway stations and taxi provision. The Council expects applicants to liaise with local transport providers, having assessed their target audience profile, and address any transport concerns within the operating schedule or EMP.*

#### **G6.6.2**

*For events that will have a significant impact on the local road/railway network, applicants should give serious consideration to including a Transport Management Plan (TMP) as part of their operating schedule or EMP. Where appropriate for the promotion of the licensing objectives, the Council may consider imposing a condition requiring a TMP to be agreed with the police in advance of the event.*

#### **G6.6.3**

*Where large numbers are expected to use local transport venues, such as railway stations, the Council considers these venues as areas that are causally linked to the event and within the licence holder's control. Where appropriate for the promotion of the licensing objectives, the Council may consider imposing conditions in relation to the provision of security at local transport venues to control event patrons.*

#### **G6.6.4**

*If the event venue is a considerable distance from key transport providers, such as railway stations, the Council expects the applicant to consider the implications of a significant number of pedestrians attending the event. This is particularly relevant for venues adjacent to main arterial routes such as Knebworth Park.*

#### **G6.6.5**

*Where appropriate to promote the licensing objectives the Council may consider imposing conditions requiring the provision of an additional transport provision between the venue and the main transport provider (such as railway stations), for example shuttle buses or organised taxi provision within the venue.*

#### **G6.6.6**

*Additionally, due to the causal link between the venue and the large number of pedestrians attending, the Council may consider imposing conditions relating to the stewarding of pedestrian routes where appropriate for the promotion of the licensing objectives.*

#### **G7.6.1**

*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:*

- (i) safe capacities in identifiable areas of the event site, including camping and car parking, that can be evacuated quickly in the case of emergency;*
- (ii) policies in relation to ingress, re-admission and egress, particularly control of*
- (iii) policies in relation to securing the safety of patrons whilst at the event, including camping and car parking; and*
- (iv) sufficient on-site medical provision, including procedures for contacting the emergency services.*

#### **G8.8.1**

*Section G5 of this Policy details the Council's recommendation that an applicant utilises an Event Management Plan as a condition of a premises licence to allow maximum flexibility for multiples events. For the same reasons, the Council also recommends that applicants utilise a Noise Management Plan (NMP) as a condition of a premises licence.*

#### **G8.8.2**

*A NMP gives maximum flexibility for an applicant to adapt the measures required for managing any potential noise nuisance from an event by reacting to amended site plans, differing artiste profiles, weather conditions, etc.. It removes the need for inflexible fixed noise levels on a premises licence and allows the applicant to work with environmental protection officers to ensure the most appropriate controls are applied proportionately for each event.*

#### **G8.8.3**

*The Council acknowledges that a NMP cannot be a requirement to enable an applicant to obtain a licence, however it is the Council's preferred option to balance appropriate control and flexibility for the applicant.*

#### **O1.1**

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

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

(iii) Equality Act 2010

*Local authorities are required to implement the Act in a manner consistent with its responsibilities to consider the equality implications of any decision it makes.*

O2.2

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

## **7. RELEVANT EXTRACTS OF STATUTORY GUIDANCE**

- 7.1 The following paragraphs from the Guidance issued by the Home Office under section 182 of the Licensing Act 2003 (April 2018 version) may be relevant to this application. This section does not prevent the sub-committee from considering other paragraphs of the Guidance where they deem it appropriate and the determination should be based upon consideration of the full document:

1.3

*The licensing objectives are:*

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

1.4

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

1.5

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

*They include:*

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

#### 1.16

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

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

#### 1.17

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

#### 2.1

*Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).*

#### 2.15

*The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.*

#### 2.16

*Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.*

#### 2.18

*As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.*

#### 2.19

*Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.*

#### 2.22

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

#### 2.26

*Licensing authorities and responsible authorities should expect applicants, when preparing an operating schedule or club operating schedule, to set out the steps to be taken to protect children from harm when on the premises.*

#### 8.41

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

#### 8.42

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

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



8.44

*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.*

9.12

*Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area<sup>5</sup>. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.*

9.42

*Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.*

9.43

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

9.44

*Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate*

*potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.*

#### **10.8**

*The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises. This provision also applies to minor variations.*

#### **10.9**

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

#### **10.10**

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

## **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 The previous Statutory Guidance first issued in July 2004 and subsequently updated up until April 2012, specifically required Licensing Sub-Committees to ensure that their decisions were based on measures that were 'necessary' for the promotion of the licensing objectives. This placed a burden on the licensing authority to demonstrate that no lesser steps would satisfy the promotion of the licensing objectives and any conditions imposed on a licence would only be those necessary for the promotion of the licensing objectives with no opportunity to go any further.

8.3 The revised Statutory Guidance issued on 25<sup>th</sup> April 2012 and subsequently amended, has amended the 'necessary' test to one of 'appropriate'. This has changed the threshold which licensing authorities must consider when determining applications by requiring that they make decisions which are 'appropriate' for the promotion of the licensing objectives.

