

**LICENSING AND APPEALS SUB-COMMITTEE
28 NOVEMBER 2019**

PUBLIC DOCUMENT

LICENSING ACT 2003

**APPLICATION BY RICHARD MASKELL
FOR THE GRANT OF A PREMISES LICENCE IN RESPECT OF SANDON FIELDS,
HYDE HALL FARM, SANDON, BUNTINGFORD, HERTFORDSHIRE, SG9 0RU.**

REPORT OF THE LICENSING OFFICER

1. BACKGROUND

- 1.1 No premises licence under the Licensing Act 2003 (“the Act”) is currently in place for the premises.

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 Wednesday 9 October 2019 Richard Maskell made an application to North Hertfordshire District Council (“the Council”) for the grant of a premises licence.
- 3.2 The prescribed consultation period was from 10 October 2019 until 5 November 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 Hertfordshire Mercury 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 **Appendix B** and now form part of the application that the sub-committee are considering.
- 4.2 No representation was received from Environmental Protection as conditions were agreed with the applicant. These conditions are included in **Appendix C** and now form part of the application that the sub-committee are considering.
- 4.3 No representation was received from Environmental Health as conditions were agreed with the applicant. These conditions are included in **Appendix D** and now form part of the application that the sub-committee are considering.
- 4.4 No representations were received from any other responsible authority
- 4.5 Twenty six (26) representations were received from 'other persons' against the application and 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 (see sections 8.17 – 8.23).**
- 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 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 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.

D1.4

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

D1.5

The Council expects applicants to address the licensing objectives in their operating schedule and have due regard to this Policy. To achieve this, the Council supports the principles set out in sections 8.33 – 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.

D1.9

The Council will not solicit representations by distributing notification of applications to nearby residents; all applications are listed on the Council's website and subject to the prescribed advertising requirements which the Council believes to be sufficient.

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.

D3.2

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

D3.3

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

D3.4

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

D6.2

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

D6.3

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

D6.6

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

D6.7

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

D6.8

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

D6.9

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

D8.1

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

D8.2

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

D8.3

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

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.

E2.3

The Council takes its responsibility for public safety seriously and is aware of a growing trend nationally to encourage alcohol consumption by adding substances to alcohol to make them more attractive to customers either in appearance or by increasing the speed of alcohol ingestion, for example liquid nitrogen in cocktails. This practice is strongly discouraged due to the inherent risks to public safety and the Council will actively use its regulatory powers where premises licence/club premises certificate holders ignore this advice.

E2.4.1

“Safe capacities” should only be imposed on licences where necessary for the promotion of public safety or the prevention of disorder. If a capacity has been imposed through other legislation it would be unnecessary to reproduce it as a licence condition. It would also be wrong to impose conditions that conflict with other legislation. If no safe capacity has been imposed by other legislation, however, a responsible authority may consider it necessary for a new capacity to be attached. For example, a capacity limit may be necessary to prevent disorder as overcrowded premises can increase the risk of crowds becoming frustrated and hostile.

E2.5.1

Where venues providing entertainment use equipment or special effects that may affect public safety, such as strobe lighting, smoke machines, etc., the Council will expect the premises licence holder to have carried out risk assessments and taken the necessary actions to safeguard patrons at the premises.

E2.7.1

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

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

E3.1.1

Licensed premises may have significant potential to impact adversely on communities through public nuisances that arise from their operation. The Council interprets ‘public nuisance’ in its widest sense and takes it to include such things as noise, light, odour, litter and anti-social behaviour, where matters arising at licensed premises impact on those living, working or otherwise engaged in activities in the locality. Ordinarily, the Council’s Environmental Protection & Housing Team, in their role as a responsible authority, would take the lead in respect of nuisance issues.

E3.2.1

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).*

E3.3.1

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.

E3.8.3

Whilst accepting that littering beyond the control of a licence holder cannot be controlled by licence conditions, litter constituting a public nuisance under the Licensing Act 2003 may still require the licensing authority to restrict opening times or ultimately suspend or revoke a licence where the nuisance cannot be appropriately mitigated.

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).

E4.3

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

E4.6.1

Whilst the Council encourages a diverse and vibrant night-time economy and will not seek to limit access by children without appropriate reasons, it is acutely aware that licensed premises have the potential to expose children to the risk of child sexual exploitation.

E4.6.2

The Council acknowledges that CSE awareness does not just apply to children on licensed premises. Applicants should be equally aware of children in the proximity of the premises that may be waiting for, or seeking, older persons.

