

**APPLICATION FOR PREMISES LICENCE**

**Applicant**                    **VUE ENTERTAINMENT LTD**                    **Ref No: DL15/00879/PREMIS**

**Premises:**                    **VUE CINEMA,  
FEETHAMS LEISURE, FEETHAMS LANE DARLINGTON, DL1 4QT**

**Requested Licensable Activities**

**Requested Hours**

Sale of alcohol (Indoors & Outdoors)  
(for consumption ON the premises)                    08:00 hrs to 02:30 hrs Every day

**Regulated Entertainment:**

Plays, Live Music, Recorded Music,                    08:00 hrs to 03:00 hours    Every Day  
Performance of Dance

Films                    24 hrs                    Every Day

Late Night Refreshment:                    23:00 hrs to 05:00 hrs    Every Day

**Premises Opening Hours**                    24 hrs                    Every Day

**Non-standard/seasonal timings:**

Sale of Alcohol, Plays, Live Music, Recorded Music, Performance of Dance and Late Night Refreshment

- An additional hour on the day that British Summertime commences.
- From the end of permitted hours in New Year's Eve to the start of permitted hours on New Year's Day

**Notification to Responsible Authorities/Interested Parties:**

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

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

**Advertisement in The Advertiser:**                    **12 June 2015**

**Information on Council's web site:**                    **3 June 2015**

## **LEGISLATION:**

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

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

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

## **DESCRIPTION OF PREMISES**

The Applicant has described the premises as a nine screen multiplex cinema within a mixed-use development. The Applicant operates in excess of 70 cinemas throughout England, Wales and Scotland all of which are licensed for the sale of alcohol as well as the primary activity of showing films.

The sale of alcohol and the provision of regulated entertainment other than the showing of films will be ancillary to the use of the premises as a cinema.

## **BACKGROUND**

The premises are currently in the process of being constructed as part of a state-of-the-art leisure complex on the former bus depot site and will comprise of a nine screen multiplex cinema, and an 80 bedroom hotel, there will also be a number of restaurants and bars with 80 car parking spaces. Members will be aware that opposite the proposed development, a 650 car parking space multi-story car park is currently under construction.

## **THE APPLICATION**

On 3 June 2015, an application was properly made for a premises licence in respect of Vue Cinema in accordance with Section 17 of the Licensing Act 2003. As a result, representations have been received from 3 Other Persons in respect of the prevention of public nuisance and the prevention of crime and disorder. The representations have been summarised below and are reproduced in full at **Appendix 1A** to this report.

## **WHERE REPRESENTATIONS ARE MADE**

Where a representation concerning the licensing objectives is made by a Responsible Authority or an Other Person and it is relevant the licensing authority's discretion will be engaged provided the representation is not frivolous or vexatious.

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.

The Secretary of State's revised guidance under Section 182 (March 2015) states

"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."

## **THE REPRESENTATIONS**

On 30 June 2015, a representation was received from Mr Stephen Twist, President of the South Terrace Residents Group, based on the prevention of public nuisance and prevention of crime and disorder. In summary, Mr Twist is concerned about the duration of the premise opening hours, which, he feels, will result in localised disturbance and noise disturbance to local residents. (Appendix 1A (i))

On 1 July 2015, a representation was received from Dr L R King based on the prevention of public nuisance. In summary, he is concerned that the duration of the premises opening hours and the possible impact on local residents particularly in relation to visitors to the site using Victoria Embankment for parking (Appendix 1A (ii))

On 1 July 2015, a representation was received from Ms Sarah Hutchinson based on the prevention of public nuisance. In summary, she is concerned that the limited number of on-site car parking spaces will lead to visitors to the premises using local roads to park their cars, which may lead to noise nuisance from customers leaving the cinema in the early hours of the morning. (Appendix 1A (iii))

## **THE APPLICANT'S RESPONSE**

The representations have been sent to the Applicant Company's legal representative to provide them with an opportunity to respond to the concerns expressed.

