

<b>Report to</b>	Licensing sub committee 5 December 2012	<b>Item</b>
<b>Report of</b>	Head of citywide services Licensing Act 2003:	<b>3</b>
<b>Subject</b>	Application for variation of a Premises Licence – Dominos Pizza 29 St Augustine's Gate Waterloo Road Norwich NR3 3BE	

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### **Purpose**

Members are asked, in accordance with the delegation of licensing functions contained in the Norwich City Council Statement of Licensing Policy (Licensing Act 2003), to consider the application for the variation of a Premises Licence in respect of Dominos Pizza 29 St Augustine's Gate Waterloo Road Norwich NR3 3BE following the receipt of relevant representations.

### **Recommendation**

That members determine the application for the variation of a Premises Licence in respect of Dominos Pizza 29 St Augustine's Gate Waterloo Road Norwich NR3 3BE in accordance with the:

- Licensing Act 2003;
- Guidance issued under Section 182 of the Licensing Act 2003; and
- Norwich City Council Statement of Licensing Policy.

### **Corporate and service priorities**

The report helps to meet the corporate priority of a safe and clean city and the service plan priority of protecting the interests of the public through the administration of the licensing function.

### **Financial implications**

None.

Ward/s: All wards

Cabinet member: Councillor Driver – Environment and neighbourhoods

### **Contact officers**

Ian Streeter, licensing manager

01603 212439

### **Background documents**

None

# Report

## The application

1. The applicant is DPGS Ltd Suite B The Stables Building Wick Road Englefield Green Surrey TW20 0HJ.
2. The premises licence held in respect of Dominos Pizza 29 St Augustine's Gate Waterloo Road Norwich NR3 3BE currently authorises the following licensable activity on the days and hours shown in the table below:

Late night refreshment – (activity takes place both indoors and outdoors):

Monday	0001 – 0300 2300 – 2400
Tuesday	0001 – 0300 2300 – 2400
Wednesday	0001 – 0300 2300 – 2400
Thursday	0001 – 0300 2300 – 2400
Friday	0001 – 0300 2300 – 2400
Saturday	0001 – 0300 2300 – 2400
Sunday	0001 – 0300 2300 – 2400

3. The opening hours of the premises are:

Monday	0001 – 0300 0700 – 2400
Tuesday	0001 – 0300 0700 – 2400
Wednesday	0001 – 0300 0700 – 2400
Thursday	0001 – 0300 0700 – 2400
Friday	0001 – 0300 0700 – 2400
Saturday	0001 – 0300 0700 – 2400
Sunday	0001 – 0300 0700 – 2400

4. A copy of the current premises licence, including a plan of the premise, is attached to the report at appendix A.
5. Conditions 22 and 23 of annex 2 to the licence currently read:

22 *The premises will be open for collection of foods Sunday through to Thursday until 1am and for delivery to customer addresses until 3am.*

23 *The premises will open Friday and Saturday nights for both collection of foods and delivery to customer addresses until 3am (Saturday and Sunday mornings).*

The applicant is seeking to amend these conditions (amendments shown in **bold**) to read:

22 *The premises will be open for collection of foods Sunday through to Thursday until 1am and for delivery to customer addresses until **5am**.*

23 *The premises will open Friday and Saturday nights for both collection of foods and delivery to customer addresses until **5am** (Saturday and Sunday mornings).*

6. Attached at appendix B to the report are extracts from the application detailing the nature of the proposed variation and the additional steps proposed by the licence holder to promote the licensing objectives as a result of the proposed variation.

### **Relevant representations**

7. The responses from the Responsible Authorities are as follows:

Police – no representations.

Environmental Protection – no representations.

Fire Officer – no representations.

Planning Officer – no representations.

Area Child Protection Committee – no representations.

Trading Standards – no representations.

