

APPLICATION FOR PREMISES LICENCE

Applicant: OSBOURNE LEISURE LTD **Ref No: DL12/00671/PREMIS**

Premises: OSBOURNE'S
20-22 GRANGE ROAD
DARLINGTON, DL1 5NG

Requested Licensable Activities:

- **Sale of Alcohol for consumption ON & OFF the Premises**
- **Regulated entertainment**
 - Live Music**
 - Recorded Music**
 - Provision of facilities for dancing**

Requested Hours:	Sale of Alcohol:	10.00 - 24.00	Sunday to Thursday
		10.00 - 01.00	Friday & Saturday
	Regulated Entertainment:		
	Live Music:	10.00 - 24.00	Every Day
	Recorded Music:	10.00 - 00.30	Sunday to Thursday
		10.00 - 01.30	Friday & Saturday
	Provision of facilities for dancing:	10.00 – 00.30	Sunday to Thursday
		10.00 – 01.30	Friday & Saturday

Notification to Responsible Authorities:

Chief Constable	Environmental Health Manager (Public Safety & Public Nuisance)
Licensing Authority	Trading Standards Section
Chief Fire Officer	Area Child Protection Group
Planning Manager	

Information on Council's Website: 27 April 2012
Advertisement in Northern Echo: 27 April 2012 **

LEGISLATION:

The Licensing Act 2003 requires the Licensing Authority to carry out its functions with a view to promoting the four Licensing Objectives:

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

The Licensing Authority must also have regard to its Licensing Policy and any guidance issued by the Secretary of State. The Licensing Authority may depart from its own Policy or the Secretary of State's Guidance if it has good cause but must be able to give full reasons for such a departure.

DESCRIPTION OF PREMISES

The Applicant has described the premises as follows:

“these premises comprise a public bar on the 1st floor”

BACKGROUND

On 25 April 2012 an application was made for a Premises Licence in respect of Osbourne's 20-22 Grange Road Darlington DL1 5NG in accordance with Section 17 of the Licensing Act 2003.

The application was properly advertised as required by the 2003 Act and, as a result concerns were initially expressed by two Responsible Authorities, namely the Police and Environmental Health and also 8 other persons (formerly known as “Interested Parties”). As a result of this the Applicant Company submitted further plans on 28 May 2012. The original “Other Persons “ were advised that their representations would be carried forward to this new application unless they advised that they no longer wished to pursue their representations. The original advertisement placed on the Council's website remained in place throughout both periods of consultation.

The Police subsequently withdrew their representation based on agreement with the Applicant Company that specific conditions would be applied to any grant of licence. These conditions are more detailed than those originally proposed in the operating Schedule and have been reproduced in the section “**AGREED CONDITIONS**”. In addition, the representation from Environmental Health was also withdrawn based on agreement with the Applicant Company that an occupancy figure of 110 (which accommodates the limited toilet provision) would become an agreed condition also

The representations from 7 “other persons” have been reproduced in full at **Appendix 1A** and are summarised below. Members must consider whether these representations are relevant, vexatious or frivolous and if any are found to be so Members should declare this and discount them. In respect of the 8th representation, this did not relate in any way to the licensing objectives and as a result officers wrote to the party involved requesting that they identified which licensing objective(s) would be affected. The letter advised that if a response was not received by 25 June 2012 it would be assumed that the representation had been withdrawn. No response was received and therefore the representation has not been included as it could not be deemed to be relevant

THE REPRESENTATIONS

On 16 May 2012 a representation was received from Mr & Mrs Jones see **Appendix 1A(i)** based on the prevention of public nuisance. In summary they express concern at the potential for rowdy behaviour and noise disturbance. Mr & Mrs Jones have been asked to provide details of their address – either home or business, as this is pertinent to determining what weight should be put on this representation. At the time of writing this report they had failed to do so and Members are invited to declare how much weight, if any, has been placed on this representation.

On 17 May 2012 a representation was received from Mr Storer (see **Appendix 1A(ii)**), a local businessman who has The Grange, in Grange Road based on planning matters. Members should note that no reference has been made to any of the 4 licensing objectives. The Secretary of State's Guidance, at 9.4 states “*a representation is ‘relevant’ if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.*” As this representation does not do so Members are invited to declare that this representation is irrelevant

On 17 May 2012 a representation was received from Mr Graham Clark (see **Appendix 1A(iii)**) who gives his address as 16 Grange Road. His representation is based on the Prevention of Public Nuisance. In summary he expresses concern at the likely impact this premise will have on the businesses based below the premises. This representation is largely based on the conflict between the planning application and the licensing application. Members should note that the Planning authority, which is a Responsible Authority, has not made any representations in respect of this application.

On 20 May 2012 a representation was received from Mr & Mrs Ross, the owners of 16 Grange road (see **Appendix 1A(iv)**) based on the Prevention of Public Nuisance, In summary they express concern at the impact the premises may have on their tenant who resides in 16 Grange Road in terms of noise nuisance and the effect of people congregating outside of the premises.

On 21 May 2012 a representation was received from Mr Ian Briggs (see **Appendix 1A(v)**) whose Company owns 53 Grange Road. His representation is based on the Prevention of Crime and disorder and the prevention of Public Nuisance. In summary he expresses concern at the potential anti social behaviour and disturbance that could be caused should this application be granted.

On 21 May 2012 a representation was received from Ms Sue Thomson (see **Appendix 1A(vi)**) whose Company owns 1-0 Wellington Court Mews. Her representation is based on the Prevention of Crime and disorder and the prevention of Public Nuisance. In summary she expresses concern at the current anti social behaviour in the area and further potential anti social behaviour and littering that could be caused should this application be granted.

On 21 May 2012 a representation was received from Mr Neil Curry (see **Appendix 1A(vii)**) who is the proprietor of Prego wine bar, 16 Grange Road. His representation is based on the Prevention of Public Nuisance. In summary he expresses concern at the impact live music will have on his own and other businesses.

Members are reminded that only those elements of the representations that relate to the four licensing objectives should be considered when determining this application.

THE APPLICANT'S RESPONSE:

The representations have been sent to the Applicant Company to provide an opportunity to respond to the concerns expressed. On 20 June 2012 The Company has responded in full (see **Appendix 1B**) and in summary claim that most objections are from competitors. In addition to this response a further e mail was received from the Company on 25 June 2012 advising that:

“subject to the necessary objections being withdrawn I will remove the request for a licence for live music at the above venue. In addition, I can confirm that there will be no dance floor and no organised dancing. I have requested a licence for dancing to ensure that, should spontaneous dancing occur in the venue, I am not in breach of the conditions of the licence”.

This information was circulated to all representors by the Licensing Office. On 27 June 2012 Mr & Mrs Ross and Mr Ian Briggs responded advising that they still wish to pursue their representation. The other representors did not respond and their representations remain current.

