



## Licensing Sub-Committee

Notice of a Meeting to be held in Committee Room 1 (Fougères Room), Civic Centre, Tannery Lane, Ashford, Kent TN23 1PL on Thursday 10<sup>th</sup> January 2013 at 10.00 am

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The Members of this Sub-Committee are:-

Cllrs. Chilton, French, Shorter  
Reserve Cllr. Galpin

### Agenda

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Nos.

1. **Election of Chairman**
2. **Apologies/Substitutes** – To receive Notification of Substitutes in accordance with Procedure Rule 1.2(iii) and Appendix 4
3. **Declarations of Interest (see “Advice to Members” overleaf)**

- (a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011 relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares a DPI in relation to any item will need to leave the Council Chamber for the whole of that item, and will not be able to speak or take part (unless a relevant Dispensation has been granted).

- (b) Other Significant Interests (OSI) under the Kent Code of Conduct as adopted by the Council on 19 July 2012, relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares an OSI in relation to any item will need to leave the Council Chamber before the debate and vote on that item (unless a relevant Dispensation has been granted). However, prior to leaving, the Member may address the Committee in the same way that a member of the public may do so.

- (c) Voluntary Announcements of Other Interests not required to be declared under (a) or (b), i.e. announcements made for transparency reasons alone, such as:
- membership of outside bodies that have made representations on agenda items, or
  - where a Member knows a person involved, but does not have a close association with that person, or
  - where an item would affect the well-being of a Member, relative, close associate, employer, etc, but not his/her financial position

[Note: an effect on the financial position of a Member, relative, close associate, employer, etc; OR an application made by a Member, relative, close associate, employer, etc, would both probably constitute an OSI].

**Advice to Members on Declarations of Interest:**

- (a) Government Guidance on DPI is available in DCLG's Guide for Councillors, at <http://www.communities.gov.uk/documents/localgovernment/pdf/2193362.pdf>
- (b) The Kent Code of Conduct was adopted by the Full Council on 19 July 2012, and a copy can be found with the papers for that Meeting.
- (c) If any Councillor has any doubt about the existence or nature of any DPI or OSI which he/she may have in any item on this agenda, he/she should seek advice from the Head of Legal and Democratic Services and Monitoring Officer or from other Solicitors in Legal and Democratic Services as early as possible, and in advance of the Meeting.

4. **Minutes** – To approve the Minutes of the Meeting of this Committee held on the 7<sup>th</sup> December 2012 1 – 8

**Matters for Decision**

5. Eastern Corner Ltd, 2-4 Torrington Road, Ashford, Kent, TN23 7TD – 9 – 33  
Application for a Premises Licence.
- (a) Clarification and Determination of Equal Maximum Time to be allocated to each party
- (b) To note withdrawal of any representations
- (c) The Hearing of the case.

KL/13<sup>th</sup> Dec 2012 \_\_\_\_\_

Please refer to the Guidance Notes on the procedure to be followed at this meeting as attached to this Agenda  
If you know the appellant(s) and have a possible conflict of interest or have any queries concerning the Agenda please contact Kirsty Liddell on 01233 330499



## Licensing Sub-Committee

Minutes of a Meeting of the Licensing Sub-Committee held in Committee Room No. 2 (Bad Münstereifel Room), Civic Centre, Tannery Lane, Ashford on the 7<sup>th</sup> December 2012.

### Present:

Cllr. Feacey (Chairman);

Cllrs. Davey, Shorter.

### Also Present:

Licensing Manager, Licensing Officer, Legal Advisor, Member Services & Scrutiny Support Officer.

PC Julian Postlethwaite – Applicant's Representative.

Special Sergeant Matthew Prigmore – Witness.

Mr T Klaric – Licence Holder.

Ms C Newing – Designated Premises Supervisor and Licence Holder.

## 248 Election of Chairman

### Resolved:

**That Councillor Feacey be elected as Chairman for this Meeting of the Licensing Sub-Committee.**

## 249 Minutes

### Resolved:

**That the Minutes of the Meeting of this Sub-Committee held on the 5<sup>th</sup> September 2011 be approved and confirmed as a correct record.**

## 250 Platform 5, 117 Station Road, Ashford, Kent – Review of the Premises Licence

The Chairman opened the meeting and welcomed all those present. Members confirmed that they had read the papers relating to the application. The Chairman explained the procedure to be followed at the meeting and the appeal process.