Primary Care Trust – no representations

8. Two representations have been received in respect of the application with concerns appearing to relate primarily to the licensing objective of the prevention of public nuisance. Copies of the representations are attached at appendix C to the report.
9. One of the persons making a representation has requested that their name and address be withheld because of fears of intimidation and their representation is referenced as being from a 'resident of St Augustine's'. Paragraphs 9.22- 9.26 of the guidance issued under section 182 of the Licensing Act 2003 address the disclosure of personal details of persons making representations and paragraph 9.26 reads:

*9.26 The licensing authority may also decide to withhold some or all of the person's personal details from the applicant, giving only minimal details (such as street name or general location within a street). However, withholding such details should only be considered where the circumstances justify such action.*

10. A site map of the area identifying the application premises in relation to the relevant representation party address will be available at the meeting.

### **Norwich City Council Statement of Licensing Policy**

11. Attached at appendix D are the elements of the City Council's local Licensing Policy which are considered to have a bearing upon the application:

### **National Guidance (issued under section 182 of the Licensing Act 2003)**

12. Attached at appendix E are the elements of the National Guidance issued by the Secretary of State that are considered to have a bearing upon the application.

### **Summary**

13. In determining the application with a view to promoting the licensing objectives the Sub-Committee must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives (i.e. the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm);
- the representations (including supporting information) presented by all the parties;
- the guidance issued under Section 182 of the Licensing Act 2003 (National Guidance); and
- the Council's own statement of licensing policy.

14. The Sub-Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- Grant the application as asked;
- Modify the conditions of the licence by altering or omitting or adding to them;
- Reject the whole or part of the application

15. The Sub-Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

16. The representations received appear to primarily relate to issues that fall under the licensing objective of the prevention of public nuisance. The Sub-Committee is directed to paragraph 24 of the local licensing policy at Appendix D which contain examples of factors that impact on the licensing objectives that the applicant could consider when addressing these issues. These paragraphs also contains examples of control measures that may be taken into account in operating schedules having regard to the type of premises and/or the licensable activities.

17. The Sub-Committee is also reminded of the contents of appendices 2, 3, 4 and 5 of the local licensing policy (not re-produced in this report) which contain pools of model conditions relating to the four licensing objectives.

APPEAL LC  
A



NORWICH  
City Council

**Premises Licence Summary**

**Premises Licence Number**

09/00573/PREM

**Premises Details**

**Postal address of premises, or if none, ordnance survey map reference or description, including Post Town, Post Code**

DPGS Limited T/A Dominos Pizza  
29 St Augustines Gate  
Waterloo Road  
Norwich  
Norfolk  
NR3 3BE

**Telephone number** 01603 622977

**Where the licence is time limited the dates**

Not applicable

**Licensable activities authorised by the licence.**

Late Night Refreshment - Activity takes place both indoors and outdoors

**The times the licence authorises the carrying out of licensable activities**

Late Night Refreshment	Every Day	23:00 - 03:00
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**The opening hours of the premises**

Monday	07:00 - 03:00
Tuesday	07:00 - 03:00
Wednesday	07:00 - 03:00
Thursday	07:00 - 03:00
Friday	07:00 - 03:00
Saturday	07:00 - 03:00
Sunday	07:00 - 03:00

The premises is open for collection of food until 01:00 Sunday through to Thursday with deliveries to customer addresses until 03:00. On Friday and Saturday the premises is open for collection of foods and delivery to customer addresses until 03:00.

**Where the licence authorises supplies of alcohol whether these are on and / or off supplies**

**Name, (registered) address of holder of premises licence**

DPGS Limited T/A Dominos Pizza  
Suite B  
The Stable Buildings  
Wick Road  
Englefield Green  
Surrey  
TW20 0HJ

**Registered number of holder, for example company number, charity number (where applicable)**

Registered Business Number            39378195

**Name, designated premises supervisor where the premises licence authorises for the supply of alcohol**

**State whether access to the premises by children is restricted or prohibited**

## Annex 2 – Conditions consistent with the Operating Schedule

### 1 **General - all four licensing objectives**

2 The premises will be adequately staffed so as to allow proper management of the premises and supervision of those who visit it.

3 The pizzas will be supplied in closed cardboard boxes, the nature and size of which make it conducive to be taken home for consumption rather than being eaten whilst walking along.

### 4 **The Prevention of Crime and Disorder**

5 The licence holder will actively co-operate with the police to ensure he is aware of any particular problems which affect the area and may affect the store.