THE OPERATING SCHEDULE

The Operating Schedule details the additional steps that will be taken to promote the four licensing objectives if the application is granted. The Applicant Company has stated in the initial application as follows:

a) General:

“All licences will be displayed behind the bar. All staff will be trained in Health & Safety on an ongoing basis. Risk assessments will be carried out on an annual basis. We will join and participate in the local Pubwatch scheme.”

b) Crime and Disorder:

A CCTV system complying with Durham Constabulary Minimum Standards will be installed, maintained and operational at all times when alcohol is available for sale. The system will record and store images for a minimum 31 day period. Staff will be trained in its usage and will produce recorded footage to Police and Authorised Officers of the Council upon request. We will participate in the local Pubwatch scheme”.

c) Public safety

“All electrical equipment will be PAT tested every year. All electrical circuits tested every 3-5 years. All fire equipment will be tested and serviced every year. We have Fire Escape notices and illuminate exit signs throughout the building plus emergency lighting”.

d) Prevention of Public Nuisance

“Sound checks are to take place to monitor sound leakage from the building when regulated entertainment is taking place. Signage to be prominently displayed advising customers of the need to leave the premises quietly. All deliveries will take place during normal commercial hours (9.00-16.00). An appropriate wall mounted cigarette disposal bin shall be provided which is to be examined and emptied on a daily basis. The Designated Premises supervisor shall ensure that glassware of any kind is not taken outside of the premises by patrons.”

e) Prevention of Harm to Children

“The Challenge 21 scheme shall be implemented requiring photographic proof of identity from any person who attempts to purchase alcohol and who appears to be under the age of 21 years. Notices shall be displayed within the premises advertising this scheme. Children under the age of 16 years shall not be permitted in the premises after 19.00 hours. Young persons between the ages of 16-18 years who are supervised by a responsible adult shall be permitted at the discretion of the Designated Premises supervisor”.

Members are aware that the Operating Schedule can be turned into conditions and placed upon any grant of licence. Members are also aware that conditions should not replicate other legislation, in this case, for example the information provided under Public Safety.

THE AGREED CONDITIONS

Following discussions with the Applicant Company the conditions below have been agreed and now form part of the Operating Schedule. They will replace any earlier similar conditions offered by the Applicant Company.

1. A digital CCTV system complying with Durham Constabulary's Minimum Standards for Licensed Premises will be installed and in operation at all times the premises are being used for licensable activities. It must be operated by properly trained staff. The system shall cover the public entrances and also the 2 fire exits for the premise, in addition to any points of sale and other areas to which the public have access, with particular regard to those areas which may not be visible from the bar area. Recordings must be kept secure where they cannot be tampered with and retained for a period of no less than 31 days. Recordings must be available on request to the Local Authority or Durham Constabulary and be provided within 14 days of any such request
2. The Licensee will be responsible for providing regular staff training, to include an understanding of the conditions attached to the premise licence in addition to general licensing law. This training will be provided to all new staff members and refresher training provided on a minimum of a quarterly basis. Such staff training will be recorded in a register to include the signature of the member of staff and the licensee. This register will be available for immediate inspection by the Local Authority or Durham Constabulary upon request.
3. Documentation must be displayed advising that a Challenge 21 age verification policy is in operation at the premises and that all individuals who appear to be under the age of 21 will be requested to provide identification before being served alcohol, and that failure to do so will result in the refusal of the sale of alcohol. Identification must bear their photograph, date of birth and a holographic mark that shows they are 18 years of age or over.
4. A register will be maintained of any refusals to serve alcohol. This register will be made available for immediate inspection by the Local Authority or Durham Constabulary upon request.
5. The premise will maintain an incident book to record all instances of violence or disorder, or where persons are requested to leave the venue due to their unacceptable behaviour. This incident book will be signed by a staff member upon each entry and made available for immediate inspection by the Local Authority or Durham Constabulary upon request.
6. The capacity of the premises shall not exceed 110. The Licensee shall implement a procedure for monitoring the number of people present in the premises to ensure that the capacity stated in (1) is not exceeded.

Members should note that although an occupancy level has been agreed the occupancy is also subject to fire legislation and until such time as works have been completed to the satisfaction of the Fire Authority the premises capacity will be lower than that stated in the condition above.

THE LICENSING POLICY

Members are referred to the following relevant sections of the Council's Licensing Policy which are reproduced at **Appendix 1C**.

Section 6.1 – 6.3	Public Nuisance/Crime and Disorder (Impact of Licensable Activities)
Section 8.0 - 8.5	Public Nuisance -Location of Premises/impact of Activity
Section 8.7.2 – 8.7.6	Public Nuisance - Reducing noise disturbance
Section 10.0 – 10.5.	Prevention of Crime and Disorder
Section 12.4	Additional Conditions

A full copy of the policy will be available at Committee should Members wish to access it.

THE GUIDANCE

Members are referred to the Secretary of State's Guidance particularly in relation to the prevention of crime and disorder, the prevention of public nuisance, conditions on licences and dealing with representations. This is reproduced at **Appendix D**.

ADDITIONAL INFORMATION

A map of the area will be produced for Members at this hearing identifying the proximity of the local residents to the premises and also identifying any nearby licensed premises.

POINTS FOR CLARIFICATION

Members are referred to the notice of hearing **points for clarification** (See **Appendix 2**).

The **Other Persons** have been asked to provide the following:

- Details of past problems experienced in the vicinity

The **Applicant Company** has been asked to provide the following:

- Details of the steps to be taken to ensure patrons do not gather outside of the premises

MEMBERS' OPTIONS

Members may consider the following options

Grant the application subject to the following conditions, which have been derived from the Applicant's Operating Schedule and meeting with Durham Police and are in addition to the mandatory conditions for sale of alcohol:

- (i) A digital CCTV system complying with Durham Constabulary's Minimum Standards for Licensed Premises will be installed and in operation at all times the premises are being used for licensable activities. It must be operated by properly trained staff. The system shall cover the public entrances and also the 2 fire exits for the premise, in addition to any points of sale and other areas to which the public have access, with particular regard to those areas which may not be visible from the bar area. Recordings must be kept secure where they cannot be tampered with and retained for

a period of no less than 31 days. Recordings must be available on request to the Local Authority or Durham Constabulary and be provided within 14 days of any such request

- (ii) The Licensee will be responsible for providing regular staff training, to include an understanding of the conditions attached to the premise licence in addition to general licensing law. This training will be provided to all new staff members and refresher training provided on a minimum of quarterly basis. Such staff training will be recorded in a register to include the signature of the member of staff and the licensee. This register will be available for immediate inspection by the Local Authority or Durham Constabulary upon request.
- (iii) Documentation must be displayed advising that a Challenge 21 age verification policy is in operation at the premises and that all individuals who appear to be under the age of 21 will be requested to provide identification before being served alcohol, and that failure to do so will result in the refusal of the sale of alcohol. Identification must bear their photograph, date of birth and a holographic mark that shows they are 18 years of age or over.
- (iv) A register will be maintained of any refusals to serve alcohol. This register will be made available for immediate inspection by the Local Authority or Durham Constabulary upon request.
- (v) The premise will maintain an incident book to record all instances of violence or disorder, or where persons are requested to leave the venue due to their unacceptable behaviour. This incident book will be signed by a staff member upon each entry and made available for immediate inspection by the Local Authority or Durham Constabulary upon request.
- (vi) The capacity of the premises shall not exceed 110. The Licensee shall implement a procedure for monitoring the number of people present in the premises to ensure that the capacity stated in (1) is not exceeded
- (vii) The designated premises supervisor or another designated representative of the Applicant Company shall attend and actively participate in the Darlington Pub Watch scheme.
- (viii) The Designated Premises supervisor shall undertake sound checks at regular intervals to monitor sound leakage from the building on each occasion when regulated entertainment is taking place. These checks shall be documented and produced to the Police and Authorised Officers of the Council upon request.
- (ix) Clear and legible signage shall be prominently displayed at each exit advising customers of the need to leave the premises quietly.
- (x) All deliveries shall take place during the hours of 9.00 am and 4 pm.
- (xi) The Designated Premises supervisor shall ensure that glassware of any kind is not taken outside of the premises by patrons.
- (xii) Children under the age of 16 years shall not be permitted in the premises after 19.00 hours.
- (xiii) Young persons between the ages of 16-18 years who are supervised by a responsible adult shall be permitted at the discretion of the Designated Premises Supervisor".

