

<b>LICENSING AND APPEALS SUB-COMMITTEE</b> <b>Wednesday 19 June 2019</b>
-----------------------------------------------------------------------------

<b>PART 1 – PUBLIC DOCUMENT</b>	<b>AGENDA ITEM No.</b>
---------------------------------	------------------------

**LICENSING ACT 2003**

**APPLICATION BY MASSIMO CIERZO, TRACEY CIERZO AND REBECCA CIERZO  
FOR THE GRANT OF A PREMISES LICENCE IN RESPECT OF  
THE BUFFS FOOTBALL CLUB, BAKERS CLOSE, CLOTHALL ROAD, BALDOCK, SG7 6PE.**

<b>REPORT OF THE LICENSING OFFICER</b>
----------------------------------------

**1. BACKGROUND**

- 1.1 No premises licence under the Licensing Act 2003 (“the Act”) is currently in place for the premises.
- 1.2 The premises previously benefitted from a premises licence whilst trading as the Cannon & Brett Social Club which was surrendered on 16 August 2013. The history of that premises licence is not relevant to this application as it was operated by a different management team.

**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 are attached as **Appendix A**.

**3. APPLICATION PROCESS**

- 3.1 On 30 April 2019, Massimo Cierzo, Tracey Cierzo and Rebecca Cierzo made an application for the grant of a premises licence.
- 3.2 The application was served on 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.
- 3.5 The consultation period ran from 1 May 2019 to 28 May 2019 inclusive and representations had to be received within that prescribed period.

#### **4. REPRESENTATIONS**

- 4.1 No representation was received from Hertfordshire Constabulary as conditions were agreed with the applicants during the consultation. These conditions, included as **Appendix B**, now form part of the amended application that is being considered by the sub-committee.
- 4.2 No representation was received from NHDC Environmental Protection as conditions were agreed with the applicants during the consultation. These conditions, included as **Appendix C**, now form part of the amended application that is being considered by the sub-committee.
- 4.3 No representations were received from any other responsible authority.
- 4.4 For the convenience of the sub-committee and the 'other persons', the amended application is included as **Appendix D**. It is this amended application that the sub-committee is asked to determine.
- 4.5 Nine (9) representations were received from 'other persons' against the application however one (1) of the representations was received outside the consultation period therefore could not be considered. The eight (8) relevant representations are attached as **Appendix E**
- 4.6 The Council's Scheme of Delegation requires the licensing officer to determine whether a representation is relevant as specified within the Act.
- 4.7 Where representations include comments that are not relevant to the Act, these comments have been clearly redacted by the licensing officer and should not be considered as part of the determination process.

**Other persons must not refer to these paragraphs in any oral presentation at the hearing.**

- 4.8 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.
- 4.9 The applicant has been served with a copy of all relevant representations by way of this report.
- 4.10 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 – 2021 may be relevant to this application. This section does not prevent the sub-committee from considering other paragraphs of the Statement of Licensing Policy where they deem it appropriate:

*B6*

*Our vision is:*

***“To ensure that North Hertfordshire continues to offer a diverse range of well managed 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.*

*B9*

*In making a balanced decision, the Council accepts that those living in town centre environments are likely to experience a degree of disturbance associated with a vibrant night-time economy but this must be managed in such a way to limit its impact beyond that which is reasonable. The Council will at all times consider the wider benefits to and impacts on the community as a whole and will take a proportionate view on the weight to apply to representations.*

*D1.5*

*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.*

**D1.8**

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

**D2.1**

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

**D2.4**

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

**D2.5**

*The Council acknowledges that the licensing process can only seek to impose conditions that are within the direct control of the licence holder. The Council does not consider that the term 'direct control' can be generically defined and will consider its definition relative to the specific circumstances of each application. For example, licensed premises at the end of road leading to a car park may be able to control its patrons leaving the premises and using the car park. In general terms, to be considered to be under the 'direct control' of a licence holder, there will need to be a direct causal link between the problems or likely problems and the specific premises.*

#### *D2.6*

*Where problems with a direct causal link to premises exist in relation to the promotion of the licensing objectives but they cannot be mitigated by the imposition of appropriate conditions, a Licensing Sub-Committee will seriously consider refusal of the application. For example, patrons from a licensed premise that are causing disorder in a town centre after leaving the premises cannot be controlled by conditions, however the problem may be resolved by the refusal of the application or revocation of the licence.*

#### *D2.8*

*The Council recognises that the exercise of its licensing function is only one of a number of means of securing the promotion of the licensing objectives. The exercise, by the Council, of its licensing function should not be seen as a panacea for all problems within the community. The Council will encourage co-operation between its licensing function, planning function and environmental health functions to ensure that any problems are addressed using the most appropriate means and that its licensing function does not duplicate any other statutory responsibilities.*

#### *D2.9*

*The Council will carry out its licensing functions in the promotion of the licensing objectives and, in addition, will support the stated aims of the Act which are as follows:*

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

#### *D3.1*

*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.*

#### *D3.3*

*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.*

#### *D6.8*

*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.*

#### *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.*

#### *E3.2.1*

*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:*

#### *2.16*

*Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.*

#### *E3.3.1*

*This may include noise and disturbance from customers on the premises and customers in outdoor areas such as terraces, beer gardens and smoking areas. It will also include noise, disturbance and obstruction from customers in the vicinity of premises smoking and/or drinking*