6 The licence holder will not countenance the use or supply of illegal drugs and the staff will inform the police immediately of any such suspected activity on or in the vicinity of the store.

7 The premises will not use or supply glassware.

8 All staff employed will be reputable and professional.

9 To install CCTV outside the front of the premises and to retain the imagery for a minimum of 28 days and to co-operate with the police when reporting any incidents of crime and disorder/anti-social behaviour in making the imagery available to the police.

### 10 **Public Safety**

11 The premises will comply with all requisite health and safety legislation.

12 Regular health and safety risk assessments will be carried out.

13 Management will take measures to avoid the premises becoming overcrowded.

### 14 **The Prevention of Public Nuisance**

15 Doors and windows will be kept closed at night.

16 Patrons who visit will be asked to leave the premises quietly and with due consideration for our neighbours.

17 Delivery drivers will be instructed to enter and leave their vehicles quietly and considerately, not to leave engines running, to park considerately, and at all times to have in mind the premises' neighbours (particularly residential occupiers).

18 Patrons who regularly leave the premises in a noisy fashion will be banned.

19 Equipment in the premises will be properly sound insulated and operated strictly in accordance with manufacturer's requirements, guidelines and tolerances.

20 The air extraction system will ensure there is no escape of cooking smells to neighbouring properties.

21 All provision delivery to the premises to take place between 7am and 5pm.

22 The premises will be open for collection of foods Sunday through to Thursday until 1am and for delivery to customer addresses until 3am.

23 The premises will open Friday and Saturday nights for both collection of foods and delivery to customer addresses until 3am (Saturday and Sunday mornings).

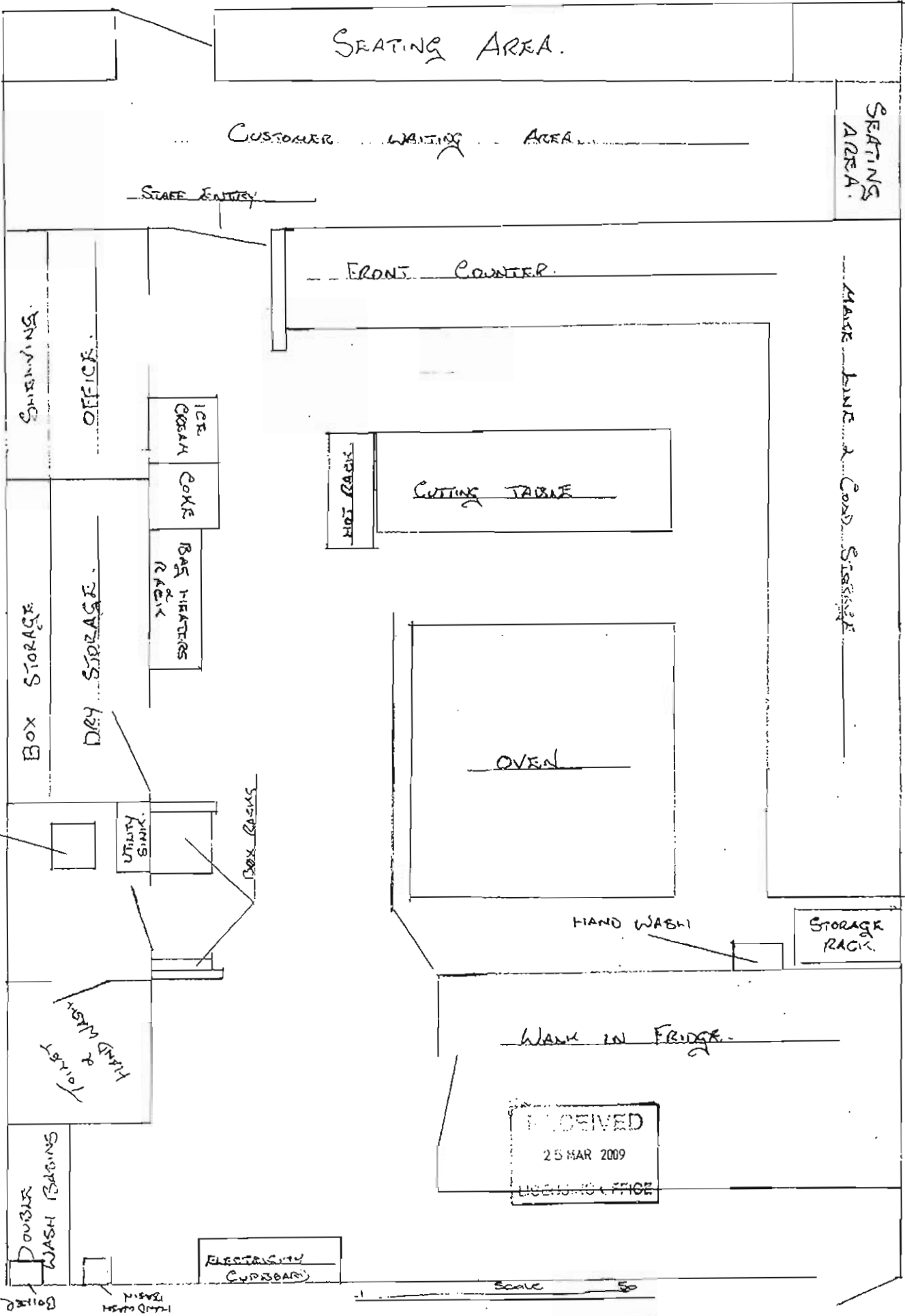
### **Annex 3 – Conditions attached after a hearing by the licensing authority**

