

FOR CHAIR AND MEMBERS
OF THE LICENSING SUB COMMITTEE
FOR 28 JANUARY 2013

APPENDIX 1

APPLICATION TO VARY PREMISES LICENCE

Licence holder	DAVID JOHNSON	Ref No: DL12/018618/PREVAR
Premises:	AVALON, 8 BLACKWELLGATE, DARLINGTON, DL1 5HL	
Current Licensable Activities:	<ul style="list-style-type: none"> • SALE OF ALCOHOL FOR CONSUMPTION ON & OFF THE PREMISES (indoors & outdoors) • REGULATED ENTERTAINMENT (indoors) - (films, indoor sporting events, live & recorded music, performance of dance, provision of facilities for making music & dancing) • LATE NIGHT REFRESHMENT (indoors) 	
Current Hours:	<p>Sale of alcohol & provision of regulated entertainment: 11.00 to 24.00 Monday to Thursday 11.00 to 01.00 Friday & Saturday 11.00 to 23.00 Sunday</p> <p>Late Night refreshment: 23.00 to 24.00 Monday to Thursday 23.00 to 01.00 Friday & Saturday</p>	
Non-Standard Timing	<ul style="list-style-type: none"> • Sale of alcohol & provision of regulated entertainment extended to 01.00 on 25 & 26 December and to the Sunday and Monday of every Bank Holiday weekend • New Year's Eve exemption until terminal hour on 01 January • Broadcast of national & international televised sporting events on 12 occasions subject to 10 working days prior notice to Police 	
Premises Opening Hours	<p>11.00 to 00.30 Monday to Thursday 11.00 to 01.30 Friday & Saturday 11.00 to 23.30 Sunday</p>	
Application to Vary:	<ul style="list-style-type: none"> • To extend the terminal hour of all licensable activities to 02.00 every day • To provide all licensable activities indoors and outdoors • To remove the condition restricting the maximum occupancy to 110 persons (including staff and performers) • To amend the premises opening hours to commence at 09.00 am for non licensable activities (e.g. sale of tea, breakfasts etc) • To extend all activities by 1 hour for British Summertime 	

Notification to Responsible Authorities/Interested Parties:

The Applicant Company has served notice of this application to the following:

The Chief Constable:	Local Health Board/Primary Care Trust
Chief Fire Officer	Trading Standards Manager
Planning Manager	Local Safeguarding Children Board
The Licensing Authority	
Environmental Health Manager	(Public Safety and Public Nuisance)

Advertisement in Darlington & Stockton Times: 07 December 2012
Information on Council's web site: 01 December 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.

BACKGROUND

On 30 August 2005 an application was made for a premises licence in respect of the Falchion public House, 8 Blackwellgate, Darlington. Following representations from the Police and Environmental Health the application was amended and was granted on 10 October 2005 to take effect from 24 November 2005.

In December 2005 an application was made to transfer the premises licence from Stephen Murray to Simon Bell and Peter May and to vary the Designated Premises Supervisor (DPS) to Simon Bell. The Police, who are the only statutory consultee in respect of such applications, did not make any representation and the licence was duly transferred and varied.

On 27 April 2006 an application was made to vary the premises licence in respect of some refurbishment of the premises. At the same time the name of the premises was amended to Avalon. As representations were not made in respect of this application it was duly granted.

On 21 February 2008 an application was made to transfer the premises licence from Simon Bell to William Steele and to vary the DPS from Simon Bell to Darrel Johnson. As the Police, who are the only statutory consultee in respect of such applications, did not make any representation and the licence was duly transferred and varied.

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On 07 July 2008 an application was made to vary the DPS from Darrel Johnson to Troy Simmons-Turner. As the Police, who are the only statutory consultee in respect of such applications, did not make any representation and the licence was duly varied.

On 02 September 2008 an application was made to vary the DPS from Troy Simmons-Turner to Barry Dodsworth. As the Police, who are the only statutory consultee in respect of such applications, did not make any representation and the licence was duly varied.

On 03 April 2009 an application was made to vary the DPS from Troy Barry Dodsworth to Craig Shaw. As the Police, who are the only statutory consultee in respect of such applications, did not make any representation and the licence was duly varied.