8.4 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.*

8.5 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.

8.6 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.*

- 8.7 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'.

### **Case law**

- 8.8 As the Guidance confirms, public nuisance under the Licensing Act 2003 has a wide interpretation and it is for the Sub-Committee to determine, based on the evidence, whether they consider these issues to be a public nuisance.
- 8.9 The Guidance states at paragraph 2.20 that conditions relating to public nuisance beyond the vicinity of the premises are not appropriate and the Council's Statement of Licensing Policy supports that view. Conditions that it would be either impracticable or impossible for the licence holder to control would clearly be inappropriate.
- 8.10 That said, if behaviour beyond the premises can be clearly linked to a premises and it is causing a public nuisance, it is wrong to say that the Licensing Act 2003 cannot address this. Whilst conditions may well be inappropriate, if the evidence deems it necessary, times and/or activities under the licence could be restricted or, indeed, the application could be refused, suspended or revoked.
- 8.11 The magistrates court case of *Koultis v London Borough of Enfield*, 9th September 2011 considered this issue.
- 8.12 In a summary of the case provided by the Institute of Licensing it is reported that District Judge Daber considered an appeal against a decision of the local authority to restrict the hours of musical entertainment of a public house to mitigate the noise from patrons as they left the premises in response to representations from local residents. The appellant relied on the sections of the Guidance that state that "beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right" (para 2.24). It was also suggested that, given that certain residents were not disturbed, this did not amount to public nuisance within the meaning of para 2.19 of the Guidance as approved by Burton J in the Hope and Glory case.
- 8.13 The District Judge held that there was ample evidence of public nuisance relating to the specific premises, and that section 4 of the Act gave the licensing authority a positive duty to deal with it proportionately. In this case, no less interventionist way of dealing with the nuisance had been suggested. He held that not only was the authority not wrong, but that it was in fact right to reduce the hours as it had. The appeal was therefore dismissed.

## **Evidence not to consider**

- 8.14 A number of 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 8.15 to 8.25 are a summary of the redacted points which, for clarity, should not be discussed during the hearing.
- 8.15 There are comments made in one representation regarding the application stating how they would control the sale of drugs with the objector interpreting this as an 'acceptance' that there will be drugs related issues. As part of an application, an applicant is required to consider if a drugs policy is required and it is best practice to provide one. This is not to be interpreted as the applicant anticipating the presence of drugs, it shows the applicant is being responsible and putting a policy in place should it happen.
- 8.16 There are comments made in some representations regarding the financial gain of the event. Financial gain is not a relevant consideration under the Act.
- 8.17 There are comments made in some representations in reference to the use of land used ordinarily by horses. Use of land is the responsibility of the land owner and is not a relevant consideration under the Act.
- 8.18 The majority of representations have made reference to the impact that the event would have on animals, in particular horses. The licensing objectives prescribed by the Act do not include the impact of the welfare of animals; this is a matter which is considered separately under the Animal Welfare Act 2006. The Act does not seek to reproduce control measures available under other legislation. If a licence was granted, the licence holder would have a responsibility under the Animal Welfare Act 2006 to consider what impact his event would have on animals in the area.
- 8.19 Representations have been made regarding the licence being applied for to be granted in perpetuity, the representations stating that it removes control from the licensing authority and residents for future events. Conditions have been included by the organisers that an Event Management Plan will be produced for each year's event in consultation with the responsible authorities. This approach is supported by the Council's Statement of Licensing Policy. Additionally, responsible authorities or the residents have the right to apply to the Council for a review of the licence if they believe there is an adverse impact on one or more of the four licensing objectives with causal links to the event.
- 8.20 Claims have been made that the event capacity is for 10,000 people which is a doubling in size from 2018 however this is not factually correct. The licence application was originally for up to 9,999 persons however a condition has been agreed that the event capacity is capped at 5,000 persons.

- 8.21 Objections have been made by residents referencing emergency vehicle access being limited to the village and event site should an emergency situation occur. No responsible authority has raised an objection to this therefore it should be assumed that they have no concern in relation to this matter.
- 8.22 References to previous applications and errors in previous application processes have been deemed irrelevant as each application is determined in its own merits.
- 8.23 A Statement was made regarding this application being a renewal of an application which is factually incorrect as this is an application for a new licence that should be determined on its own merits.
- 8.24 Residents have suggested that there are more appropriate sites for this event to be held locally. An application can be made for any event site which will be assessed on its own merits with regard to the licensing objectives.
- 8.25 Concerns were raised about the lack of available water at the event site. This has been resolved by conditions agreed with Environmental Health.

## **9. APPENDICES**

- 9.1 Appendix A Application and operating schedule.
- 9.2 Appendix B Representations from other persons.

## **10. CONTACT OFFICER**

Molly Shiells  
Licensing Officer  
[molly.shiells@north-herts.gov.uk](mailto:molly.shiells@north-herts.gov.uk)