- 1 The licence holder shall provide a clear and legible notice on the exit requesting patrons to leave the premises having regard to the needs of local residents and any other person who might be affected by the departing customer's behaviour.
- 2 The licence holder shall take all necessary steps during the hours of operation, and in particular at the close of business each day, to clear rubbish and detritus arising from the business from outside the front of the licensed premises.
- 3 The licence holder shall provide a large refuse bin secured to the premises outside the premises and will ensure it is regularly emptied.
- 4 Last orders for late night refreshment are to be taken no later than 15 minutes prior to the end of the permitted hours for the licensable activity.



FRONT DOOR

NO. 12345 & FLOOR PLAN



RECEIVED  
 25 MAR 2009  
 LICENSING OFFICE

# APPENDIX B

## Part 3 - Variation

Please tick yes

Do you want the proposed variation to have effect as soon as possible?

If not do you want the variation to take effect from

Day Month Year

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Please describe briefly the nature of the proposed variation (Please see guidance note 1)

The premises comprise of a Dominos home delivery store.

As we have conditions on our current licence we would like to extend the delivery hours to customers homes. Currently, our late night licence has a condition that Sunday- Thursday the premises is open for collection off the premises until 1am and for delivery until 3am. We would like to extend this delivery time ONLY until 5am.

Our late night licence also has a conditions that on Frday's and Saturdays the premises is open for collection off the premises and delivery until 3am. We would like to extend the delivery time ONLY until 5am.

The layout of the store comprises of a kitchen, shop counter, staff room and a small waiting are for pizza collection by the public.

Please see the existing floor plan for further details as the premises have not changed.

We would like to extend the hours due to the demand from our customers.

If your proposed variation would mean that 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend

0

**P** Describe any additional steps you intend to take to promote the four licensing objectives as a result of the proposed variation:

**a) General – all four licensing objectives (b,c,d,e) (please read guidance note 9)**

We will ensure all safety procedures are adhered and any disorderly behaviour is banned from our store. The late night service being proposed would be of a delivery nature and can be closed to the public for collected orders at a time that is recommended.

**b) The prevention of crime and disorder**

CCTV systems have been installed within the store and covers all the public areas.

Images from the footage can be made available to the police as required.

We do not allow any glassware or bottles within the store.

**c) Public safety**

Any incidents are recorded and reported within 24 hours.

There is a trained manager on shift at all times.

We will discourage patrons to congregate outside the front of the premises.

**d) The prevention of public nuisance**

All doors and windows will be kept closed at night to prevent any night nuisance.

Music will not be played in store at all and drivers will be discouraged from playing music in their cars at night.

Patrons who frequent the premises and behave in a disorderly manner will be banned from the store.

