

APPLICATION FOR PREMISES LICENCE

Applicant **TARA LEIGH HORRORS** **Ref No: DL15/00969/PREMIS**

Premises: **TIKI SHACK**
108 VICTORIA ROAD, DARLINGTON, DL1 5JW

Requested Licensable Activities

Sale of alcohol (
(for consumption OFF the premises)

Requested Hours

16:00 to 01:00 Monday to Thursday
16:00 to 02:00 Friday
14:00 to 02:00 Saturday
14:00 to 01:00 Sunday

Regulated Entertainment:

Late Night Refreshment:

23:00 to 01:00 Sunday to Thursday
23:00 to 02:00 Friday & Saturday

Premises Opening Hours

11:00 to 01:00 Monday to Thursday
11:00 to 02:00 Friday & Saturday
14:00 to 01:00 Sunday

Non-standard/seasonal timings:

Bank Holiday weekends:

Sale of Alcohol,

- 16:00 to 02:00 on Sundays
- 14:00 to 01:00 on Mondays

Late Night Refreshment

- 23:00 to 02:00 on Sundays

Notification to Responsible Authorities/Interested Parties:

The Applicant 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 Darlington & Stockton Times
Information on Council's web site:

26 June 2015
19 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.

THE APPLICATION / DESCRIPTION OF PREMISES

On 19 June 2015, an application was properly made for a premises licence in respect of the Tiki Shack in accordance with Section 17 of the Licensing Act 2003. In the application the Applicant described the premises as:

“An American Hawaiian BBQ/Pizzeria offering hot food and alcohol in a takeaway/delivery format.”

The Applicant has also described the operation of the business as follows:

“Food will be prepared and cooked on the premises, sold along with cold drinks and Alcohol (to be consumed away from the premises). A small seating area will be provided for customers to wait for their orders, however the consumption of food and alcohol will not be allowed.

The waiting area is located at the front of the shop at the entrance and is completely separate from the serving area by a high counter that stretches the width of the room. Immediately after the counter is a serving area where orders will be placed and handed out and where the alcohol will be displayed and sold. Behind the serving area is an open kitchen area where the food will be cooked, there is then a separate room to the rear where food is prepared and stocked along with the Alcohol

As well as alcohol being available in sealed cartons for purchase over the counter, it will also be available for delivery.

The system concerning the home delivery of alcohol is as follows:

- All orders for the delivery of alcohol MUST be made online or over the phone and pre-paid using a debit or credit card, this allows the driver to only carry alcohol which has already been paid for by the customer.

- All deliveries MUST be made to registered addresses only and not to places i.e. a park or public place

-Photographic ID, i.e. Drivers licence or passport must be shown to the driver along with the debit/credit card used to pay for the order upon receiving the alcohol

- The delivery driver will be an employee of Tiki Shack and not an independent driver and therefore will adhere to all polices regarding the sale of alcohol

- Alcohol can only be purchased for delivery with the purchase of food, the maximum spend permitted on alcohol will be no more than twice the amount spent on food. For example if a food order comes to £15.00, the maximum the customer can spend on alcohol is £30.00."

The application was properly advertised and 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.

THE REPRESENTATIONS

On 30 June 2015 a representation was received from Mr I Verrill, a local businessman, based on the prevention of crime and disorder. In summary he expresses concern at the current problems relating to alcohol and drugs in the area and believes granting this application will exacerbate the problems. The representation has been reproduced in full at **Appendix 1A(i)**. Members should note that Mr Verrill is the Premises Licence holder and the DPS at the Dalesman Hotel.

On 30 June 2015 a representation was received from Ms S Martin based on the prevention of crime and disorder. In summary she expresses concern at the current problems relating to alcohol and drugs in the area and believes granting this application will exacerbate the problems. The representation has been reproduced in full at **Appendix 1A (ii)**

On 30 June 2015 a representation was received from Ms S Lerigo based on the prevention of crime and disorder. In summary she expresses concern at the current problems relating to alcohol and drugs in the area and believes granting this application will exacerbate the problems. The representation has been reproduced in full at **Appendix 1A (iii)**

Members are aware that representations are only valid if they are about the likely effect of the grant of the Premises Licence on the promotion of the licensing objectives and are made by Responsible Authorities or Other Persons. Members must therefore decide whether each representation is relevant.