The Licensing Manager then gave a brief summary of his report. The application for the review of the premises licence of Platform 5 had been received from Chief

Inspector Bradley on behalf of the Chief Officer of Police. Where an application for a review had been accepted by the Licensing Authority the Act required that a notice was displayed on the premises, in a position where it can be seen from the outside of the premises, stating that an application to review the premises licence had been made. A notice must also be displayed at the Council's offices and on its website. The notices had been displayed correctly.

The premises licence, as contained in Appendix F to the Licensing Manager's Report, permitted the following activities:

<b><i>Alcohol Sales (on the premises only)</i></b>	<b><i>Regulated Entertainment</i></b>	<b><i>Late Night Refreshment</i></b>
Sunday 11:00 - 23:00	Sunday 11:00 - 23:00	
Monday 11:00 - 23:00	Monday 11:00 - 23:00	
Tuesday 11:00 - 23:00	Tuesday 11:00 - 23:00	
Wednesday 11:00 - 23:00	Wednesday 11:00 - 23:00	
Thursday 11:00 - 23:00	Thursday 11:00 - 23:00	
Friday 11:00 - 02:00	Friday 11:00 - 02:00	Friday 23:00 - 02:00
Saturday 11:00 - 02:00	Saturday 11:00 - 02:00	Saturday 23:00 - 02:00

Since the licence was issued in February 2011, three applications for minor variations had been submitted. Two of these were for changes to the layout in the two bar areas and the third application was made to include the outside area in the permitted area for licensable activities. All three minor variations were granted.

The application for the review by Kent Police related to the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm licensing objectives. In summary the application for a review stated the following problems:

- The sale of alcohol to persons under 18 years of age
- The consumption of alcohol by children
- The lack of age verification policies
- The use of unregistered door staff
- The ineffectiveness of the premises' management.

The application for the review of the premises licence was based upon events on 30<sup>th</sup> June, 16<sup>th</sup> July, 30<sup>th</sup> September, 5<sup>th</sup> October and 19<sup>th</sup> October 2012. Additional information in the form of witness statements from police officers and a special constable had been provided:

- Special Sergeant Prigmore re: incident on 30th June 2012
- PC Pickett re: incident on 5th October 2012
- PC Smith re: incident on 5th October 2012
- Special Sergeant Prigmore re: incident on 5th October 2012
- PC Haines re: incident on 5th October 2012

The Police had provided a summary of the observations after viewing the CCTV from Platform 5 covering the event on 5<sup>th</sup> October 2012. This could be found in Appendix C to the Licensing Manager's Report. The Guidance issued by the Secretary of State under section 182 of the Licensing Act suggested that where authorised persons and responsible authorities had concerns about problems identified at a premises, it was good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they needed to take to address those concerns. A failure by the licence holder to respond to such warnings was expected to lead to a decision to apply for a review. A number of meetings had been held with the licence holder by the Police and others to inform the relevant parties of the Police's concerns and to make suggestions as to appropriate steps to promote the licensing objectives. A summary of these meetings had been provided by the Police and could be found in Appendix D to the Licensing Manager's Report.

No other representations from other persons or responsible authorities were received during the 28-day notice period.

One noise complaint was received by the Council regarding an event at Platform 5 on Saturday 4<sup>th</sup> August 2012. This related to music played in the marquee and was collaborated by the Police. The licence holder was advised of the complaint and advised to ensure that the music levels were restricted as to not cause a nuisance.

Where the Licensing Authority considered that action under its statutory powers was appropriate, it could take any of the following steps:

- to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- to suspend the licence for a period not exceeding three months;
- or revoke the licence.

The options available to the Sub-Committee were set out in paragraphs 45 and 47 in the Licensing Manager's Report. If the Sub-Committee believed that steps should be taken to promote the prevention of crime and disorder, the prevention of public nuisance and/or the protection of children from harm licensing objectives, they could consider the conditions requested by Kent Police:

- a) No persons under 18 to be permitted on the premises at any time. Alternatively the Sub-Committee may wish to consider, that persons under 18 may be permitted on the premises up to 21:00 if accompanied by an adult, and only if they are having a table meal.
- b) At least one member of door staff per 50 customers on duty from 21:00 on Friday and Saturday nights. The same condition to apply for any organised, ticketed or advertised event on any other night.
- c) The Licence Holder will ensure that all staff are trained on age awareness and that all staff training records are regularly audited and will be available to all of the responsible authorities at their request.
- d) The Licence Holder will ensure that an incident book is maintained at the premises and that all staff will be trained in its use. The book will be bound and clearly marked with the following information:
  - Time & date of incident
  - Full description of incident
  - Details of description of any person involved in the incident
  - Any action taken by staff
  - Name of staff member making the entry
- e) At least one personal licence holder to be on duty at the premises from 18:00.
- f) A CCTV system shall be designed, installed and maintained in proper working order, to the satisfaction of the Licensing Authority and in consultation with Kent Police. Such system shall:
  - Be operated by properly trained staff
  - Be in operation at all times that the premises are being used for a licensable activity
  - Ensure coverage of all entrances and exits to the licensed premises, internally and externally
  - Ensure coverage of such other areas as may be required by the Licensing Authority and Kent Police
  - Provide continuous recording facilities for each camera to a good standard of clarity. Such recordings shall be retained (on tape or otherwise) for a period of one month, and shall be supplied to the Licensing Authority or a Police Officer on request.

PC Julian Postlethwaite advised the Sub-Committee that Chief Inspector Bradley, the District Commander for Shepway, had submitted the application for the review; however he was the Police Licensing Officer for the Area and would be representing the Chief Inspector. He would give the Sub-Committee an overview of the events that had lead to the review being applied for:

- 30<sup>th</sup> June 2012 – An all day music event had taken place. Police had attended the premises regarding a missing person. Special Sergeant Prigmore had spoken to the bar manager who had been unable advise how many people were in the premises or identify patrons under the age of 18. Special Sergeant Prigmore had spoken to a 16 year old female who appeared intoxicated and had lost her 15 year old friend. The Designated Premises Supervisor (DPS) was not present.
- 16<sup>th</sup> July 2012 – An under 18 event was hosted at the premises. The Police Licensing Officer had attended and had confiscated a bottle of cider from a 15 year old outside of the premises. Mr Klaric was advised that the individual should not be allowed back into the premises. He was later observed inside the premises by the same officer.
- PC Julian Postlethwaite spoke to the door man who, on investigation, provided false details and was not Security Industry Authority (SIA) registered. Following this discovery Mr Klaric was interviewed and was unaware of the requirements under the SIA regulations.
- 30<sup>th</sup> September 2012 – an assault occurred in the street near to the premises, this was still being investigated which meant that the officer could not elaborate further. On reviewing the CCTV footage from that evening it was clear that drinks were still being poured after 02:00, there was no Temporary Event Notice in place and Mr Klaric was at the bar. Money could not be seen changing hands. There was a 16 year old, who was known to PC Julian Postlethwaite, in the premises who was visibly drinking alcohol and appeared intoxicated.
- 5<sup>th</sup> October 2012 – At 21:03 staff at the premises called the Police to report a disturbance which was ‘out of control’ and advised that the fire alarm had been set off. Upon arrival officers had noticed a large number of youths present, a number of which were clearly intoxicated. PC Julian Postlethwaite was unaware of the type of event that had taken place (18<sup>th</sup> birthday party or an under 18’s event), however there were a number of under 18’s present and alcohol had been on sale. PC Suzy Pickett had seized a doctored driving licence, which was available to view as evidence should this be necessary. Neither the DPS nor Mr Klaric were present at the premises.
- 19<sup>th</sup> October 2012 - PC Julian Postlethwaite attended the premises with Sergeant Allcott. A young male in the smoking area had no identification and appeared to be under 18, PC Julian Postlethwaite informed Mr Kinge, the bar manager, that he should be removed from the premises. Upon further investigation the young male was found to be 17 years old.

In summary the review had been sought due to the premises serving beyond the permitted hours, the inability of staff to differentiate between patrons over and under 18 years old, the employment of unlicensed door staff and the apparent lack of identification checks.

In response to questions from the Sub-Committee PC Julian Postlethwaite advised that the information in the witness statements was taken from the Police Officers' pocket notebooks. He had met with Mr Klaric and Ms Newing on a number of occasions and whilst they did appear to take on board the advice that had been provided he felt that it had made no difference to the running of the premises. The decision to apply for a review had not been taken lightly and there appeared to be a lack of guidance provided to staff.

Special Sergeant Prigmore advised that on the two occasions that he had spoken to Mr Kinge, the bar manager, he had been unhelpful and unable to advise of how many patrons were in the premises. He had appeared uninterested in helping and appeared to regard the Police presence as a hindrance.