## **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:**

1. A tamper proof CCTV system shall be installed, maintained and operated in the premises in liaison with and to the satisfaction of the police and shall be used to record during all hours the premises are open to the public.
2. Notices stating that CCTV is in operation will be displayed throughout the venue.
3. Sale of alcohol will cease at 02:30 or 30 minutes before the end of the last film showing at the premises whichever is the earlier.
4. Each auditoria is visited by a member of staff during film showings to monitor screens and the behaviour of customers. These staff are issued with night vision goggles or equivalent.
5. The occupancy capacity of the premises shall be identified by way of a Risk Assessment

6. All staff shall receive training in emergency evacuation procedures
  7. The premises shall operate a proof of age scheme and Challenge 25 policy. Notices setting out this policy shall be displayed within the premises.
  8. All staff involved in the sale of alcohol shall be properly trained (as per the premises licence holders own training programme) and retrained every 6 months.
- b) **Prevention of Crime and Disorder:** There has not been an entry in this section of the application
- c) **Public Safety:** There has not been an entry in this section of the application
- d) **Prevention of Public Nuisance:** There has not been an entry in this section of the application
- e) **Protection of Children from Harm:** There has not been an entry in this section of the application

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 AGREED CONDITIONS

Following discussions with the Applicant Company, the conditions below have been agreed and now form part of the Operating Schedule. The revised Operating Schedule is shown below and the amendments are highlighted in bold.

1. A tamper proof CCTV system shall be installed, maintained and operated in the premises in liaison with and to the satisfaction of the police and shall be used to record during all hours the premises are open to the public.
2. Notices stating that CCTV is in operation will be displayed throughout the venue.
3. Sale of alcohol will cease at 02:30 or 30 minutes before the end of the last film showing at the premises whichever is the earlier.
4. Each auditoria is visited by a member of staff during film showings to monitor screens and the behaviour of customers. These staff are issued with night vision goggles or equivalent.
5. The occupancy capacity of the premises shall be identified by way of a Risk Assessment
6. All staff shall receive training in emergency evacuation procedures
7. The premises shall operate a proof of age scheme and Challenge 25 policy. Notices setting out this policy shall be displayed within the premises.

8. All staff involved in the sale of alcohol shall be properly trained (as per the premises licence holders own training programme) and retrained every 6 months. **Training records to be available to the police or local authority on request.**
9. **An alcohol refusal register will be maintained and available for inspection at the request of the police or local authority.**
10. **Alcohol shall only be sold to persons who have been granted admittance to the premises by way of a purchase ticket, who admittance has been paid for, or to employees or bona fide guests of Vue Entertainment Limited.**

### THE LICENSING POLICY

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

Section 6.1 – 6.3	Public Nuisance	Impact of Licensable Activities
Section 8.3 – 8.6.1	Public Nuisance	Location and Impact of Activity
Section 11.5.1	Film Exhibitions	

### THE GUIDANCE

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

### ADDITIONAL INFORMATION

Copies of the plans will be made available at the hearing for Members' consideration.

### POINTS FOR CLARIFICATION

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

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

- Details of past problems experienced in the vicinity

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

- Details of the steps to be taken to ensure patrons do not cause problems to nearby local residents due to the lack of significant provision for on-site parking.

**MEMBERS' OPTIONS**

Members may consider the following options:

1. Grant the application subject to the mandatory licence conditions and those converted from the applicants Operating Schedule.
2. Grant the application as above and place 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. Grant the application as above and exclude from the scope of the licence any of the licensable activities to which the application relates;
4. Reject the application

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

Contact Officer: Julie Richings  
Ext 6391

**Ian Williams**  
**Director of Economic Growth**

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**For admin use only:** **Date of Sub Committee:**  
**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:** Stephen Twist  
**Comments:** Based on the Prevention of Public Nuisance

The South Terrace Residents' Group is aware of this application, and as president of the group, I have been asked to respond on their behalf.

Darlington Council website is unhelpful as to how our objections can be recorded. We anticipate that this is not a Planning matter, but hope that you can forward our comments to the relevant department at the Town Hall. The 'no later than' date for receipt of objections is 1 July 2015.