Members will also note that addresses have not been supplied by Ms S Martin and Ms S Lerigo and their status (i.e. residents; local business people etc) is unknown. Both representations were received by email and Officers have contacted both parties to request an address but at the time of writing this report that information had not been forthcoming. Members will be aware that the "vicinity test" has been removed from representations therefore no longer requiring an Other Person to live near to the premises, however Members would normally expect to see how the grant of the licence will impact on a particular representor. All 3 representors will be invited to attend the hearing by email and the issue of impact has been addressed in the Points for Clarification section of this report.

THE APPLICANT'S RESPONSE

A copy of each of the 3 representations was sent to the Applicant for her consideration. On 06 July 2015 she sent a written response for each of the 3 representors (see **Appendix 1B**). This was duly forwarded to each of the Other Persons and they were invited to contact the Licensing Authority if they wished to withdraw their representations in the light of both the Applicant's response and also the agreement reached between the Applicant and the Police which led to the Police not making a representation against the application. A response has not been received from any of the representors so officers have had to assume that they wish to continue with their representation.

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:** "Tiki Shack is a newly established business and therefore all the steps highlighted below in order to uphold the four licencing objectives have been compiled with the aid of research and previous experience in the industry. All steps will be carried out and written into Tiki Shack policies and staff training manuals to be used over the first 12 months. After this time a risk assessment will be carried out in all four areas and if any further steps are needed they will be added to the existing policies."
- b) **Prevention of Crime and Disorder:** "Risk assessments will be taken every 12 months and any changes in Tiki Shack policies towards the prevention of crime and disorder will be dealt with accordingly. The initial steps to be made during Tiki Shacks first 12 months of trading are as follows:
 - 1) Alarms will be fitted to all external doors and windows
 - 2) CCTV will be in full operation during opening hours and in partial operation at all other times
 - 3) All staff will be advised of licensing laws in writing before they are allowed to serve alcohol
 - 4) Staff training in conflict management will be provided to give them the knowledge and confidence to deal with difficult situations and reduce crime and disorder at the premises
 - 5) Staff will be trained to identify suspicious behaviour in and around the premises and either log or report the incidents to the police
 - 6) Any and all criminal incidents witnessed by a member of staff will be reported to the police
 - 7) All Alcohol will be displayed behind a 4ft high counter spanning the entire width of the customer area and will be supervised constantly during opening hours
 - 8) Posters advertising the use of CCTV and crime prevention policies will be on display inside and outside facing in the windows
 - 9) Sufficient lighting will be provided for staff at the rear of the premises for when it is necessary to be in this area

- 10) Staff should be aware of their responsibilities under the Licensing Act 2003 and be able to recognise appropriate 'cut off' points for serving drunken customers, so as to reduce the likelihood of fights or aggressive behaviour
- 11) Lockable display units will be used to prevent alcohol being sold out of permitted hours"

c) Public Safety:

- 1) "Internal and external lighting will be fixed to promote the public safety objective
- 2) Well trained staff adherence to environmental health requirements
- 3) Training and implementation of underage ID checks
- 4) All parts of the premises and all fittings and apparatus therein, door fastenings and notices, lighting, heating, electrical, and other installations, will be maintained at all times in good order and in a safe condition
- 5) A log book shall be kept at the premises in which shall be entered particulars of inspections made; those required to be made by statute, and information compiled to comply with any public safety condition attached to the premises licence that requires the recording of such information. The log book shall be kept available for inspection when required by persons authorised by the Licensing Act 2003 or associated legislation."

d) Prevention of Public Nuisance:

- 1) "By not allowing the consumption of food or alcohol on the premises we aim to reduce the amount of time customers spend at the premises thus preventing crowds forming and limiting the amount of noise or disturbance customers may cause to the public
- 2) No music will be played at a volume that can be heard from outside of the premises at any time day or night
- 3) By training staff to increase their awareness so they can assess potential risks and work towards minimising possible disturbances
- 4) By upholding our duty to prevent statutory nuisance under the Environmental Protection Act 1990 and the Anti-Social Behaviour Act 2014
- 5) Standard Operations will be put in place to reduce:
 - (i) Noise;
 - (ii) Odour;
 - (iii) Litter, waste and street fouling;
 - (iv) (iv) Light pollution

These standard ops include:

- The use of locked commercial bins for both general and recycled waste to the rear of the property, kept off the street and out of public view. These bins will be used for all waste created by Tiki Shack, including any customer waste left inside or directly outside the premises and will be emptied weekly reducing odour and waste.

