



Licensing Sub-Committee

Notice of a Meeting to be held in Committee Room 1, Civic Centre, Tannery Lane, Ashford, Kent TN23 1PL on Thursday 13th November 2014 at 2.00 pm

The Members of this Sub-Committee are:-

Cllrs. Chilton, Galpin, Mrs Hutchinson.
Reserve Cllr. Shorter

Agenda

- | | Page
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:- To declare any interests which fall under the following categories, as explained on the attached document: | 1 |
| a) Disclosable Pecuniary Interests (DPI) | |
| b) Other Significant Interests (OSI) | |
| c) Voluntary Announcements of Other Interests | |
| See Agenda Item 3 for further details. | |
| 4. Minutes – To approve the Minutes of the Meeting of this Sub-Committee held on the 1 st October 2014. | 3 – 11 |

Matters for Decision

- | | |
|--|---------|
| 5. The Crusader, Brookfield Road, Ashford, Kent, TN23 4EZ - Application for the variation of the Premises Licence. | 13 - 45 |
| (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. | |

Please refer to the Guidance Notes on the procedure to be followed at this meeting as attached to this Agenda

If you know the applicant/objector(s) and have a possible conflict of interest or have any queries concerning the Agenda please contact Rosie Reid on 01233 330565

Declarations of Interest (see also “Advice to Members” below)

- (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 meeting for that item (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 meeting 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 disclosed under (a) and (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 either an OSI or in some cases a DPI].

Advice to Members on Declarations of Interest:

- (a) Government Guidance on DPI is available in DCLG’s Guide for Councillors, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/240134/Openness_and_transparency_on_personal_interests.pdf plus the link sent out to Members at part of the Weekly Update email on the 3rd May 2013.
- (b) The Kent Code of Conduct was adopted by the Full Council on 19 July 2012, with revisions adopted on 17.10.13, and a copy can be found in the Constitution at <http://www.ashford.gov.uk/part-5---codes-and-protocols>
- (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.

Licensing Sub-Committee

Minutes of a Meeting of the Licensing Sub-Committee held in Committee Room No.1 (Fougères Room), Civic Centre, Tannery Lane, Ashford on the **1st October 2014**

Present:

Cllr. Shorter (Chairman);

Cllr. Davey

Apologies:

Cllrs. Chilton, Hodgkinson.

Also Present:

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

Mr Biggs – Applicant.

Mr Duncan, Mr Ibbotson, Mr and Mrs Holdstock – Interested Parties.

165 Election of Chairman

Resolved:

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

166 Minutes

Councillor Shorter referred to the set of minutes from the meeting held on 3rd April 2014 and requested that the Licensing Team confirmed, at a later date, that the conditions applied to the licence by the Sub-Committee were being complied with.

Resolved:

That the Minutes of the Meetings of this Sub-Committee held on the 15th February 2013 and 3rd April 2014 be approved and confirmed as a correct record.

167 Spearpoint Pavilion, The Ridge, Kennington, Ashford, TN24 1ET – Application for a 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.

The Licensing Support Officer then gave a brief summary of her report. The application was for a premises licence at Spearpoint Pavilion, along with a plan of the internal layout which was contained at Appendix A of the agenda papers. The premises were a sports pavilion built in the 1960's and of timber construction with a flat roof. It was situated on a large council owned area of amenity land at The Ridge in Kennington. The pavilion currently housed several changing rooms, a small bar area, kitchen, office, store rooms and a lounge area. The Ashford Barbarians Rugby Club was formed in January 2013 and they had been using the premises since August 2013.

Planning permission had been sought for a replacement building on the site. Should a licence be granted it would relate only to the building on site, should planning permission be granted and a replacement building constructed then the applicant would need to apply for a new licence.

The application proposed to permit the sale of alcohol Monday to Saturday 11:00 to 23:00, Sundays 11:00 to 22:00 with an extension on Christmas Eve until 00:00 and on New Years Eve until 01:00, the performance of plays, films, performance of dance and indoor sporting events Monday to Saturday 11:00 to 23:00 and Sundays 11:00 to 22:00, live music Friday and Saturdays 12:00 to 22:00 and Monday and Sundays 12:00 to 18:00 with an extension on Christmas Eve until 22:00 and New Years Eve until 00:00 and recorded music Monday to Saturday 11:00 to 23:00, Sundays 11:00 to 22:00 with an extension on Christmas Eve until 00:00 and on New Years Eve until 01:00. There was no premises licence granted for the premises at the present time.

