

# REPORT TO LICENSING SUB-COMMITTEE FOLLOWING RECEIPT OF REPRESENTATIONS IN RELATION TO AN APPLICATION MADE UNDER THE LICENSING ACT 2003 FOR LEPPARDS WILDERNESS FARM

Licensing Sub-Committee - 23 May 2016

Report of Chief Officer, Environmental and Operational Services

Status: For Decision

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**Executive Summary:** This report provides information to advise members of an application for a new time limited premises licence under The Licensing Act 2003 in respect of Leppards Wilderness Farm, Wilderness Lane, Edenbridge, TN8 7LP.

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## Recommendation to Licensing Sub-Committee:

Options available to members are:

- a) To grant the application in full on the terms and conditions contained in the operating schedule along with relevant mandatory conditions
  - b) To grant the application, modified to such an extent as considered appropriate in order to satisfy any relevant representations so as to adequately promote the licensing objectives
  - c) To refuse the application in its entirety.
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**Reason for recommendation:** Each application must be considered on its individual merits and in relation to the licensing objectives under the Licensing Act 2003, therefore recommendations as such cannot be made. However, having considered the individual circumstances of this application and representations and testimony received at hearing, the options available to Members are outlined above.

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## Introduction and Background

- 1 On 24 March 2016 an application was received by Phizzwizzards Ltd for a new time limited premises licence for Leppards Wilderness Farm, Wilderness Lane, Edenbridge, TN8 7LP. This application was validated on 4 April 2016 and the consultation end date was the 2 May 2016.
- 2 Members are requested to determine the application having regard to the operating schedule, representations and testimony received, the Council's Statement of Licensing Policy, revised section 182 guidance and the four Licensing objectives.
- 3 An authorisation is required in respect of any premises where it is intended to conduct one or more of the four licensable activities, these being:

- Sale of alcohol
- Supply of alcohol (in respect of a club)
- Regulated Entertainment
- Provision of Late Night Refreshment

An appropriate authorisation is either, a premises licence, a club premises certificate or a Temporary Event Notice.

4 Licence holders are required, when offering any licensable activity, to ensure that they promote the licensing objectives at all times. The operating schedule of the application contains details of the activities applied for and the control measures that the applicant will have in place in order to promote these objectives. Such measures will, where appropriate, be converted into enforceable conditions on any licence issued.

5 The four licensing objectives are:

- Prevention of crime and disorder
- Prevention of public nuisance
- Public safety
- Protection of children from harm

No objective carries any more weight than any other and these are the only factors in which Licensing can have regard in determining an application.

6 Any representation must be able to demonstrate that on the balance of probability the application in its current form will fail to adequately promote one or more of the licensing objectives specific to the subject premises.

## 7 Summary of Application Sought

7.1 The application received on 24 March 2016 from Phizzwizzards Ltd seeks a new premises licence under the Licensing Act 2003 time limited from 28 July 2016 to 31 July 2016 inclusive. A copy of the application, and the risk management plan which forms the basis of the applicants operating schedule, is attached at appendix A.

The premises application is proposed to permit the LeeFest Music and Arts Festival 2016 within a Farmland and woodland area totalling approximately 43 hectares.

The event proposed has been described as a small-scale family friendly music and arts festival with a focus on supporting emerging artists, engaging communities in the arts and allowing people to enjoy the outdoors as part of a festival experience. The event proposes live music, DJ's cabaret, communal campfire, cinema, circus, comedy, craft markets and workshops, dance classes, games, sports glitter wrestling, hot tubs, art installations, kids area, local ales, magic, paint fights, therapies, debates, yoga and camping facilities.

It has also come to the attention of licensing that the event intends to have a casino and arcade area.

The application is made to permit a total number of 4499 members of the public and 500 performers and staff.

7.2 The application seeks a premises licence to permit the following activities:-

Performance of Plays both indoors and outdoors

28 July 14:00 to 23:59

29 July 00:00 to 03:00 and 09:00 to 23:59

30 July 00:00 to 05:00 and 09:00 to 23:59

31 July 00:00 to 05:00

Exhibition of films both indoors and outdoors

28 July 14:00 to 23:59

29 July 00:00 to 03:00 and 09:00 to 23:59

30 July 00:00 to 05:00 and 09:00 to 23:59

31 July 00:00 to 05:00

Live music both indoors and outdoors

28 July 14:00 to 23:59

29 July 00:00 to 03:00 and 09:00 to 23:59

30 July 00:00 to 05:00 and 09:00 to 23:59

31 July 00:00 to 05:00

Recorded music both indoors and outdoors

28 July 14:00 to 23:59

29 July 00:00 to 03:00 and 09:00 to 23:59

30 July 00:00 to 05:00 and 09:00 to 23:59

31 July 00:00 to 05:00

Performance of dance both indoors and outdoors

28 July 14:00 to 23:59

29 July 00:00 to 03:00 and 09:00 to 23:59

30 July 00:00 to 05:00 and 09:00 to 23:59

31 July 00:00 to 05:00

Anything of a similar description to live music, recorded music and performance of dance that would not be classified as such both indoors and outdoors

