



DARLINGTON

Borough Council

Licensing Act 2003 Sub Committee Agenda

10.00 am

Friday, 17 February 2023

Council Chamber, Town Hall, Darlington

Members of the Public are welcome to attend this Meeting.

1. Election of Chair
2. Introductions/Attendance at Meeting
3. Declarations of Interest
4. Application for Premises Licence - 42 Duke Street, Darlington –
Report of the Director of Group Services
(Pages 3 - 66)
5. EXCLUSION OF THE PUBLIC AND PRESS –
To consider the exclusion of the Public and Press :-

RECOMMENDED – That pursuant to Sections 100A(4) and (5) of the Local Government Act 1972, the public be excluded from the meeting during the consideration of the ensuing items on the grounds that they involve the likely disclosure of exempt information as defined in exclusion paragraphs 1 and 7 of Part 1 of Schedule 12A of the Act.



Luke Swinhoe
Assistant Director Law and Governance

Thursday, 9 February 2023

Town Hall
Darlington.

Membership

Councillors Donoghue, C L B Hughes and B Jones

If you need this information in a different language or format or you have any other queries on this agenda please contact Allison Hill, Democratic Officer, during normal office hours 8.30 a.m. to 4.45 p.m. Mondays to Thursdays and 8.30 a.m. to 4.15 p.m. Fridays Email: allison.hill@darlington.gov.uk or telephone 01325 405997

FOR CHAIR AND MEMBERS
OF THE LICENSING ACT 2003 SUB COMMITTEE
17 FEBRUARY 2023

APPLICATION FOR PREMISES LICENCE

Applicant: BROTHERHOOD VENTURES Ref No: LAPREM00502/22
LTD

Premises: 42 DUKE STREET
DARLINGTON
DL3 7AJ

Requested Licensable Activities SALE OF ALCOHOL FOR CONSUMPTION OFF THE PREMISES;
PROVISION OF LATE NIGHT REFRESHMENT (LNR) INDOORS

Requested Hours: 00:00 to 24:00 EVERY DAY (ALCOHOL)
23:00 to 05:00 EVERYDAY (LNR)

Premises opening hours 00:00 to 24:00 EVERY DAY

Notification to Responsible Authorities: 13 December 2022

Police
Environmental Health
Public Health
Licensing Authority
Fire
Trading Standards
Health and Safety
Planning
Safeguarding
Home Office Immigration

Information on Council's Website: 13 December 2022

Advertisement in Northern Echo: 16 December 2022

LEGISLATION:

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

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

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

DESCRIPTION OF PREMISES

The Applicant Company has described the premises as:

“The premises to which this application relates is a late night takeaway and already has a premises licence for late night refreshment until 04.00. The takeaway enables customers to visit and collect food in person or arrange for a delivery.

The applicant is Brotherhood Ventures who have been in the retail business since 2014, they own a number of convenience stores and highly experienced retail operators. The applicant is expanding the business and providing a click and collect service for all convenience products where customers will be able to order by phone or online for delivery or collection in person.

The premises is not changing and will remain as a hot food takeaway. The convenience product, (including alcohol) will not be displayed or on show to customers, and the premises is only being used as a storage facility where the product will be collected for delivery, or by a customer to collect and take away.

All staff responsible for the delivery of alcohol will be trained in every element to ensure there is no risk to the licencing objectives.

In terms of addressing the licencing objectives and in order to mitigate any risk from the sales of alcohol and its impact on the licencing objectives a number of robust conditions, which reflect the expected policies and procedures to be operated within the business, have been included as part of this application.”

THE APPLICATION

On the 12 December 2022 an application was made by the applicants company, Brotherhood Venture Ltd via their agents, Licensing Matters, in accordance with Section 17 of the Licensing Act 2003 for the premises to supply alcohol for consumption off the premises and the provision of late night refreshment to take place indoors (**Appendix 1**). All Responsible Authorities received a copy of the application and it was properly advertised both in the press and on the premises.

THE REPRESENTATIONS

On the 6 January 2023, the Licensing Department received representations from the police in relation to this application. These representations were based on the prevention of crime and disorder and prevention of public nuisance objectives being undermined.

