

# NORWICH CITY COUNCIL

## Report for Resolution

**Report To** Licensing sub-committee  
17 November 2011

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**Report of** Head of citywide services

**Subject** Licensing Act 2003:  
Application to vary a Premises Licence -  
Hollywood Bowl Wherry Road Norwich NR1 1WZ

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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 to vary a Premises Licence in respect of Hollywood Bowl Wherry Road Norwich NR1 1WZ following the receipt of Interested Party representations.

### Recommendation

That Members determine the application to vary a Premises Licence in respect of Hollywood Bowl Wherry Road Norwich NR1 1WZ 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.

### Financial Consequences

The financial consequences for this report are nil.

### Corporate Objective/Service Plan Priority

The report helps to achieve the service plan priority of protecting the interests of the public through the administration of the licensing function.

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### Background Documents

The Licensing Act 2003  
Guidance issued under Section 182 of the Licensing Act 2003  
Norwich City Council Statement of Licensing Policy

## 1.0 The Application

1.1 The applicant is The Original Bowling Company Limited of Valley Centertainment Broughton Lane Sheffield S9 2EP.

1.2 The premises currently hold a premises licence authorising the licensable activities of:

- the sale by retail of alcohol for consumption on and off the premises
- the exhibition of films
- indoor sporting events
- late night refreshment
- recorded music

A copy of the current premises licence is attached to the report as Appendix A.  
(to follow)

1.3 The application seeks to extend the existing provision of regulated entertainment by adding:

live music (indoors)  
recorded music via a DJ (indoors)  
provision of facilities for making music (indoors)  
provision of facilities for dancing (indoors)

The hours sought for the additional activities are:

Monday to Sunday                      10:00 – 01:00

Non-standard timings:

New Years Eve – start of permitted hours stated to the commencement of permitted hours the following day.

On the following days licensable activities are extended by one hour:  
1 January, Valentines night, Burns night, 1 March (St Davids) Easter Sunday and Monday, first and second May Bank Holiday Mondays, August Bank Holiday Monday and Halloween.

On the following days licensable activities are extended by two hours:  
17 March (St Patricks Day), first and second May Bank Holiday Sundays, August Bank Holiday Sunday, Christmas Eve, Boxing Day, 27, 28 & 30 December.

On commencement of British Summertime one hour should be added to the standard times.

- 1.4 The application also seeks to add an outside area adjacent to the application premises for the consumption of alcohol as indicated on the plan attached at Appendix B to the report (to follow). This area will close at 23:00 hours.
- 1.5 The applicant has proposed the following conditions in their operating schedule in order to promote the licensing objectives as a result of the variation application:-
- Live music and recorded music will be kept to a reasonable level and will be switched off at 01:00.
  - Signs shall be displayed in prominent positions requesting that patrons are respectful of neighbouring residential properties and keep noise to a minimum when leaving the premises.
- 1.6 Following discussions with Norfolk Constabulary and the council's environmental protection section, the applicant has advised that they wish to add the following conditions to their operating schedule:
- The location of the outside area will be as shown on the plan submitted
  - The outside area will only be used for the consumption of alcohol which will cease at 23:00.
  - No sales of alcohol, regulated entertainment or late night refreshment will be permitted in the outside area.
- 1.7 Members should be aware that this application is a revised version of an earlier application which was subsequently withdrawn. Accordingly, part of the interested party representations (which were made in respect of the original application) will no longer be relevant, e.g. location of outside area impeding fire exit from the cinema.

## **2. Relevant Representations**

2.1 The responses from the Responsible Authorities are as follows:

- Police – Representations received - No representations.
- Environmental Services – No representations.
- Fire Officer – No representations.
- Planning Officer – No representations.
- Area Child Protection Committee – No representations.
- Trading Standards – No representations.

2.2 Representations objecting to the application have been received from three Interested Parties with concerns relating to all four of the licensing objectives:

the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. Copies of the representations are attached to the report at Appendix C (to follow).

- 2.3 A site plan showing the interested parties addresses in relation to the application premises will be available at your meeting.

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

- 3.1 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.