*and customers arriving at, leaving or queuing outside premises. Measures to prevent a public nuisance may include, but are not limited to:*

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

#### *E3.7.1*

*This can include external lighting, security lighting and lighting displays. Measures to prevent a public nuisance may include:*

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

#### *E3.7.2*

*The Council is aware that security lighting plays an important part in securing the premises and promoting the prevention of crime and disorder objective. Before imposing conditions restricting security lighting, the Council will give consideration to paragraph 2.19 of the Guidance which states:*

##### *2.19*

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

#### *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.*

#### *E3.9.1*

*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 night-time economy.*

#### *E3.9.2*

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



#### **E3.9.3**

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

#### **E4.1**

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

#### **F4.1**

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

#### **F8.1**

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

#### **F8.2**

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

#### **O1.1**

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

- (i) 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).*

#### *2.10*

*Licence holders should make provision to ensure that premises users safely leave their premises. Measures that may assist include:*

- Providing information on the premises of local taxi companies who can provide safe transportation home; and*
- Ensuring adequate lighting outside the premises, particularly on paths leading to and from the premises and in car parks.*

#### *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.*

#### *2.20*

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

#### *2.21*

*Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social 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.*

#### *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*

#### *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. 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 *Kouttis 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 8.18 are a summary of the redacted points which, for clarity, should not be discussed during the hearing.
- 8.15 Reference has been made to either the lack of police resources or the need for additional policing. If this were a concern for the police, they could have made a representation as a responsible authority but chose not to. Additionally, unless either point resulted in a significant increase in crime and/or disorder, it would be unlikely to relate specifically to the licensing objectives.
- 8.16 Comparisons have been made to trading hours of other licensed premises within Baldock. This is not relevant as each application is considered on its own merits.
- 8.17 Parking is a concern for most ‘other persons’, more specifically the lack of parking resource at the premises and the impact on permitted parking in residential streets. Parking is primarily a matter for consideration at the planning stage, through consideration of the impact on local amenity, as it does not relate specifically to the licensing objectives. In simplistic terms, planning decides how a premises can be used,



whilst licensing decides how best to then manage that premises. Residential parking permits are controlled through other legislation and the Licensing Act 2003 cannot seek to duplicate other existing control measures than can otherwise be effectively managed.

Although the impact of car parking is not relevant under the Licensing Act 2003, the sub-committee can consider the impact of the noise nuisance associated with persons returning to their vehicles having used the premises as this falls within the remit of the prevention of public nuisance. The sub-committee should be cautious about how much weight they attach to this matter when the location of patrons parking is outside the control of the applicant. Conditions restricting parking locations would not be appropriate whereas the restriction of trading hours to limit potential noise nuisance to a reasonable hour would be appropriate.

- 8.18 Problems related to the previous operation of the premises have been mentioned however they are not relevant as each application is determined on its own merits. The sub-committee should focus their deliberations on the ability of the proposed management team to prevent issues arising from the use of the premises.

#### **Deregulation of live and recorded music on alcohol licensed premises**

- 8.19 Following deregulatory changes introduced by the Live Music Act 2012, The Licensing Act 2003 (Descriptions of Entertainment (Amendment) Order 2013 and The Legislative Reform (Entertainment Licensing) Order 2014 no licence is needed for the following activities:

##### **Live Music**

- A performance of unamplified live music between 08:00hrs and 23:00hrs on any day on any premises
- A performance of amplified live music between 08:00hrs and 23:00hrs on any day on premises authorised to sell alcohol for consumption on those premises provided that the audience does not exceed 500

##### **Recorded Music**

- Any playing of recorded music between 08:00hrs and 23:00hrs on any day on premises authorised to sell alcohol for consumption on those premises provided that the audience does not exceed 500

- 8.20 The effect of this deregulation is that licensing committees cannot restrict live or recorded music where it would benefit from the deregulation detailed in paragraph 8.19
- 8.21 Additionally, during the hours of deregulation where no licence would be required, any licence conditions that relate directly to live and/or recorded music are suspended between the hours of 08:00hrs and 23:00hrs.

For example, the applicant has agreed to a condition requested by NHDC Environmental Protection that states:

A suitable environmental noise control device shall be installed in the premises, calibrated and set to the satisfaction of the Council's Noise Control Officer. The device must be set at an appropriate time in the presence of the aforementioned Officer. No amplified live or recorded music

constituting regulated entertainment shall take place in the function hall until this device has been installed and set in accordance with this condition.

This condition will only apply to live or recorded music that takes place after 23:00hrs where permitted by the premises licence.

8.21 The safety net for 'other persons' is that:

- (i) There is other statutory legislation that can be used to control nuisance; and
- (ii) At a licence review hearing, a licensing committee can remove the deregulation therefore making the activities licensable again and subject to licensing controls such as conditions and/or restrictions in permitted timings.

## **9. APPENDICES**

- 9.1 Appendix A Original application
- 9.2 Appendix B Conditions agreed with Hertfordshire Constabulary
- 9.3 Appendix C Conditions agreed with NHDC Environmental Protection
- 9.4 Appendix D Amended application (for determination)
- 9.5 Appendix E Relevant representations from 'other persons'.

## **10. CONTACT OFFICER**

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