In summary, the police state that Duke Street is within a mixed area of residential and business premises and within the footfall of the night time economy. There are currently 13 licensed premises in Duke Street, 12 of which are licensed until 02.00am. The location of this premises is in a predominantly residential area and the hours applied for hot food would essentially mean it would be open 24 hours per day. The applicant has applied to supply alcohol until 3.00am from the shop and it is argued that all of this would likely impact on public nuisance and crime and disorder.

Evidence from the only other premises with a 24 hour alcohol licence in Northgate has shown an increase in anti-social behaviour and violent crime at that location by people who have already been out, wishing to prolong their alcohol consumption.

Should the licence be granted, the public could access the premises 24 hours per day to consume hot food. If that were to be the case they would need to apply for both on and off sales.

There is a current licence in place for these premises (commonly referred to as a shadow licence), making enforcement difficult if they choose not to adhere to conditions of the licence.

The representations have been reproduced in full at **Appendix 2**

The current list of licensed premises and their hours in Duke Street is at **Appendix 3**

SHADOW LICENCE

VJ Ventures Ltd currently hold a premises licence for 42 Duke Street, Darlington, DL3 7AJ for late night refreshment; open until 03.00 each day and for residential deliveries until 04.00. A copy of this licence is at **Appendix 4**. The position of the Licensing Act 2003 allows for the existence of more than one licence in respect of the same premises.

The term “shadow licence” describes the situation where a premises licence is granted to one party in respect of a premises where another party already holds a separate licence. Although they are not explicitly referred to in the Licensing Act 2003, a shadow licence will typically be granted on the same terms as the existing licence being operated.

In circumstances where a tenant’s actions could have a negative impact on the licence e.g. they might become insolvent or bankrupt and the licence could lapse, a shadow licence will allow the business to continue without having to go through the whole process of applying for a new licence.

THE APPLICANT’S RESPONSE

The representation from police was sent to the Licensing Matters acting on behalf of Brotherhood Ventures and a response was received from Gill Sherratt. In summary Ms Sherratt made it clear that this business will be a hot food takeaway and retailer of convenience products (not a store). The company is owned by Mr Vikas Phouhat who already has a licence and creating a new company will reflect the progression of the business.

The nature of the business will not change. Currently the food take away is open for people coming to the premises to collect in person between 11:00 and 03:00, and for the delivery of the food until 04:00. Under the terms of this compromise, that will remain the same as it is now but with one additional hour for the delivery of hot food to 05:00.

The interpretation of LNR and it needing to be for both on and off sale is not correct. The application for LNR is for the SALE of the goods (indoors) and has no connection to where the food is consumed. Consumption never has and never will be consumed on this premises, it is a takeaway and delivery service only.

The sale of convenience products (including alcohol) is a diversification for this business due to demand from local people who prefer products to be delivered to them in person at home. This is now widespread practise and the national presence of companies such as Ubereats and Just Eat means that all products are freely accessible to be delivered 24/7. Orders can be made from the large supermarkets on these websites and delivered at any time, why therefore should a smaller retailer not also provide this service?

In light of police concerns Mr Phoughtat was prepared to agree that customers do not attend the premises for any reason after 03:00, the same time he is licensed for at present. Therefore, no additional hours for people attending the premises are being requested.

In relation to deliveries, in the interest of compromise and to demonstrate the service he provides will have no negative impact, a compromise is offered as follows:

Deliveries of alcohol will take place between 06:00 to 04:00 Monday to Sunday (deliveries of all other products to be 24 hours).

Ms Sherratt appreciated that a shadow licence could create enforcement difficulties and suggested a condition as below:

In the event that more than one premises licence exists for the premises, this premises licence (number) will not be used for the conduct of licensable activities without prior written notification to the licensing authority. That notification will include the time and date from which the premises licence will be in effect.

Should the licence holder want to end the use of this premises licence in favour of another premises licence, they will notify the licensing authority immediately in advance that a changeover is to be made & provide the time and date of that changeover.

The response has been reproduced in full at **Appendix 5**

ADDITIONAL INFORMATION

There has been some discussion over the applicant indicating indoors on the application form for provision of LNR when he intended to do takeaways, and if this would require a re-application. The general feeling is that both indoors and outdoors should have been indicated on the form, however there was a description of the activities requested within the narrative of the application form so it is unlikely the public would have been mis-led. This is still subject of discussion with both parties, who are working together with their legal teams to resolve this issue.