Four parties had made representations. Copies of the letters were contained in Appendix B of the agenda papers. All of the representations were from parties living in the area. The representations had a number of common themes in terms of the licensing objectives and they could be summarised as follows:

- The concern about the sale of alcohol in an area used by children
- The concern about the potential for excessive noise and anti-social behaviour

The Licensing Support Officer advised that since August 2013 there had been 20 Temporary Event Notices (TENs) issued for the site, which had involved the consumption of alcohol and entertainment from 12:00 to 00:00 and there had been no complaints received by any statutory body during this time.

Mr Duncan spoke in objection to the application. He had lived in the area for 22 years and was concerned about the potential noise and anti-social behaviour that

permitting of the premises licence may create. He had no objection to people's right to enjoy alcohol however he did not want instances of anti-social behaviour in the area. He questioned what would happen to the glasses if alcohol was consumed on the field/in the car park and the potential impact on children and young people. Furthermore he was concerned about litter being spread along the roadside and in residents gardens.

Mrs Holdstock spoke in objection to the application. She advised the Sub-Committee that her biggest concern was anti-social behaviour. If she was to confront an individual causing anti-social behaviour in the area, as she had in the past, and she was met with abuse she questioned who would be responsible for dealing with this, as in her opinion the response from the Police was not satisfactory. Research had shown that there were 5 places in the area that had premises licences and permitted the hire of function rooms, therefore she questioned the necessity of a premise licence at this location. She was not against rugby or the club however felt that the consumption of alcohol in the area was a big issue. She along with many other residents walked her dogs on the field and was concerned about broken glasses and bottles. Mrs Holdstock requested clarification on who would 'carry the buck' should there be issues at the premises?

The Legal Advisor asked Mrs Holdstock to clarify if the instances of anti-social behaviour she had mentioned had been related to the premises in question. Mrs Holdstock advised that the instances she had referred to had emanated from elsewhere. Her main concern was that a point of contact be available should residents have any concerns or if any instances of anti-social behaviour occurred were related to the premises.

Mr Ibbotson spoke in objection to the application. He and his wife had lived on The Ridge for over 43 years and wished to spend their retirement without any disturbances. He felt that alcohol did not mix well with a sports pavilion and any licence at this location was unnecessary.

Mr Biggs spoke in support of the application. He advised that he was the club house manager and had held a personal licence for 15 years. He had managed Utopia, in the town centre, for 10 years and had had zero instances of trouble in that time. The rugby club was formed in January 2013 and had been at The Ridge since August 2013. The club and clubhouse was operated on a voluntary basis. The club motto was 'for the love of the game' and this was something that the committee members and players valued. The club wished to place itself at the heart of the community. They had played two seasons of rugby and had been rewarded by the RFW with an award for the 'friendliest club'. The pavilion was used to host meals and drinks for visiting teams. In addition to the 20 TENs mentioned by the Licensing Support Officer, an additional TEN had been exercised the previous weekend, with no complaints received from anyone in the area. There had been a number of enquiries from local residents and groups regarding the hire of the pavilion for meetings, he wanted to reassure all those present that a member of the rugby club would be present at the premises at all times when an event was taking place. Polycarbonate glasses had been purchased by the club, these were reusable unlike traditional plastic glasses. The club undertook a sweep of the field at the end of each game for

litter etc. It was also intended for the club to become a member of the pubwatch scheme.

Mr Biggs advised that in the evening only members or guests of members were present in the building and it was expected that admittance would be policed by committee members. It would not be possible for someone to walk in off the street and purchase alcohol. The seven day a week licence had been applied for to allow flexibility for the club and hirers of the pavilion. Members of the club were aware of instances of anti-social behaviour in the car park which had been brought to the Police's attention. This behaviour was not linked to the club in any way, however it was hoped that the presence of the club and its members would help to deter these occurrences. Many of the residents had his contact details, and he would be pleased to provide these to those present, and they could contact him should there be any issues in relation to the pavilion or activities taking place there.

In response to questions from Members Mrs Holdstock advised that the instances of anti-social behaviour she had referred to pre-dated the rugby club. Her concern was that the presence of the club would exacerbate these instances.