On 02 December 2011 an application was made to transfer the premises licence from William Steele to David Johnson and to vary the DPS from Craig Shaw to Daniel Collings. As the Police, who are the only statutory consultee in respect of such applications, did not make any representation and the licence was duly transferred and varied.

On 29 October 2012 an application was made to vary the DPS from Daniel Collings to Darrel Johnson. As the Police, who are the only statutory consultee in respect of such applications, did not make any representation the licence was duly varied.

A copy of the current licence is appended for Members' attention at **Appendix 1A**.

THE APPLICATION TO VARY THE LICENCE

On 30 November 2012 an application was received from the Applicant's legal representatives to amend the terminal hour for all licensable activities to 2 am; to permit all licensable activities to be offered both indoors and outdoors (the current licence at present only permits sale of alcohol outdoors); to remove the condition limiting occupancy to 110 from the licence; to amend the opening hours so that the premises can open from 9 am for non licensable activities and to amend the plans for the premises to reflect the inclusion of the outdoor areas for all licensable activities. This application was properly advertised and circulated to all Responsible Authorities. As a result two representations have been received from Responsible Authorities and these are detailed below.

THE REPRESENTATIONS

On 13 December 2012 a representation was received from the Environmental Health Manager, as a Responsible Authority based on the prevention of public nuisance. In summary he expresses concern at the likely effect the playing of amplified music in the external areas will have on local residents. In addition he states that there is insufficient toilet provision. This representation has been reproduced in full at **Appendix 1B(i)**.

On 28 December 2012 a representation was received from the Durham Constabulary as a Responsible Authority, based on the prevention of crime and disorder and the prevention of public nuisance. In summary she states that the occupancy level of 110 currently required by condition on the premises licence has already been exceeded twice in December 2013 when Police had visited the premises and that there has not been any offer of a condition in respect of door supervisors to control the occupancy levels. This representation has been reproduced in full at **Appendix 1B(ii)**.

THE APPLICANT'S RESPONSE

The representations have been sent to the Applicant's legal representative to provide them with an opportunity to respond to the concerns expressed. On 08 January 2013 the Applicant's legal representative e mailed the Environmental Health Manager as follows:

"Your representation has been forwarded by Darlington Borough Council with regard to the above premises. I understand you have also had the opportunity to speak with Dave Johnson at the premises.

I have discussed your proposal detailed in the email of the 19 December 2012 with Dave Johnson and believe that with the deregulation of live music in the Live Music Act, he would not be unopposed to your suggestion save for the limitation of there being no more than three occasions in total in any calendar month permitted. Save for New Years Eve, I anticipate the premises will primarily wish to use the outside area during decent summer weather which in this country inevitably is somewhat unpredictable.

I understand from Dave that the geography surrounding his premises assist in ensuring that noise does not cause a nuisance in the vicinity. I understand his speakers are angled towards his premises and that the premises are sheltered by significantly high walls which act as a barrier. I also understand that the speakers used in the outside area have limiters installed which cannot be overridden by DJs/performers and that in this way the premises are able to set appropriate levels in the outside area. I understand that the steps they have taken have been effective in as much as it would appear there have not been any complaints made however I would advise that I have reminded him of his responsibilities with regard to avoiding noise nuisance and in particular of the possibility that action can be taken under the Environmental Protection Act. I will hopefully speak with you soon with regard to the above."

Similarly a response was sent to the Licensing Section on 08 January 2013 as follows:

"For your information I understand the premises are in the process of obtaining an independent fire risk assessment and have discussed the capacity issues with the Fire Officer who I believe is satisfied with the action being taken. With regard to Stephen's representation the capacity condition is listed on the copy Licence I have as condition 2 in annex 2 but it may be that I am referring to an out of date Licence. I do apologise if this has caused any confusion. I will of course keep you posted with regard to the discussions I have with the responsible authorities."