On 23 January 2023 Police provided additional information to Ms Sherratt highlighting Darlington Borough Councils Licensing Policy encouraging a closing time of 11.00pm in residential areas and clarifying the operating models of other premises who have 24 hour licences. Reference was also made to changes to the road system in Duke Street in recent years, now taking vehicles through a residential area via a one way system.

Police agreed to the sale of alcohol until 11.00pm and the provision of LNR until 3.00am with the closure of the premises at 3.00am. This information is reproduced in full at **Appendix 6**

Relevant information from Darlington Borough Councils Licensing Policy is at **Appendix 7**

Relevant information from Section 182 Guidance to the Licensing Act 2003 is at **Appendix 8**

At the time of writing this report Ms Sherratt was taking instruction from her client.

MEMBERS' OPTIONS

Members may consider the following options:

1. **Grant** the application subject to the mandatory conditions and any additional conditions agreed between the police and applicant
2. Place any **additional conditions** on the licence that Members consider are necessary to address any concerns relating to, the prevention of crime and disorder, the prevention of public nuisance, public safety and protection of children from harm.
3. **Reject** all or part of the application

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

Dave Winstanley
Director of Group Services

Contact Officer: Colin Dobson
X 5988

For admin use only:
Sub Committee Decision:

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

Reasons:

**Application for a premises licence to be granted
under the Licensing Act 2003**

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I/We BROTHERHOOD VENTURES LTD

(Insert name(s) of applicant)

apply for a premises licence under section 17 of the Licensing Act 2003 for the premises described in Part 1 below (the premises) and I/we are making this application to you as the relevant licensing authority in accordance with section 12 of the Licensing Act 2003

Part 1 – Premises details

Postal address of premises or, if none, ordnance survey map reference or description 42 DUKE STREET			
Post town	DARLINGTON	Postcode	DL3 7AJ
Telephone number at premises (if any)			
Non-domestic rateable value of premises		11000	

Part 2 - Applicant details

Please state whether you are applying for a premises licence as Please tick as appropriate

- | | | |
|--|-------------------------------------|-----------------------------|
| a) an individual or individuals * | <input type="checkbox"/> | please complete section (A) |
| b) a person other than an individual * | | |
| i as a limited company/limited liability partnership | <input checked="" type="checkbox"/> | please complete section (B) |
| ii as a partnership (other than limited liability) | <input type="checkbox"/> | please complete section (B) |
| iii as an unincorporated association or | <input type="checkbox"/> | please complete section (B) |
| iv other (for example a statutory corporation) | <input type="checkbox"/> | please complete section (B) |
| c) a recognised club | <input type="checkbox"/> | please complete section (B) |
| d) a charity | <input type="checkbox"/> | please complete section (B) |

- c) the proprietor of an educational establishment please complete section (B)
- f) a health service body please complete section (B)
- g) a person who is registered under Part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital in Wales please complete section (B)
- ga) a person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 (within the meaning of that Part) in an independent hospital in England please complete section (B)
- h) the chief officer of police of a police force in England and Wales please complete section (B)

* If you are applying as a person described in (a) or (b) please confirm (by ticking yes to one box below):

- I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities; or
- I am making the application pursuant to a
 - statutory function or
 - a function discharged by virtue of Her Majesty's prerogative

(A) INDIVIDUAL APPLICANTS (fill in as applicable)

Mr <input type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title (for example, Rev)	
Surname			First names		
Date of birth I am 18 years old or over				<input checked="" type="checkbox"/> Please tick yes	
Nationality					
Current residential address if different from premises address					
Post town				Postcode	
Daytime contact telephone number					
E-mail address (optional)					

SECOND INDIVIDUAL APPLICANT (if applicable)

Mr <input type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title (for example, Rev)	
Surname			First names		

Date of birth		I am 18 years old or <input type="checkbox"/> Please tick yes	
over			
Nationality			
Current postal address if different from premises address			
Post town		Postcode	
Daytime contact telephone number			
E-mail address (optional)			

(B) OTHER APPLICANTS

Please provide name and registered address of applicant in full. Where appropriate please give any registered number. In the case of a partnership or other joint venture (other than a body corporate), please give the name and address of each party concerned.

Name	BROTHERHOOD VENTURES LIMITED
Address	42 Duke Street, Darlington, County Durham, DL3 7AJ
Registered number (where applicable)	09097601
Description of applicant (for example, partnership, company, unincorporated association etc.)	Private limited Company
Telephone number (if any)	
E-mail address (optional)	

Part 3 Operating Schedule

When do you want the premises licence to start?