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

- 4.1 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.

### **5.0 Summary**

- 5.1 The Sub-Committee is obliged to determine this application with a view to promoting the licensing objectives which are:

the prevention of crime and disorder;  
public safety;  
the prevention of public nuisance;  
the protection of children from harm.

- 5.2 In making its decision, the Sub-Committee is also obliged to have regard to guidance issued under Section 182 of the Licensing Act 2003 (National Guidance) and the Council's own local licensing policy. The Sub-Committee must also have regard to all of the representations made and the evidence it hears.

- 5.3 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

- 5.4 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.

- 5.5 The representations received from the Interested Parties appear to relate to issues that fall under all four licensing objectives: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. The Sub-Committee is directed to paragraphs 20, 22, 24 and 26 of the local licensing policy at Appendix D which contain examples of factors that impact on the four 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.
- 5.6 The Sub-Committee is also reminded of the contents of appendix 4 of the local licensing policy (not re-produced in this report) which contains a pool of model conditions relating to the prevention of public nuisance.

# 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.

### (a) 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 repetitious, 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 necessary for the promotion of the licensing objectives.

#### 8.0 The Impact of Licensed Premises

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- 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**

### 20.0 Objective - Prevention of Crime and Disorder

20.1 Section 17 of the Crime and Disorder Act 1998 introduced a wide range of measures for preventing crime and disorder and imposed a duty on the City Council, and others, to consider crime and disorder reduction in the exercise of all their duties. The Licensing Act 2003 reinforces this duty for local authorities.

20.2 The promotion of the licensing objective, to prevent crime and disorder, places a responsibility on licence holders to become key partners in achieving this objective. 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 reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and the licensable activities at those premises.

20.3 When addressing the issue of crime and disorder, the applicant should demonstrate that all those factors that impact on crime and disorder have been considered. These include:

Underage drinking

Drunkenness on premises

Public drunkenness

Keeping Illegal activity like drug taking and dealing, offensive weapons and sales of contraband or stolen goods away from the premises.

Preventing disorderly and potentially violent behaviour on and outside the premises.

Reducing Anti-social behaviour and Disorder inside and outside the premises

Litter

Unauthorised advertising

Protecting people and property from theft, vandalism and assault

Guard against glasses and bottles being used as weapons or causing accidents.

20.4 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 licensable activities:

Effective and responsible management of premises;

Training and supervision of staff;

Employ sufficient numbers of staff to keep numbers down of people awaiting service;

Provide sufficient seating for customers;

Patrols of staff around the premises;

Ensure sufficient lighting and visibility, removing obstructions if necessary, to discourage illegal activity;

Introduce an entry policy – making people aware of it – and apply it consistently and fairly;  
 Implement a search policy to prevent drugs, offensive weapons etc being brought onto the premises;  
 Implement effective management of entrance queues – incorporating barriers if necessary;  
 Adoption of best practice guidance e.g. Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit, Minor Sales Major Consequences, Clubbing against Racism and other voluntary codes of practice, including those relating to drinks promotions e.g. The Point of Sale Promotions published by the British Beer and Pub Association (BBPA), Security in Design published by BBPA and Drugs and Pubs, published by BBPA;  
 Acceptance of accredited 'proof of age' cards e.g. Portman proof of age cards, Citizencard, Connexions Card and/or 'new type' driving licences with photographs, or passports;  
 Provision of effective CCTV in and around premises;  
 Employment of Security Industry Authority licensed door staff to manage the door and minimize disorder;  
 Ensure glasses are collected on an on going basis, make regular inspections for broken glass and clear up;  
 Provision of toughened or plastic drinking vessels and bottles;  
 Provision of 'bottle bins' inside the premises and near exits;  
 Provision of secure, deposit boxes for confiscated items i.e. Operation Enterprise Drug and Weapon Amnesty Safe's;  
 Information displayed for staff and customers on Drug Awareness including the 'spiking' of drinks with drugs;  
 Provision of litterbins and other security measures, such as lighting, outside premises;  
 Membership of local 'Pubwatch' schemes or similar accreditation schemes or organizations ie Operation Enterprise;  
 Responsible advertising;  
 Distribution of promotional leaflets, posters etc;  
 Drug Seizure Kits (available from Norfolk Police Operation Enterprise);  
 Member of the 'NiteLink' radio scheme;  
 Working in partnership with the SOS Bus scheme;  
 Ban known offenders and share information with other licensed premises in the area;  
 Implement a dispersal policy;  
 Introduce a 'closed door' policy, with attendance prohibited for new customers 2-3 hours before licensable activities finish;