THE OPERATING SCHEDULE

In the section of the application dealing with the operating schedule, i.e. the additional steps that will be taken to promote the four licensing objectives if this application is granted, the Applicant has stated the following:

- a) **General:** - "This application may be amended during the application period to reflect any agreements that may be reached with the responsible authorities and interested parties. No additional steps have currently been identified as necessary to promote the licensing objectives. Every effort is made to ensure that the licensing objectives are met and noise levels will continue to be monitored to ensure that no nuisance is caused to people living in the vicinity"

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- b) **Prevention of Crime and Disorder:** There has not been any information provided in this section.
- c) **Public Safety:** There has not been any information provided in this section.
- d) **Prevention of Public Nuisance:** There has not been any information provided in this section.
- e) **Protection of Children from Harm:** There has not been any information provided in this section.

Members are aware that the operating schedule can be turned into conditions to be placed on any grant of licence. Members are also aware that all conditions should be clear, unambiguous and enforceable.

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 & Disorder	Impact of Licensable Activities
Section 8.0 - 8.5	Public Nuisance	Location of Premises
Section 8.7.2-8.7.6	Public Nuisance	Noise disturbance
Section 10-10.4.	Prevention of Crime and Disorder	Effect in Vicinity

THE GUIDANCE

Members are referred to the Secretary of State's Guidance in relation to the prevention of crime and disorder and the prevention of public nuisance. This is reproduced at **Appendix 1D**.

ADDITIONAL INFORMATION

A map of the area will be produced for Members and circulated at the Hearing showing the location of the premises and their proximity to residential properties.

POINTS FOR CLARIFICATION

Members are referred to the notice of hearing **points for clarification** (See **Appendix 2**). The **Applicant** has been asked to clarify the following:

- Details of how noise from external events is to be managed
- Details of the nature and frequency of regulated entertainment to be provided externally

The **Environmental Health Manager** has been asked to provide more detailed information in respect of

- Any incidents of public nuisance in respect of the current operation of the premises.
- Details of toilet provision requirements in respect of occupancy numbers

The **Chief Constable** has been asked to provide specific details of any incidents of crime and disorder in respect of the current operation of the premises

MEMBERS' OPTIONS

Members may consider the following options:

1. **Grant** the application **in full** subject to the following conditions, which have been carried over from the current licence and are not the subject of this variation application and are in addition to the mandatory conditions for sale of alcohol:
 - i) Alcoholic and other drinks may not be removed from the premises in open containers save for consumption in any external area provided for that purpose.
 - ii) No person who appears to be carrying open bottles upon entry shall be admitted to the premises at any times the premises are open to the public.
 - iii) The current CCTV system shall be in operation at all times when the premises are open to the public. The tapes shall be properly stored and kept for a minimum of 30 days and made available on request to the Police and Authorised Officers of this Council.
 - iv) Conspicuous and legible signage shall be prominently displayed within the premises at each exit, requesting that patrons leave the establishment in a quiet and orderly manner.
 - v) No person under the age of 16 years shall be permitted on the premises after 9:00pm.
 - vi) Any nuisance customers shall be banned from the premises.
 - vii) Music from the licensed premises must not give rise to levels of 5db(A) or more above the background noise level, measured in accordance with BS4142 at the nearest affected residential premises.
 - viii) Suitable refuse containers with close fitting and lockable lids must be available and used at all times. Such containers must be effectively secured by appropriate means to prevent unauthorised persons from moving them.
 - ix) A contractual arrangement with an authorised refuse collection and disposal company must be undertaken to ensure that all refuse is collected and disposed of properly.

(Members will note that if this application is granted in full the conditions limiting occupancy to 110 will be removed)

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

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Members are reminded that any aggrieved party (i.e. Applicant or either of the Responsible Authorities) may appeal any decision of the Licensing Sub Committee to the Magistrates' Courts.