E4.6.3

Applicants are encouraged to ensure that suitable management controls are in place to safeguard children against the risk of CSE. Measures may include, but are not limited to:

- awareness training for staff;*
- regular patrols of the premises, including external areas and the immediate proximity, to identify any vulnerable children;*
- close monitoring of patrons as they leave the premises;*
- recording and reporting concerns to the police.*

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.

F8.3

The Council recognises that initiatives are available that assist with calming or reducing the incidences of disorder or nuisance as customers leave a premises and expects these to be fully considered in the operating schedule.

Section G (highlighted in bold) apply to any outdoor event with an audience of above 500

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.

G2.11

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.**

G4.1

The Council is aware that responsible authorities, and sometimes other persons, often engage with applicants prior to submission of an application until sometimes after an event has taken place. This concept is referred to in the Guidance, as it would assist in promoting the licensing objectives by fostering a partnership approach. The Council supports this concept, but with an additional caveat. Prior to such engagement, applicants are expected to consider, and to make reference in their operating schedule to:

- (i) relevant technical advice from any professionals they employ/involve in the planning of the event (such as Health & Safety Consultants, Event Management Companies, etc.);**
- (ii) relevant National Guidance (such as The Event Safety Guide, MUTA's Best Practice Guide, etc.); and**
- (iii) relevant professional advice from agencies that are not responsible authorities under the Act (such as the Highways Authority, local transport providers, medical service providers, etc.)**

G4.2

The Council's reasons for this policy principle are the following:

- (i) The demands on the responsible authorities can be disproportionate to their resources, particularly in light of the Council's policy of encouraging cultural activities such as music, dancing and theatre. This may place undue pressure on such bodies, undermining the level of scrutiny of such applications.**

- (ii) It must be considered that the legal responsibilities connected to holding such events rests primarily with the organiser and land owner. Where an application does not contain reference to such guidance and expertise, statutory bodies may be placed in an untenable position where they may be open to litigation due to the level of input/advice they may have to provide, and by implication may have taken an inappropriate degree of legal responsibility/liability in connection with the event. The Council believes it is pertinent, therefore, to attempt to avoid such a problem arising.**
- (iii) Where an applicant does not consider such advice and guidance before making an application, this can place responsible authorities and/or other persons in a difficult position due to the fact that many aspects of an application may be lacking and it may not allow full and proper consideration of the proposals during the consultation period. This may undermine their full and proper consideration of an application.**

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.***

G6.1.2

In preparing an application, applicants are encouraged to have early discussions with the police about the potential for crime and disorder associated with or at the event in order that any concerns can be addressed in the operating schedule.

G6.1.3

Given the potential impact on the licensing objectives of a large scale event, the Council will place significant weight on any representation received from the police and will give serious consideration to refusing the application unless the concerns raised in the representation are fully addressed.

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.

G6.3.5

For events where the capacity, audience profile or perceived risk leads the Council to believe that a police presence on site is appropriate to promote the licensing objectives, the Council may consider the imposition of conditions requiring the applicant to make on site provision for any infrastructure required for the police to reasonably carry out their

duties. These requirements may include, but are not limited to:

- **a temporary custody area;**
- **a visible and accessible area for event patrons to attend;**
- **suitable accommodation on site for Police Commanders;**
- **suitable on site welfare provision for police personnel; and**
- **suitable IT equipment (telephony, internet, etc.) in order to facilitate any reasonable police request.**

G6.4.1

As part of an operating schedule or an EMP, the Council expects an applicant to fully apprise the police of the event security plan (including any requested details of security companies and operatives) and comply with any reasonable requests from the police in finalising the event security arrangements.

G6.4.2

For events that will have the potential to pose a significant risk to the licensing objectives, applicants should give serious consideration to including a Security and Stewarding Plan (SSP) 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 SSP to be agreed with the police in advance of the event.

G6.4.3

Where appropriate based on the evidence and/or any perceived risk, the Council expects the security companies and operatives employed by the applicant to work closely with the police in regard to:

- **information sharing;**
- **best practice;**
- **attendance at police briefings; and**
- **co-operation and assistance during the event.**

G6.4.4

Where appropriate based on the evidence and/or any perceived risk, the Council may consider imposing conditions in relation to closed-circuit television (CCTV) at events for monitoring of audiences, camping, parking and ingress/egress.

G6.4.5

Where appropriate based on the evidence and/or any perceived risk, the Council may consider imposing conditions relating to a security search requirement on entry to an event site.

G6.5.1

The Council is aware that the provision of on-site camping for multi-day events increases the risk of crime and disorder, predominately through organised criminal elements that target festivals and festival campsites.