28 July 14:00 to 23:59

29 July 00:00 to 03:00 and 09:00 to 23:59

30 July 00:00 to 05:00 and 09:00 to 23:59

31 July 00:00 to 05:00

Late night refreshment both indoors and outdoors

28 July 23:00 to 23:59

29 July 00:00 to 03:00 and 23:00 to 23:59

30 July 00:00 to 05:00 and 23:00 to 23:59

31 July 00:00 to 05:00

## Sale of Alcohol both on and off the premises

28 July 14:00 to 23:59

29 July 00:00 to 03:00 and 10:00 to 23:59

30 July 00:00 to 05:00 and 10:00 to 23:59

31 July 00:00 to 05:00 and 10:00 to 23:59

- 7.3 The films shown will be classified with age limits by the British Board of film classification. There will be some mildly explicit sexual content in the cabaret shows. The organiser and stated their intention for these to take place in closed marquees in which children will not be admitted.
- 7.4 The application applied for omits wrestling however the applicant has advertised glitter wrestling and included reference to this within their event management plan. Wrestling is a licensable activity under the Licensing Act 2003 and as such should be authorised under the Act by means of a premises licence of Temporary event notice. A temporary event notice is limited to not more than 499 persons including staff in attendance. Should the applicant licence the activity in this way, the area would be required to be restricted to this number of people and the activity may not therefore be permitted to be shown in viewing of other guests at the event as the event extends to 4999 persons in total.
- 7.5 The application seeks opening hours to the public of:

Thursday 28 July 12:00 to 23:59

Friday 29 July 00:00 to 23:59

Saturday 30 July 00:00 to 23:59

Sunday 31 July 00:00 to 14:00

- 8 Members would not normally be asked to consider Gambling matters under applications under the Licensing Act 2003 however Officers feel it is important to give members an understanding of other licensable events advertised by the applicant under the Gambling Act 2005 which may be permitted should a premises licence for alcohol be granted under the Licensing Act 2003.

The applicant has registered their intention to have an arcade. This can be located on the plan appended to you as appendix B

The arcade proposed will feature a series of vintage arcade computer games, such as nintendo, playstation and some old CRT arcade games like Pacman. Attendees will have to pay to play some of these games but none of the games will provide any cash reward or prize.

As these are games of skill for which there is no prize, it is not believed that these fall under the remit of the Gambling Act 2005 as they are not categorised as prize gaming. However, should one or more prize gaming machines be used these will be classed as commercial gaming and would be deemed unlawful both in terms of not having authorisation under the

Gambling Act and because they would not be permitted on or as part of an alcohol licensed premises.

Also proposed is a Casino, this can be located on the plan appended to you as appendix B.

The casino is intended to feature traditional casino games such as cards and roulette. These games may feature small prizes for the winners, such as dinner vouchers, T Shirts etc. Players will not have to pay anything to be involved in these games and have no opportunity to lose money.

The casino and arcade are in separate tents and are meant to be fun experiences that do not involve gambling money. There is however a complication with the application. Alcohol licensed premises allow the provision of entitlement to equal chance gaming.

Should the Casino be located in an area covered under the alcohol licensed area applied for within this premises application, the event would potentially have entitlement to some equal chance games, however, this would depend on whether or not the Casino tent could be classed as an ancillary use to the premises licence and whether in fact, the games were actually equal chance. Exempt gaming must be ancillary to the purpose of the premises licence and is limited to a few games, which would certainly not include the common Casino games such as Roulette, Black Jack etc.

It must be noted that, Casino games are not generally equal chance and it is irrelevant under the terms of section 6(4) of the Gambling Act 2005 whether fee is paid or not. The mere provision of a prize is enough to make the event licensable and therefore it is likely that provision of any Casino facilities would be unlawful and may undermine one or more of the Licensing objectives, not least the prevention of crime and disorder. In any event in order to have a licence for a Casino, the applicant must also hold an Operator licence with the Gambling Commission.

The Gambling Commission have also advised that in their view any Casino games provided at the event would be unlawful. Should the Casino meet the requirements for this entitlement, the applicant would be required to comply with the relevant code of practice on exempt gaming in alcohol licensed premises. Games such as roulette for example would not be considered equal chance games.

The organiser has been advised to seek his own legal advice on this issue.