## 22. Objective – public safety

- 22.1 The safety of any person visiting or working in licensed premises must not be compromised. **Applicants are expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to ensure public safety, relevant to the individual style and characteristics of their premises and the licensable activities for which the licence is being sought.**

22.2 Applicants must ensure that they carry out their responsibilities under the Regulatory Reform (Fire Safety) Order 2005 and liaise with the Norfolk Fire and Rescue Service where necessary. Further information is available from <http://www.norfolkfireservice.gov.uk/firesafetyinbusinesspremises.html>

22.3 Also when addressing the issue of public safety, an applicant must demonstrate that they have considered other public safety issues.

These include:

- the age, design and layout of the premises
- the nature of the licensable activities to be provided, in particular the sale or supply of alcohol and/or the provision of music and dancing and including whether those activities are of a temporary or permanent nature
- the hours of operation (differentiating the hours of opening from the hours when licensable activities are provided, if different)
- customer profile (eg age, disability)
- the use of special effects such as lasers, pyrotechnics, smoke machines, foam machines, etc
- the safety of electrically powered equipment brought onto their premises
- having public liability insurance.

22.4 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:

- suitable and sufficient risk assessments
- effective and responsible management of premises
- provision of a sufficient number of people employed or engaged to secure the safety of the premises and patrons
- effective management of number of patrons within different parts of the premises
- determine sensible occupancy limits according to the nature of the premises and activities being carried out
- impose occupancy limits rigorously, employing registered doorstaff as necessary. In order to manage occupancy effectively, consider automated systems like electronic door counters
- appropriate instruction, training and supervision of those employed or engaged to secure the safety of the premises and patrons
- adoption of best practice guidance (eg Guide to Fire Precautions in Existing Places of Entertainment and Like Premises (further advice can be obtained from the Norfolk
- Fire Service on 01603 810351 [www.norfolkfireservice.gov.uk](http://www.norfolkfireservice.gov.uk) The Event Safety Guide, Safety in Pubs published by the BBPA)
- provision of effective CCTV in and around premises
- provision of toughened or plastic drinking vessels
- implementation of crowd management measures
- the provision of suitable electrical cut outs for use with electrical appliances which are brought onto the premises (such as amplifiers, microphones etc). Such cut-outs should be of a residual current device

with a rated tripping current of 30ma in 30 milliseconds (applicants should have regard to HSE Publication INDG 24 7 Electrical safety for entertainers)

- proof of regular testing (and certification where appropriate) of procedures, appliances, systems etc. pertinent to safety.

#### 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.

## 26. Objective – protection of children from harm

26.1 The council will consult with the appropriate area child protection committee for consideration of all applications for licences.

26.2 With a view to the promotion of the licensing objective relating to the protection of children from harm the council will work closely with the police and trading standards authority to ensure the appropriate enforcement of the law, especially relating to the sale and supply of alcohol products to children (for Minor Sales Major Consequences information please contact trading standards on 0844 800 8013 [trading.standards@norfolk.gov.uk](mailto:trading.standards@norfolk.gov.uk)).

26.3 Applicants should be aware that the protection of children from harm includes the protection of children from moral, psychological and physical harm and this includes the protection of children from exposure to strong language, sexual expletives and gambling. In certain circumstances children are more vulnerable and their needs will require special consideration. This vulnerability includes their susceptibility to suggestion, peer group influences, inappropriate example, the unpredictability of their age and their lack of understanding of danger.

26.4 There should be no presumption of giving children access nor any presumption of preventing their access to licensed premises. Where no licensing restriction is necessary, the admission of children will remain entirely a matter for the discretion of the individual licensee or club, or person who has given a temporary event notice.