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2. Place any additional conditions on the licence that Members consider are necessary to address any concerns relating to crime and disorder, public nuisance, public safety and protection of children from harm.
 3. Reject all or part of the application

Members are reminded that any aggrieved party (ie Applicant, Responsible Authority or Other Person) may appeal any decision of the Licensing Sub Committee to the Magistrates' Courts.

Contact Officer: Pam Ross
Ext 2647

Richard Alty
Director of Place

Date of Sub Committee: 19 July 2012

For admin use only:
Sub Committee Decision:

**GRANT ALL / PART OF APPLICATION / REJECT ALL / PART OF APPLICATION/
PLACE CONDITIONS**
Reasons:

REPRESENTATIONS IN RESPECT OF APPLICATION

Appendix 1A(i)

Representor: Colin & Jennifer Jones (16/5/12) - Address unknown

Comments: Based on the prevention of Public Nuisance

I have seen the licensing notice regarding the above property (formally named Drum) and would like to register an objection. I have read the notice with some dismay and have checked against the planning application which was for change of use, detailing there would only be a bar with limited opening hours however the application to yourselves is somewhat different!!

Opening hours of early morning to very late at night

There are many cafe's and bars around so another is un-necessary and with extended hours could cause disturbance to the tranquillity of the neighbourhood – we need to maintain the businesses we have as there are enough closing due to the economic environment.

Dancing

Again this is not in keeping with the surrounding shops and businesses which are of a high quality and so would be adversely affected by additional noise and potential rowdy behaviour.

There are many potential unknowns - such as the owners drinks pricing policy – and so if the area became troublesome it would deter my wife and I from using (and hence supporting) the local facilities. I hope there are many others who feel the same way and that it will stop you issuing the Licence.

Appendix 1A (ii)

Representor: Mr D Storer, (17/5/12) BBF 468 Limited. The Grange, 51 Grange Road, Darlington, DL1 5PD

Comments: Based on Planning Issues

I wish to voice my objections to the application for the licensing of 22 Grange Road, Darlington and subsequently objections to the previously provisional granting of change of usage via the planning process. My key objections are that the information forwarded to the planning committee in no way relates to the operation detailed in the premises licence application.

The impact on the surrounding area will be much greater than would be expected by all services that were consulted during the planning process. I believe that this makes the initial planning application and subsequent decisions null and void. I look forward to your comments on these points.

Appendix 1A (iii)

Representor: Mr Graham Clark (17/5/12) 16 Grange Road, Darlington, DL1 5NG

Comments: Based on Public Nuisance

I am writing in objection to the above application as the planning and licensing process is being abused by the applicant. The building does not have planning permission for use as a (A4) drinking establishment. Recently the applicant applied for planning permission (application number 12/00042/CU) however this has not been granted as the conditions imposed have not been met. In addition to this the building licence application exceeds the agreed operation of the establishment as outlined in the planning application in multiple areas including the hours of operation, provision of a dance floor and provision of live music and there are no restrictions on access to the premises by minors.

APPENDIX 1A (cont)**Appendix 1A (iii) (Cont)**

Issue 1: Conditions imposed on the planning application have not been met. The planning committee document show clear conditions that require details to be submitted and agreement and implementation before the premises can commence operations. The conditions are as follows :

1. A3 – Implementation Limit (Three Years)
2. The use hereby permitted for Class A4 (Drinking Establishments) purposes shall not commence until full particulars and details of a scheme to insulate the premises against the transmission or airborne and impact sound has been submitted to, and approved by, the Local Planning Authority and the development shall not be carried out otherwise than in accordance with any approval given. REASON - To prevent noise disturbance to nearby properties.
3. D19 – Ventilation Equipment (Details Required)
4. The use hereby permitted shall not commence until details of the arrangements for storing of refuse or waste have been submitted to, and approved by, the Local Planning Authority. The details shall include the types of waste and the proposed hours and method of collection. The development shall not be carried out otherwise than in accordance with any approval given and shall be completed prior to any part of the accommodation hereby permitted being occupied. REASON - To safeguard the amenities of the area.
5. Notwithstanding the details shown on the approved plans, precise details for improving accessibility to the building for disabled people shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out otherwise in complete accordance with the approved details REASON: In order to make the building accessible to disabled people in accordance with Policy CS2 of the Darlington Core Strategy Development Plan Document 2011.
6. B5 – Detailed Drawings (Accordance with Plan)

These conditions have not been met therefore a premise licence should not be issued.

Issue 2: The licence application grossly exceeds the agreed operation of the premises outlined in the planning application. The planning committee documents and application outline the following opening hours: The bar would operate from 1800 to 0100 Monday to Friday; 1200 to 0100 Saturdays and 1800 to 1200 Sundays.

- There are no plans to install a dance floor
- There will possibly be background music associated with the bar but there is no live music anticipated
- A policy would be put in place to control security, unruly behaviour, smoking areas etc

A comparison between the planning application and the premises licence reveal that the opening hours of the premises licence differ exceeding the planning application. The planning application shows 48 hours operation per week. The premises licence shows 100 hours of operation per week. A difference of 52 hours serving alcohol from 10am daily – 8 hours earlier than the application made to planning. This shows that the opening hours of the premises were not properly represented in the planning application which would have made a large difference to how councillors voted on the application

APPENDIX 1A (cont)**Appendix 1A (iii) cont**

The planning application and supporting documentation provided to the council clearly stated that no live music or dance floor would be installed. This was a large factor in allowing the planning permission as businesses operating underneath the premises would be badly affected by the noise generated. In a blatant contradiction to the information provided to the planning department the applicant had applied for both provision of a dance floor and live music. This will have a large impact on the businesses operating underneath which include a restaurant, printing office and a café/bar.

Issue 3: Access for Minors: Restrictions should be applied for access to the premises for minors. No one under the age of 18 should be allowed on the premises; this is a late night venue which only sells alcohol. This would avoid youth parties, that we have all seen in the papers and children have no place in this kind of establishment.

A combination of the 3 issues would surely make it impossible for a premises licence to be granted and would urge the department to refuse a licence that does not reflect the previously agreed conditions and operation of the premises. I wish to be kept informed of the progress of this application.”

Appendix 1A (iv)

Representor: Mr & Mrs M Ross (20/5/12), 70 Avenue Jeanne d'Arc., 62780 Stella Plage
France

Comments: Based on the Prevention of Public Nuisance

“We are the owners of 16 Grange Road Darlington; we are extremely concerned about the proposed development of 22 Grange Road for a music (and dancing) venue. We would like to strongly object to the granting of a license for the consumption of alcohol on these premises. Our worries are numerous; firstly for our tenant at 16 Grange Road who is directly underneath the proposed development, we feel that a live music venue above their business will cause a considerable amount of noise and nuisance.

Due to the age and structure of the whole of this building it does not lend itself to this kind of activity. Also the fact that there is only one entrance/exit on to the pavement in Grange Road would cause considerable problems at busy times with people queuing and obstruction of the pavement.

Despite the proposal of a music venue without dancing, we feel that this would be impossible to police. People would evidently want to dance. Together with the loud music this would cause considerable disturbance to our tenant underneath. The problem of the loud music would not only affect our tenant but also other businesses in the area.

A venue like this is very likely to cause a nuisance to the public and certainly public safety problems. We foresee young people congregating on the pavement, threatening to severely damage the environment of which many people have worked very hard to create. The abuse of alcohol is prevalent amongst the young which can lead to behavioural problems affecting the safety of other members of the public.