**e) The protection of children from harm**

To protect children from harm, any children that frequent the premises during hours when late refreshment is provided must be accompanied by an adult.

Norwich City Council Licensing Authority  
Licensing Act 2003

RE  
20 SEP 2012  
LICENSING OFFICE

Statement of support or objection to  
an application for a premises licence

Your name/organisation name/name of body you represent (see note 1)	MR. NITEL HARTLEY
Postal address	7 ALMA TERRACE NORWICH, NR3 3EE
Email address	
Contact telephone number	
Name of the premises you wish to support or object to	DPGS LTA/TIA DOMINOS PIZZA
Address of the premises you wish to	29 St Andrew's rd, Gate, Waterside rd NORWICH NR3 3EE

Your support or objection must relate to one of the four Licensing Objectives (see note 2)

Licensing Objective	Please set out your support or objections below. Please use separate sheets if necessary
To prevent crime and disorder	/
Public safety	/
To prevent public nuisance	object to the use of the car park by delivery drivers, already noise produced by cars, loud music, sewing engines, doors slamming until 3am!
To protect children from harm	Now until 5am! Who eats pizza at 3-5am!

CORPORATE RESOURCES  
21 SEP 2012

Please suggest any conditions which would alleviate your concerns.	Install a sound proof wall (shield) along Alma Terrace to deflect the noise nuisance back into the car park.
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Signed:

Date: 18/9/12

Please see notes on reverse

## **Representation from a resident of St Augustine's:-**

RE: DPGS Limited T/A Dominos Pizza  
29 St Augustines Gate Waterloo Road Norwich Norfolk NR33BE  
Licensing Act 2003: Premises Licence- Variation.

We would like to Object to the above referenced application on the following grounds;

### To prevent crime and disorder

Urinating in the car park is a big problem, we have witnessed (and complained about) members of Dominos staff urinating in the car park and returning back to work. This isn't acceptable especially as they have lavatory facilities within their premises.

### Public Safety

Our road is used as a short cut between Waterloo Road and Aylesham Road to bypass the new Stint Augustines Gyratory scheme, it is a single carriageway access only road for residents and currently is in a bad state of repair. Dominos staff regularly use our road to save them time, unfortunately they do not respect the speed limits and are a risk to public safety, we can only hope they all carry the appropriate work related insurance in the event of an accident? They have also been seen driving in the car park at high speed, this is very dangerous especially to shoppers using the car park.

### To prevent Public nuisance

When the bins are emptied at the end of the shift dominos staff make lots of noise opening and closing the lid and the subsequent filling of the the bin with the days/nights rubbish. This noise has often woken me up (even on Sundays!) with this application are we to understand that will they be putting us through this at 5 in the morning now, this would be very unreasonable to those who live here.

The Dominos drivers use the horns on their cars on arrival and departure at all hours day and night, Dominos drivers sit in the car park and play loud music, they use our access only road as a short cut at high speeds throughout the day and especially late at night.

Rubbish from this company is often spread about the neighbourhood and remains there until the carpark is cleaned, this cleaning we gather takes place every 3 months.

We have contacted them on numerous occasions and appealed to the manager to understand our views but no improvement. We cannot win and we are victims prisoned in our own homes by the staff at Domios who have damaged this neighbourhood with excessive noise and do not respect those who wish to live here peacefully.

To protect Children from Harm

There are children who live on this road, who (see above) are subject to the excessive speed, noise and disturbance caused by the people and vehicles moving around the car park late at night.

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# APPENDIX D

## Local Policy considerations

### 1.0 Introduction

1.4 The 2003 Act requires the Council to carry out its various licensing functions so as to promote the four licensing objectives. These are:

- The Prevention of Crime and Disorder
- Public Safety
- The Prevention of Public Nuisance
- The Protection of Children from Harm

1.5 The 2003 Act also requires that the Council publishes a 'Statement of Licensing Policy' that sets out the policies the Council will generally apply to promote the Licensing Objectives when making decisions on applications made under the Act.