26.5 Applicants must ensure that children will not be allowed access into premises when licensable activities involving eg topless female 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. The council has given particular consideration to the types of entertainment referred to above, and has included within this policy their expectations of applicants in section A, paragraph 17.

**26.6 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 protect children from harm, relevant to the individual style and characteristics of their premises and the licensable activities for which a licence is being sought.**

26.7 While children may be adequately protected from harm by the action taken to protect adults, they may also need special consideration and no policy can anticipate every situation. **When addressing the issue of protecting children from harm, the applicant must demonstrate that those factors that may particularly impact on harm to children have been considered.** These include:

- where entertainment or services of an adult or sexual nature are commonly or regularly provided
- where there have been convictions of members of the current staff at the premises for serving alcohol to minors or with a reputation for underage drinking
- where there has been a known association with drug taking or dealing
- where there is a strong element of gambling on the premises
- where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.

26.8 The council commends the Portman Group code of practice on the naming, packaging and promotion of alcoholic drinks. The code seeks to ensure that drinks are packaged and promoted in a socially responsible manner and only to those who are 18 years or older. **The council will expect all licensees to agree not to replenish their stocks following notification of a retailer alert bulletin by the Portman Group in relation to any product that is in breach of that code. Commitment to that code should be included in operating schedules.**

26.9 The following examples of control measures are given to assist applicants and are considered to be amongst the most essential that applicants should take account of in their operating schedule, having regard to their particular type of premises and/or activities:

- Effective and responsible management of premises.
- Provision of a sufficient number of people employed or engaged to secure the protection of children from harm.
- Appropriate instruction, training and supervision of those employed or engaged to secure the protection of children from harm.
- Adoption of best practice guidance (eg Minor Sales Major Consequences).
- Ensure that all drinks containers carry a price tag or other sticker that identifies your premises. This will be a useful tool for working with authorities to tackle underage drinking if problems arise.
- Limitations on the hours when children may be present, in all or parts of the premises.
- Limitations or exclusions by age when certain activities are taking place.
- Imposition of requirements for children to be accompanied by an adult.
- Train staff to deal with – and be vigilant about – potentially harmful situations, eg children in the presence of adults who are excessively drunk.
- Acceptance of accredited proof of age cards and/or new type driving licences with photographs, or passports.
- Measures to ensure children do not purchase, acquire or consume alcohol.
- Measures to ensure children are not exposed to incidences of violence or disorder.

These examples can be adopted in any combination.

**26.10 In the case of film exhibitions, licence and certificate holders and those who have given notice of a temporary event within the terms of the 2003 Act should implement measures that restrict children from viewing restricted films classified according to the recommendations of the British Board of Film Classification or the council.**

26.11 In premises where there may be children unaccompanied by adults any supervisors must have undergone appropriate checks through the Criminal Records Bureau.

#### 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)**

### **CRIME AND DISORDER**

2.1 The steps any licence holder or club might take to prevent crime and disorder are as varied as the premises or clubs where licensable activities may be carried on. Licensing authorities should therefore look to the police as the main source of advice on these matters.

2.4 The essential purpose of the licence or certificate in this context is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives. Conditions attached to licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff or agents, but can directly impact on the behaviour of customers on, or in the immediate vicinity of, the premises as they seek to enter or leave.

2.5 Licence conditions should not replicate licensing offences that are set out in the 2003 Act. For example, a condition that states that a licence holder shall not permit drunkenness and disorderly behaviour on his premises would be superfluous because this is already a criminal offence. A condition that states that a licence holder shall not permit the sale of controlled drugs on the premises would be similarly superfluous.

2.6 Conditions are best 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 cameras both inside and immediately outside the premises can actively deter disorder, nuisance and anti-social behaviour and crime generally. Some licensees may wish to have cameras on their premises for the protection of their own staff and for the prevention of crime directed against the business itself or its customers. But any condition may require a broader approach, and it may be necessary 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.

2.7 Similarly, the provision of requirements for door supervision may be necessary to ensure that people who are drunk or drug dealers or carrying firearms do not enter the premises, reducing the potential for crime and disorder, and that the police are kept informed.