Members are reminded that they may only have regard to promotion and upholding of the licensing objectives in relation to the licensable activities under the Licensing Act 2003 in determining this application. It is however an offence to undertake any licensable activity other than in accordance with a licence or other authorisation under the 2003 Act or the gambling Act 2005. Recourse would therefore under provisions of the Gambling Act 2005 in respect of any unlawful gambling activity.

## **9 Summary of premises history**

The application is requested by the applicant to be time limited to the dates of 28 July to 31 July 2016 inclusive. The licence if granted, will expire after 31 July 2016. The application is intended to facilitate the 'LeeFest Festival' which is advertised as a family event.

This is a new application for a premises licence and the event has not been run within the District of Sevenoaks previously however the event has been run in other areas on a smaller scale.

The application therefore must be determined on its own merits.

## **10 Consultation**

The regulations to the Licensing Act 2003 outline the requirements for the advertising of applications. These require to applicant to advertise the application:

a. For a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority to display a white notice prominently at or on the premises to which the application relates where it can be conveniently read from the exterior of the premises. It was noted that the notice was displayed upon the premises for the 28 day consultation period which ended 2 May 2016.

The public notice was not displayed on the premises until 5 April 2016 therefore the consultation did not begin until this date. The notice was inspected by the Licensing Officer on 29 April 2016. The Officer noted that upon inspection the notice stated that the end of the consultation was 3 May 2016 and subsequently any representations received between midnight on 2 May 2016 and 3 May 23:59 hours would have been accepted.

b. By publishing a notice in a local newspaper on at least one occasion within 10 working days of submitting the application.

Regulations also require that the applicant give a copy of the application to each responsible authority on the same day as the day upon which it is given to the licensing authority. As the application was electronic, the requirement to serve the application was met by the licensing authority.

There are no other statutory requirements for advertising of any application, however, details of all applications received along with the time limit for receipt of representations is posted on the Council website via the weekly premises tracker and the public and councillors have public access.

## **11 List of Objectors/Representations**

### **11.1 Responsible Authorities:**

One (1)

#### **Other Persons:**

Cow Lane One (1)

Cowden Pound Road Two (2)

Hever Six (6)

Hever Road Two (2)

Hill Hoath Road One (1)

Holtye Crescent One (1)

Lockskimmers Oast One (1)

Markbeech Three (3)

Oakenden Lane One (1)

Oak Lane One (1)

Pigdown Lane Five (5)

Ryewel Hill One (1)

Tanners Mead One (1)

Truggers Lane Three (3)

Uckfield Lane Four (4)

Anonymous One (1)

11.2 Anonymous representations would not usually be considered under the Licensing Act 2003. A name and address of a person whom wishes to make a representation would only be withheld in extreme circumstances should the person making the representation be concerned that there would be possible retaliation following their comments. One representation requested that under these circumstances their name and address is withheld from the applicant. The representation is valid and the Council are in receipt of their details.

## 12 Summary of Relevant Objections/ Representations

- 12.1 Primarily representations received concern noise pollution, public nuisance for other nearby events and residents, preventing crime and disorder and concerns for children.

It is important to note that whilst representations were received and accepted as valid by Officers, not all representations are valid in their entirety and invalid aspects of each representation may not be considered.

Valid aspects to consider are those which directly relate to the licensing objectives and are not regulated by other means such as in other legislation for example traffic matters, parking, wildlife, disease, drugs and planning matters.

Some of the representations are concerned with the noise that would accompany the setting up and dismantling of stages, marquees and other equipment relating to the event. A premise licence can only be granted for licensable activity and this does not therefore extend to set up or clearing up before and after the event. Such matters are however, covered under separate legislation e.g. Environmental Protection Act 1990, with regard to noise and as such it is not appropriate to condition any licence that may be granted in respect of peripheral works both before and after the event as there would be no power to enforce such a condition under any licensing legislation. It is important to point out however, that protections exist for the public under separate legislation as indicated.

All representations and comments received and summarised below are appended to you in full in appendix C of the report.

- 12.2 Responsible Authorities:

Environmental Protection commented ‘the applicant has not provided sufficient information to demonstrate that noise controls before 23:00 ...are achievable. This event is very large and comprises multiple noise sources which have in my view not been adequately assessed. I am concerned that one these multiple noise sources are accounted for, the proposed noise standards will not be achievable’

‘If the applicant is able to demonstrate that the proposed control is achievable, this music noise level would be in accordance with the code of practice on environmental noise control at concerts therefore in the view of environmental health would be acceptable. It should however be noted that this level may still give rise to complaints from residents as noise could be considered intrusive by those living in the vicinity of the event and bass may still be audible at considerable distance.’

No other representations were received from other responsible authorities.