G6.5.2

Applicants are expected to liaise with local police to establish any perceived risk or intelligence associated with an event and address these concerns in the operating schedule or EMP. Control measures may include:

- **24hr campsite security patrols and car park stewarding;**
- **security fencing around the campsite;**

- *controlled entry points to campsites including identification wristbands (or similar);*
- *secure storage for campers (campsites and arenas); and*
- *raised security observation points.*

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.

G7.1.1

The Council recognises that the public safety objective is concerned with the physical safety of the people attending the event and not with public health, which is dealt with in other legislation.

G7.1.2

Given the nature of large scale events, particularly those that involve camping, the Council recognises that the applicant's responsibility in promoting the public safety objective is much wider than that of permanent premises with much shorter customer visiting periods.

G7.1.3

Where appropriate for the promotion of the licensing objectives, depending on the size, nature and duration of the event, the Council will expect applicants to address these wider responsibilities in the operating schedule or EMP. Examples of these wider issues include, but are not limited to:

- **washing and showering facilities;**
- **medical provision (first aid, on-site hospital, hospital transfer capability, etc.);**
- **suitable food and beverage provision;**
- **quiet areas away from entertainment; and**
- **emergency planning**

G7.1.4

The Council is aware that the responsibility for enforcing health & safety at outdoor events is shared between the local authority and the Health & Safety Executive (HSE). In general terms, the HSE enforce throughout the build-up and strike phases, whilst the local authority enforce throughout the event. As the HSE is not a responsible authority in its own right under the Act, applicants are encouraged to include the HSE in any pre-application discussions and address their concerns in the operating schedule or EMP.

G7.4.1

Large scale outdoor events, particularly greenfield sites, often involve a temporary or extended water supply network which has the potential to adversely affect the public safety objective.

G7.4.2

The water supply and distribution network must meet the standards required by BS 8551 and applicants should have due regard to the guidance provided by the document 'Guidelines for the Provision of Temporary Drinking Water Supplies at Events'.

G7.4.3

The Council expects applicants to provide a Water Management Plan (WMP), including an appropriate risk assessment, which should include provision of an alternative water supply in the event of loss of the original supply.

G7.4.4

If an operating schedule does not fully address public safety concerns in respect of the water supply a Licensing Sub-Committee may consider imposing a condition, where appropriate for the promotion of the licensing objectives, requiring the applicant to produce a WMP as part of the operating schedule or EMP.

G7.4.5

The Council encourages applicants to have early discussions with NHDC's Commercial Team to enable them to address any issues associated with temporary water supplies in the operating schedule or EMP.

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 capacities, queuing and safe dispersal from the locality;**

- (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.*

G7.7.3

If children are expected to attend the event, applicants are expected to make suitable additional sanitary facility provision, for example baby changing facilities (if appropriate) or suitable height urinals.

G7.7.4

Applicants are reminded of their responsibilities under the Equality Act 2010 and the Council will expect applicants to demonstrate that they have provided appropriate sanitary facility provision to cater for the needs of disabled persons. Considerations for the provision of disabled sanitary facilities include, but are not limited to:

- level access, including wheelchair access;*
- suitable cubicle door widths;*
- suitable level hand-washing facilities;*
- suitable locations relative to stages, camping and other amenities.*

G7.7.5

Applicants for events that provide camping facilities will need to consider separate sanitary facility provision within the campsite. Adequate sanitary facilities should be provided in all camping areas and publicly accessible areas of the event site independent of other areas; it is not acceptable to the Council to have one centrally located sanitary facility provision serving all areas of the event site including camping.

G8.3.1

This may include noise from live or recorded music, human voices (both amplified and unamplified) and other forms of entertainment (i.e. playing of films). Measures to prevent a public nuisance may include:

- restrictions on the number of days that entertainment is held during an event;*
- restrictions on the timings and types of entertainment, including sound propagation testing and pre-event sound checks;*
- limiting the overall front of house sound levels including, where appropriate, limiting specific frequencies;*
- suitably located and orientated stages to minimise the potential for noise nuisance;*
- limiting the number of stages and/or sound sources that can be used for the provision of entertainment at any one time;*
- use of noise control measures, for example directional sound systems, noise limiting devices and acoustic barriers or enclosures;*
- employing a competent noise consultant to plan and implement noise control measures before and during the event.*

G8.3.2

The Council is aware that the potential for noise nuisance must be proportionately balanced against the benefits to the community and each application must be determined on its individual merits. That said, the Council will give additional weight to concerns where an event has the potential to affect a large number of the public (for example, multiple communities such as neighbouring towns and/or villages).

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.