APPENDIX 1A (cont)**Appendix 1A (iv) cont**

The Grange Road area of Darlington is a very select shopping area and is well served with bars, restaurants and entertainment. We together with our tenant have spent a considerable amount of money on our property to attract the right kind of clientele in keeping with the other businesses in Grange Road. We feel that the proposed development of a music venue would be seriously detrimental to the area. We sincerely hope that you will seriously consider our views on this application and agree it is not at all suitable for this area of Darlington."

Further Comments received 27 June 2012 following Applicant Company's offer to remove live music from application:

"Despite the amendments made by the applicant, we are still of the opinion that a business of this nature is highly inappropriate in this building and environment. We are totally against the application for a license for dancing. Our original reasons for opposing this application remain the same."

Appendix 1A (v)

Representor: Mr Ian Briggs (21/5/12), Cable Properties & Investments
Riverside Park Road, Middlesbrough. TS2 1QW

Comments: Based on the Prevention of Crime & Disorder and
the Prevention of Public Nuisance

"As owners of Grange House, 53 Grange Road, Darlington, DL1 5NB we would like to object to the licensing application recently submitted by Osbourne Leisure Limited for above property on the following grounds. We are constantly clearing up our car park and gardens of discarded drinking bottles along with people urinating and vomiting not to mention the damage caused by anti social behaviour from the existing licensed premises therefore we do not feel the Police could deal with further operators on Grange Road as well as the impact on the surrounding area. The premises are also restricted by way of a single access in terms of fire regulations etc. We feel that the area is already saturated with licensed premises and there can be no business case justifying this application."

Further comments received 27 June 2012 following Applicant Company's offer to remove live music from application:

"Following our representations regarding above application & your correspondence in relation to this of 26 June. Although I appreciate the applicant has offered to remove his request for live music and also confirms no dancing will take place, these will have no bearing on my representations and concerns which are for Public Nuisance and Crime & Disorder which will still remain. Furthermore can you please clarify all the attached planning conditions have been met prior to licensing considering this application along with Building Regulations requirements of 60 persons to escape within 3 minutes from a single staircase property please?"

APPENDIX 1A (cont)**Appendix 1A (vi)**

Representor: Ms Sue Thompson (21/5/12), Mistell Ltd
Riverside Park Road, Middlesbrough. TS2 1QW

Comments: Based on the prevention of Crime and Disorder and
the Prevention of Public Nuisance

“As the owner of 1-9 Wellington Court Mews, Grange Road, DL1 5NB, I wish to object to the licensing application for 22 Grange Road, Darlington. DL1 5NG. On the planning application for change of use it was stated that the premises would only be in use from 6pm-1am Sunday-Friday and 12pm – 1am on Saturdays, however the licence application is from 10am 7 days a week. This could have a negative impact on what is a very nice shopping street if there is sound leakage from the building, smokers on the pavement outside or anti-social behaviour from patrons of the bar. The Police are already stretched enough as it is in Darlington and the addition of another bar will not help the situation. The area is already saturated with licensed premises and there can be no justification for this application”.

Appendix 1A (vii)

Representor: Mr Neil Curry (21/5/12) 16 Grange Road, Darlington, DL1 5NG

Comments: Based on the Prevention of Public Nuisance

“I am writing with concerns about 22 Grange Road (Drum Furniture Store) with regards to the new licensing of this building. Although I object to another pub on this road, I have strong concerns about the level of noise and the effects this will have on the 3 businesses below. I believe this would come under the licensing objective of public nuisance and an issue of environmental health.

In the planning stages (to get it passed) the applicant stated that there would be no live music and in the new licensing application they have applied for a live music licence. I believe that any live music from this property would negatively affect all the businesses below, these include:- Browns Restaurant - This is a small restaurant with a very intimate feel and the live music from above would change this dramatically (would you eat at a restaurant with thump thump along side your conversation).

Prontaprint -This is a small printing business with offices opening 9 to 5. Any music would be intrusive to this working environment.

Prego Café and Wine Bar -This is a small intimate place to have a drink and chat (although is busier on weekend evenings) any live music played would have a damaging effect on the mid week feel and trade of the business.

For these reasons I believe that there should be no allowances for live music and only background music would be appropriate.”

THE APPLICANT COMPANY'S RESPONSE TO REPRESENTATIONS

"I refer to the objections that have come in from member of the public regarding the premises licence at 20-22 Grange Road and would like to allay any concerns. Two of the objections come from the same source. Both Ian Briggs & Sue Thompson work at Cleveland Cable. This company, which is my landlord in Yarm, are also one of my biggest competitors here as well. They are also serial objectors to any plans that Osbourne Leisure puts in. There is an irony in that they both work for the company operating The Keys, which is responsible for most of the law & order issues in Yarm.

With regard to the specifics of the objections, Sue Thompson comments on the opening hours. I have no plans to open in the daytime, except for Saturdays and Bank Holiday Sundays. However in the event of one-off requirements, I would like the capability to open during the day if required, hence my application to be licensed from 10am. Osbourne's in Durham has similar licensing hours as those applied for here, but only opens evenings & all day Saturdays, as is the proposal here. I do not feel this is a valid objection. Her other claims regarding policing and the number ("saturation") of licensed premises do not seem to be valid and are all based on the "what if" scenario.

Ian Briggs' objection is similar in that he is presuming that there will be an increase in law and order and that police would not be able to deal with it. There is no evidence to back up these assertions. Please see my comments at the end of the email regarding the complete lack of such issues where my other licensed premises operate.

Neal Curry, who I believe is the owner of Prego and therefore has an interest in no further licenses being granted on Grange Road, as a threat to his competitive position, has concerns about noise leakage, particularly around live music. Environmental Health have not expressed a concern about this and I have confirmed that I will monitor and record noise levels to ensure they are acceptable. I understand that the current tenant of 20-22 Grange Road has been carrying out band practice at the unit for several years, directly above where Prego is situated, and that none of the tenants downstairs have ever raised this as an issue.

The objection from Colin Jones relates to the opening hours (as referred to above under Sue Thompson) and dancing. The application covers spontaneous dancing in the venue but not performances of dance. I added the former in to cover myself in case, as I am sure will happen, people start to dance to the music being played. This is common at plenty of venues and is not a cause for an objection under the licensing objectives.

The final objection is from the owners of 16 Grange Road (Prego, I believe), who are similarly concerned about live music and have assumed that 20-22 will become a live music venue. This is far from the case. As mentioned above, sound levels will be monitored and recorded and Environmental Health are happy with this. The issue of dancing and the disturbance to the specific property below is also erroneous. The intention is to create a "chilled" area specifically above the premises in question. This is the second room on the right hand side of the plans, which is intended to be a seating area, with sofa and fixed furniture. Their other objection relates to the potential nuisance of having another licensed venue in this area of Darlington. Again I see this as "what if" concerns, with no evidence to back them up.

APPENDIX 1B (cont)

I would like to point out that Osbourne Leisure operates two venues, in Yarm and Durham, with very little attendant issues of public nuisance or law & disorder. Both bars provide a safe environment for its customers and surrounding neighbours. To date there have been no issues with any responsible bodies with regards to the conduct of the business. I envisage that the operation in Darlington running along exactly the same lines, targeting a very similar customer base, with the same strict adherence to any terms and conditions of the premises licence.

I hope that I have covered off all the objections to the issuing of a premises licence, but if you require any further information, then please do not hesitate to contact me.”