- 12.3 Summaries of Relevant representations from “other persons”:

- 1) 'Large numbers of people arriving in a rural location with no local police on hand are bound to increase the risk of crime and disorder'.
- 2) 'In July the windows will be open and noise will intrude.'
- 3) 'Weddings and other events at the other historical venues, will almost certainly be impacted by a large noisy festival.'
- 4) 'It is intolerable that people should be subjected to that level of noise for so long.'
- 5) 'Prevention of public nuisance due to noise pollution.'
- 6) 'Noise levels would not be the 65 decibels intimates, as sound travels even if the speakers face the ground. The suggestion that residents would not be able to hear the festival if they had their windows and doors closed is not acceptable, especially as it will be summertime and we may wish to be in our gardens at the weekends.'
- 7) 'The proposed timing of the staging of events would mean that the music will continue until about 5am in the morning with the bars closing at perhaps the same time.'
- 8) 'Other proposed events within the festival, such as drag and cinema would mean that children attending may be subjected to unsuitable entertainment.'
- 9) 'The noise so late at night.'
- 10) 'Significant noise disturbance.'
- 11) 'Lack of police resources and the fact that the many local wedding venues have bookings that would ruin a bride/grooms day.'
- 12) 'Noise, both day and night, for at least three days.'
- 13) 'Children will suffer from sleep deprivation because the noisy events carry on until 5am each day.'
- 14) 'The 65Db limits set in the guideline seem high... I consider it unreasonable and annoying to myself and my family the have 65Db continuously from early morning until 11:00 at night.'
- 15) ' Whilst it is intended that the noise level at night will be reduced to 45db, with the intention that it is inaudible inside a dwelling, in practice at that time of year windows will be open and we have the prospect of three nights of disturbed sleep until 5am.'
- 16) 'Being in the 50 to 60db range will be a considerable public nuisance.'
- 17) 'There will be considerable noise nuisance for the two weddings taking place in Chiddingstone during the festival.'

18) 'There is no proper indication of the security arrangements, and no suitable conditions have been offered.'

19) 'Why should the local residents be subjected to the noise and nuisance for days on end.'

20)' Being in the 50-60 decibel range for the music being played by LeeFest and the Neverland means that there is a high probability that our audience, some 1500+ members of the general public will not be able to hear the play adequately and their evening will be spoilt/ruined.'

21) 'The risk of children being exposed to alcohol, noise and adult entertainment.'

22) 'Untrained volunteers and stewards cannot properly "police" this festival, this will give rise to threats to crime, disorder, public nuisance, public safety and risks to children.'

In support:

1) 'With regards to the four licensing objectives I can not find any reason to object to any of these points.'

12.4 There are a total of 34 representations, one of these from responsible authorities, and 7 comments. It is important to view the representations in full when considering the application. These are appended to this report as appendix C.

It must be noted that paragraphs 12.2 and 12.3 only intends to summarise and exhibit the main concerns within the representations, the representations may contain other valid points for which members may consider relevant in determining the licence, subject to legislative requirements of valid representations.

12.5 Other Comments received:

The Planning Authority responded to the consultation however no representation was made. Planning outlined that they had no objection providing the applicant was certain that the temporary land use did not require planning permission. The planning Authority would advise the applicant submit a lawful development certificate application. The planning Authority did not refer to the licensing objectives in making comment.

The Health and Safety Authority responded to the consultation however no representation was made.

During the consultation, the Licensing Authority received four (4) comments in support of the application however, whilst positive representations are permitted, these were not classed as representations as no reference was made to any of the licensing objectives.

On 4 May 2016, after the end of the consultation, correspondence was received from the Police stating that they had no representations to make.

## 13 Statutory Guidance

### Revised Section 182 Guidance (March 2015)

#### Licensing objectives and aims

##### Paragraph 1.2

The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.

##### Paragraph 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.

##### Paragraph 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.

##### Paragraph 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.

## **The Licensing Objectives**

### **Crime and disorder**

#### **Paragraph 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).

#### **Paragraph 2.2**

In the exercise of their functions, licensing authorities should seek to co-operate with the Security Industry Authority (“SIA”) as far as possible and consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed.

#### **Paragraph 2.3**

Conditions should be targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

#### **Paragraph 2.4**

The inclusion of radio links and ring-round phone systems should be considered an appropriate condition for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. These systems allow managers of licensed premises to communicate instantly with the police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises.

## Paragraph 2.5

Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.

## Public safety

### Paragraph 2.6

Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed 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. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

### Paragraph 2.7

A number of matters should be considered in relation to public safety. These may include:

Fire safety;

Ensuring appropriate access for emergency services such as ambulances;

Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts (see paragraph 2.4 above);

Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;

Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);

Ensuring appropriate and frequent waste disposal, particularly of glass bottles;

Ensuring appropriate limits on the maximum capacity of the premises (see paragraphs 2.11-2.12, and Chapter 10; and

Considering the use of CCTV in and around the premises (as noted in paragraph 2.3 above, this may also assist with promoting the crime and disorder objective).