G9.3

Measures to protect children from harm at large scale outdoor events may include, but are not limited to:

- **restricting access to unaccompanied children below a specified age;**
- **additional supervision of and/or restricted access to concessions selling age-restricted products;**
- **an identifiable wristband scheme to distinguish children from adults (including additional entry and sales policies to ensure children cannot access adult tickets);**
- **policies in relation to lost children (specifically, lost children points, welfare arrangements, contact with the police, secure or coded communication between agencies)**
- **additional security clearance for staff that may come into contact with children;**
- **mitigating additional risk factors in terms of the prevention of CSE;**
- **restricting access to children from events where the entertainment or nature of the event is not suitable for children.**

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.*

2.12

“Safe capacities” should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.

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.

2.22

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.

8.49

For some premises, it is possible that no measures will be appropriate to promote one or more of the licensing objectives, for example, because they are adequately covered by other existing legislation. It is however important that all operating schedules should be precise and clear about the measures that are proposed to promote each of the licensing objectives.

9.5

It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

9.6

Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate.

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 area⁵. 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.

9.37

As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.

9.38

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy.

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 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.
- 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 to consider

- 8.14 Representations include comments relating to the management of the previous Sandon Fields festivals held at the Poplars Farm location in Sandon. These comments have been deemed relevant to this application as it is appropriate to give consideration to the previous events as the applicant intends to use a similar business model and services in relation to this application, the only difference being a new location.
- 8.15 There are numerous comments made in representations under the public safety objective relating to the increase in traffic that may be caused and that the safety of walkers, cyclists, horse riders and pedestrians will be compromised and that the surrounding road network will be placed under strain prior to, during and after the event. These comments have been regarded as relevant as the proposed event is for a two day period during the months of June to September. The applicant has applied for a licence to accommodate up to 4999 persons on each day of the event. It is reasonable to assume that there will be an increase of vehicle traffic that is not normally present in the area. The public safety licensing objective is for the applicant to provide safety measures for persons within the venue and outside, within the licence holders control. It

is reasonable to extend this to wider area road network as being under the applicants control due to volume of traffic that will be created because of the event.

Evidence not to consider

- 8.16 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 8.17 to 8.23 are a summary of the redacted points which, for clarity, should not be discussed during the hearing.
- 8.17 Representations have made reference to the impact that the event would have on animals and local wildlife. 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 and the Wildlife and Countryside Act 1981. The Licensing Act 2003 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 and the Wildlife and Countryside Act 1981 to consider what impact his/her event would have on animals and wildlife in the area.
- 8.18 Comments have been made relating to the increased risk of individuals drink driving as a result of being at the venue and due to the lack of public transport in the village, the assumption being that an individual would drink and drive. The Road Traffic Act 1988 provides for a criminal offence of drink driving for which individuals are responsible for their own actions. For this reason these comments have been deemed not relevant.
- 8.19 Objections have been made by residents referencing the proximity of local police stations being a considerable distance to the village should an emergency situation occur or the police are required to attend. Hertfordshire Constabulary has raised no objection therefore it should be assumed that they have no concern in relation to this matter.
- 8.20 Residents have suggested that there are more appropriate sites for this venue to be held away from the village of Sandon. An application can be made for any site which will be assessed on its own merits with regard to the licensing objectives.
- 8.21 References have been made to suggest that patrons of the venue will become drunk whilst on the premises. It is an offence under the Licensing Act 2003 to serve persons that are believed to be drunk or to allow disorderly conduct on a licensed premises. The licence holder will have a duty under the Licensing Act 2003, were a premises licence to be granted, to ensure that patrons behave in a lawful manner.
- 8.22 Comments made relating to planning conditions imposed at the proposed site, surrounding farms and other surrounding buildings are not relevant to this application. Claims made that planning conditions will be breached should a licence be granted for this premises are unsupported evidentially and are not to be considered.
- 8.23 Representations that have included statements of vexatious accusations and predictions of how the applicant will behave and operate have been deemed not relevant to this application. Whilst consideration may be given to facts relating to the applicant's previous management of the Sandon Fields festival, it is not appropriate to make unsubstantiated assumptions. Whilst tensions exist between the residents and the

applicant, representations must focus on genuine concerns that the sub-committee can consider against the applicant's proposed operating schedule and EMP.

9. APPENDICES

- 9.1 Appendix A Application (Inc. plan, operating schedule and accompanying documents)
- 9.2 Appendix B Conditions agreed between the applicant and Hertfordshire Constabulary
- 9.3 Appendix C Conditions agreed between the applicant and NHDC Environmental Protection.
- 9.4 Appendix D Conditions agreed between the applicant and NHDC Environmental Health.
- 9.5 Appendix E Representations from 'other persons'

10. CONTACT OFFICER

Molly Shiells
Licensing Officer
molly.shiells@north-herts.gov.uk