EXTRACTS FROM LICENSING POLICY

6.0 THE IMPACT OF LICENSABLE ACTIVITIES

6.1 **Policy:** When considering whether a licensable activity should be approved the Licensing Authority will, if relevant representations are received, assess the likelihood of it contributing to unacceptable, adverse impact in terms of crime and disorder and public nuisance, in particular to local residents and businesses. Applicants should therefore consider the following when making an application:

- a) The proposed hours and days of operation and how often an activity occurs.
- b) The location of the premises, particularly in relation to residential properties and such places as hospitals, hospices and places of worship.
- c) The number and type of current and future customers.
- d) The means of access and egress to the premises which should have public access on principal pedestrian routes.
- e) The availability of public transport for patrons arriving at and leaving the premises compared to the anticipated level of private transport usage.
- f) The likely effect of car parking demand on both principal roads and residential streets and the impact this may have on local residents and emergency access.
- g) The need for provision of portable toilet facilities outside of the premises.
- h) The cumulative impact of licensed premises within the area and the scope for mitigating such impact.
- i) Waste disposal arrangements including bin storage and the collection and containment of litter from the vicinity of the premises.
- j) Public nuisance caused by unauthorised advertising and fly-posting and, in considering any application from premises which are currently licensed, the Licensing Authority will, if relevant representations are received, take into account any evidence of:
 - i) Past demonstrable adverse impact from the activity, particularly on local residents and businesses; or
 - ii) If adverse impact has been caused, that appropriate measures have been agreed and put into place to address any future adverse impact. If measures are to be put into effect or alternatively if there has been insufficient time to assess their usefulness a licence may be granted for a limited period only.

6.2 **Reason:** To achieve the licensing objective of preventing public nuisance. To promote this objective the Licensing Authority, in considering the likelihood of adverse impact, will take into account, among other matters:

- The precise nature of the activity, particularly in terms of entertainment, as this may impact in terms of the age of patrons and their behaviour.
- Noise levels and type of noise, which may be acceptable during daytime hours but may have greater impact at times when ambient noise levels are much lower.
- The impact of patrons arriving, queuing and exiting which should take place on main pedestrian routes rather than through residential areas
- The impact of other sources of nuisance from smells, smoke, refuse storage, vermin and other similar causes of nuisance

NB Where steps can be taken to mitigate adverse impact and such steps are reliable, practical and robust then an activity may be licensed.

APPENDIX 1C (cont)**6.3 Additional Information**

The Licensing Authority will focus on matters within the control of the individual licensee and the steps they can take to achieve the licensing objectives. In making its decisions the Licensing Authority accepts the difficulties that licence holders face in preventing anti social behaviour once patrons are beyond the direct control of the licensee. However, the licensing objective of preventing public nuisance will not be achieved if patrons from licensed premises regularly behave in an anti social way which impacts on local residents and/or businesses. The Licensing Authority recognises the Council's responsibility under the Crime and Disorder Act 1998 to do all it can to prevent crime and disorder. The aim of this Policy therefore is to achieve a balanced approach to these difficult issues.

NB this list is not exhaustive

8.0 PREVENTION OF NUISANCE

Many parts of this section are directly relevant to the Licensing Objective on the prevention of Crime and Disorder and should be cross-referenced accordingly.

8.1 LOCATION OF PREMISES, LICENSING HOURS AND THE PREVENTION OF NUISANCE

Policy: The Licensing Authority must strike a fair balance between the benefits to a community of a licensed venue and the risk of disturbance, nuisance and loss of amenity to local residents. Consequently, in certain sensitive areas or appropriate cases, the Licensing Authority may, on the receipt of relevant representations, limit the number of licensed premises and/or restrict the hours of operation. Each application will be considered on its merits, having regard to all available evidence including information within the application itself.

Reason: This Policy is aimed at the fulfilment of the licensing objective of preventing public nuisance.

8.2 ADDITIONAL INFORMATION

When the 2003 Act was first enacted the Government's view was that longer licensing hours should be encouraged in the interests of avoiding a concentration of disturbance while ensuring that nuisance is minimised to local residents. The Government also believed that shops and public houses should generally be permitted to sell alcohol during the hours they intend to open. The Government also wished that entertainment providers should be encouraged to provide a range of entertainment during their operating hours, to promote live music, dancing and theatre for the wider cultural benefit the community.

The Licensing Authority acknowledges this view but also considers that it is self evident that the risk of disturbance to local residents is greater when licensable activities continue late at night and into the early hours of the morning. For example the risk of residents' sleep being disturbed by patrons leaving licensed premises is obviously greater at 2am than at 11pm

8.3 LOCATION AND IMPACT OF ACTIVITY

Policy: The Licensing Authority will normally, on the receipt of relevant representations, encourage a closing time of 11pm for licensed premises in predominantly residential areas. Hours of 12 am and beyond will normally be more appropriate for premises located:

- a. In predominantly commercial areas, such as the Town Centre.
- b. Where there is a high level of accessibility to public transport services.
- c. Where there is an appropriate amount of car parking, readily accessible to the premises.
- d. The operating schedule indicates that the applicant is taking appropriate steps to comply with the licensing objective of preventing public nuisance.

Later closing times i.e. beyond 2 am will normally be more appropriate where it can be demonstrated that, in addition to the above:

- a. The licensed activities would not be likely to cause adverse impact especially on local occupiers, and that, if there is a potential to cause adverse impact, appropriate measures will be put in place to prevent it.
- b. There will not be any increase in the cumulative adverse impact from these or similar activities, on an adjacent residential area.
- c. The activity will not be likely to lead to a demonstrable increase in car parking demand in surrounding residential streets or on roads.

8.4 **Reason:** This part of the Policy dealing with opening hours is based on a broad distinction between the approach to be taken in certain predominantly commercial areas such as parts of the Town Centre and the rest of the Borough.

8.4.1 Any activity involving public entertainment or eating or drinking on the premises has the potential to impact adversely on the surrounding area due to noise, smells, or congestion on the highway. It may be exacerbated by patrons being noisy when leaving, leaving litter or taking up on-street car parking space needed by residents. The impact of noise generated by these activities, especially patrons departing either on foot or in cars, is particularly intrusive at night when ambient noise levels are much lower.

8.4.2 Parts of this Borough are very sensitive to the impact of licensed activities because they are either residential in character or close to residential areas. Many shopping areas are close to residential areas, including housing above commercial premises. The impact of traffic and parking related to licensed premises can be considerable. Even where a majority of patrons arrive on foot or by public transport, the additional parking demand may be significant, especially where there are already a number of licensed premises. The impact may be felt by local residents being prevented from parking close to their homes and by increasing the danger from traffic in residential streets.

8.4.3 Some commercial areas in the Borough, however, particularly the Town Centre may be more suitable locations for licensed activities, especially those with late opening hours or which attract significant numbers of people. In the Town Centre, more patrons are likely to travel by public transport and licensable activities may help bring vitality to the area after normal shopping hours.

APPENDIX 1C (cont)

The ambient noise levels are also likely to be higher in the evening particularly when compared with residential areas so that additional noise may be less of a problem.

Nevertheless, late at night, the impact of licensed activities is more likely to be objectionable to residents living within or close to a licensed activity. The ambient noise level is lower so that noise disturbance from activities becomes more probable.

- 8.4.4 Persons who visit entertainment venues, which open beyond the provision of the main public transport services, are more likely to use taxis or private cars or they seek to park in residential streets close to the activity. This Policy allows for later closing times where it can be shown that there will not be an adverse impact.

8.5 **ADDITIONAL INFORMATION**

This part of the Policy is concerned with whether a proposal is appropriate in a location with particular regard to the impact on any residential areas. In those parts of the Borough, which are predominantly residential, it is anticipated that, in the event of receipt of relevant representations, the normal hours of opening of new licensed activities would be encouraged to be a maximum of 11 pm.