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- All food and drink will be packaged and wrapped in a way that their consumption on the streets will not be ideal, thus aiming to reduce littering and street fouling
- The use of an adequate extraction/filter system will be used to prevent unnecessary pollution, odour and noise
- Notices will be displayed at the customer exit asking them to leave quietly in respect of neighbouring properties.”

e) Protection of Children from Harm:

- 1) “Music that is not radio edited and therefore may contain explicit lyrics will not be played in Tiki Shack to be heard by the public and persons under 18
- 2) Staff will be trained to pay special attention to children who are unaccompanied by an adult; this may include but not restricted to, not allowing them to climb on furniture, pointing out wet floor signs and observing their behaviours towards other customers and vice versa
- 3) Alcohol will not be advertised as a primary selling point of Tiki Shack and minimal displays/posters will be on show promoting the sale of Alcohol
- 4) All staff will be trained in Strict Think/ Challenge 21 style campaigns to ensure alcohol is not sold to anyone under the age of 18. These staff will also be given sufficient knowledge to observe and powers to refuse the sale of alcohol to anyone they believe is purchasing it for or on the behalf of any persons under 18
- 5) Notices will be displayed inside and facing outside of the premises highlighting our strict ID policy

Alcohol will only be delivered to registered addresses and only when the order has been pre-paid by debit/credit card. Photographic ID will need to be produced along with said debit/credit card to the member of delivery staff; (whom will be an employee of Tiki Shack and NOT an independent or self-employed delivery driver). On arrival to the registered premises if the delivery staff suspects that the alcohol is being purchased for or on the behalf of any persons under 18, they will return the alcohol order to Tiki Shack and offer a refund to the customer. A note will be taken of the address and customer and caution will be taken when dealing with these customers in the future”

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 ADDITIONAL CONDITIONS

Following discussions between the Applicant and the Police, some additional conditions have been agreed and will now form part of the Operating Schedule.

1. Alcohol sales over the counter at the premises shall cease at 23:30
2. A Challenge 21 scheme shall be implemented at the premises.
3. All staff shall be trained in respect of the following:
 - (i) The requirements of and their responsibilities under the Licensing Act 2003
 - (ii) The contents and requirements of the premises licence
 - (iii) The requirements of Challenge 21 including the use of identification checks

This training shall be documented and the records produced on request to Authorised Officers of the Licensing Authority or the Police.

4. A refusals log and an incident book shall be maintained at the premises and shall be produced on request to Authorised Officers of the Licensing Authority or the Police.

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 & disorder	x-	Impact of licensable activities
Section 10.0 – 10.4	Crime & Disorder		Control measures; personal licence holders.
Section 12.7	Off licences		
Section 12.8	Late Night Refreshment Houses		

THE GUIDANCE

Members are referred to the relevant sections of the Secretary of State's Guidance which has been reproduced at **Appendix 1D**. Members are particularly directed to sections 3.7 to 3.9 relating to remote sales of alcohol and to section 10.52 relating to age verification for remote sales.

ADDITIONAL INFORMATION

A map showing the location of the premises will be produced at Committee for Members' attention.

POINTS FOR CLARIFICATION

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

All **Other Persons** have been asked to provide specific details of current issues of crime and disorder in the vicinity of the premises and what impact the grant of the licence would have on them. In addition, Ms Martin & Ms Lerigo have been asked to advise whether they live and/or work in the area of the premises

MEMBERS' OPTIONS

Members may consider the following options:

1. Grant the application subject to the mandatory licence conditions and the conditions detailed below (NB Members should note that some of the conditions offered in the operating schedule have been reworded to make them enforceable):
 - (i) Alcohol sales over the counter at the premises shall cease at 23:30.
 - (ii) A Challenge 21 scheme shall be advertised and implemented at the premises.