Contact Officer: Pam Ross
Ext 2647

Richard Alty
Director of Services for Place

For admin use only: Date of Sub Committee: 28 January 2013

Sub Committee Decision:

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

Reasons:



Licensing

Town Hall, Feethams, Darlington. DL1 5QT

Tel: (01325) 388562 Fax: (01325) 388555

<http://www.darlington.gov.uk>

PART A

Licensing Act 2003 Premise Licence

Avalon

Premises Licence Number	DL12/01658/VARDPS
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PART 1 – PREMISES DETAILS

Premises Details:	AVALON 8 Blackwellgate, Darlington, DL1 5HL
Telephone number:	01325 469977

Licence effective from:	29 October 2012	Duration of Licence:	Indefinite
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Authorised Licensable Activities:	Authorised Hours	
Retail sale of alcohol (consumption ON AND OFF premises)	11:00 - 24:00 11:00 - 01:00 11:00 - 23:00	Monday to Thursday Friday and Saturday Sunday
Regulated Entertainment: Films, Indoor Sporting Events, Live Music, Recorded Music, Performance of Dance, Provision of Facilities for Making Music, Provision of Facilities for Dancing	11:00 - 24:00 11:00 - 01:00 11:00 - 23:00	Monday to Thursday Friday and Saturday Sunday
Late Night Refreshment:	23:00 - 24:00 23:00 - 01:00	Monday to Thursday Friday and Saturday

Premises Opening Hours:	11:00 - 00:30 11:00 - 01:30 11:00 - 23:30	Monday to Thursday Friday and Saturday Sunday
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Non-standard/seasonal timings:

The Sale of Alcohol and regulated entertainment specified in this licence shall be extended to 01:00 on Christmas Day, Boxing Day and Fri, Sat, Sun, Mon on Bank Holidays Weekends.

The licensable activities specified in this licence may be provided from 10:00 on any day which is New Year's Eve to the terminal hour stated in this licence on the following day, which is New Year's Day.

To permit the premises to open for licensable activities to show the broadcast of televised sporting events of national or international interest outside normal operating hours such opening times for this purpose to be confirmed upon 10 days notice in writing to the police before the premises intend to open, such notification to include the opening times and the sporting event which is to be shown.

PART 2

Premises Licence Holder:	David Johnson 19 Harley Grove, Darlington, DL1 3HD
Designated Premises Supervisor:	Mr Darrel Johnson 12 Portreath Court, Darlington, DL3 0ZG
Personal Licence No:	DL06/00334/PERSON
Issuing Authority:	Darlington Borough Council

Annex 1 Mandatory Conditions:

- 1. Every Supply of alcohol under the premises licence must be made by or authorised by a person who holds a personal licence.**
- 2. No supply of alcohol may be made under the premises licence:-**
 - (a) at a time when there is no Designated Premises Supervisor in respect of the premises licence or**
 - (b) at a time when the designated Premises Supervisor does not hold a personal licence or his personal licence is suspended.**
- 3. The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.**

In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children—

- a) games or other activities which require or encourage, or are designed to require or encourage, individuals to:-**
 - i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or**
 - ii) drink as much alcohol as possible (whether within a time limit or otherwise);**
 - b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);**
 - c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;**
 - d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on—**
 - i) the outcome of a race, competition or other event or process, or**
 - ii) the likelihood of anything occurring or not occurring;**
 - e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.**
- 4. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).**

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- 5. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.**
- 6. The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.**

The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.
- 7. The responsible person shall ensure that—**
 - (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—**
 - (i) beer or cider: ½ pint;**
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and**
 - (iii) still wine in a glass: 125 ml; and**
 - (b) customers are made aware of the availability of these measures.**
- 8. The admission of children to film exhibitions must be limited to those films classified as suitable for children by the film classification body. Where no classification has been made the licence holder must approach the Licensing Authority who will then classify the film. The same restriction will then apply.**

Annex 2 Conditions consistent with the Operating Schedule and/or converted from the Original Licence(s):