### 2.0 Consultation and Links to other Policies and Strategies

2.7 So far as possible, the Council will avoid duplication with other regulatory regimes, and will not to use its powers under the Licensing Act 2003 to achieve outcomes that can be achieved by other legislation and other enforcement agencies. As an example, the council will not seek to impose fire safety conditions that may duplicate any requirements or prohibitions that could be imposed under the Regulatory Reform (Fire Safety) Order 2005.

### 3.0 Applications for Licences

**3.2 Applicants must address the four licensing objectives in their operational plan. The operating plan must have regard to the nature of the area where the premises are situated, the type of premises, the licensable activities to be provided, operational procedures and the needs of the local community. The operating schedule must demonstrate how the premises will be "good neighbours" both to residents and to other venues and businesses.**

**3.3 Applicants must provide evidence that suitable and sufficient measures, as detailed in their operating schedule, will be implemented and maintained, relevant to the individual style, location and characteristics of their premises and activities. They must also also indicate if additional measures will be taken on an occasional or specific basis, such as when a special event or promotion is planned, which is, for example, likely to attract larger audiences.**

### 4.0 Representations

4.1 "Responsible Authorities" (see Appendix 7) will be asked to consider all applications and to make representations to the Council, if they relate to the promotion of the four licensing objectives and particularly in respect of applications which, might be regarded as contentious. Representations must be

evidentially based and the organisation should attend any hearing when the application is being considered. Representations can be made in opposition to, or in support of, an application.

- 4.2 The Council will consider all representations from any “Interested Party” (see Appendix 7), or their representative, which should preferably be evidentially based and supported by attendance at any hearing at which the application is being considered.
  - 4.3 A representation, will only be accepted by the Council if it is ‘relevant’, ie it must relate to the likely effect of granting the licence on the promotion of at least one of the four licensing objectives. Representations, that are regarded as being frivolous or vexatious, will not be considered, and in the case of a review of a licence, any representation which is regarded as repetitive, will also not be considered. A decision as to whether a representation is frivolous, vexatious or repetitive will be made by an officer of the Council.
- 5.0 Conditions attaching to Licences
- 5.1 Where relevant representations are made, the Council will make objective judgments as to whether conditions may need to be attached to the premises licence to secure achievement of the licensing objectives. Any conditions arising as a result of representations will primarily focus on the direct impact of the activities taking place at licensed premises, on those attending the premises, and members of the public living, working or engaged in normal activity in the area concerned, and will cover matters that are within the control of individual licensees.
  - 5.2 All applications will be considered on an individual basis and any condition attached to such a licence, will be tailored to each individual premises, in order to avoid the imposition of disproportionate or burdensome conditions on those premises. Therefore, mandatory conditions, will only be imposed where they are appropriate for the promotion of the licensing objectives.
- 8.0 The Impact of Licensed Premises
- 8.1 When considering whether any licensed activity should be permitted, and a relevant representation has been received, the likelihood of it causing unacceptable adverse impact will be assessed by taking into account relevant matters including:
    - the type of use, the number of customers likely to attend the premises and the type of customers at the time of the application;
    - the proposed hours of operation;
    - the level of public transport accessibility for customers either arriving or leaving the premises and the likely means of public or private transport that will be used by the customers;
    - the means of access to the premises including the location of customer entrances and exits;
    - the provision of toilet facilities;
    - the frequency of the licensable activity.



With any adverse impact it may be possible to take steps to mitigate or prevent the impact and if such measures are reliable an activity may be licensed.

### 13.0 Management of Licensed Premises

- 13.1 Within the operating schedule for premises from which alcohol will be sold, with the exception of qualifying community premises, a premises supervisor must be designated (designated premises supervisor) and such person must be in possession of a current personal licence. The licensing authority will normally expect the designated premises supervisor [DPS] to have been given the day to day responsibility for running the premises by the premises licence holder and, as such, would normally be present on the licensed premises on a regular basis. In addition to the DPS holding a personal licence, the licensing authority would strongly encourage the DPS to undergo additional training and to have experience commensurate with the nature and style of entertainment provided and the capacity of the premises.
- 13.2 The act does not require a DPS or any other personal licence holder to be present on the premises at all times when alcohol is sold. However, the DPS and the premises licence holder remain responsible for the premises at all times and have a duty to comply with the terms of the licensing act and any conditions, including the matters set out in the premises' operating schedule, in order to promote the licensing objectives. To that end, the licensing authority will be mindful of the guidance issued by the secretary of state, which recommends that a personal licence holder/DPS gives specific written authorisations to those individuals they are authorising to retail alcohol. Although written authorisation is not a requirement of the act and the designated premises supervisor/personal licence holder remain ultimately responsible for ensuring compliance with the act and licensing conditions, this action could assist in demonstrating due diligence should any issues arise with regard to enforcement.