DD	MM	YYYY
1	0	012023

If you wish the licence to be valid only for a limited period, when do you want it to end?

DD	MM	YYYY
<input type="text"/>	<input type="text"/>	<input type="text"/>

Please give a general description of the premises (please read guidance note 1)
 The premises to which this application relates is a late-night takeaway and already has a premises licence for late-night refreshment until 04:00. The takeaway enables customers to visit and collect food in person or arrange for a delivery.

The applicant is Brotherhood Ventures who have been in the retail business since 2014, they own a number of convenience stores and are highly experienced retail operators. The applicant is expanding the business and providing a click and collect service for all convenience products where customers will be able to order by phone or online for delivery or collection in person.

The premises is not changing and will remain as a hot food takeaway. The convenience products, (including alcohol) will not be displayed or on show to customers, & the premises is only being used as a storage facility where the products will be collected for delivery or by a customer to collect & take away.

All staff responsible for the delivery of alcohol will be trained in every element to ensure there is no risk to the licensing objectives.

In terms of addressing the licensing objectives, and in order to mitigate any risk from the sales of alcohol and its impact on the licensing objectives a number of robust conditions, which reflect the expected policies and procedures to be operated within the business, have been included as part of this application.

If 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend.

What licensable activities do you intend to carry on from the premises?

(please see sections 1 and 14 and Schedules 1 and 2 to the Licensing Act 2003)

- | Provision of regulated entertainment (please read guidance note 2) | Please tick all that apply |
|---|----------------------------|
| a) plays (if ticking yes, fill in box A) | <input type="checkbox"/> |
| b) films (if ticking yes, fill in box B) | <input type="checkbox"/> |
| c) indoor sporting events (if ticking yes, fill in box C) | <input type="checkbox"/> |
| d) boxing or wrestling entertainment (if ticking yes, fill in box D) | <input type="checkbox"/> |
| e) live music (if ticking yes, fill in box E) | <input type="checkbox"/> |
| f) recorded music (if ticking yes, fill in box F) | <input type="checkbox"/> |
| g) performances of dance (if ticking yes, fill in box G) | <input type="checkbox"/> |
| h) anything of a similar description to that falling within (e), (f) or (g) (if ticking yes, fill in box H) | <input type="checkbox"/> |

Provision of late night refreshment (if ticking yes, fill in box I)



Supply of alcohol (if ticking yes, fill in box J)



In all cases complete boxes K, L and M

A

Plays Standard days and timings (please read guidance note 7)			Will the performance of a play take place <u>indoors or outdoors or both – please tick</u> (please read guidance note 3)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon			Please give further details here (please read guidance note 4)	Both	<input type="checkbox"/>
Tue					
Wed			State any seasonal variations for performing plays (please read guidance note 5)		
Thur					
Fri			Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list (please read guidance note 6)		
Sat					
Sun					

B

Films Standard days and timings (please read guidance note 7)			Will the exhibition of films take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	Please give further details here (please read guidance note 4)		
Mon					
Tue					
Wed			State any seasonal variations for the exhibition of films (please read guidance note 5)		
Thur					
Fri					
Sat			Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list (please read guidance note 6)		
Sun					

C

Indoor sporting events Standard days and timings (please read guidance note 7)			<u>Please give further details</u> (please read guidance note 4)
Day	Start	Finish	
Mon			<u>State any seasonal variations for indoor sporting events</u> (please read guidance note 5)
Tue			
Wed			
Thur			<u>Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list</u> (please read guidance note 6)
Fri			
Sat			
Sun			

D

Boxing or wrestling entertainments Standard days and timings (please read guidance note 7)			<u>Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick</u> (please read guidance note 3)		Indoors	<input type="checkbox"/>
					Outdoors	<input type="checkbox"/>
					Both	<input type="checkbox"/>
Day	Start	Finish				
Mon			<u>Please give further details here</u> (please read guidance note 4)			
Tue						
Wed			<u>State any seasonal variations for boxing or wrestling entertainment</u> (please read guidance note 5)			
Thur						
Fri			<u>Non standard timings. Where you intend to use the premises for boxing or wrestling entertainment at different times to those listed in the column on the left, please list</u> (please read guidance note 6)			
Sat						
Sun						

