

FOR CHAIR AND MEMBERS
OF THE LICENSING SUB COMMITTEE
FOR 16 May 2013

APPENDIX 1

APPLICATION FOR PREMISES LICENCE

Applicant: MARTIN MCCOLL LTD Ref No: DL13/00497/PREMIS

Premises: MARTINS
118 WHITBY WAY
DARLINGTON, DL3 9UH

Requested Licensable Activities SALE OF ALCOHOL FOR CONSUMPTION OFF THE PREMISES

Requested Hours: 06.00 to 23.00 EVERY DAY

Premises opening hours 06.00 to 23.00 EVERY DAY

Notification to Responsible Authorities:

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

Information on Council's Website: 03 April 2013
Advertisement in Northern Echo 05 April 2013

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 Company has described the premises as:

“The premises are a brick built construction and presently trade as a convenience store but without the benefit of a Premises Licence. Included with this application is the layout plan which confirms that the whole of the retail sales floor area is proposed to be covered by this application. Alcohol will be displayed within the retail sales floor area in such positions where it can be supervised by a combination of direct staff supervision and/or CCTV. The CCTV system will form part of the due diligence system which will be operable at the store (images will be maintained for a minimum of 31 days). The due diligence systems will also incorporate the operation of a refusals record together with general staff training providing guidance upon both the legal and social aspects of selling alcohol. The Company also provide continual external support through test purchasing operations. The Licensable activities will take place between the hours as specified on page 17 of this application form. This is an overview of the type of premises.”

THE APPLICATION

On 28 March 2013 an application was properly made by the Applicant Company in accordance with Section 17 of the Licensing Act 2003 for a premises to enable to sale of alcohol for consumption off the premises. All Responsible Authorities received a copy of the application and it was properly advertised in the press and on the premises. The final statutory date for consultation should have been 25 April 2013 however the advertisement placed in the press by the Applicant Company stated that representations should be made by 29 April 2013. As a result of this the Applicant Company has been advised that should a late representation come into the Licensing Authority between 26 and 29 April 2013 it will be included in any report prepared for the Hearing. Three representations have been received from “other persons” as detailed below.

THE REPRESENTATIONS

On 15 April 2013 a representation was received from a Mrs Harrison, a local resident who states she lives directly opposite these premises. Her representation is based on the prevention of crime and disorder and the prevention of public nuisance. In summary she states that she currently experiences noise, littering and anti - social behaviour from a nearby take away and opposes the sale of alcohol until 11 pm at these premises. On 24 April 2013 she added a further paragraph to this representation. The representation has been reproduced in full at **Appendix 1A (i)**

On 24 April 2013 a representation was received from a Mrs G Wisniewski a local resident who states she lives directly opposite these premises. Her representation is based on the prevention of public nuisance. In summary she states that the area currently experiences noise, disturbance from cars arriving and parking in the vicinity and youths gathering near the shop. She fears that this will increase if the licence was granted. The representation has been reproduced in full at **Appendix 1A (ii)**

On 24 April 2013 a representation was received from a Mr P A Graves, a local resident, based on the prevention of public nuisance. In summary he states that the area currently experiences noise, disturbance from cars parking in the vicinity and youths gathering near the shop. He fears that this will increase if the licence was granted. The representation has been reproduced in full at **Appendix 1A (iii)**.

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

THE APPLICANT'S RESPONSE

The representation has been sent to the Applicant Company to provide them with an opportunity to respond to the concerns expressed. At the time of writing this report a response had not been received. A verbal update may therefore be given to Members at the hearing.

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 Company has stated the following:

a) **General:**

"We are a national retailer that sells alcohol as part of a broad offering of goods and services. We have held off-licenses in our stores for many years and are an approved British institute of Inn-Keeping examination centre. We have written training policies and formal training programs are in place which ensure our people are equipped to meet all licensing objectives. All training and revision/refresher materials are reviewed regularly. We have introduced our "Think 25" policy to all our stores, this policy is brought to the customers' attention through point of sale material at the checkout and wherever alcohol is displayed for sale"

b) **Prevention of Crime and Disorder:**

"The premises has digital CCTV system that covers many areas of the shop floor, including the proposed area which will be used for display of beer and wine. High value alcoholic products such as champagne and spirits will be displayed behind the sales counter. Images are retained for a minimum of 31 days and made available on request by an authorised person."