In response to questions from Members Mr Biggs explained that the car park at The Ridge was concealed and members of the club had moved people on that were partaking in unsavoury activities in the area. The club would operate a Challenge 21 scheme and were content for this to be added as a condition to any licence should it be granted. No minors played rugby at the club at the present time. Three members of staff were trained in respect of the legislation and the serving of alcohol and he would train more committee members should it be necessary. He wished to reiterate that members of the public would not be able to enter the premises and purchase alcohol without having been invited by a member. Should anyone present in the pavilion have consumed too much alcohol then that person(s) would be refused alcohol. Not only was it dangerous to serve alcohol to someone already intoxicated it was also an offence. Staff would be trained to recognise this and on the procedure to follow to refuse to serve alcohol. There were sanctions that the rugby club could bring against its members should they cause or contribute towards incidences of anti-social behaviour, this included being barred from the premises permanently. Mr Biggs further advised that live music would be likely to be an individual on a guitar or keyboards rather than a full scale band. Live music had been played at a number of the events where TENs had been in place and no noise complaints had been received either from local residents or Environmental Protection. The Legal Advisor added that there had been no representation made by Environmental Protection in respect of this application therefore it was apparent they had no cause for concern.

Mr Biggs advised of the entrances to the pavilion and that there were security lights installed at the front and rear of the building. As part of the change of access additional exterior lights were to be installed along the footpath. Discussions had been held with Ashford College regarding the use of the grounds and changing rooms, however this was unlikely to be actioned for at least four years. As the Designated Premises Supervisor he had a right to restrict access to the premises and so would not permit members of the public to enter the premises and purchase alcohol without having been invited by a member.

In response to a question the Licensing Support Officer advised that the sale of alcohol, on sales, related to the purchase of alcohol on the site, not where the consumption could take place.

The Licensing Sub-Committee adjourned for 15 minutes to allow the applicant to formulate some additional conditions to add to the licence, should it be granted.

On return the applicant advised that he wished to amend his application and as such put forward the following additional conditions:

1. Held within the premises will be the training records and appendices of bar staff trained to serve alcohol.
2. All staff trained in the following:
 - (a) Challenge 21 or equivalent regime to be enforced and posters displayed;
 - (b) All committee members will be trained to identify if alcohol is being passed onto minors and the procedure to deal therewith; and
 - (c) all staff trained when it is appropriate to stop serving and how to enforce this.
3. When the licensed premises is open, the responsible person will regularly, at least hourly, check around the perimeter to monitor the outside for anti-social behaviour and safety of minors.

In response to a question Mr Biggs advised that CCTV recordings would be held for 28 days after any event should the Police wish to inspect the recordings.

The Licensing Support Officer then summed up the nature of the application and the issues for the Sub-Committee to consider. She reminded the Sub-Committee that they may grant the licence with no modifications, modify the conditions of the licence or reject whole or part of the application.

The Sub-Committee then retired to make their decision.

On return the Legal Advisor read out the decision.

Resolved:

That the premises licence be granted as applied for.

The decision notice and formal wording read out by the Legal Advisor is appended to these minutes.

LICENSING SUB-COMMITTEE
Wednesday 1 October 2014

APPLICATION FOR A PREMISES LICENCE
ASHFORD BARBARIANS RUGBY FOOTBALL CLUB, SPEARPOINT PAVILLION,
THE RIDGE, KENNINGTON, ASHFORD, KENT.

LICENSING SUB-COMMITTEE DECISION AND REASONINGS

**NAME AND ADDRESS
OF PREMISES:**

Ashford Barbarians Rugby Football Club,
Spearpoint Pavillion,
The Ridge,
Kennington,
Ashford,
Kent.

APPLICANT:

Ashford Rugby 2013 Limited

**REASON FOR
HEARING:**

To determine application further to receipt of four valid representations received from interested parties.

DELIBERATION:

The Licensing Sub-Committee was advised at the meeting that 21 temporary event notices had been held at the premises and further, there had been no complaints received from any party, e.g. Environmental Services, police, fire service, or any residents.

Further, that the applicant wished to amend the application to include the following conditions –

1. *Held within the premises will be the training records and appendices of bar staff trained to serve alcohol.*
2. *All staff trained in the following:*
 - (a) *Challenge 21 or equivalent regime to be enforced and posters displayed;*
 - (b) *all committee members will be trained to identify if alcohol is being passed onto minors and the procedure to deal therewith; and (c) all staff trained when it is appropriate to stop serving and how to enforce this.*

3. *When the licensed premises is open, the responsible person will regularly, at least hourly, check around the perimeter to monitor the outside for anti-social behaviour and safety of minors.*

The Sub-Committee considered in detail the representations contained within the committee bundle at pages 37 to 41, which were expanded upon at the Sub-Committee hearing.