Mr Klaric advised the Sub-Committee that Mr Kinge had had a troubled past and was shy of authority and appeared withdrawn, but he was not being disrespectful. Procedures were followed and meetings were held with staff before the start of each shift. It was not always possible to spot fake identification; an issue which he had discussed with the Police. The premises had had a bad reputation previously, but in the time that he had been in charge there had not been a single fight relating to the premises. The Police were given access to the premises and he felt that they had a good relationship with them. The issue with the illegal SIA door man was unfortunate. Mr Klaric had been provided with incorrect details from the individual involved, who had previously worked at Hustle Nightclub. He had not been aware that he needed to have a licence to employ door staff and this was in the process of being rectified.

The event that had taken place on the 5<sup>th</sup> October 2012 had been an 18<sup>th</sup> birthday party. It had been made clear to the organiser that no under 18's would be permitted into the premises and ID checks would be carried out. 35 people were expected to attend, however due to a 'Facebook Flash' over 200 people had turned up, which had taken staff by surprise. He had advised his staff, by telephone, to turn off the music and to confiscate any alcohol that had been taken into the premises.

Some issues had been experienced with people jumping over the perimeter fence between Platform 5 and Hustle Nightclub. He had installed new fencing around the whole perimeter. On the two occasions when under 18 events had been held the bar had been closed. An incident book was kept and he had installed CCTV at the premises at considerable expense. He felt that reputation was important and was conscious that seven people relied on the premises for employment. Mr Klaric stated that he had already brought in a policy of no under 20's in Platform 5 and that he was happy for this to be a condition on his licence.

Ms Newing further advised that they had requested a town radio, however this had not yet been provided. This resulted in the premises effectively being cut off from other premises in the town. She added that on the night of the 30<sup>th</sup> September no money had been taken for drinks after 02:00. Witnesses to the fight down the road were invited into the premises to await the arrival of the Police and provided with a free drink. She felt that there was no excuse for the incidents that had occurred, however they were looking to train their staff further.



In response to questions from the Sub-Committee PC Julian Postlethwaite advised that Ashford Partnership Against Crime provided the town radios and co-ordinated PubWatch. He confirmed that Mr Klaric and Ms Newing had requested a radio on a number of occasions.

Mr Klaric stated that they were strict on procedures being followed; ID checks were carried out on entry and if more than two drinks were being purchased ID was requested for all individuals in that group. He had requested guidance on what to look for on a fake ID.

Ms Newing requested advice on ID samples and example paperwork that could assist with the training of the staff. The Licensing Manager advised that the DPS course run by the British Institute of Innkeepers would be useful and the course documentation would assist with the training of staff.

The Licensing Manager then summed up the nature of the application and the issues for the Sub-Committee to consider.

In response to a question from the Sub-Committee, Mr Klaric confirmed he was happy to have a condition regarding a 20 year old and older age restriction on his licence.

The Sub-Committee then retired to make their decision.

On return the Legal Advisor read out the decision.

**Resolved:**

**That given the evidence presented to them and the views presented at the hearing, the Sub-Committee grant the review of the Premises Licence and the following additional conditions be applied to the licence:**

- 1. No persons under 20 to be permitted on the premises at any time.**
- 2. All staff to operate the Challenge 21 Scheme.**
- 3. At least one member of door staff per 50 customers on duty from 21:00 on Friday and Saturday nights. The same condition to apply for any organised, ticketed or advertised event on any other night.**
- 4. The Licence Holder will ensure that all staff are trained on age awareness and that all staff training records are regularly audited and will be available to all of the responsible authorities at their request.**
- 5. The Licence Holder will ensure that an incident book is maintained at the premises and that all staff will be trained in its use. The book will be bound and clearly marked with the following information:**
  - Time & date of incident**
  - Full description of incident**

- Details of description of any person involved in the incident
  - Any action taken by staff
  - Name of staff member making the entry
6. At least one personal licence holder to be on duty at the premises from 18:00.
7. A CCTV system shall be designed, installed and maintained in proper working order, to the satisfaction of the Licensing Authority and in consultation with Kent Police. Such system shall:
- Be operated by properly trained staff
  - Be in operation at all times that the premises are being used for a licensable activity
  - Ensure coverage of all entrances and exits to the licensed premises, internally and externally
  - Ensure coverage of such other areas as may be required by the Licensing Authority and Kent Police
  - Provide continuous recording facilities for each camera to a good standard of clarity. Such recordings shall be retained (on tape or otherwise) for a period of one month, and shall be supplied to the Licensing Authority or a Police Officer on request.