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- (iii) All staff shall be trained in respect of the following:
 - The requirements of and their responsibilities under the Licensing Act 2003
 - The contents and requirements of the premises licence
 - The requirements of Challenge 21 including the use of identification checks.

This training shall be documented and the records produced on request to Authorised Officers of the Licensing Authority or the Police.

- (iv) A refusals log and an incident book shall be maintained at the premises and shall be produced on request to Authorised Officers of the Licensing Authority or the Police.
- (v) All staff shall be advised of their duties under the licensing legislation in writing before they are permitted to sell alcohol.
- (vi) Staff training in conflict management shall be provided to enable staff to deal with difficult situations and reduce crime and disorder at the premises.
- (vii) Staff shall be trained to identify suspicious behaviour in and around the premises and either log or report the incidents to the police. All criminal incidents witnessed by a member of staff shall be reported to the police.
- (viii) A CCTV system approved by Durham Constabulary shall be operational at all times when the premises are open for licensable activities and in partial operation at all other times. Recordings shall be retained securely for a minimum of 30 days and produced on request to Authorised Officers of the Licensing Authority or the Police.
- (ix) Posters advertising the use of CCTV and crime prevention policies shall be on display inside and outside facing in the windows.
- (x) All Alcohol shall be displayed behind a 4ft high counter spanning the entire width of the customer area and shall be supervised constantly during opening hours.
- (xi) Lockable display units shall be used to prevent alcohol being sold out of permitted hours.
- (xii) Alcohol shall not be advertised as a primary selling point of Tiki Shack and minimal displays/posters will be on show promoting the sale of Alcohol.
- (xiii) Alcohol shall only be delivered to registered addresses and only when the order has been pre-paid by debit/credit card. Photographic ID shall be required to be produced, along with the stated debit/credit card, to the member of delivery staff; (who shall be an employee of Tiki Shack and NOT an independent or self-employed delivery driver).
- (xiv) On arrival at a registered delivery premises if staff suspect that the alcohol is being purchased for or on the behalf of any persons under 18, they shall return the alcohol order to Tiki Shack and offer a refund to the customer. A note will be taken of the address and customer and caution will be taken when dealing with these customers in the future.
- (xv) Food and alcohol shall not be permitted to be consumed on the premises at any time.
- (xvi) All food and drink shall be packaged and wrapped securely to discourage consumption on the streets

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- (xvii) Notices shall be displayed at the exit asking patrons to leave quietly and respect neighbouring properties
 - (xviii) A log book shall be kept at the premises detailing all inspections made in respect of statutory health and safety requirements and produced on request of authorised officers of the Licensing Authority and the Fire Authority.
 - (xix) Locked commercial bins shall be used for both general and recycled waste to the rear of the property, kept off the street and out of public view. These bins shall be used for all waste created by Tiki Shack, including any customer waste left inside or directly outside the premises and shall be emptied weekly.
2. Grant the application as above and place any additional conditions on the licence that Members consider are appropriate to address any concerns relating to crime and disorder, public nuisance, public safety and protection of children from harm.
 3. Reject all or part of the application

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

Contact Officer: Pam Ross Ext 5988

Ian Williams
Director of Economic Growth

For admin use only: Date of Sub Committee: 12 AUGUST 2015
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: Ian Verrill, 96 Victoria Road, Darlington, DL1 5JW
Comments: Based on the Prevention of Crime and Disorder

"I am writing to appeal against the Tiki Shack been granted a premises licence for the sale of alcohol. I feel that it will bring down Victoria road even more, as it will attract a certain type of clientele since the lodge opened the homeless shelter next door to me. I have had endless problems with their customers with alcohol and drug related incidents. I feel if this was granted the police would be never away from the street I strongly feel if this was granted it would cause a great deal more problems for businesses and residents on Victoria Road. Thank you for taking time to read this appeal."

Appendix 1A (ii)

Representor: Sharon Martin
Comments: Based on the Prevention of Crime and Disorder

"I am writing to appeal against the tiki shack gaining a licence for the sale of alcohol. I feel like this would bring further problems to Victoria Road. Since the co-op chemist and the lodge opened up on Victoria Road I have seen endless problems on the street due to drugs and alcohol crimes and I think this being permitted would fuel further problems on Victoria Road."