- 1. The maximum occupancy of the premises (including staff and performers) will be restricted to 110 persons**
- 2. Alcoholic and other drinks may not be removed from the premises in open containers save for consumption in any external area provided for that purpose.**
- 3. No person apparently carrying open bottles upon entry shall be admitted to the premises at any times the premises are open to the public.**
- 4. The current CCTV system shall be in operation at all times when the premises are open to the public. The tapes shall be properly stored and kept for a minimum of 30 days and made available on request to the Police and Authorised Officers of this Council.**
- 5. That conspicuous and legible signage will be prominently displayed within the premises at each exit, requesting that patrons leave the establishment in a quiet and orderly manner.**
- 6. No person under the age of 16 years shall be permitted on the premises after 9:00pm.**
- 7. Any nuisance customers shall be banned from the premises.**
- 8. Music from the licensed premises must not give rise to levels of 5db(A) or more above the background noise level, measured in accordance with BS4142 at the nearest affected residential premises.**
- 10. Suitable refuse containers with close fitting and lockable lids must be available and used at all times.**
- 11. Such containers must be effectively secured by appropriate means to prevent unauthorised persons from moving them. Such containers must be effectively secured by appropriate means to prevent unauthorised persons from moving them.**
- 12. A contractual arrangement with an authorised refuse collection and disposal company must be undertaken to ensure that all refuse is collected and disposed of properly.**

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Annex 3 Conditions attached after Licensing Authority Hearing:

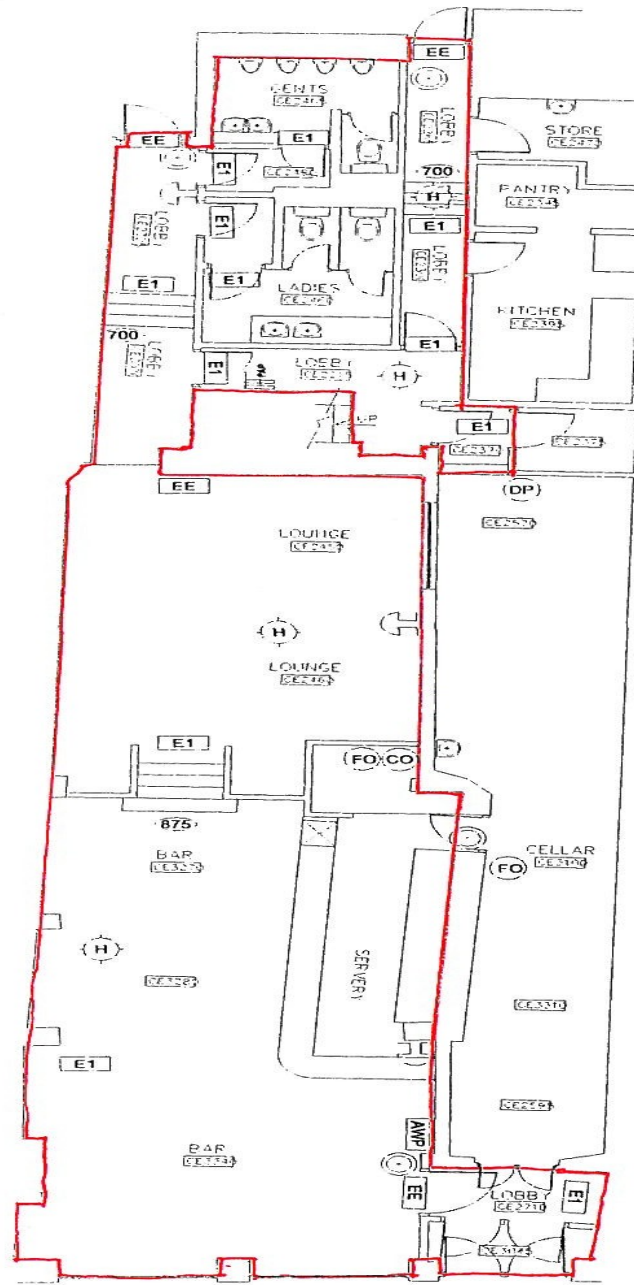
None

In accordance with the application to vary the Designated Premises Supervisor.

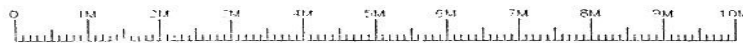
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Authorised Officer

Date of Issue: 12 November 2012

Annex 4 Premise Plan



GROUND FLOOR PLAN - RE-SURVEY



REPRESENTATIONS IN RESPECT OF APPLICATION

Appendix 1B(i)

Representor: Stephen Todd on behalf of the Environmental Health Manager

Comments: Based on the prevention of public nuisance

- “1. Insufficient information is provided in the operating schedule to demonstrate how the applicant is going to prevent public nuisance from the external playing of amplified music.
2. The provision of external music at any time until 1.00 am is likely to lead to noise complaints due to the proximity of residences.
- 3 .Removal of the Condition 1 in Annex 2 could lead to the premises being over-occupied with a risk to public safety and additionally there is inadequate toilet provision for greater numbers of people. (Note-In the application this is stated as Condition 2 in Annex 2 but this relates to the removal of drinks from the premises in open containers not occupancy levels).