The residents of South Terrace have the following concerns in relation to the applications by Vue Entertainments Limited, for Vue Cinema Feethams:

1. The duration of the performance licence: we feel that 0300 hrs is too late and will result in localised disturbance and traffic noise whilst residents are sleeping.
2. The duration of the alcohol sale licence: we feel that 0230 hrs is too late, and will result in a late night influx of customers, with attendant issues relating to alcohol and public order. It is of note that the council do not permit sales as late as this at other venues for good reason.
3. The late night refreshment licence: we cannot see justification for 0500 hrs, and consider that this will result in localised noise disturbance and traffic noise whilst residents are sleeping.

We contend that:

- existing residents' right to undisturbed environment and a night's sleep has priority over late night operations.
- performances should terminate no later than 0100 hrs - which will give sufficient opportunity for Vue Entertainment Ltd to screen late night films;
- the sale of alcohol should not extend beyond 1200 hrs midnight, save within the cinema bar and auditorium during late night screening, where sales could continue to 0100 hrs;
- late night refreshment licence should be limited to 0200 hrs for venues within the semi-enclosed concourse only.

Some residents have expressed concerns in relation to the times suggested above, and would prefer earlier cessation. That which appears above not local consensus, but is proposed by the group as a reasonable compromise.

For the benefit of the licencing committee, it should be recorded that the South Terrace Residents' Group, is a long standing group comprising 43 households - 100% of currently occupied homes in South Terrace and Pease Cottages, DL1 5JA.

Please confirm receipt of this objection by email.

**Representor:** Dr. Leslie King  
**Comments:** Based on the Prevention of Public Nuisance.

I am writing to formally object to the proposed 24 hour showing of films, and late night licensing of performances, sale of alcohol, and sale of refreshments at the Vue, Feethams, development, described as follows on a notice posted at the site:

"The proposed licensable activities and their hours are :to permit the performance of plays, live music, recorded music and performance of dance from 0800 until 0300 each day; to permit the sale of alcohol from 0800 to 0230 each day; the showing of films and opening hours 24 hours each day and late night refreshment from 2300 to 0500 each day."

I cannot understand how the Council can be giving serious consideration to an application that would, if approved, result in serious and potentially continuous disruption to residents living in a large section of this part of the town. For Sunday to Friday a reasonable time for the sale of alcohol to stop each day would be 11.30pm, with all commercial activity on the site ending no later than 12 midnight. On Saturdays a one hour extension of these times, to 1.00am and 12.30am respectively, would be acceptable.

The extent of disruption to local residents will be increased if customers of the 'Vue' development are allowed to park their cars in residents streets in the neighbourhood. To minimise this impact, no on-street parking by non-residents (other than residents' visitors) should be allowed. Before the 'Vue' development begins commercial activity, the residents parking scheme for the area between, and including, Victoria Embankment and Clifton Road should be amended to be residents-only for both side of all roads 24 hours per day. I facility should be introduced whereby each household is provided with an agreed number of visitors' tickets per year free of charge, with the option to purchase additional tickets. These should also be valid and required 24 hours per day, each and every day of the year. While this scheme needs to be activated and managed by Darlington Council, it should be a condition of the licensing approval that commercial activity on the 'Vue' site shall not begin until such a scheme is in place.

Would you please confirm that you have received this email prior to the closing time for objections to be submitted, and that its contents will be fully considered prior to a decision being made with regard to the 'Vue' development application.

#### Appendix 1A (iii)

**Representor:** Sarah Hutchinson  
**Comments:** Based on the Prevention of Public Nuisance

While the letter has the support of 43 households through the residents group, as a resident of South Terrace I would like to add my express support to the letter of objection below from Mr Stephen Twist on behalf of the residents group.

It is to be noted that nearby residents would be likely to have their lives significantly disrupted by the proposals having regard to the need for uninterrupted sleep for all residents but in particular such disruption will affect residents ability to work and the ability of children to prosper.



The issue is exacerbated by the lack of significant on site car parking on the complex and the nearby car parking available both on South Terrace and Victoria Embankment whereby departures through the night may be a significant likelihood and disruptive to a significant group of residents.

The road is extremely quiet at night and noise of customers departing the cinema especially where parked on the street would be a very likely cause to wake residents with bedrooms to the front of the houses, which given the layout of the houses is where the main bedrooms face, and in our case the nursery.

Accordingly I would repeat and support the letter of objection below.