Appendix 1A (iii)

Representor: Sarah Lerigo
Comments: Based on the Prevention of Crime and Disorder

"I am writing to appeal against the Tiki Shack gaining a license for the sale of alcohol. I think this will bring more problems to Victoria Rd, as there is already a lot to start with. I work on Victoria Rd and since the opening of the Coop chemist and The Lodge I have seen there is more trouble on the street due to drugs and alcohol, this street doesn't feel safe to walk down any more as there is always people from them places loitering around full of drink and drugs. I think the Tiki Shack having a drink license is just going to attract the wrong sort of people and make the situation worse and cause more trouble in the street for people passing bye and also for business trying to make a living. Thank you for taking the time to read this."

APPLICANT'S RESPONSE TO REPRESENTATIONS FROM OTHER PERSONS

Dear Sir/ Madam,

I am writing in response to your recent objections towards the grant of a premises licence for Tiki Shack at 108 Victoria Road. As a former officer of Her Majesties Prison Service, a local small business owner and a resident of Victoria Road I understand fully the importance of public safety, the prevention of crime and disorder and of course the feel of the community in our area. For these reasons I have planned my application very carefully and put measures in place to combat any concerns with these matters, some of which I have highlighted in this letter. I would also like to point out that if you wish to view my application in full you can do so in the licensing department at the Town Hall.

May I please take this opportunity to explain briefly what Tiki Shack is and how it operates - Tiki shack (pronounced teekee) is an American style BBQ & Pizzeria with Hawaiian inspirations and is the first of its kind in the UK. It serves restaurant quality food in Takeaway and delivery format and will create up to 5 full time jobs for local people, including chef apprenticeships for students of Darlington College.

Having read your concerns carefully I would like to address a couple of them straight away. Firstly, Tiki Shack is a takeaway and delivery service only so no food or alcohol will be consumed on the premises meaning Tiki shack will not directly contribute to the amount of people loitering on the streets (something I myself feel very strongly about, and will do everything in my power to prevent). Secondly, alcohol will only be available with orders of food and then only to twice the value of food being bought, this directly prevents customers treating Tiki Shack like an off-license and also limits the amount being bought by any one customer. With the use of CCTV surveillance and added lighting outside the premises I hope to make the street safer for those traveling up and down, waiting at the bus stop directly outside and for my staff and customers.

Below are just some of the steps I have put in place which I feel may be of interest to you;

- All staff will be advised of licensing laws in writing before they are allowed to serve alcohol
- Staff training in conflict management will be provided to give them the knowledge and confidence to deal with difficult situations and reduce crime and disorder at the premises
- Staff will be trained to identify suspicious behaviour in and around the premises and either log or report the incidents to the police helping to reduce crime in the area
- Staff should be aware of their responsibilities under the Licensing Act 2003 and be able to recognise appropriate 'cut off' points for serving drunken customers, so as to reduce the likelihood of fights or aggressive behaviour
- By not allowing the consumption of food or alcohol on the premises we aim to reduce the amount of time customers spend at the premises thus preventing crowds forming and limiting the amount of noise or disturbance customers may cause to the public

- No music will be played at a volume that can be heard from outside of the premises at any time day or night
- By training staff to increase their awareness so they can assess potential risks and work towards minimising possible disturbances
- By upholding our duty to prevent statutory nuisance under the Environmental Protection Act 1990 and the Anti-Social Behaviour Act 2014
- The use of locked commercial bins for both general and recycled waste to the rear of the property, kept off the street and out of public view. These bins will be used for all waste created by Tiki Shack, including any customer waste left inside or directly outside the premises and will be emptied weekly reducing odour and waste
- All food and drink will be packaged and wrapped in a way that their consumption on the streets will not be ideal, thus aiming to reduce littering and street fouling

I would finally like to point out that I will be working with the local police department to ensure everything I have discussed in this response also meets their standards and any addresses any concerns they may have. Kind Regards

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.

10.0 CRIME AND DISORDER

This section should be read in conjunction with the section on Prevention of Nuisance with which it is directly cross-referenced.