Opening hours of midnight and beyond are more likely to be considered to be acceptable, in principle, for premises in commercial areas with high levels of public transport accessibility. However, in all cases, following the receipt of relevant representations, the granting of a licence will still depend on the impact of an activity, particularly on local residents. It is necessary to consider, amongst other things, the level of impact that could arise from noise and vibration, litter, parking, movement of patrons, crowds and queuing; and whether any impact is particularly unacceptable late at night.

- 8.7.2 **Policy: The Licensing Authority will expect the operating schedule to effectively address the assessments made to minimise noise disturbance, both inside the premises and as patrons are leaving the premises. Operating schedules must also outline the measures identified as being required to prevent nuisance to patrons, local residents and local businesses.**

Reason: One of the greatest causes of annoyance to residents trying to sleep is the noise including music emanating from licensed premises. Such noise might preclude the grant of a licence or, if one has already been granted, for it to be reviewed with a view to possible revocation. It might also lead to a Noise Abatement Notice being issued under the Environmental Protection Act 1990 and related environmental legislation subject to evidence and circumstances. Responsible Applicants and licensees will wish to avoid the need for such action, as they will wish to comply with the licensing objective of preventing public nuisance.

8.7.3 In addition, residents are frequently disturbed when patrons leave entertainment venues in the early hours of the morning. While licence holders cannot be held solely responsible for the behaviour of their patrons after they have left the premises, they have a duty to put in place such measures that will assist in the quieter exiting and dispersal of such patrons. This is because people leaving the premises, particularly late at night or in

APPENDIX 1C (cont)

the early hours of the morning, can be a significant problem. Patrons may be less inhibited about their behaviour and may be unaware of the noise they are creating. This is particularly the case when patrons have been exposed to high levels of sound within the premises, causing them to shout to be heard. Upon leaving the premises there may be then a tendency to continue to shout and this may cause more disturbance, in particular, to local residents.

8.7.4 ADDITIONAL INFORMATION

The Licensing Authority will expect the Applicant to propose practical steps to prevent nuisance or disturbance to local residents. In relation to noise from within the building the Licensing Authority will expect the applicant to have carried out a thorough acoustic assessment to ascertain the impact of any sound escaping from the licensed premises. This noise could relate not only to music but also from fixed plant equipment or from patrons themselves. If there is sound escape the Licensing Authority will expect this to have been addressed in practical ways such as:

- a. Working with the Council's Environmental Protection team to establish a suitable noise management scheme.
- b. Keeping doors and windows closed and providing adequate alternative ventilation.
- c. Reducing sound levels and installing a sound-limiting device to prevent sound exceeding the appropriate level.
- d. Installing and maintaining soundproofing measures to contain sound and vibration
- e. Providing quieter areas for patrons
- f. In the event of beer gardens or similar outdoor areas, ensuring that amplified music is not relayed to such areas and that these areas are properly screened.

The Licensing Authority will expect popular venues, which attract queues, to formulate a system to avoid disturbance to residents. This can sometimes be achieved by simply ensuring that the direction of the queue is away from any residential accommodation.

8.7.5 Excessive noise and/or disorder require more rigorous action. It is important that queues formed later in the evening are supervised to keep noise to a minimum. This action can also help stop drug dealers from passing on drugs during the queuing process but the prime purpose is to prevent noise and disturbance. Door Supervisors will generally carry out this role, but they must be given clear instructions as to their duties and responsibilities – where necessary they should be adequately supervised.

8.7.6 In terms of patrons leaving the premises particularly late at night or early in the morning the Licensing Authority will expect the applicant to have considered including in the operating schedule such practical steps as:

- a. Erecting prominent notices at the exits to premises asking customers to leave quietly and not to slam car doors.
- b. At appropriate times making loudspeaker announcements to the same effect.
- c. Instructing door staff to ask customers leaving the premises to leave the area quietly.
- d. Reducing the volume of music towards the end of the evening and having in place arrangements for playing quieter, more soothing music as the evening winds down.

APPENDIX 1C (cont)

- e. Availability of licensed taxis, private hire vehicles or public transport to take patrons from the premises.
- f. In appropriate cases, requiring Door Supervisors or a Manager to patrol nearby streets to assess for themselves whether there is a problem and how best to deal with it.
- g. Banning from the premises people who often leave in a noisy fashion.
- h. Increasing outside lighting levels without causing collateral intrusion.
- i. Installing outside CCTV systems.
- j. Where there is a private forecourt, preventing patrons from using it for eating and drinking etc after a specified time.

NB this list is not exhaustive

10.0 CRIME AND DISORDER

- 10.1 **Policy: The Licensing Authority will expect the applicant to indicate in his operating schedule the steps proposed to prevent crime and disorder on and in the vicinity of their premises and/or events.**

Reason: Prevention of crime and disorder is both an objective of the Licensing Act 2003 and a responsibility of the Licensing Authority under the Crime and Disorder Act 1998. It is important, therefore, that the applicant be able to demonstrate to the Licensing Authority the practical steps that will be taken to further this objective in the operating schedule. The factors that impact on crime and disorder may include:

Underage drinking
 Drunkenness on premises
 Public drunkenness
 Drugs
 Violent behaviour/Anti-social behaviour

- 10.2 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:
- a. Effective and responsible management of premises.
 - b. Training and supervision of staff.
 - c. Adoption of best practice guidance (e.g. Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other Voluntary Codes of Practice, including those relating to drinks promotions e.g. The Point of Sale Promotions published by BBPA, Security in Design published by BBPA and Drugs and Pubs, published by BBPA).
 - d. Acceptance of accredited means of age identification e.g. DVLA photo driving licence or "PASS" approved proof of age' cards
 - e. Provision of effective digital CCTV in and around premises
 - f. Employment of Security Industry Authority licensed door-staff.
 - g. Provision of plastic or shatter resistant glasses.
 - h. Provision of secure, deposit boxes for confiscated items.
 - i. Procedures for assessing risk associated with promotions and events such as "happy hours" for the potential to cause crime and disorder, and plans for minimising such risks.
 - j. Measures to prevent the use or supply of illegal drugs.
 - k. Employment of licensed door supervisors and other appropriately trained staff.

APPENDIX 1C (cont)

- l. Installation of non-retrievable bottle bins at exits and ensuring that patrons do not leave with bottles or glasses (on licence sales).
 - m. Provision of litterbins and other security measures, such as lighting, outside premises.
 - n. Membership of Darlington 'Pubwatch' scheme.
- 10.3 The Licensing Authority will expect the operating plan to include a risk assessment into the use of door-staff, in terms of the actual need for such a service and also the ratio of such personnel to patrons based on capacity of the premises.
- 10.4 **Policy: The Licensing Authority will normally require a Personal Licence holder to be on the premises at all times when alcohol is being sold.**

Reason: It is important that there is an accountable, responsible person present at all times when alcohol is being sold. This is to ensure that alcohol is not sold to persons who have had too much to drink and to ensure that alcohol is only sold to persons over the age of 18 years. In terms of crime and disorder, there is a need for an identified person with whom the Licensing Authority and Police can discuss any problems/issues arising from the licensable activities offered on the premises.

10.5 **DRUGS**

Policy: The Licensing Authority will normally expect all licensees of venues that offer alcohol and entertainment to provide and implement a written drugs Policy. This should be included as part of the operating schedule.

Reason: To further the crime prevention objective and to ensure public safety.