2.8 Text and radio pagers allow premises licence holders, designated premises supervisors and managers of premises and clubs to communicate instantly with the local police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises. The Secretary of State recommends that text or radio pagers should be considered appropriate necessary

conditions for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises.

2.9 Some conditions primarily focused on the prevention of crime and disorder will also promote other licensing objectives. For example, a condition requiring that all glasses used on the premises for the sale of alcoholic drinks should be made of plastic or toughened glass or not allowing bottles to pass across a bar may be necessary to prevent violence by denying assailants suitable weapons, but may also benefit public safety by minimising the injury done to victims when such assaults take place (for example, facial injuries resulting from broken glass).

2.10 A condition must also be capable of being met. For example, while beer glasses may be available in toughened glass, wine glasses may not. Licensing authorities should carefully consider conditions of this kind to ensure that they are not only necessary but both practical and achievable.

## **PUBLIC SAFETY**

2.19 Licensing authorities and responsible authorities should note that the public safety objective is concerned with the physical safety of the people using the relevant premises and not with public health, which is dealt with in other legislation. There will of course be occasions when a public safety condition could incidentally benefit health, but it should not be the purpose of the condition as this would be ultra vires the 2003 Act. Accordingly, conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

2.20 From 1 October 2006 the Regulatory Reform (Fire Safety) Order 2005 ('the Fire Safety Order') replaced previous fire safety legislation. As such any fire certificate issued under the Fire Precautions Act 1971 will have ceased to have effect. Licensing authorities should note that under article 43 of the Fire Safety Order any conditions imposed by the licensing authority that relate to any requirements or prohibitions that are or could be imposed by the Order automatically cease to have effect, without the need to vary the licence. This means that licensing authorities should not seek to impose fire safety conditions where the Order applies.

2.22 The Fire Safety Order applies in England and Wales. It covers 'general fire precautions' and other fire safety duties which are needed to protect 'relevant persons' in case of fire in and around 'most premises'. The Order requires fire precautions to be put in place 'where necessary' and to the extent that it is reasonable and practicable in the circumstances of the case.

2.23 Responsibility for complying with the Order rests with the 'responsible person', which may be the employer, or any other person or people who may have control of the premises. Each responsible person must carry out a fire risk assessment which must focus on the safety in case of fire for all 'relevant persons'. The fire risk assessment is intended to identify risks that can be removed or reduced and to decide the nature and extent of the general fire precautions that need to be taken including, where necessary, capacity limits.

2.24 The local fire and rescue authority will enforce the Order in most premises and have the power to inspect the premises to check the responsible person is complying with their duties under the Order. They will look for evidence that the responsible person has carried out a suitable fire risk assessment and acted upon the significant findings of that assessment. If the enforcing authority is dissatisfied with the outcome of a fire risk assessment or the action taken, they may issue an enforcement notice that requires the responsible person to make certain improvements or, in extreme cases, issue a prohibition notice that restricts the use of all or part of the premises until improvements are made.

## **PUBLIC NUISANCE**

2.32 The 2003 Act requires licensing authorities (following receipt of relevant representations) and responsible authorities, through representations, to make judgements about what constitutes public nuisance and what is necessary 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 impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.33 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 interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.

2.34 Conditions relating to noise nuisance will normally concern steps necessary 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 in the evening to more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions necessary to promote the prevention of public nuisance should be tailored to the style and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid unnecessary 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.

2.35 As with all conditions, it will be clear that conditions relating to noise nuisance may not be necessary in certain circumstances where the provisions of the Environmental Protection Act 1990, the Noise Act 1996, or the Clean Neighbourhoods and Environment Act 2005 adequately protect those living in the vicinity 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 necessary.

2.36 Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from midevening 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 in the immediate vicinity of the premises may also prove necessary to address any disturbance anticipated as customers enter and leave.

2.37 Measures to control light pollution will also require careful thought. Bright lighting outside premises considered necessary 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.

2.38 In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives.

2.39 Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in 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.