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

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

- a. Underage drinking
- b. Drunkenness on premises
- c. Public drunkenness
- d. Drugs
- e. Violent behaviour
- f. Anti-social behaviour

10.2 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule, having regard to their particular type of premises and/or activities:

- a. Effective and responsible management of premises.
- b. Training and supervision of staff.
- c. Adoption of best practice guidance (eg Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other Voluntary Codes of Practice, including those relating to drinks promotions eg The Point of Sale Promotions published by BBPA, Security in Design published by BBPA and Drugs and Pubs, published by BBPA).
- d. Acceptance of accredited means of age identification e.g. DVLA photo driving licence or "PASS" approved proof of age' cards
- e. Provision of effective digital CCTV in and around premises.
- f. Employment of Security Industry Authority licensed door-staff.
- g. Provision of plastic or shatter resistant glasses.
- h. Provision of secure, deposit boxes for confiscated items.

- i. Procedures for assessing risk associated with promotions and events such as “happy hours” for the potential to cause crime and disorder, and plans for minimising such risks.
 - j. Measures to prevent the use or supply of illegal drugs.
 - k. Employment of licensed door supervisors and other appropriately trained staff.
 - l. Installation of non-retrievable bottle bins at exits and ensuring that patrons do not leave with bottles or glasses (on licence sales).
 - m. Provision of litterbins and other security measures, such as lighting, outside premises.
 - n. Membership of Darlington ‘Pubwatch’ scheme.
- 10.3 The Licensing Authority will expect the operating plan to include a risk assessment into the use of door-staff, in terms of the actual need for such a service and also the ratio of such personnel to patrons based on capacity of the premises.
- 10.4 **Policy: The Licensing Authority will normally require a Personal Licence holder to be on the premises at all times when alcohol is being sold.**

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

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.

12.8 LATE NIGHT REFRESHMENT HOUSES

All take-away food premises, including street traders, late night refreshment houses and night cafes which operate beyond 11 pm are required to apply for a Premises Licence from the Licensing Authority. In addition, any premises, which also wish to sell alcohol as part of the premises licence, will need to identify a Designated Premises Supervisor and, where relevant representations are made, ensure that a personal licence holder is normally present on the premises whenever alcohol is to be sold. The application will be subject to the requirements described for premises licences in Appendix A.

Late night takeaways can be a public order “hot spot” when patrons, who have attended late night entertainment premises, congregate in their vicinity. The operating schedule for such premises should therefore address such issues as:

- a. Provision of CCTV both inside and outside of the premises.
- b. Additional lighting both inside and outside of the premises.
- c. Measures to be taken to reduce littering within the vicinity.
- d. Measures to be taken to reduce noise disturbance at the premises and within its vicinity.

NB this list is not exhaustive.

Holders of night time street trading consents for the sale of food are required to apply for a premises licence in addition to their street trading consents.

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

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.

Crime and disorder

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

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

Mobile, remote, internet and other delivery sales

- 3.7 The sale by retail of alcohol is a licensable activity and may only be carried out in accordance with an authorisation under the 2003 Act. Therefore, a person cannot sell alcohol from a vehicle or moveable structure at a series of different locations (e.g. house to house), unless there is a premises licence in respect of the vehicle or moveable structure at each location at which a sale of alcohol is made in, on or from it.
- 3.8 The place where the order for alcohol, or payment for it, takes place may not be the same as the place where the alcohol is appropriated to the contract (i.e. the place where it is identified and specifically set apart for delivery to the purchaser). This position can arise when sales are made online, by telephone, or mail order. Section 190 of the 2003 Act provides that the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract. It will be the premises at this location which need to be licensed; for example, a call centre receiving orders for alcohol would not need a licence but the warehouse where the alcohol is stored and specifically selected for, and despatched to, the purchaser would need to be licensed. These licensed premises will, as such, be subject to conditions including the times of day during which alcohol may be sold. The premises licence will also be subject to the mandatory licence conditions.
- 3.9 Persons who run premises providing 'alcohol delivery services' should notify the relevant licensing authority that they are operating such a service in their operating schedule. This ensures that the licensing authority can properly consider what conditions are appropriate.