In light of the above, the Sub-Committee considered the following relevant licensing objectives.

1. Prevention of Crime and Disorder

No representations had been made regarding this licensing objective.

2. Public Safety

No representations had been made regarding this licensing objective.

3. The Prevention of Public Nuisance

The Sub-Committee had regard to the representations made regarding this objective and the concerns expressed by those residents present at the meeting, in respect of excessive noise. It was noted that there was no evidence to suggest that any of the residents were suffering the affects of excessive noise from the premises or patrons. Rather these were anticipated concerns. The Sub-Committee considered that the measures in place and, in particular, the additional conditions proffered at the meeting by the applicant would alleviate these concerns.

In respect of anti-social behaviour, again it was noted that there was no evidence to suggest that residents were suffering the affects of anti-social behaviour from the premises or patrons currently but that these were anticipated concerns. The Sub-Committee considered that the measures in place, the additional conditions proffered at the meeting by the applicant would alleviate these concerns. The Sub-Committee thought that the following condition particularly effective, 'When the licensed premises is open, the responsible person will regularly, at least hourly, check around the perimeter to monitor the outside for anti-social behaviour and safety of minors.'

4. Prevention of Harm to Children

The Sub-Committee had regard to the representations made regarding this objective and the concerns expressed by those residents present at the meeting in respect of prevention of harm to children. Again it was noted that there was no evidence to suggest that this is a current problem but that these were anticipated concerns. The Sub-Committee considered that the measures in place, the additional conditions proffered at the meeting by the applicant would alleviate these concerns. The Sub-Committee thought that the following conditions particularly effective: 'Challenge 21 or equivalent regime to be enforced and posters displayed; and all committee members will be trained to identify if alcohol is being passed onto minors and the procedure to deal therewith'.

DECISION MADE:

Application as applied for.

Additional notes made by the Sub-Committee at the meeting -

- This licence, like any other licence, is subject to review at the instigation of any Responsible Authority or Interested Person should there be any concerns regarding the operation of, and/or, breaches of the licence.
- Other Persons and Responsible Authorities were reminded that they may apply for a review of this licence "after a reasonable interval" pursuant to section 51 of the Licensing Act 2003.
- Entitlements to appeal for parties aggrieved by the decisions of the Licensing Authority are set out in Schedule 5 to the 2003 Act.
- In the case of a Premises Licence, an appeal has to be commenced by the giving of a notice of appeal by the appellant to the justices' chief executive for the magistrates' court within a period of 21 days beginning on the day on which the appellant was notified by the licensing authority of the decision to be appealed against.

Agenda Item No:

Licence Reference **WK/201408638**

Report To: **LICENSING SUB COMMITTEE**

Date: **13 NOVEMBER 2014**

Report Title: **Licensing Act 2003 - Application for a variation of a premises licence for **The Crusader, Brookfield Road, Ashford, Kent, TN23 4EZ.****

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 from an existing licence holder to vary the premises licence under the provisions of section 35(3)(a) to the Licensing Act 2003**

Applicant: **Mr Ufuk Sen**

Premises: **The Crusader, Brookfield Road, Ashford, Kent, TN23 4EZ.**

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

Key Decision: NO

Affected Wards: Beaver (Ashford) Ward

Recommendations: **The Committee is asked to determine the application and decide whether to grant the variation to 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

Contacts: jane.woodford@ashford.gov.uk – Tel: 01233 330578

Report Title: Licensing Act 2003 - Application to vary a premises licence The Crusader, Brookfield Road, Ashford, Kent, TN23 4EZ

Purpose of the Report

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

Application type: **Application to vary a premises licence**

Applicant: **Mr Ufuk Sen**

Premises: **The Crusader, Brookfield Road, Ashford, Kent
TN23 4EZ**

Issue to be Decided

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

Background

The Licensing Objectives

3. The licensing authority must carry out its functions under the Licensing Act 2003 Section 4 (1) with a view to promoting the licensing objectives namely:
 - the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance
 - the protection of children from harm

Application details

4. The application is made by an existing licence holder to vary a premises licence. It should be noted that the current licence holder has only been at the premises since 25 September 2014.
5. See Appendix A for the application to vary a premises licence. The application has been made in the proper manner.
6. The applicant has applied to vary the premises licence to add the off sale of alcohol to match the existing hours for the on sale of alcohol as follows:

Sunday to Wednesday 10:00 – 23:30

Thursday to Saturday 10:00 – 01:30

Bank Holidays, Christmas Day & New Years Day 10:00 – 01:00

Off sales will be able to be made from the premises or with food orders upon delivery. Payment for alcohol delivery will be made online or over the phone.