E

Live music Standard days and timings (please read guidance note 7)			Will the performance of live music take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input type="checkbox"/>			
				Outdoors	<input type="checkbox"/>			
				Both	<input type="checkbox"/>			
Day	Start	Finish	Please give further details here (please read guidance note 4)					
Mon								
Tue								
Wed						State any seasonal variations for the performance of live music (please read guidance note 5)		
Thur								
Fri						Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list (please read guidance note 6)		
Sat								
Sun								

F

Recorded music Standard days and timings (please read guidance note 7)			<u>Will the playing of recorded music take place indoors or outdoors or both – please tick</u> (please read guidance note 3)		Indoors	<input type="checkbox"/>
					Outdoors	<input type="checkbox"/>
					Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 4)			
Mon						
Tue						
Wed			<u>State any seasonal variations for the playing of recorded music</u> (please read guidance note 5)			
Thur						
Fri						
Sat			<u>Non standard timings. Where you intend to use the premises for the playing of recorded music at different times to those listed in the column on the left, please list</u> (please read guidance note 6)			
Sun						

G

Performances of dance Standard days and timings (please read guidance note 7)			Will the performance of dance take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon			Please give further details here (please read guidance note 4)	Both	<input type="checkbox"/>
Tue					
Wed			State any seasonal variations for the performance of dance (please read guidance note 5)		
Thur					
Fri			Non standard timings. Where you intend to use the premises for the performance of dance at different times to those listed in the column on the left, please list (please read guidance note 6)		
Sat					
Sun					

H

Anything of a similar description to that falling within (e), (f) or (g) Standard days and timings (please read guidance note 7)			Please give a description of the type of entertainment you will be providing		
Day	Start	Finish	Will this entertainment take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input type="checkbox"/>
Mon				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Tue			Please give further details here (please read guidance note 4)		
Wed					
Thur			State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g) (please read guidance note 5)		
Fri					
Sat			Non standard timings. Where you intend to use the premises for the entertainment of a similar description to that falling within (e), (f) or (g) at different times to those listed in the column on the left, please list (please read guidance note 6)		
Sun					

I

Late night refreshment Standard days and timings (please read guidance note 7)			Will the provision of late night refreshment take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input checked="" type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon	2300	0500	Please give further details here (please read guidance note 4) All current takeaway products that they sell on their current licence	Both	<input type="checkbox"/>
Tue	2300	0500			
Wed	2300	0500	State any seasonal variations for the provision of late night refreshment (please read guidance note 5)		
Thur	2300	0500			
Fri	2300	0500	Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list (please read guidance note 6)		
Sat	2300	0500			
Sun	2300	0500			

J

Supply of alcohol Standard days and timings (please read guidance note 7)			Will the supply of alcohol be for consumption – please tick (please read guidance note 8)	On the premises	<input type="checkbox"/>
				Off the premises	<input checked="" type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	State any seasonal variations for the supply of alcohol (please read guidance note 5)		
Mon	0000	2400			
Tue	0000	2400			
Wed	0000	2400			
Thur	0000	2400	Non standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list (please read guidance note 6)		
Fri	0000	2400			
Sat	0000	2400			
Sun	0000	2400			

State the name and details of the individual whom you wish to specify on the licence as designated premises supervisor (Please see declaration about the entitlement to work in the checklist at the end of the form):

Name NEHA CHAUDHARY PHOUGHAT	
Date of birth 22/6/87	
Address 41 BUTCHERS HILL LANE REDDITCH	
Postcode	B97 6SY
Personal licence number (if known) VEPERS2541	
Issuing licensing authority (if known) CALDERDALE	

□□□□

K

Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children (please read guidance note 9).
None

L

Hours premises are open to the public Standard days and timings (please read guidance note 7)			State any seasonal variations (please read guidance note 5)
Day	Start	Finish	
Mon	0000	2400	Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list (please read guidance note 6)
Tue	0000	2400	
Wed	0000	2400	
Thur	0000	2400	
Fri	0000	2400	
Sat	0000	2400	
Sun	0000	2400	

M Describe the steps you intend to take to promote the four licensing objectives:

a) General – all four licensing objectives (b, c, d and e) (please read guidance note 10)

On first appointment, all staff employed at the premises will receive training on the Licensing Act 2003 including input on preventing underage sales, preventing sales of alcohol to people who are drunk and any other relevant matters. Training shall be regularly refreshed at no less than annual intervals. The training must be recorded and be accessible on the premises and made available for inspection upon request of a Police Officer or an authorised officer of the licensing authority or (in the case of online training) within 48 hours.