10.5.1 **ADDITIONAL INFORMATION**

The Licensing Authority recognises that drug use is not something that is relevant to all licensed premises. Many entertainment venues can however be popular with drug mis-users and suppliers. The production of a drugs Policy (advice on writing a Policy is available from the Licensing Authority) combined with the effective professional management of a venue will assist in keeping incidents of drug abuse to a minimum. The Licensing Authority will normally expect that all licensees who provide entertainment along with retail alcohol sales will comply with the Home Office Safer Clubbing Guidelines. These include:

- a. The provision of free drinking quality (potable) water in public areas e.g. the bar area and not in toilets.
- b. The installation of a drugs deposit box in all licensed premises providing entertainment beyond 11pm.
- c. A drugs register to record confiscated drugs and drugs deposits.
- d. Full qualified first aiders at all premises which provide entertainment beyond 11pm.
- e. The provision of cooler, quieter areas for patrons.

12.4.2 ADDITIONAL CONDITIONS

Policy: Licence conditions will be tailored to the individual style and characteristics of the premises and events and only be imposed to meet the licensing objectives. Licence conditions will not be imposed where the Licensing Authority considers other regulatory regimes provide sufficient protection to the public e.g. health and safety at work, fire safety legislation etc.

Reason: The Licensing Authority accepts that a “one size fits all” approach is not appropriate to achieving this outcome and that conditions should be tailored to the premises and activities to achieve the licensing objectives. Officers will seek to discuss proposed conditions in advance with the applicant and/or representative with the aim of achieving a mutually agreeable level of protection to the public and fulfilment of the licensing objectives. Premises Licences and Club Premises Certificates will so far as possible reflect local crime prevention strategies and the input of the Darlington Crime and Disorder Reduction Partnership.

GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003(REVISED April 2012)

PURPOSE

- 1.7 The Guidance is provided to licensing authorities in relation to the carrying out of their functions. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of operators of licensed premises, their legal advisers and the general public. It is a key mechanism for promoting best practice, ensuring consistent application of licensing powers across the country and for promoting fairness, equal treatment and proportionality.
- 1.8 The police remain key enforcers of licensing law. The Guidance has no binding effect on police officers who, within the terms of their force orders and the law, remain operationally independent. However, the Guidance is provided to support and assist police officers in interpreting and implementing the 2003 Act in the promotion of the four licensing objectives.

LEGAL STATUS

- 1.9 Section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must "have regard" to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, the guidance cannot anticipate every possible scenario or set of circumstances that may arise and as long as licensing authorities have properly understood the Guidance they may depart from it if they have reason to do so as long as they are able to provide full reasons. Departure from the guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

EACH APPLICATION ON ITS OWN MERITS

- 1.16 Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy where, for example, its effect on cumulative impact is relevant. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

AVOIDING DUPLICATION OF OTHER LEGAL REQUIREMENTS

- 1.17 The licensing authority should only impose conditions on a premises licence or club premises certificate which are appropriate and proportionate for the promotion of the licensing objectives. If other existing law already places certain statutory responsibilities on an employer at or operator of a premise, it cannot be appropriate to impose the same or similar duties on the premises licence holder, or club. It is only where additional and supplementary measures are appropriate to promote the licensing objectives that there will be a requirement for appropriate, proportionate conditions to be attached.

CRIME AND DISORDER

- 2.4 The essential purpose of the licence or certificate in this context is to regulate behaviour on and access to premises 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. Examples of measures which may encourage swift and effective dispersal from licensed premises include quietening down periods at the end of the night, security training in reminding patrons to leave quietly and signage on the premises reminding people of this.
- 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 (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.
- 2.7 Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed.
- 2.8 Radio links and ring-round phone systems allow managers of premises and clubs to communicate instantly with the police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises. The inclusion of these systems should be considered an appropriate condition for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises.
- 2.9 However, while this may be appropriate and effective in certain parts of a licensing authority's area, it may be less effective or even inappropriate in others. Licensing authorities must remember that only appropriate conditions, which are within the control of the licence holder or club, may be imposed.
- 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 appropriate but both practical and achievable. Further guidance on determining whether a condition is appropriate is given in Chapter 10 of this guidance.
- 2.11 Similarly, although most commonly made a condition of a licence on public safety grounds, licensing authorities should also consider conditions which set capacity limits for licensed premises or clubs where it may be appropriate to prevent overcrowding likely to lead to disorder and violence. If such a condition is considered appropriate, the licensing authority should consider whether door supervisors are needed to control numbers and that a system is implemented to monitor capacity control

APPENDIX 1D (cont)

- 2.13 The designated premises supervisor is the key person who will usually be charged with day to day management of the premises by the premises licence holder, including the prevention of disorder. However, conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. A condition of this kind could only be justified as appropriate in rare circumstances where it could be demonstrated that in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.
- 2.14 It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained and licensing authorities must ensure that they do not stray outside their powers and duties under the 2003 Act. This is important to ensure the portability of the personal licence and the offences set out in the 2003 Act and to ensure, for example, that the prevention of disorder is in sharp focus for all managers, licence holders and clubs.
- 2.16.1 Conditions on a premises licence are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will”, is encouraged. Conditions on licences must:
- be precise and enforceable;
 - be unambiguous;
 - not duplicate other statutory provisions;
 - be clear in what they intend to achieve; and,
 - be appropriate, proportionate and justifiable

PUBLIC NUISANCE

- 2.33 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.
- 2.34 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.

APPENDIX 1D (cont)

- 2.35 Conditions relating to noise nuisance will normally 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.
- 2.36 As with all conditions, those relating to noise nuisance may not be appropriate 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 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.
- 2.37 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.
- 2.39 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. However, premises should have adequate dispersal policies (where appropriate) in place to ensure that customers leave the premises promptly and with minimal disruption to those in the surrounding area.
- 2.40 Beyond the immediate area surrounding 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.

WHERE REPRESENTATIONS ARE MADE

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

RELEVANT, VEXATIOUS AND FRIVOLOUS REPRESENTATIONS

- 9.3A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.
- 9.4 It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.
- 9.6 Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate.
- 9.7 Any person who is aggrieved by a rejection of their representations on either of these grounds may lodge a complaint through the local authority’s corporate complaints procedure. A person may also challenge the authority’s decision by way of judicial review.
- 9.8 Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This may be difficult for councillors who receive complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub-committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.
- 9.9 It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.
- 9.10 Licensing authorities should consider providing advice on their websites about how any person can make representations to them.

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.

PROPOSED CONDITIONS

- 10.6 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.
- 10.7 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. Proper liaison may avoid the need for representations.
- 10.8 Conditions should be appropriate, proportionate and justifiable in meeting the licensing objectives. They should be written in a prescriptive format and be readily understood and enforceable.
- 10.9 It is also 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. Conditions should be appropriate for the promotion of the licensing objectives and easily enforceable.

CONSISTENCY WITH STEPS DESCRIBED IN OPERATING SCHEDULE

- 10.10 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.
- 10.11 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

- 10.12 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.
- 10.13 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

- 10.14 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.
- 10.15 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. Consideration should also be given to wider issues such as conditions already in place that address the potential negative impact on the promotion of the licensing objectives and the track record of the business. The physical safety of those attending such events should remain a primary objective.

Duplication with other statutory provisions

- 10.16 If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be appropriate to impose the same or similar duties as conditions.

APPENDIX 1D (cont)

- 10.17 So, licensing authorities should 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 (see Chapter 2).
- 10.18 The 2003 Act does not affect the continued use of inspection and enforcement powers conferred by other legislation; for example, the powers of an environmental health officer in relation to statutory nuisance under the Environmental Protection Act 1990.
- 10.19 However, these general duties will not always adequately address specific issues that arise on the premises in connection with, for example, certain types of entertainment. It is only where additional and supplementary measures are appropriate to promote the licensing objectives that conditions will need to be attached to a licence.