7. In addition the applicant has applied for late night refreshment as follows:

Sunday to Wednesday 23:00 – 23:30
Thursday to Saturday 23:00 – 01:30

8. One representation has been received hence the determination coming before Members.

Additional steps

9. The conditions put forward by the licensing department are taken from section M of the application form and 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).
10. It is stressed that while a licensing authority has no discretion to add or modify a condition where there is no relevant representation. Also it may not issue a licence with conditions that are illegal.

Representations from Responsible Authorities

11. No representations have been received from responsible authorities.

Representations from Other Parties

12. One of the Ward Councillors has made a representation and a copy of the email is contained in Appendix B. The representation concerns the potential for increased noise within the vicinity of the premises.
13. It is also stated within the representation that issues have previously been raised directly with the Ward Councillors, about people gathering in the area, which the licensing team were not aware of.
14. Licensing has had three complaints (but all relating to the previous licence holder) from members of the public, all regarding loud music. The most recent being August 2014 and the others date back to July 2012 and January 2011.
15. 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 other person or responsible authority within the prescribed period, are not withdrawn or, in the opinion of the licensing authority, frivolous or vexatious.
16. 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 25 September 2014 and the last date for receipt of relevant representations was 23 October 2014. A notice was placed on the premises and advertised in the local paper.

Relevant premises history

17. The premises is a relatively large public house situated on Brookfield Road.
18. The current licence holder has only been operating the business since 25 September 2014 and there have been no complaints during this short time.
19. The current premises licence is attached in Appendix E but is summarised below:

	Alcohol On Sales	Films, Indoor Sporting Events	Live Music	Recorded Music	Other Entertainment	Opening Hours
Sun	10:00 – 23:30	12:00 – 00:00	12:00 – 22:30	12:00 – 23:00	10:00 – 00:00	10:00 – 00:00
Mon	10:00 – 23:30	10:00 – 00:00	10:00 – 23:00	10:00 – 00:00	10:00 – 00:00	10:00 – 00:00
Tue	10:00 – 23:30	10:00 – 00:00	10:00 – 23:00	10:00 – 00:00	10:00 – 00:00	10:00 – 00:00
Wed	10:00 – 23:30	10:00 – 00:00	10:00 – 23:00	10:00 – 00:00	10:00 – 00:00	10:00 – 00:00
Thu	10:00 – 01:30	10:00 – 01:30	10:00 – 00:00	10:00 – 01:00	10:00 – 01:30	10:00 – 01:30
Fri	10:00 – 01:30	10:00 – 01:30	10:00 – 00:00	10:00 – 01:30	10:00 – 01:30	10:00 – 02:00
Sat	10:00 – 01:30	10:00 – 01:30	10:00 – 00:00	10:00 – 01:30	10:00 – 01:30	10:00 – 02:00
	Bank Holidays, Christmas Day & New Years Day 10:00 - 01:00					

General

20. 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;
 - 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

- Grant the application without modifications to the proposed conditions
- Modify the conditions of the licence
- Reject whole or part of the application

Consultation

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

Implications Assessment

22. 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

23. 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

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

Conclusion

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

APPENDIX C
CONDITIONS CONSISTENT WITH THE APPLICANTS OPERATING SCHEDULE

Additional conditions which have been volunteered by the applicant, on the application, and would be added to the licence if the variation is granted:

General – All Four Licensing Objectives

The Licence Holder will work with the police and local authority to provide a safe environment for customers.

The Licence Holder will ensure there is no underage drinking by the use of verification methods and to encourage sensible drinking.

The Licence Holder will encourage customers to leave quietly.

The Prevention of Crime & Disorder

The Licence Holder will ensure that all sales for delivery orders are made at the premises, online or over the telephone.

The Licence Holder will ensure that age verification checks are completed before handing over a delivery that includes alcohol and that the customer is advised of acceptable forms of identification at the time of ordering.

Public Safety

The Licence Holder will work closely with the local police to improve public safety.

APPENDIX D - HUMAN RIGHTS

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 1 of the First Protocol

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws, as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 10

3. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
4. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.