c) **Public Safety:**

"A member of the management team is on the premises all the time the store is open and is trained to manage the store including looking after the safety of the public. The store adheres to all rules and regulations relating to public safety."

d) **Prevention of Public Nuisance:**

"These premises are proposed to be licensed for the consumption of liquor off the premises only. In addition to there being no consumption on the premises, there is no form of entertainment on the premises. There are no outdoor areas utilised for the benefit of members of the public and the nature of the operation does not require the employment of door supervisors or use of dedicated cab firms. The store is an active member of the community and is always happy to liaise with police and enforcement authorities should the need arise."

e) Protection of Children from Harm:

“All staff are trained and have regular refresher training on the corporate “Think 25” policy. Staff are trained to look at the customer and “Think 25” when selling age restricted products. A till prompt will appear on the initial sale of alcohol that will remind the seller of the “Think 25” policy and remind staff not to sell alcohol to anyone under the age of 18. The Company also provide external support through test purchasing operations. When alcohol is refused by the seller the refusal is recorded and refusals frequently checked on a regular basis by a Manager. The store displays signage around the store informing both staff and customers of our “Think 25” policy.”

Members are aware that the information contained within the operating schedule is to be converted into conditions that will be attached to any grant of a licence.

In addition, at the section of the application form that deals with activities that may give rise to concern in respect of children, the Applicant Company has stated:

“These premises will benefit from a Premises Licence for consumption of alcohol off the premises only. There will be no adult entertainment in order to ensure compliance with legislation. The Company will operate a “Challenge 25” policy as a minimum requirement whereby any person appearing to be aged 25 or under must prove that they are in fact over the lawful age of 18 for the purpose of sale of alcohol. Acceptable forms of identification as proof of age are a ten year passport, a photo-card driving licence and an approved PASS logo proof of age card. All staff are obligated to familiarise themselves with these requirements. The Company will operate a due diligence policy, incorporating the minimum challenge 25 policy as above, also incorporating full training for all staff, the operation of a refusal record and refresher training on a regular basis. This store will operate a fully recordable CCTV system which is overtly operable. There will be a prominent signage located throughout the store confirming the legal minim age for the purchase of alcohol and the Company policy”.

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 - 8.4.3	Public Nuisance	Location of Premises
Section 8.8	Public Nuisance	Littering
Section 10-10.1.	Prevention of Crime and Disorder	Effect in Vicinity
Section 12.7	Off Sales	

THE GUIDANCE

Members are referred to the Secretary of State's Guidance in relation to the prevention of crime and disorder, public safety, the prevention of public nuisance and guidance relating to shops, stores, petrol stations and supermarkets. This is reproduced at **Appendix 1D**

ADDITIONAL INFORMATION

A map of the premises will be produced at Committee for the benefit of Members.

POINTS FOR CLARIFICATION

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

- Details of any measures that will be taken to discourage youths from congregating outside of the premises.
- Details of what provision will be made to discourage littering.

The **Other Persons** have been asked to provide

- specific details of any incidents of public nuisance currently related to these premises

MEMBERS' OPTIONS

Members may consider the following options:

1. **Grant** the application subject to the mandatory conditions for sale of alcohol and the additional conditions drawn from the operating schedule as follows:
 - A digital CCTV system covering the areas where alcohol is displayed within the store shall be maintained and in operation at all times whenever alcohol is available for sale. Recordings shall be securely stored and kept for a minimum of 31 days. The recordings shall be made available to the Police and/or authorised officer of the Council on request. (operating schedule condition)
 - The Challenge 25 scheme shall be implemented at the premises requiring photographic proof of identity from any person who attempts to purchase alcohol and who appears to be under the age of 25 years. Notices shall be displayed within the premises advertising this scheme. All staff shall be trained in respect of the operation of this policy and such training shall be documented and produced to the Police and/or authorised officer of the Council on request. (operating schedule condition.)
 - A refusals book shall be kept with details of all refusals of alcohol sales. All staff shall be trained in its use and such training shall be documented. It shall be produced to the Police and/or authorised officer of the Council on request. (operating schedule condition.)