**The Licensing Manager be given delegated authority to make minor amendments to the wording of the conditions as necessary.**

The Chairman advised Mr Klaric that the Sub-Committee acknowledged his public spiritedness. He urged him to take on board the comments made at the Meeting and that the running of the premises needed to improve.

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**Agenda Item No:** 5  
**Licence Reference** WK/201207586  
**Report To:** LICENSING SUB COMMITTEE  
**Date:** 10 JANUARY 2013  
**Report Title:** Licensing Act 2003 - Application for a premises licence for Eastern Corner Ltd, 4 Torrington Road, Ashford, Kent, TN23 7TD  
**Report Author:** Licensing Support Officer



**Summary:** The report advises Members of a licence application under the provisions of the Licensing Act 2003.

Application type: **Application for a premises licence**

Applicant: **Eastern Corner Ltd –  
Mr Dmytro Zushchuk**

Premises: **Eastern Corner Ltd, 4 Torrington Road,  
Ashford, Kent, TN23 7TD**

Members are asked to determine whether to grant the premises licence.

**Key Decision:** NO

**Affected Wards:** Norman Ward (Ashford)

**Recommendations:** **The Committee is asked to determine the application and decide whether to grant the premises licence.**

**Policy Overview:** The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy. Where the decision departs from the Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and such departure must be supported by clear and cogent reasons.

**Financial Implications:** The costs associated with processing the application are taken from licensing fee income.

**Other Material Implications:** **HUMAN RIGHTS:** In considering this application the Sub Committee will balance the competing Human Rights of the various parties including the right to respect for private and family life, the protection of property and the right to a fair hearing.  
**LEGAL:** Under the Licensing Act 2003 the Council has a duty to exercise licensing control of relevant premises.

**Exemption Clauses:** Not applicable

**Background  
Papers:** None

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**Contacts:**

**Report Title:**            **Licensing Act 2003 - Application for a premises licence  
Eastern Corner Ltd, 4 Torrington Road, Ashford, Kent,  
TN23 7TD**

### **Purpose of the Report**

1. The report advises Members of a licence application under the provisions of the Licensing Act 2003.

Application type:        **Application for a premises licence**

Applicant:                **Eastern Corner Ltd - Mr Dmytro Zushchuk**

Premises:                **Eastern Corner Ltd, 4 Torrington Road, Ashford,  
Kent, Ashford, Kent, TN23 7TD**

### **Issue to be Decided**

2. Members are asked to determine whether to grant the premises licence.

### **Background**

#### ***The Licensing Objectives***

3. The licensing authority must carry out its functions under the Licensing Act 2003 with a view to promoting the licensing objectives namely, the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm (LA 2003, s4 (1)).

#### ***Application details***

4. The application is for a premises licence. See Appendix A for the application for a premises licence, along with a plan of the internal layout of the premises.
5. Representations have been received hence the determination coming before Members.

#### ***Additional steps***

6. The applicant states within section P of the application form the additional steps they intend to take in order to promote the four licensing objectives if the proposed application is granted.
7. The conditions put forward by the Licensing Support Officer as taken from section P of the application form are as given within Appendix C. Note it is the responsibility of the Licensing Authority to prepare conditions that are "consistent" with the operating schedule (s.18).

8. It is stressed that while a licensing authority has no discretion to add or modify a condition where there is no relevant representation, it may not issue a licence with conditions that are illegal.

### ***Representations from Responsible Authorities***

9. No representations have been received from responsible authorities.

### ***Representations from Other Parties***

10. Two parties have made representations (both from the same household). Copies of the letters are contained in Appendix B.
11. The representations can be summarised as follows:
  - The potential for increased litter within the vicinity of the premises, particularly broken and half drunk bottles of alcohol which the objectors already feel is a problem.
  - The worry that it will lead to further noise and nuisance in the area.
  - The fact that there are already a number of licensed premises in the location.
12. Members will be aware that demand for premises cannot be considered under the Licensing Act.
13. Under section 35(5) of the Licensing Act 2003, representations are relevant if they are about the likely effect of the grant of the licence on the promotion of the licensing objectives and (subsection 6) are made by an interested party or responsible authority within the prescribed period, are not withdrawn or, in the opinion of the licensing authority, frivolous or vexatious
14. The prescribed period for the receipt of such representations in this case is, by Regulation 22(b) of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 "during a period of 28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant". In this case the application was given to the authority 18 October 2012 and the last date for receipt of relevant representations was 15 November 2012. However the notice was not correctly displayed at the premises and therefore the consultation process was restarted and the new date for objections set as 12 December 2012.