#### Paragraph 2.8

The measures that are appropriate to promote public safety will vary between premises and the matters listed above may not apply in all cases. As set out in Chapter 8 (8.33- 8.41), applicants should consider when making their application which steps it is appropriate to take to promote the public safety objective and demonstrate how they achieve that.

#### **Ensuring safe departure of those using the premises**

#### Paragraph 2.9

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.

#### **Public nuisance**

#### Paragraph 2.14

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.

#### Paragraph 2.15

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.

#### Paragraph 2.16

Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 15). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.

#### Paragraph 2.17

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.

#### Paragraph 2.18

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.

#### Paragraph 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.

## Paragraph 2.20

Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

## Protection of children from harm

### Paragraph 2.21

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 protect children from sexual exploitation when undertaking licensing functions.

### Paragraph 2.22

The Government believes that it is completely unacceptable to sell alcohol to children. Conditions relating to the access of children where alcohol is sold and which are appropriate to protect them from harm should be carefully considered. Moreover, conditions restricting the access of children to premises should be strongly considered in circumstances where:

- adult entertainment is provided;
- a member or members of the current management have been convicted for serving alcohol to minors or with a reputation for allowing underage drinking (other than in the context of the exemption in the 2003 Act relating to 16 and 17 year olds consuming beer, wine and cider when accompanied by an adult during a table meal);
- it is known that unaccompanied children have been allowed access;
- there is a known association with drug taking or dealing; or
- in some cases, the premises are used exclusively or primarily for the sale of alcohol for consumption on the premises.

### Paragraph 2.23

It is also possible that activities, such as adult entertainment, may take place at certain times on premises but not at other times. For example, premises may operate as a café bar during the day providing meals for families but also provide entertainment with a sexual content after 8.00pm.

It is not possible to give an exhaustive list of what amounts to entertainment or services of an adult or sexual nature. Applicants, responsible authorities and licensing authorities will need to consider this point carefully. This would broadly include topless bar staff, striptease, lap-, table- or pole-dancing, performances involving feigned violence or horrific incidents, feigned or actual sexual acts or fetishism, or entertainment involving strong and offensive language.

#### Paragraph 2.24

Applicants must be clear in their operating schedules about the activities and times at which the events would take place to help determine when it is not appropriate for children to enter the premises. Consideration should also be given to the proximity of premises to schools and youth clubs so that applicants take appropriate steps to ensure that advertising relating to their premises, or relating to events at their premises, is not displayed at a time when children are likely to be near the premises.

#### Paragraph 2.25

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.

#### Paragraph 2.26

Conditions, where they are appropriate, should reflect the licensable activities taking place on the premises. In addition to the mandatory condition regarding age verification, other conditions relating to the protection of children from harm can include:

- restrictions on the hours when children may be present;
- restrictions or exclusions on the presence of children under certain ages when particular specified activities are taking place;
- restrictions on the parts of the premises to which children may have access;
- age restrictions (below 18);
- restrictions or exclusions when certain activities are taking place;
- requirements for an accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and
- full exclusion of people under 18 from the premises when any licensable activities are taking place.

#### Paragraph 2.27

Please see also Chapter 10 for details about the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010.

## Paragraph 2.28

Licensing authorities should give considerable weight to representations about child protection matters. In addition to the responsible authority whose functions relate directly to child protection, the Director of Public Health may also have access to relevant evidence to inform such representations. These representations may include, amongst other things, the use of health data about the harms that alcohol can cause to underage drinkers. Where a responsible authority, or other person, presents evidence to the licensing authority linking specific premises with harms to children (such as ambulance data or emergency department attendances by persons under 18 years old with alcohol-related illnesses or injuries) this evidence should be considered, and the licensing authority should also consider what action is appropriate to ensure this licensing objective is effectively enforced. In relation to applications for the grant of a licence in areas where evidence is presented on high levels of alcohol-related harms in persons aged under 18, it is recommended that the licensing authority considers what conditions may be appropriate to ensure that this objective is promoted effectively.

## Paragraph 2.29

The 2003 Act provides that, where a premises licence or club premises certificate authorises the exhibition of a film, it must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under section 4 of the Video Recordings Act 1984 specified in the licence (the British Board of Film Classification is currently the only body which has been so designated) or by the licensing authority itself. Further details are given in Chapter 10.