**The licensing authority will therefore expect that where the personal licence holder/DPS does not have the premises under their immediate day to day control, written authorisations will be issued to staff acting on their behalf, such authorisations being made available for inspection by a responsible Officer of the licensing authority or the police upon request.**

## **LICENSING OBJECTIVES**

### **24.0 Objective - prevention of public nuisance**

24.1 Licensed premises can potentially have a significantly adverse impact on communities through public nuisances that arise from their operation. The amenity of residents and occupiers of other businesses should be maintained and protected from the potential consequence of the operation of licensed premises, whilst recognising the valuable cultural, social and business importance that such premises provide.

24.2 Public nuisance will be interpreted in its widest sense, and will take it to include such issues as noise, light, odour, litter and antisocial behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.

24.3 Applicants should be aware that stricter conditions, including controls on licensing hours for all or some licensable activities will be applied, where licensed premises are in residential areas or where their activities may impact on residents or other business

premises, and where relevant representations have been received. Conversely, premises for which it can be demonstrated have effective measures to prevent public nuisance, may be suitable for longer opening hours.

24.4 The council will normally permit the hours during which alcohol is sold to match the normal trading hours during which other sales take place, unless there are exceptional reasons such as disturbance or disorder attributable to the location and/or the premises, and relevant representations have been made.

24.5 The council believe that the impact a licensed premises can have on a neighbourhood is significantly influenced by the times when those licensed premises are open, and the times when licensable activities are taking place. Consequently, the council has adopted a policy on hours of trading, (section E) and in so doing, has given full consideration to the secretary of state's guidance on hours of trading.

**24.6 Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and characteristics of their premises and events. For example, the increasing business requirement for licence holders to provide live or recorded music in premises where this has not previously been the case is especially pertinent, and should be fully assessed on the application.**

24.7 When addressing the issue of prevention of public nuisance, the applicant must demonstrate that those factors that impact on the likelihood of public nuisance have been considered. These may include:

- the location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices, care homes and places of worship
- the hours of opening, particularly between 11pm and 7am
- the nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises
- the design and layout of premises and in particular the presence of noise limiting features
- the occupancy capacity of the premises
- the availability of public transport
- wind down period between the end of the licensable activities and closure of the premises
- last admission time
- preventing litter and refuse becoming an eyesore
- consideration of local residents that they are not upset by loud or persistent noise or by excessive light
- preventing cars attending an event or premises from causing a noise nuisance and congestion, and from taking up local people's parking spaces
- avoid early morning or late night refuse collections
- avoiding emptying bins into skips, especially if they contain glass, either late at night or early in the morning
- customers eating, drinking or smoking in open air areas (for example beer gardens/forecourts and other open areas adjacent to the premises).

24.8 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule, having regard to their particular type of premises and/or activities:

- Effective and responsible management of premises.
- Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance, eg to ensure customers leave quietly.
- Fit prominent signs requesting that customers respect local residents and leave quietly.
- Control of operating hours for all or parts (eg garden areas) of premises, including such matters as deliveries ie not too early in the morning.
- Adoption of best practice guidance (eg Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by Institute of Acoustics, Licensed Property: Noise, published by BBPA).
- Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices.
- Management of people, including staff, and traffic (and resulting queues) arriving and leaving premises.
- Liaison with public transport providers.
- Siting of external lighting, including security lighting.
- Management arrangements for collection and disposal of waste, empty bottles etc.
- Effective ventilation systems to prevent the emission of unwanted odours.
- Take away packaging to include the name and address of the premises on it.
- Capacity levels for fast food outlets.
- Introduce a chill out area with coffee and mellow music where customers can settle before leaving.
- Introduce a closed door policy, with attendance prohibited for new customers 2 to 3 hours before licensable activities finish.