## **PROTECTION OF CHILDREN FROM HARM**

2.41 The protection of children from harm includes the protection of children from moral, psychological and physical harm, and this would include the protection of children from too early an exposure to strong language and sexual expletives, for example, in the context of film exhibitions or where adult entertainment is provided.

2.42 However, in the context of many licensed premises such as pubs, restaurants, café bars and hotels, it should be noted that the Secretary of State recommends that the development of family-friendly environments should not be frustrated by overly restrictive conditions in relation to children.

2.43 The Secretary of State intends that the admission of children to premises holding a premises licence or club premises certificate should normally be freely allowed without restricting conditions unless the 2003 Act itself imposes such a restriction or there are good reasons to restrict entry or to exclude children completely. Licensing authorities, the police and other authorised persons should focus on enforcing the law concerning the consumption of alcohol by minors.

2.44 Conditions relating to the access of children which are necessary to protect them from harm are self evidently of great importance. As mentioned in connection with statements of licensing policy in Chapter 13 of this Guidance, issues will arise about the access of children in connection with premises:

- where adult entertainment is provided;
- where 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 in the company of adults during a table meal);
- where it is known that unaccompanied children have been allowed access;
- where requirements for proof of age cards or other age identification to combat the purchase of alcohol by minors is not the norm;
- with a known association with drug taking or dealing;
- where there is a strong element of gambling on the premises (but not small numbers of cash prize machines);
- where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.

2.46 Similarly, gambling may take place in part of a leisure centre but not in other parts of those premises. This means that the access of children will need to be carefully considered by applicants, licensing authorities and responsible authorities. In many respects, it should be possible to rely on the discretion and common sense of licence and certificate holders. However, licensing authorities and responsible authorities should still expect applicants when preparing an operating schedule or club operating schedule to state their intention to exercise discretion and where they are necessary, to set out the steps to be taken to protect children from harm when on the premises.

2.47 Conditions, where they are necessary, should reflect the licensable activities taking place on the premises and can include:

- where alcohol is sold, requirements for the production of proof of age cards or other age identification before sales are made, to ensure that sales are not made to individuals under 18 years (whether the age limit is 18 or 16 as in the case of the consumption of beer, wine and cider in the company of adults during a table meal);
- restrictions on the hours when children may be present;
- restrictions 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 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



## Proposed Conditions

10.7 The conditions that are necessary for the promotion of the licensing objectives should emerge initially from a prospective licensee's or certificate holder's risk assessment which applicants and clubs 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 of opening.

10.8 In order to minimise problems and the necessity for hearings, it would be sensible for applicants and clubs to consult with responsible authorities when schedules are being prepared. This would allow for proper liaison before representations prove necessary

## Imposed Conditions

10.11 The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It may then only impose conditions that are necessary to promote one or more of the four licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute.

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

## Proportionality

10.13 The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. This rules out standardised conditions which ignore these individual aspects. It is important that conditions are proportionate and properly recognise significant differences between venues. For example, charities, community groups, voluntary groups, churches, schools and hospitals which host smaller events and festivals will not usually be pursuing these events commercially with a view to profit and will inevitably operate within limited resources.

## Fundamental principles

13.16 "...licensing is about regulating licensable activities on licensed premises...and the conditions attached to various authorisations will be focused on matters which are within the control of individual licensees and others with relevant authorisations, i.e. the premises and its vicinity."

13.17 "...whether or not incidents can be regarded as being "in the vicinity" of licensed premises is a question of fact and will depend on the particular circumstances of the case."

13.18 "...licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises."

#### Standardised Conditions

13.20 "...statements of policy should make it clear that a key concept underscoring the 2003 Act is for conditions to be tailored to the specific premises concerned. This effectively rules out standardised conditions...However, it is acceptable for licensing authorities to draw attention in their statements of policy to pools of conditions which applicants and others may draw on as appropriate."

#### Licensing Hours

13.41 "...the Government wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time economies...providing consumers with greater choice and flexibility is an important consideration, but should always be balanced carefully against the duty to promote the four licensing objectives and the rights of local residents to peace and quiet."