2. Place any **additional conditions** on the licence that Members consider are necessary to address any concerns relating to, the prevention of crime and disorder, the prevention of 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 Company 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 Corporate Services

Date of Sub Committee: 16 May 2013

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: Mrs C M Harrison, 115 Whitby Way, Darlington, DL3 9UG

Comments: Based on the prevention of crime & disorder and public nuisance

"I understand Martins Newsagent is seeking a wine and spirit licence to be open until 11pm. I live directly opposite this shop and have problems with noise now from the takeaway shop every evening, car doors slamming and people shouting and litter. During winter months where there are lights, youths collect and play football. There is a shop 40 yards away selling alcohol now. I am disturbed a good few nights a week with people knocking on my door and trying the handle and using my garden as a toilet. So any more inconvenience is not welcome. I strongly oppose you allowing them to sell alcohol until 11pm and so does my sister in law from 119 Whitby Way. We are the ones who will suffer the most."

On 24 April 2013 the additional comments were received from this representor:

"I live directly opposite the premises in question and oppose the granting of a licence to sell alcohol. There is a shop selling alcohol only 40 yards away, we have enough disturbance with a cash machine and a takeaway food outlet, with noisy patrons and their car doors."

Appendix 1A(ii)

Representor: Mrs G Wisniewski 119 Whitby Way, Darlington, DL3 9UG

Comments: Based on the prevention of public nuisance

"I refer to the above mentioned application that includes an extension to the current opening hours and an application for a liquor licence. I object to the application for the following reasons:

1. Alcohol is already on sale at the Mini Market 50 yards away from number 118.
2. Youths already collect outside the block of shops using the shuttered shops as goal posts, especially when the take away outlet opens. To approve Martins request for extended opening hours until 11.30 will further encourage the youths to the annoyance of the residents opposite.
3. Any increase of cars will also affect house numbers 115-119 inclusive. At present motorists using the ATM at Martins frequently U turn opposite these houses, lighting up front bedrooms like Blackpool! We already suffer the bus terminus with the noise from buses from 5.15 throughout the day.
4. Legal car parking starts outside number 117 Whitby Way, consequently cars often queue to park outside this block of houses. Any opening hours after the normal closing time of 6pm will cause more disturbance for residents.

In my opinion the Licensing Authority should consider refusing a licence to the applicant and consider the effect on local residents. Do we really need to encourage more drinking of alcohol?"

Representor: Mr P A Graves 117 Whitby Way, Darlington, DL3 9UG

Comments: Based on the prevention of public nuisance

“Variation of licence in respect of Martins Newsagent, 118 Whitby Way, Darlington. I refer to the above mentioned application that includes an extension to the current opening hours and an application for a liquor licence. I strongly object to this application. Double yellow lines run the length of this block of shops and outside house number 115 and half of house number 117. We are already continually disturbed by cars parking illegally on the yellow lines from 6am every day when Martins the Newsagents opens. I am extremely concerned that granting this application and permitting them to remain open till late will exacerbate this problem.

Your records will show that over the years we have had trouble with youths collecting on the shop fronts causing anti-social behaviour. This has never gone away and I am continually chasing youths from kicking balls against the shop shutters. The sound of this drives my wife and I mad even through double glazed windows. The shop being open until late where they can buy cheap crisps etc. will further encourage them to collect. To specifically address the alcohol licence application I would make you aware that there is already a Mini Market which sells alcohol on the same block as Martins with a Booze Buster outlet further up Whitby Way. The government and council are trying to tackle anti-social behaviour and underage drinking and I can see no positive reasons why you should grant this application.”

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:
 - 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 a 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.

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.

LOCATION AND IMPACT OF ACTIVITY

- 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.

8.8 LITTERING

Policy: Promotional flyers, advertising leaflets etc should be collected at regular intervals by the licensee or his/her representative and deposited in the premises' own waste bins. At the end of each evening staff should patrol the vicinity, collect all discarded flyers within a 20 metre radius of the premises and deposit them in the premises' own waste bins. Where promotional material is distributed away from the premises concerned the same principle applies, however, at the end of the evening staff must return to the distribution site(s), collect all relevant discarded promotional material and return it to their own premises.