To address issues arising from customers smoking, eating and drinking in outdoor areas and on the highway outside the premises could include signage asking customers to keep noise to a minimum when using outdoor areas; restrictions on the numbers of customers permitted in certain outside areas and/or at certain times; and use of door-staff and employees to monitor possible public nuisance issues.

## **SECTION E - Hours of Trading**

30.7 Consideration will always be given to an applicant's individual case and if the matter of trading hours has been raised in a representation, the council will take into account any proposals the applicant has to minimise the risk of nuisance or disorder being caused or exacerbated by customers departing from the premises. It is however, unlikely that statements such as the premises being well-managed, or that the applicant is of good character or that the style of the premises is intended and likely to attract a discerning clientele, will alone be sufficient to demonstrate that restrictions on hours of trading should not be applied.

# APPENDIX E

## National Guidance

(issued under section 182 of the Licensing Act 2003)

### PUBLIC NUISANCE

- 2.18 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- 2.19 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 is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.
- 2.20 **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 more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 2.21 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.

- 2.22 **Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods.** For example, music noise from premises usually occurs from mid-evening until either late-evening or early-morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave.
- 2.23 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.
- 2.24 **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 and to respect the rights of people living nearby to a peaceful night.

## **DISCLOSURE OF PERSONAL DETAILS OF PERSONS MAKING REPRESENTATIONS**

- 9.22 Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearings) Regulations 2005 to provide the applicant with copies of the relevant representations that have been made.
- 9.23 In exceptional circumstances, persons making representations to the licensing authority may be reluctant to do so because of fears of intimidation or violence if their personal details, such as name and address, are divulged to the applicant.
- 9.24 Where licensing authorities consider that the person has a genuine and well-founded fear of intimidation and may be deterred from making a representation on this basis, they may wish to consider alternative approaches.
- 9.25 For instance, they could advise the persons to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.
- 9.26 The licensing authority may also decide to withhold some or all of the person's personal details from the applicant, giving only minimal details (such as street name or general location within a street). However, withholding such details should only be considered where the circumstances justify such action.

## **DETERMINING ACTIONS THAT ARE APPROPRIATE FOR THE PROMOTION OF THE LICENSING OBJECTIVES**

- 9.38 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations

should be considered on a case by case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

9.39 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

9.40 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

## **10. CONDITIONS ATTACHED TO PREMISES LICENCES AND CLUB PREMISES CERTIFICATES**

10.2 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions that the holder of the premises licence or the club premises certificate will be required to take or refrain from taking in relation to the carrying on of licensable activities at the premises in question. Failure to comply with any condition attached to a licence or certificate is a criminal offence, which on conviction is punishable by a fine of up to £20,000 or up to six months imprisonment. The courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided.

10.3 There are three types of condition that may be attached to a licence or certificate: proposed, imposed and mandatory. Each of these categories is described in more detail below.

### **PROPOSED CONDITIONS**

10.4 The conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence or certificate holder, which they should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating

schedule, which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public.

10.5 It is not acceptable for licensing authorities to simply replicate the wording from an applicant's operating schedule. A condition should be interpreted in accordance with the applicant's intention.

## **CONSISTENCY WITH STEPS DESCRIBED IN OPERATING SCHEDULE**

10.6 The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities or any other person, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required under the 2003 Act.

10.7 Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule. If conditions are broken, this may lead to a criminal prosecution or an application for a review and it is extremely important therefore that they should be expressed on the licence or certificate in unequivocal and unambiguous terms. The duty imposed by conditions on the licence holder or club must be clear to the licence holder, club, enforcement officers and the courts.

## **IMPOSED CONDITIONS**

10.8 The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.

10.9 It is possible that, in certain cases, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions are appropriate to promote the licensing objectives.

## **Proportionality**

10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case by case basis and standardised conditions which ignore these individual aspects should be avoided. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

## **Hours of trading**

- 10.11 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 regarding licensed opening hours as part of the implementation of its licensing policy statement and 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.
- 10.12 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