**EXTRACTS FROM LICENSING POLICY**

- 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 ideally 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, if any, for provision of portable toilet facilities outside of the premises.
  - h) The cumulative impact of licensed premises within the area and the scope for mitigating such impact.
  - i) Waste disposal arrangements including bin storage and the collection and containment of litter from the vicinity of the premises.
  - j) Public nuisance caused by unauthorised advertising and fly-posting
- and, in considering any application from premises which are currently licensed, the Licensing Authority will, *if relevant representations are received*, take into account any evidence of:
- i) Past demonstrable adverse impact from the activity, particularly on local residents and businesses; or
  - ii) If adverse impact has been caused, that appropriate measures have been agreed and put into place to address any future adverse impact. If measures are to be put into effect or alternatively if there has been insufficient time to assess their usefulness a licence may be granted for a limited period only.
- 6.2 **Reason:** To achieve the licensing objective of preventing public nuisance. To promote this objective the Licensing Authority, in considering the likelihood of adverse impact, will, along with other matters, take into account:
- a. 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.
  - b. 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.
  - c. The impact of patrons arriving, queuing and exiting which should take place on main pedestrian routes rather than through residential areas.
  - d. 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.

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.

### 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:**

**e) 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.**

**f) There will not be any increase in the cumulative adverse impact from these or similar activities, on an adjacent residential area.**

**g) 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.

### 11.5.1 FILM EXHIBITIONS

Where the exhibition of films is permitted, the Licensing Authority will require the age restrictions of the British Board of Film Classification (BBFC) in respect of the films to be exhibited to be complied with. Only in exceptional cases will variations of this general rule be granted by the Licensing Authority and then only with appropriate safeguards.

In relation to specialist Film Festivals and other occasions where it is desired to show films not classified by the BBFC the Licensing Authority will, provided adequate notice has been given, classify the films concerned. To achieve consistency and the protection of children the Council will use the guidelines published by the BBFC

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**GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003  
(REVISED MARCH 2015)**

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**Purpose**

- 1.7 This Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.
- 1.8 The police remain key enforcers of licensing law. This Guidance does not bind police officers who, within the parameters of their force orders and the law, remain operationally independent. However, this 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. This Guidance is therefore binding on all licensing authorities to that extent. However, this Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this 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;
  - 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.

## Other relevant legislation

- 1.19 While 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

- 2.14 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.
- 2.15 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 may 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
- 2.17 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.
- 2.18 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.
- 2.19 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.
- 2.20 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, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.



## APPLICATIONS FOR PREMISES LICENCES

### 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 While 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.

## DETERMINING APPLICATIONS

### Where representations are made

- 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.

**APPENDIX 1C (CONTINUED)**

- 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.

**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 an unlimited fine 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

## APPENDIX 1C (CONTINUED)

- 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 exercised 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. This provision also applies to minor variations.
- 10.9 It is possible that in some cases no additional conditions will be 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. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. 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

- 10.13 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 about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. 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.
- 10.14 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.
- 10.15 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: 14 July 2014

Type of Hearing: Application for Premises Licence

Premises: Vue Cinema

Hearing Details: 9.30am Tuesday 28 July 2015

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

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Copy of notice sent to	Vue Cinema	(Applicant)
	Poppleston Allen	(Applicant's Legal Representative)
	Mr S Twist	(Other Person)
	Dr LR King	(Other Person)
	Mrs S Hutchinson	(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 Monday 27 July 2014**

**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 the steps to be taken to ensure patrons do not cause problems to nearby local residents due to the lack of significant provision for on-site parking

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

- Details of past problems experienced in the vicinity

**LICENSING**

Town Hall, Feethams, Darlington DL1 5QT

☎ 01325 405 888

☎ 01325 405983

✉ [licensing@darlington.gov.uk](mailto:licensing@darlington.gov.uk)

DX 69280 Darlington 6

Web site: <http://www.darlington.gov.uk>**NOTICE OF ATTENDANCE**

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

DATE OF HEARING: 28 July 2015

NAME OF PREMISES: VUE CINEMA

YOUR NAME: \_\_\_\_\_

I WILL\*  I WILL NOT\*  BE ATTENDING THE HEARINGI 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

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

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## 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.