## Paragraph 2.30

Theatres may present a range of diverse activities and entertainment including, for example, variety shows incorporating adult entertainment. It is appropriate in these cases for a licensing authority to consider restricting the admission of children in such circumstances. Entertainments may also be presented at theatres specifically for children. It will be appropriate to consider whether a condition should be attached to a premises licence or club premises certificate which requires the presence of a sufficient number of adult staff on the premises to ensure the wellbeing of the children during any emergency.

## Paragraph 5.4

Gambling is the subject of separate legislation and licensing authorities should not duplicate any conditions imposed by this legislation when granting, varying or reviewing licences that authorise licensable activities under the 2003 Act. When making a licence application, the applicant may, in detailing the steps to be taken in promoting the licensing objectives, refer to the statutory conditions in respect of their gambling licence (where

relevant). In addition, any conditions which are attached to premises licences should not prevent the holder from complying with the requirements of gambling legislation or supporting regulations. Further information about the Gambling Act 2005 can be found on the GOV.UK website.

#### Paragraph 5.5

Outdoor sports stadia are regulated by separate legislation and sports events taking place at outdoor stadia do not fall within the definition of the provision of regulated entertainment under the 2003 Act, with the exception of boxing or wrestling entertainment (see 15.49-15.51). Licensing authorities should therefore limit their consideration of applications for premises licences to activities that are licensable under the 2003 Act.

### **Large scale time-limited events requiring premises licences**

#### Paragraph 5.24

Licensing authorities should note that a premises licence may be sought for a short, discrete period. The 2003 Act provides that a temporary event notice is subject to various limitations (see Chapter 7 of this Guidance). The temporary provision of licensable activities that fall outside these limits will require the authority of a premises licence if the premises are currently unlicensed for the activities involved.

#### Paragraph 5.25

The procedures for applying for and granting such a licence are identical to those for an unlimited duration premises licence except that it should be stated on the application that the applicant's intention is that the period of the licence should be limited. Licensing authorities should clearly specify on such a licence when it comes into force and when it ceases to have effect. If the sale of alcohol is involved, a personal licence holder must be specified as the designated premises supervisor.

### **Determining applications**

#### Paragraph 9.1

When a licensing authority receives an application for a new premises licence or an application to vary an existing premises licence, it must determine whether the application has been made in accordance with section 17 of the 2003 Act, and in accordance with regulations made under sections 17(3) to (6), 34, 42, 54 and 55 of the 2003 Act. It must similarly determine applications for the grant of club premises certificates made in accordance with section 71 of the 2003 Act, and in accordance with regulations made under sections 71(4) to (7), 84, 91 and 92 of the 2003 Act. This means that the licensing authority must consider among other things

whether the application has been properly advertised in accordance with those regulations.

### **Where no representations are made**

#### **Paragraph 9.2**

A hearing is not required where an application has been properly made and no responsible authority or other person has made a relevant representation or where representations are made and subsequently withdrawn. In these cases, the licensing authority must grant the application in the terms sought, subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions under the 2003 Act. This should be undertaken as a simple administrative process by the licensing authority's officials who should replicate the proposals contained in the operating schedule to promote the licensing objectives in the form of clear and enforceable licence conditions. Licensing authorities should not hold hearings for uncontested applications, for example in situations where representations have been made and conditions have subsequently been agreed.

### **Where representations are made**

#### **Paragraph 9.3**

Where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating schedule and it is relevant (see paragraphs 9.4 to 9.10 below), the licensing authority's discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious (see paragraphs 9.4 to 9.10 below). Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.

### **Relevant, vexatious and frivolous representations**

#### **Paragraph 9.4**

A representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a

recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

#### Paragraph 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.

#### Paragraph 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.

#### Paragraph 9.7

Any person who is aggrieved by a rejection of their representations on either of these grounds may lodge a complaint through the local authority's corporate complaints procedure. A person may also challenge the authority's decision by way of judicial review.

#### Paragraph 9.8

Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This may be difficult for councillors who receive complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub-committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.

#### Paragraph 9.9

It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.

## **Hours of trading**

### **Paragraph 10.13**

The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

### **Paragraph 10.14**

Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.

### **Paragraph 10.15**

Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

## **The performance of plays**

### **Paragraph 10.16**

The 2003 Act provides that other than for the purposes of public safety, conditions must not be attached to premises licences or club premises certificates authorising the performance of a play<sup>7</sup> which attempt to censor or modify the content of plays in any way. Any such condition would be ultra vires the 2003 Act.

## **Censorship**

### **Paragraph 10.17**

In general, other than in the context of film classification for film exhibitions, licensing authorities should not use their powers under the 2003 Act to seek to impose conditions which censor the content of any form of regulated entertainment. This is not a proper function of licensing law and cannot be properly related to the licensing objectives. The content of regulated entertainment is a matter which is addressed by existing laws

governing indecency and obscenity. Where the concern is about protecting children, their access should be restricted where appropriate. But no other limitation should normally be imposed.