Premises with an existing premises licence, which choose to operate such a service in addition to their existing licensable activities, should contact their licensing authority for its view on whether this form of alcohol sale is already permitted or whether an application to vary the licence will be required.

Late night refreshment

- 3.12 Schedule 2 provides a definition of what constitutes the provision of late night refreshment. It involves only the supply of 'hot food and hot drink'. Shops, stores and supermarkets selling cold food and cold drink that is immediately consumable from 11.00pm are not licensable as providing late night refreshment. The 2003 Act affects premises such as night cafés and take away food outlets where people may gather at any time from 11.00pm and until 5.00am. In this case, supply takes place when the hot food or hot drink is given to the customer and not when payment is made. For example, supply takes place when a table meal is served in a restaurant or when a take-away is handed to a customer over the counter.
- 3.13 Some premises provide hot food or hot drink between 11.00pm and 5.00am by means of vending machines. The supply of hot drink by a vending machine is not a licensable activity and is exempt under the 2003 Act provided the public have access to and can operate the machine without any involvement of the staff.
- 3.14 However, this exemption does not apply to hot food. Premises supplying hot food for a charge by vending machine are licensable if the food has been heated on the premises, even though no staff on the premises may have been involved in the transaction.
- 3.15 It is not expected that the provision of late night refreshment as a secondary activity in licensed premises open for other purposes such as public houses, cinemas or nightclubs or casinos should give rise to a need for significant additional conditions. The key licensing objectives in connection with late night refreshment are the prevention of crime and disorder and public nuisance, and it is expected that both will normally have been adequately covered in the conditions relating to the other licensable activities on such premises.
- 3.16 The supply of hot drink which consists of or contains alcohol is exempt under the 2003 Act as late night refreshment because it is caught by the provisions relating to the sale or supply of alcohol.
- 3.17 The supply of hot food or hot drink free of charge is not a licensable activity. However, where any charge is made for either admission to the premises or for some other item in order to obtain the hot food or hot drink, this will not be regarded as "free of charge". Supplies by a registered charity or anyone authorised by a registered charity are also exempt. Similarly, supplies made on vehicles – other than when they are permanently or temporarily parked – are also exempt.

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.

- 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.

Disclosure of personal details of persons making representations

- 9.25 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.
- 9.26 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
- 9.27 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.
- 9.28 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.

- 9.29 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.

Hearings

- 9.30 Regulations governing hearings may be found on the www.legislation.gov.uk website. If the licensing authority decides that representations are relevant, it must hold a hearing to consider them. The need for a hearing can only be avoided with the agreement of the licensing authority, the applicant and all of the persons who made relevant representations. In cases where only 'positive' representations are received, without qualifications, the licensing authority should consider whether a hearing is required. To this end, it may wish to notify the persons who made representations and give them the opportunity to withdraw those representations. This would need to be done in sufficient time before the hearing to ensure that parties were not put to unnecessary inconvenience.
- 9.31 Responsible authorities should try to conclude any discussions with the applicant in good time before the hearing. If the application is amended at the last moment, the licensing committee should consider giving other persons time to address the revised application before the hearing commences.
- 9.32 Regulations made under the 2003 Act require that representations must be withdrawn 24 hours before the first day of any hearing. If they are withdrawn after this time, the hearing must proceed and the representations may be withdrawn orally at that hearing. However, where discussions between an applicant and those making representations are taking place and it is likely that all parties are on the point of reaching agreement, the licensing authority may wish to use the power given within the hearings regulations to extend time limits, if it considers this to be in the public interest.
- 9.33 Applicants should be encouraged to contact responsible authorities before formulating their applications so that the mediation process may begin before the statutory time limits come into effect after submission of an application. The hearing process must meet the requirements of regulations made under the 2003 Act. Where matters arise which are not covered by the regulations, licensing authorities may make arrangements as they see fit as long as they are lawful.
- 9.34 There is no requirement in the 2003 Act for responsible authorities that have made representations to attend, but it is generally good practice and assists committees in reaching more informed decisions. Where several responsible authorities within a local authority have made representations on an application, a single local authority officer may represent them at the hearing if the responsible authorities and the licensing authority agree. This local authority officer representing other responsible authorities may be a licensing officer, but only if this licensing officer is acting as a responsible authority on behalf of the licensing authority and has had no role in the licensing determination process. This is to ensure that the responsible authorities are represented by an independent officer separate from the licensing determination process.