The premise currently has applied for 11 Temporary Event Notices (TENs) to hold entertainment externally to the rear of the premises over the Christmas Holiday period. Under normal circumstances Environmental Health would object to the granting of a licence for external music as experience has shown that complaints relating to public nuisance from noise are likely. A number of TENs for different premises (including the applicant's premises) have been permitted on the basis that:

- a) it was the holiday period and a degree of relaxation was appropriate to this period
- b) Only a small number of events was to be applied for
- c) Management were given a chance to demonstrate that such outdoor events could be managed effectively.

Currently, at this premise, only 4 of the 11 total events have been held and it is accepted that no complaints have yet been received by Environmental Health. However it is a fact that residents will tolerate noise if it is for a short period or a small number of events or for special events but may be less tolerant for persistent noise. It may be that when further events are held complaints are received and these would need to be addressed.

The application, if granted, would allow external entertainment to be held at the premises until 01.00 every day for 365 days per year and it is felt that this does not allow enough control to be exercised should problems arise.”

Representor: Mandy McAllister on behalf of Durham Constabulary
Comments: Based on the prevention of crime and disorder and the prevention of public nuisance

“The grounds for this application to assess whether within the current operating schedule, the applicant have outlined suitable steps to prevent crime and disorder, prevent public nuisance, protect children from harm and maintain public safety. The applicant seeks to permit licensable activity to be permitted both indoors and outdoors, and remove condition 2 of Annex 2 to remove the occupancy level:

On Saturday 15th December 2012 officers from the Alcohol Harm Reduction Unit attended the premise and raised concerns regarding:

- The occupancy inside the premise. Experienced officers carried out a rough head count and concluded that there were approximately 162 persons present at 00.30. Sgt Robson estimated that there were 35 persons in situ between the rear/outside of the premise and the steps leading into the main room. Therefore the capacity of 110 had been breached.
- The outside bar (which is part of the application) had been in use and was in the process of being closed. A TEN was in place, for the outside.
- There was a large amount of broken glass, and water distributed around the floor area, inside and outside of the venue.

A joint licensing visit on the 26th September 2012 was undertaken after police had been called to the premise on Wednesday 23rd September for a private party being held by a local college where patrons were of mixed age. 200 tickets had been sold and upon checking, the premise licence holder stated that there were 125 patrons had been inside the premise, exceeding their present occupancy figure by 15 not including staff)

Due to the above, and consideration for adverse weather conditions, whereupon patrons may need to decant inside the premise, I have concerns with the removal of the occupancy figure. The applicant has not offered any additional conditions, and within the current licence there is no provision for door supervisors, this must be set as a condition for this premise licence variation – if granted.

If the applicant cannot run the premises within the boundaries of its current premise Licence, then we have little faith that the application to permit licensable activities to be permitted inside and outside and removal of occupancy level will not cause further breaches of the Licensing Act.”

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:
 - a. Past demonstrable adverse impact from the activity, particularly on local residents and businesses; or
 - b. 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.

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.

6.0 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. 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 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.
 - 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:

- a. Underage drinking
- b. Drunkenness on premises
- c. Public drunkenness
- d. Drugs
- e. Violent behaviour
- f. 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 (eg Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other Voluntary Codes of Practice, including those relating to drinks promotions eg 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.
- 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.

**GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003
(REVISED OCTOBER 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.
- 1.10 Nothing in this Guidance should be taken as indicating that any requirement of licensing law or any other law may be overridden (including the obligations placed on any public authorities under human rights legislation). This Guidance does not in any way replace the statutory provisions of the 2003 Act or add to its scope and licensing authorities should note that interpretation of the 2003 Act is a matter for the courts. Licensing authorities and others using this Guidance must take their own professional and legal advice about its implementation.