### **Major festivals and carnivals**

#### Paragraph 10.18

Licensing authorities should publicise the need for the organisers of major festivals and carnivals to approach them at the earliest opportunity to discuss arrangements for licensing activities falling under the 2003 Act. For some events, the organisers may seek a single premises licence to cover a wide range of activities at varied locations within the premises. This would involve the preparation of a substantial operating schedule, and licensing authorities should offer advice and assistance about its preparation.

### **Exhibition of films**

#### Paragraph 10.61

The 2003 Act provides that where a premises licence or club premises certificate authorises the exhibition of a film, it must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under section 4 of the Video Recordings Act 1984 specified in the licence (currently only the British Board of Film Classification (BBFC)) or by the licensing authority itself.

#### Paragraph 10.62

The effect of paragraph 5 of Schedule 1 to the 2003 Act is to exempt adverts from the definition of regulated entertainment, but not exempt them from the definition of exhibition of a film. Since the above mandatory condition applies to 'any film', it is therefore applicable to the exhibition of adverts.

### **Types of regulated entertainment**

#### Paragraph 15.1

Schedule 1 to the 2003 Act sets out what activities are regarded as the provision of regulated entertainment and when they are licensable and those activities which are not and therefore exempt from the regulated entertainment regime. Changes to regulated entertainment are due to take effect on 6 April 2015. Therefore, up until that date you should refer to chapter 15 of the guidance published in October 2014.

#### Paragraph 15.2

The descriptions of entertainment activities licensable under the 2003 Act are:

a performance of a play;  
an exhibition of a film;  
an indoor sporting event;  
a boxing or wrestling entertainment;  
a performance of live music;  
any playing of recorded music;  
a performance of dance; and  
entertainment of a similar description to a performance of live music, any playing of recorded music or a performance of dance.

### Paragraph 15.3

To be licensable, one or more of these activities needs to be provided for the purpose (at least partly) of entertaining an audience; has to be held on premises made available for the purpose of enabling that activity; and must also either:

take place in the presence of a public audience, or where that activity takes place in private, be the subject of a charge made with a view to profit.

As a result of deregulatory changes that have amended the 2003 Act, no licence is required for the following activities:

Plays: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500.

Dance: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500.

Films: no licence is required for 'not-for-profit' film exhibition held in community premises between 08.00 and 23.00 on any day provided that the audience does not exceed 500 and the organiser (a) gets consent to the screening from a person who is responsible for the premises; and (b) ensures that each such screening abides by age classification ratings.

Indoor sporting events: no licence is required for an event between 08.00 and 23.00 on any day, provided that those present do not exceed 1000.

Boxing or wrestling entertainment: no licence is required for a contest, exhibition or display of Greco-Roman wrestling, or freestyle wrestling between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000.

Live music: no licence permission is required for: a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises.

a performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.

a performance of amplified live music between 08.00 and 23.00 on any day, in a workplace that is not licensed to sell alcohol on those premises, provided that the audience does not exceed 500.

a performance of amplified live music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community

premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.

a performance of amplified live music between 08.00 and 23.00 on any day, at the non-residential premises of (i) a local authority, or (ii) a school, or (iii) a hospital, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance on the relevant premises from: (i) the local authority concerned, or (ii) the school or (iii) the health care provider for the hospital.

Recorded Music: no licence permission is required for: any playing of recorded music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.

any playing of recorded music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.

any playing of recorded music between 08.00 and 23.00 on any day, at the non-residential premises of (i) a local authority, or (ii) a school, or (iii) a hospital, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance on the relevant premises from: (i) the local authority concerned, or (ii) the school proprietor or (iii) the health care provider for the hospital.

#### Paragraph 15.7

The deregulatory changes mean that, for example, an indoor sporting event that takes place between 07.00 and 23.30 on a particular day is licensable in respect of activities taking place between 07.00-08.00 and 23.00-23.30. Similarly, where the audience for a performance of dance fluctuates, those activities are licensable if, and for so long as, the number of people in the audience exceeds 500. If organisers are uncertain as to audience sizes or if audience migration is likely<sup>25</sup>, it might be easier and more flexible to secure an appropriate authorisation. Examples of where a Temporary Event Notice (TEN) could still be required include if the activity is the playing of recorded music or the exhibition of a film that requires an authorisation; or if the entertainment is not authorised by an existing licence or certificate and its conditions.

#### Paragraph 15.8

Of course, anyone involved in the organisation or provision of entertainment activities - whether or not any such activity is licensable under the 2003 Act - must comply with any applicable duties that may be imposed by other legislation relevant to the event (e.g. in areas such as crime and disorder, fire, health and safety, noise, nuisance and planning).