Reason: The aim of this Policy is to prevent public nuisance from littering.

12.7 OFF SALES

In accordance with DCMS guidelines the Licensing Authority will not normally seek to limit the hours during which alcohol can be sold for consumption off the premises. The Council does, however, expect that a responsible attitude be adopted in relation to the sale of alcohol to and/or for persons under the age of 18 years. Operating schedules should therefore include the following:

- a. Staff training, particularly in relation to refusal of sales.
- b. Proof of age requirements.
- c. Records of refusal of sales.
- d. Consideration of display of posters advertising the illegality of purchasing alcohol on behalf of persons under 18 years of age.

NB this list is not exclusive

Test purchasing exercises will be undertaken in a partnership arrangement between the Council's Trading Standards Service and South Durham Police. Sales of alcohol to or on behalf of persons under 18 years of age may result in a request to review a licence with a view to revocation.

In addition to the above, the operating schedule should also address issues of anti social behaviour that may give rise to crime and disorder and public nuisance. This is particularly the case in relation to gangs of youths congregating outside of premises. Measures such as CCTV provision, both inside and outside of the premises and additional lighting outside of the premises should be considered to address this problem.

**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.

GENERAL PRINCIPLES

- 1.15 If an application for a premises licence or club premises certificate has been made lawfully and there have been no representations from responsible authorities or other persons, the licensing authority must grant the application, subject only to conditions that are consistent with the operating schedule and relevant mandatory conditions. It is recommended that licence applicants contact responsible authorities when preparing their operating schedules.

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; for example, if the application falls within the scope of a cumulative impact policy. 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.
- 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.

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**OTHER PERSONS**

8.12 As well as responsible authorities, any other person can play a role in a number of licensing processes under the 2003 Act. This includes any individual, body or business entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their geographic proximity to the premises. In addition, these persons may themselves seek a review of a premises licence. Any representations made by these persons must be 'relevant', in that the representation relates to one or more of the licensing objectives. It must also not be considered by the licensing authority to be frivolous or vexatious. In the case of applications for reviews, there is an additional requirement that the grounds for the review should not be considered by the licensing authority to be repetitious. Chapter 9 of this guidance (paragraphs 9.4 to 9.10) provides more detail on the definition of relevant, frivolous, vexatious and repetitious representations.

8.13 Whilst any of these persons may act in their own right, they may also request that a representative makes the representation to the licensing authority on their behalf. A representative may include a legal representative, a friend, a Member of Parliament, a Member of the Welsh Government, or a local ward or parish councillor who can all act in such a capacity.

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

RELEVANT, VEXATIOUS AND FRIVOLOUS REPRESENTATIONS

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.

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

CONDITIONS

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

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

PROPOSED CONDITIONS

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

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

CONSISTENCY WITH STEPS DESCRIBED IN OPERATING SCHEDULE

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

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

IMPOSED CONDITIONS

- 10.8 The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.
- 10.9 It is possible that, in certain cases, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions are appropriate to promote the licensing objectives.

Proportionality

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

Hours of trading

- 10.11 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.
- 10.12 Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours 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: 30 April 2013

Type of Hearing: Application for Premises Licence

Premises: Martins
118 Whitby Way
Darlington, DL3 9UH

Hearing Details: 09.30 am Thursday 16 May 2013

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

Copy of notice sent to: McColls Ltd (Applicant Company)
Mrs Harrison (Other Person)
Mrs G Wisniewski (Other Person)
Mr P A Graves (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 09 May 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.

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 Company** at the Hearing:

- Details of any measures that will be taken to discourage youths from congregating outside of the premises.
- Details of what provision will be made to discourage littering

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

- specific details of any incidents of public nuisance currently related to these premises



Public Protection Division
Corporate Services
11 Houndgate
Darlington DL1 5RF
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: 09.30 am Thursday 16 May 2013

**NAME OF PREMISES: Martins,
118 Whitby Way
Darlington, DL3 9UH**

YOUR NAME:

I WILL*/ 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

(*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, Parking , TS & CCTV 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.