

REPORT TO LICENSING SUB-COMMITTEE FOLLOWING RECEIPT OF REPRESENTATIONS IN RELATION TO AN APPLICATION MADE UNDER THE LICENSING ACT 2003 FOR WESTEHAM VALLEY

Licensing Sub-Committee- 16 November 2016

Report of Chief Officer, Environmental and Operational Services

Status: For Decision

Executive Summary: This report provides information to advise members of an application for a new premises licence under The Licensing Act 2003 in respect of Westerham Valley, Westerham, TN16 1QP.

Contact Officer(s) Nicola O'Shea Ext. 7270

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

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.

Introduction and Background

- 1 On 23 September 2016 an application was received from The Squerryes Partnership for a new licence for Westerham Valley, Westerham, TN16 1QP. This application was validated on 4 April 2016 and the consultation end date was the 21 September 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 With regard to both Live and Recorded Music, the Live Music Act 2012 (in the former case) and the Licensing Act 2003 (Descriptions of Entertainment) Amendment Order 2013 (in the latter case) have deregulated both Live and Recorded music to the extent that no authorisation is required between the hours of 8:00 and 23:00. Subject to certain provisions contained within the statutory guidance at paragraph 13 of this report, it is deregulated in between these hours if the entertainment is taking place on a premises where there is a premises licence in force and in operation that authorises the sale of alcohol for consumption on the premises and alcohol is offered on sale at that time.

8 Subsequently any conditions the committee impose at this stage in relation to live and/or recorded music would be exempt during these hours if the alcohol licence was granted between these hours. Conditions may be imposed however outside of these hours should the applicant have applied for such hours, which they have not. The provision of alcohol on the licence must be determined on its own merits and not in relation to consideration of the deregulation of such entertainment.

- 9 Should live or recorded music prove to be a nuisance and jeopardise one or more of the licensing objectives, it is possible to go through the process to exempt a premises from the deregulation and any such conditions imposed at this stage would be applied if successful. This must only be sought on an evidential basis, and not in relation to preventing a potential problem with nuisance.

Summary of Application Sought

- 10 The application received on 21 September 2016 from The Squerryes Partnership seeks a new premises licence under the Licensing Act 2003 effective from 21 November 2016. A copy of the application is attached at appendix A.

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

Performance of Plays both indoors and outdoors

Monday to Saturday 12:00 to 23:00

Sunday 12:00 to 22:00

Exhibition of films both indoors and outdoors

Monday to Saturday 08:00 to 23:00

Sunday 12:00 to 22:50

Live music both indoors and outdoors

Monday to Saturday 12:00 to 23:00

Sunday 12:00 to 22:50

Recorded music both indoors and outdoors

Monday to Saturday 08:00 to 23:00

Sunday 12:00 to 22:50

Performance of dance both indoors and outdoors

Monday to Saturday 12:00 to 23:00

Sunday 12:00 to 22:50

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

Monday to Saturday 08:00 to 23:00

Sunday 12:00 to 22:50

Sale of Alcohol both on and off the premises

Monday to Saturday 08:00 to 23:20

Sunday 08:00 to 22:50

The application seeks opening hours to the public of:

Monday to Saturday 08:00 to 23:20

Sunday 12:00 to 22:50

Summary of premises history

- 11 The application is requested by the applicant to accommodate the relocated Westerham Brewery, Squerryes Winery, Tasting rooms, Vineyard and barn.

The application must be determined on its own merits.

Consultation

- 12 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. The consultation period ended 21 September 2016.
 - 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.

List of Objectors/Representations

- 13 Responsible Authorities:

One (1)

Other Persons:

None

Summary of Relevant Objections/ Representations

- 14 The representation received from environmental protection concerned the potential for noise pollution and subsequent public nuisance.

The representation received and summarised below is appended to you in full in appendix C of the report.

Responsible Authorities:

- 15 Environmental Protection commented ‘Environmental Protection has concerns regarding the outdoor usage of the area outlined in red, without the imposition of conditions on the premises licence to control the potential for activities to give rise to noise nuisance.’

No other representations were received from other responsible authorities.

Other Comments received:

- 16 Kent Fire and Rescue service responded to the consultation with the following ‘KFRS currently has no representations for the licence request on these premises.’
- 17 The Police have responded to the consultation to state that they have no objections.
- 18 The Planning Authority responded to the consultation however no representation was made. Planning outlined that they had no objection providing the applicant adhered to the planning permissions/restrictions on the site. The letter detailing these restrictions and the Officer’s comments may be found in appendix D.

The planning Authority did not refer to the licensing objectives in making a representation and planning permission can not lawfully be considered in making a decision in relation to this application. Nevertheless, the applicant has confirmed that adhering to the permissions will not be an issue and this has been conveyed to the planning officer.

Statutory Guidance

- 19 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 cooperate 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.

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 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 play⁷ 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.

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 15.8

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.

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 link in the background papers.

Other Options Considered and/or Rejected

- 15 Members are to make any decision outlined within the recommendations of this report should they 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.

Key Implications

Financial

16 None directly arising from this report

Legal Implications and Risk Assessment Statement.

17 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.

Equality Assessment

18 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.

Conclusions

19 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.

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

21 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

Appendix A - Application

Appendix B - Plan

Appendix C - Representations from Responsible Authorities

Appendix D- Other comments received

Background Papers:

Relevant Legislation

[Council's Statement of Licensing Policy \(2015-2020\)](#)

[Revised Section 182 Guidance](#)

[Statement of Licensing Policy - Licensing Act 2003](#)

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