b) The prevention of crime and disorder

A CCTV system will be in operation at the premises and recorded images shall be retained for a period of 31 days. CCTV images will be provided to the police and other responsible authorities as soon as practicable and in any case within 48 hours of a request for such images, subject of the provisions of the DPA.

c) Public safety

An incident register will be maintained at the premises and made available to the authorities on request.

d) The prevention of public nuisance

Delivery personnel shall carry with them a refusals book, and any refusals or incidents shall be documented. The record shall be made available to police and authorised officers of the Licensing Authority on request. The Designated Premises Supervisor shall regularly check the refusals record to ensure it is being consistently used by all staff.

e) The protection of children from harm

Deliveries shall only be made to persons aged over 18. The delivery shall be signed for and photographic proof of age shall be requested and recorded. International passport and photocard driver's licence shall be the accepted proof of age documents.

Delivery will only be made to a home or business address given at the time of the order & not to any public place such as parks, roadsides, or landmarks.

The person making the delivery will make the appropriate ID checks at the door of the address according to the Challenge 25 Scheme requirements.

The only forms of identification that will be accepted will bear their photograph, date of birth and a holographic mark and/or ultraviolet feature. Examples of appropriate identification include a passport, photocard driving licence, military ID, and Home Office approved proof of age ID card bearing the PASS hologram.

Checklist:

Please tick to indicate agreement

- I have made or enclosed payment of the fee.
- I have enclosed the plan of the premises.
- I have sent copies of this application and the plan to responsible authorities and others where applicable.
- I have enclosed the consent form completed by the individual I wish to be designated premises supervisor, if applicable.
- I understand that I must now advertise my application.
- I understand that if I do not comply with the above requirements my application will be rejected.
-

[Applicable to all individual applicants, including those in a partnership which is not a limited liability partnership, but not companies or limited liability partnerships] I have included documents demonstrating my entitlement to work in the United Kingdom (please read note 15).

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

IT IS AN OFFENCE UNDER SECTION 24B OF THE IMMIGRATION ACT 1971 FOR A PERSON TO WORK WHEN THEY KNOW, OR HAVE REASONABLE CAUSE TO BELIEVE, THAT THEY ARE DISQUALIFIED FROM DOING SO BY REASON OF THEIR IMMIGRATION STATUS. THOSE WHO EMPLOY AN ADULT WITHOUT LEAVE OR WHO IS SUBJECT TO CONDITIONS AS TO EMPLOYMENT WILL BE LIABLE TO A CIVIL PENALTY UNDER SECTION 15 OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 AND PURSUANT TO SECTION 21 OF THE SAME ACT, WILL BE COMMITTING AN OFFENCE WHERE THEY DO SO IN THE KNOWLEDGE, OR WITH REASONABLE CAUSE TO BELIEVE, THAT THE EMPLOYEE IS DISQUALIFIED.

Part 4 – Signatures (please read guidance note 11)

Signature of applicant or applicant's solicitor or other duly authorised agent (see guidance note 12). **If signing on behalf of the applicant, please state in what capacity.**

Declaration	<ul style="list-style-type: none"> [Applicable to individual applicants only, including those in a partnership which is not a limited liability partnership] I understand I am not entitled to be issued with a licence if I do not have the entitlement to live and work in the UK (or if I am subject to a condition preventing me from doing work relating to the carrying on of a licensable activity) and that my licence will become invalid if I cease to be entitled to live and work in the UK (please read guidance note 15). The DPS named in this application form is entitled to work in the UK (and is not subject to conditions preventing him or her from doing work relating to a licensable activity) and I have seen a copy of his or her proof of entitlement to work, if appropriate (please see note 15)
Signature	<i>P. Sherratt</i>
Date	8/12/22
Capacity	Authorised Agent

For joint applications, signature of 2nd applicant or 2nd applicant's solicitor or other authorised agent (please read guidance note 13). **If signing on behalf of the applicant, please state in what capacity.**

Signature	
Date	
Capacity	

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 14)

Licensing Matters
54 Fairfield Drive

Post town	Clitheroe	Postcode	BB7 2PE
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Telephone number (if any)	01282500322
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If you would prefer us to correspond with you by e-mail, your e-mail address (optional)
paul@licensingmatters.net

Appendix 2

6th January 2023

To Whom it may concern

Durham Constabulary would like to object to the application for a premises licence to be granted under the Licencing Act 2003 for BROTHERHOOD VENTURES LTD 42 DUKE STREET, DARLINGTON, DL3 7AJ under the prevention of Crime and Disorder, protection of children from harm and the prevention of public nuisance.