Any such person should take steps to be aware of relevant best practice, and may find responsible authorities a useful source of expert support and advice.

### **Plays, dance and indoor sport**

#### Paragraph 15.45

Where qualifying conditions are satisfied, any current licence condition that relates to a performance of a play or dance, or an indoor sporting event for which a licence is no longer required will (except in the circumstances described in the next paragraph) have no effect.

#### Paragraph 15.46

Where, however, these non-licensable activities take place at the same time as other activities for which a licence is required (e.g. the sale or supply of alcohol for consumption on the premises), conditions included in a licence may nevertheless apply to the non-licensable activities in the circumstances set out in paragraphs 15.52 and 15.53 (conditions relating to other non-licensable activities).

#### Paragraph 15.47

Dance that is sufficiently sexual in nature continues to be regulated. Performances of dance which are “relevant entertainment” within the meaning of the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”) are not deregulated, regardless of the size of the audience or the time of day. “Relevant entertainment” is defined in the 1982 Act as a live performance or live display of nudity that, ignoring financial gain, can be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience.

#### Paragraph 15.48

In almost all cases where a performance of dance is potentially licensable as both the provision of **relevant** entertainment (under the 1982 Act) and **regulated** entertainment (under the 2003 Act), the 1982 Act disapplies the entertainment licensing regime in the 2003 Act in favour of its stricter regime for the control of sex establishments. However, an authorisation under the 2003 Act rather than the 1982 Act will continue to be required where:

the premises are not licensed as a sex entertainment venue under the 1982 Act, and

relevant entertainment has been provided at those premises on no more than 11 occasions in any 12 month period, with none of those occasions lasting longer than 24 hours or taking place within a month of any other such occasion.

## **Boxing or wrestling entertainment and conditions relating to combined fighting sports**

### **Paragraph 15.49**

An indoor boxing or wrestling entertainment cannot also be an indoor sporting event, and any contest, exhibition or display that combines boxing or wrestling with one or more martial arts ('combined fighting sports') is - whether indoors or not - a boxing or wrestling entertainment.

### **Paragraph 15.50**

Where a premises licence or club premises certificate purports to authorise a boxing or wrestling entertainment or combined fighting sports as an 'indoor sporting event', the 2013 Order provides that the authorisation will be treated as having authorised those activities as a boxing or wrestling entertainment. Those activities will continue to be subject to any relevant conditions attached to that authorisation.

### **Paragraph 15.51**

A contest, exhibition or display of Greco-Roman wrestling, or of freestyle wrestling, between two participants (regardless of their sex) does not require a licence provided that certain qualifying conditions are met. They are that:

it takes place in the presence of no more than 1,000 spectators;

it takes place between 08.00 and 23.00 on the same day; and

it take place wholly inside a building and the spectators present at that entertainment are accommodated wholly inside that building.

## **14 Relevant section of the Council's Licensing Policy (2015-2020)**

### **Paragraph 16.7**

The Licensing Authority must give the appropriate amount of weight to representations made by the Police on crime and disorder matters. It will give appropriate weight to all representations made by all parties based on the content and relevance to the promotion of all licensing objectives.

Please see the full policy at appendix D

## **15 Other Options Considered and/or Rejected**

Members are to make any decision outlined within the recommendations of this report should the deem it reasonable and proportionate given reference to the requirements of the Act, revised guidance, Council's Statement of Licensing Policy and representations and testimony at hearing.

Any decision taking into account matters outside of the Licensing Act 2003 may result in challenge or judicial review.

## 16 Key Implications

### 16.1 Financial

None directly arising from this report

### 16.2 Legal Implications and Risk Assessment Statement.

This Hearing is regulated by The Licensing Act 2003 (Hearings) Regulations 2005

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.

## 17 Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

## 18 Conclusions

The applicant must satisfy the sub-committee and demonstrate that they have sufficient controls outlined within the operating schedule in place in order to uphold the promotion of all four of the licensing objectives.

The application must be determined on its own merits and based on the specifics of the premises applied for.

Members of the sub-committee are asked using the operating schedule, representations, testimony at hearing, statutory guidance and the Council's licensing policy, may determine whether to grant the application as applied for, refuse in its entirety or grant with additional conditions.

## Appendices

- A -Application and Risk Assessment
- B -Plan
- C -Representations from Responsible Authorities  
-Representations from Other Persons  
-Comments Received
- D - [Statement of Licensing Policy-Licensing Act 2003](#) (on website only)

E - Area plan

**Background Papers:**

Relevant Legislation

Council's Statement of Licensing Policy (2015-2020)

[Revised Section 182 Guidance](#)

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