- 9.35 As noted in paragraphs 9.13 to 9.19 above, where the licensing officer is acting as a responsible authority the relevant steps should be followed to ensure that this individual has no role in the decision making process regarding the licensing determination.
- 9.36 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation.
- 9.37 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are appropriate to promote the licensing objectives;
 - the representations (including supporting information) presented by all the parties;
 - this Guidance;
 - its own statement of licensing policy.
- 9.38 The licensing authority should give its decision within five working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition that is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety. Any conditions added to the licence must be those imposed at the hearing or those agreed when a hearing has not been necessary.
- 9.39 Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities. In the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that those involved have the most current information.

Determining actions that are appropriate for the promotion of the licensing objectives

- 9.41 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

- 9.42 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 9.43 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

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

- 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

Hours of trading

- 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.

Age verification

- 10.48 The premises licence holder or club premises certificate holder must ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. This must as a minimum require individuals who appear to the responsible person (see paragraph 10.41) to be under the age of 18 years of age to produce on request, before being served alcohol, identification bearing their photograph, date of birth, and either a holographic mark or ultraviolet feature.
- 10.49 The premises licence holder or club premises certificate holder must ensure that staff (in particular, staff who are involved in the supply of alcohol) are made aware of the existence and content of the age verification policy which applies by the premises.
- 10.50 The designated premises supervisor (where there is one) must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy. This means that the DPS has personal responsibility for ensuring that staff are not only aware of, but are also applying, the age verification policy.
- 10.51 It is acceptable, and indeed encouraged, for premises to have an age verification policy which requires individuals who appear to the responsible person to be under an age greater than 18 to produce such identification on request. For example, if premises have a policy that requires any individual that appears to be under the age of 21 to produce identification that meets the criteria listed above, this is perfectly acceptable under the mandatory code.
- 10.52 Licence holders should consider carefully what steps they are required to take to comply with the age verification requirements under the 2003 Act in relation to sales of alcohol made remotely. These include sales made online, by telephone and mail order sales, and alcohol delivery services. Each of these sales must comply with the requirements of the 2003 Act. The mandatory condition requires that age verification takes place before a person is served alcohol. Where alcohol is sold remotely (for example, online) or through a telephone transaction, the sale is made at this point but the alcohol is not actually served until it is delivered to the customer. Age verification measures (for example, online age verification) should be used to ensure that alcohol is not sold to any person under the age of 18. However, licence holders should also consider carefully what steps are appropriate to ensure that age verification takes place before the alcohol is served (i.e. physically delivered) to the customer to be satisfied that the customer is aged 18 or over. It is, therefore, the responsibility of the person serving or delivering the alcohol to ensure that age verification has taken place and that photo ID has been checked if the person appears to be less than 18 years of age.

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

Date of Notification: 23 July 2015

Type of Hearing: Application for Premises Licence

Premises: TIKI SHACK

Hearing Details: 9.00am Wednesday 12 August 2015

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

Copy of notice sent to	Tara L Horrors	(Applicant)
	Mr I Verrill	(Other Person)
	Ms S Martin	(Other Person)
	Ms S Lerigo	(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 Wednesday 05 August 2015**

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 All **Other Persons** at the Hearing:

- Details of past problems of crime and disorder they have experienced in the vicinity of the premises
- What impact the grant of the licence would have on them

In addition, Ms Martin & Ms Lerigo are asked to advise whether they live and/or work in the area of the premises



LICENSING

Town Hall, Feethams, Darlington DL1 5QT

☎ 01325 405 888

☎ 01325 405983

✉ 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: 12 AUGUST 2015

NAME OF PREMISES: TIKI SHACK

YOUR NAME: _____

I WILL* I WILL NOT* BE ATTENDING THE HEARING

I WILL* I WILL NOT* LEGALLY REPRESENTED

NAME OF LEGAL REPRESENTATIVE (IF APPROPRIATE):

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

(*delete as appropriate)

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

Name

Details

Please return to: Mrs P Ross
Licensing, 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.