### ***Relevant premises history***

15. The premises is situated Torrington Road, Ashford in a premises which has had retail use since 1996.
16. The application proposes to permit off sales of alcohol:
  - 11am – 9pm Monday to Thursday
  - 11am – 10pm Friday
  - 10am – 10pm Saturday & Sunday

No season variations or non standard timings have been applied for.

17. The application states that the premises will be a general convenience shop selling Eastern European food & drink. No other licensable activities have been applied for.

## Options

### *General*

18. Members attention is drawn to the following matters:
- All applications are to be considered on their merits as well as against the relevant policy and statutory framework.
  - Due regard should be given to the provisions of the Human Rights Act 1998, Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 and Section 17 of the Crime and Disorder Act 1998 and, so far as possible, reflect local crime prevention strategies.
  - The operating schedule forms part of the completed application form for a premises licence. The operating schedule should include information, which is necessary to enable any responsible authority or other party to assess whether the steps to be taken to promote licensing objectives are satisfactory.
  - The licensing authority may not impose any conditions unless its discretion has been engaged following the making of relevant representations and it has been satisfied at a hearing of the appropriateness to impose conditions due to the representations raised. It may then only impose such conditions as are appropriate to promote the licensing objectives arising out of the consideration of the representations. However, in order to minimise problems and the necessity for hearings, it would be sensible for applicants to consult with responsible authorities when schedules are being prepared. This would allow for proper liaison before representations prove necessary.
  - Where problems have occurred, the application for the new licence will afford an opportunity for responsible authorities and other parties to raise the issue through representations and for conditions addressing any nuisance previously caused to be attached following a hearing where necessary. The views of local residents will be important in establishing the extent of any history of problems.
  - The conditions put forward within this report are suggested on the basis of:
    - information contained within the application form;
    - interested parties representations and
    - on those measures currently in existence.
  - 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.

- Public nuisance is not narrowly defined in the 2003 Act and retains its broad common law meaning for the Act's purposes. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity of other parties living and working in the area of a licensed premises. Public nuisance may also arise as a result of artificial light, dust, odour and insects or where its effect is prejudicial to health.
- Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise may also prove necessary to address any disturbance anticipated as customers enter and leave the premises and therefore, in the immediate vicinity of the premises.
- In the context of preventing public nuisance, it is essential that conditions are focused on measures within the direct control of the licence holder. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, or premises management cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises. 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 his own right. However, it would be perfectly reasonable for a licensing authority to impose a condition it considered appropriate following relevant representations from an interested party that requires the licence holder to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living near-by to a peaceful night. After a licence has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence.
- The Guidance states "the conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence or certificate holder, which they should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule which must also set out



the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public.”

- It is perfectly possible that in certain cases, because the test is one of appropriateness, where there are other legislative provisions, which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

### **Decision options**

19. In addition to those matters outlined in the applications operating schedule if members are minded to grant the application they may wish to consider the following conditions:

#### **Prevention of Public Nuisance**

- a) The Licence Holder will take all reasonable steps to ensure that adequate waste receptacles are available for use by customers immediately outside the premises, subject to the Council’s approval.
- b) The Licence Holder will ensure that staff monitor the immediate vicinity of the premises, on an hourly basis, when the premises is open to the public. Any litter will be collected and disposed of appropriately.

### **Consultation**

20. All relevant parties have followed the consultation procedures required under the Licensing Act 2003.

### **Implications Assessment**

21. The decision should be made with regard to the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal / challenge is increased.

### **Human Rights**

22. While all Convention Rights must be considered, those which are of particular relevance to the application are:
- Article 8 - Right to respect for private and family life
  - Article 1 of the First Protocol - Protection of Property
  - Article 10 – Freedom of Expression

The full text of each Article is given in the attached Appendix D.

### **Handling**

23. The timings for handling the application are set out in the Licensing Act 2003 and related regulations.

## **Conclusion**

24. Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