**LICENSING ACT 2003
NOTIFICATION OF HEARING
(Regulations 6 and 7)**

Date of Notification: 04 July 2012

Type of Hearing: Application for Premises Licence

**Premises: Osbourne's
20-22 Grange Road
Darlington, DL1 5NG**

Hearing Details: 9.30 am Thursday 19 July 2012

**Location: Darlington Borough Council,
Town Hall, Darlington,
DL1 5QT**

Copy of notice sent to:	Osbourne Leisure Ltd	(Applicant Company)
	Mr & Mrs Jones	(Other person)
	Mr D Storer	(Other person)
	Mr G Clark	(Other person)
	Mr & Mrs Ross	(Other person)
	Mr I Briggs	(Other person)
	Ms S Thomson	(Other person)
	Mr N Curry	(Other person)

Attendance: All parties may attend this hearing. You may find it useful to be accompanied by your legal representative(s) or any other person who may be able to assist you. Please complete the attached form at **Appendix 2A** and return to the Licensing Section **no later than 12 noon on Thursday 12 July 2012**

Non-attendance: If you notify the Licensing Authority that you will not be attending this hearing and that you will not be legally represented in your absence, the hearing may proceed in your absence. If you do not notify your non-attendance and then do not attend this hearing the Licensing Sub Committee will decide whether it is in the public interest to adjourn the hearing to enable you to attend or whether to hold the hearing in your absence. If the hearing does proceed in your absence your representations will still be considered.

Procedure at the Hearing: You will find attached, at **Appendix 2B**, the procedure that will be followed at the Hearing. The Hearing will take place in public unless it is deemed in the public interest to exclude the public or any party to the Hearing from all or part of the Hearing. If a party is excluded from the Hearing (s)he will be able to provide written information to cover any verbal representations (s)he may have made if (s)he had not been so excluded. The Hearing will take

the form of a discussion and each party will be permitted an equal period of time to provide information, make comment and express their views.

Withdrawal of Representations: Anyone wishing to withdraw representations should do so as soon as possible. Although this can be done at the Hearing, you are requested, where possible, to give at least 24 hours notice as it may no longer be necessary for the Hearing to proceed.

Outcome of Hearing: A decision will be made at the end of the hearing, although this may take some time.

Points for Clarification:

The Licensing Authority considers that the following matters will need to be clarified by the at the Hearing:

The **Other Persons** have been asked to provide the following:

- Details of past problems experienced in the vicinity

The **Applicant Company** has been asked to provide the following:

- Details of the steps to be taken to ensure patrons do not gather outside of the premises



Public Protection Division
 Service of Place
 Block D, Town Hall
 Darlington DL1 5RQT
 Tel: 01325 388799
 Fax: 01325 388555
 Email: publicprotection@darlington.gov.uk

NOTICE OF ATTENDANCE

Please complete the following notice in block capitals and return to the address detailed below:

DATE OF HEARING: 9.30 am Thursday 19 July 2012

NAME OF PREMISES: Osbourne's
 20-22 Grange Road
 Darlington,
 DL1 5NG

YOUR NAME:

I WILL* I WILL NOT* BE ATTENDING THE HEARING

I WILL* WILL NOT* BE LEGALLY REPRESENTED

NAME OF LEGAL REPRESENTATIVE
 (IF APPROPRIATE)

I DO* DO NOT* CONSIDER A HEARING TO BE NECESSARY

(*Please ✓ as appropriate)

If you wish to be accompanied by any other person please provide details of their name and an outline of what they wish to say and how this will assist you:

Name:

Details:

Please return to: Mrs P Ross
 Licensing, Parking & Trading Standards Manager
 Darlington Borough Council
 Block D, Town Hall
 Feethams
 DARLINGTON
 DL1 5QT

LICENSING SUB COMMITTEES

FULL HEARING PROCEDURE FOR APPLICATIONS FOR PREMISES LICENCES/CLUB PREMISES CERTIFICATES WHERE RELEVANT REPRESENTATIONS HAVE BEEN RECEIVED

1. The Chair will welcome all parties who are present and introduce the Members. The Chair will explain to the parties at the beginning of a hearing the procedure that it is proposed to follow. The hearing will take the form of a discussion. Cross-examination will not be permitted without the consent of the Chair.

Any Members who know the Applicant or any of the objectors will declare this fact and not take part in the hearing of the application. This is in addition to the declaration of any personal or prejudicial interest.

(NB The Secretariat will endeavour to ensure that Ward Members and Members that are personally known to the Applicant are not included on the Sub Committee).

All hearings will usually be in public. The Sub-Committee may, however, exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.

The Licensing Manager will outline the application.

2. THE REPRESENTOR'S CASE

NB: Where representations come from Other Persons e.g. local residents or businesses, the Sub-Committee will expect that wherever possible a spokesperson be elected to speak on behalf of the group. This person will make the application. At the conclusion of the application the Chair will ask the group if there is any information which is additional to the application made by the spokesperson and if so will permit this information to be given.

- [1] The Representor or his/her representative will give their reasons for objecting to the application.
- [2] The Representor or his/her representative will then call any witnesses and/or give reasons for his/her objection.
- [3] The Applicant or his/her representative may then question the Representor [if he/she has given evidence] and any witnesses.
- [4] The Chair or any member of the Licensing Sub Committee, through the Chair, may ask questions of the Objector and any witnesses.

If several objections have been received and the Representors have not agreed to present their objection jointly, this procedure will normally be repeated for each individual Representor

3. THE APPLICANT'S CASE

- [1] The Applicant or his/her representative presents his/her application for a licence
- [2] The Applicant or his/her representative will then call any witnesses and/or give evidence in support of his/her application.
- [3] The Representors may then question the Applicant if he/she has given evidence and any witnesses.
- [4] The Chair or any Member of the Licensing Sub-Committee through the Chair will ask questions of the Applicant and any witnesses.
- [5] The Applicant or his/her representative will then be given a final opportunity of asking any further questions of any witnesses to clear up any points raised in the earlier questioning.

-
4. The Applicant will be asked by the Chair of the Sub-Committee whether, in the light of the information heard in relation to the application, (s)he wishes to amend the application, as when they retire, Members will consider only the information before them at that time.

If the Applicant wishes to amend the application or indicates that (s)he is prepared for Members to consider an amended application if they are minded to refuse the original application, the Objectors will be given the opportunity to comment on the amended application.

5. CLOSING STATEMENT OR SUMMARY

- [1] **By or on behalf of the Representors** - The Representors may summarise any points they wish to make and comment briefly on the Applicant's replies to questions. They cannot introduce new issues.
- [2] **By or on behalf of the Applicant** - The Applicant will be invited to summarise any points they wish to make and comment briefly on the Representors' replies to questions. They cannot introduce new issues.

6. CONCLUSION

All decisions will be made in private

If Members, when considering the application, are minded to grant on a different basis than that requested, the Applicant, the Responsible Authorities and Other Persons will be asked for their views, which will be taken into consideration.

The Legal Officer will repeat, in summary form, any legal advice given to Members when the public is re-admitted.

If the Licensing Sub-Committee has excluded the public, once a decision has been reached the press and public will be re-admitted to the meeting together with the Applicant, Responsible Authorities and Other Persons. At this stage, the Chair will announce the Sub-Committee's decision, will give reasons for the decision and advise all parties of rights of appeal. The decision will subsequently be formally notified to the Applicant(s), Responsible Authorities and Other Persons in writing, including their rights of appeal as soon as possible after the Hearing.