LICENCE CONDITIONS – GENERAL PRINCIPLES

- 1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as "must", "shall" and "will", is encouraged. Licence conditions:
- must be appropriate for the promotion of the licensing objectives;
 - must be precise and enforceable;
 - must be unambiguous and clear in what they intend to achieve;

- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

EACH APPLICATION ON ITS OWN MERITS

- 1.17 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.

OTHER RELEVANT LEGISLATION

- 1.19 Whilst licence conditions should not duplicate other statutory provisions, licensing authorities and licensees should be mindful of requirements and responsibilities placed on them by other legislation. Legislation which may be relevant includes:
- The Gambling Act 2005
 - The Environmental Protection Act 1990
 - The Noise Act 1996
 - The Clean Neighbourhoods and environmental Act 2005
 - The Regulatory Reform (Fire Safety) Order 2005
 - Health and Safety (First-Aid) Regulations 1981
 - The Equality Act 2010

CRIME AND DISORDER

- 2.1 **Licensing Authorities should look to the police as the main source of advice on crime and disorder.** They should also seek to involve the local Community Safety Partnership (CSP).

- 2.3 **Conditions should be targeted on deterrence and preventing crime and disorder.** For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.
- 2.6 **Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences.** The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.
- 2.7 **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. However, 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.

PUBLIC NUISANCE

- 2.18 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- 2.19 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

- 2.20 **Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises.** This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 2.21 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.
- 2.22 **Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods.** For example, music noise from premises usually occurs from mid-evening until either late-evening or early-morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave.
- 2.23 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.
- 2.24 **Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law.** An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.

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

- 9.4 A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.
- 9.5 It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.
- 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.

THE ROLE OF RESPONSIBLE AUTHORITIES

- 9.11 Responsible authorities under the 2003 Act are automatically notified of all new applications. Whilst all responsible authorities may make representations regarding applications for licences and club premises certificates and full variation applications, it is the responsibility of each responsible authority to determine when they have appropriate grounds to do so.

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

- 9.38 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case by case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.
- 9.39 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 9.40 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

PROPOSED CONDITIONS

- 10.4 The conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence or certificate holder, which they should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule, which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public.

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

CONSISTENCY WITH STEPS DESCRIBED IN OPERATING SCHEDULE

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

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

IMPOSED CONDITIONS

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

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

Proportionality

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

Hours of trading

10.11 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best

placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

- 10.12 Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.
- 10.13 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

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

Date of Notification: 10 January 2013

Type of Hearing: Application to Vary Premises Licence

Premises: Avalon Public house
8 Blackwellgate
Darlington, DL1 5HL

Hearing Details: 09.30am Monday 28 January 2013

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

Copy of notice sent to	David Johnson Flint Bishop LLB Head of Environmental Health Durham Constabulary	(Applicant) (Applicant's Legal Representative) (Responsible Authority) (Responsible Authority)
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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 Friday 18 January 2013**

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.

AVALON PUBLIC HOUSE

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 Applicant** at the Hearing:

- Details of how noise from external events is to be managed
- Details of the nature and frequency of regulated entertainment to be provided externally

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

- Specific details of any incidents of public nuisance in respect of the current operation of the premises.
- Details of toilet provision requirements in respect of occupancy numbers

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

- specific details of any incidents of crime and disorder in respect of the current operation of the premises



Services for Place
Town Hall, Feethams, Darlington DL1 5QT
Tel: 01325 388799
Fax: 01325 388555
Email: licensing@darlington.gov.uk

NOTICE OF ATTENDANCE

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

DATE OF HEARING: 09.30 am Monday 28 January 2013

NAME OF PREMISES: Avalon, 8 Blackwellgate, Darlington, DL1 5HL

YOUR NAME: _____

I WILL* I WILL NOT* BE ATTENDING THE HEARING

I WILL* I WILL NOT* LEGALLY REPRESENTED

NAME OF LEGAL REPRESENTATIVE (IF APPROPRIATE):

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

(*delete 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 and Parking Manager
Darlington Borough Council
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", i.e. local residents or businesses or representatives of such groups, 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 Interested Parties 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.