The applicant has requested the following hours

1. Supply of alcohol Monday to Sunday 00:00hrs - 24:00hrs for consumption off the premises
2. Late night refreshment Monday to Sunday 23:00hrs - 05:00hrs on the premises only
3. Hours the premises are open to the public Monday to Sunday 00:00hrs - 24:00hrs.

The applicant has stated when describing the nature of the business that it will be a hot food takeaway as well as a convenience store and has stated that there is already a premise licence in place for late night refreshments until 4am. They have stated that the nature of the business won't change and will still be a hot food takeaway.

DUKE STREET, DARLINGTON is within the town centre and there are currently 13 licensed premises 12 of which are licensed to sell alcohol with the latest closing time being 2:00am. DUKE STREET is within the footfall of the night-time economy and is currently a mixture of residential and commercial premises, with residents residing in the flats above some of the businesses. The streets surrounding DUKE STREET are all residential and I would argue that this area where the business is located is predominantly residential.

The applicant has applied to be open for 24 hrs and for the supply of alcohol also to be for 24hrs. Due to the hrs applied for, for late night refreshment this also means that hot food and drink could be provided 24hrs a day. Having a business operating 24hrs per day in the area is likely to impact on public nuisance and crime and disorder in an already busy area of the town and I feel this would be in direct opposition to the area's licencing objectives.

Takeaways already operating within Darlington town centre currently close at 3am with only one being licensed up to 4am. The latest alcohol licence is 4am so as a result the transport systems for the night-time economy are geared towards these times and with the introduction of the safety hub and city safe medics the hours, they work are to service the current Night-time economy hours.

24hr opening especially with the provision to access alcohol will hold people in the town later than the systems are set up for, which will have a knock-on effect on crime and disorder and anti-social behaviour (ASB).

The only other premises in DARLINGTON which routinely offers 24hr alcohol sales is a petrol station on HIGH NORTHGATE which does not allow access to the public after 11pm and all sales are through a night safe hatch.

There has been an increase ASB and violent incidents at this location as the demand for alcohol late at night and in the early hours of the morning tends to be for people who have already been out consuming alcohol and want to prolong their evening or problematic drinkers.

The applicant has stated that members of the public will be able to access the shop 24hrs per day to collect the good they have ordered on click and collect and it is a concern to Durham Constabulary the risks associated with this especially when someone intoxicated orders alcohol online for collection and they are refused when they go to collect it. There are no conditions attached to the application which will prevent children from accessing the venue 24hrs per day.

The licence application submitted to Durham Constabulary for us to consider as a responsible authority also requested **on sales** for the provision of late-night refreshment.

The licencing act 2003 schedule 2 details the provision of late-night refreshment and states

1(1)For the purposes of this Act, a person “provides late night refreshment” if—

(a)at any time between the hours of 11.00 p.m. and 5.00 a.m., he supplies hot food or hot drink to members of the public, or a section of the public, on or from any premises, whether for consumption on or off the premises, or

(b)at any time between those hours when members of the public, or a section of the public, are admitted to any premises, he supplies, or holds himself out as willing to supply, hot food or hot drink to any persons, or to persons of a particular description, on or from those premises, whether for consumption on or off the premises

Should this licence be granted in its current state, members of the public could access the premises 24hrs per day and consume hot food, although the applicant is stating it will remain as a hot food takeaway this option would be available to them

and there are no steps included in the application to promote the licencing objectives to address this.

If the premises as per the application intends to offer late night refreshment and deliveries, then they would need to apply for both on and off sales for the provision of late night refreshment.

This has not been applied for so I question that they will be operating this provision under their current premise licence they have in place for 42 Duke Street ref no DL14/01529/PREMIS which allows members of the public to access the shop until 3am and deliveries until 4am. If this is the case and this licence is granted it will mean that there a 2 premise licences on one location. This is commonly referred to as a shadow licence when a business holds 2 licences and is normally applied for by landlords when they have a tenant in to protect the business and licence should the tenant do anything to jeopardise the licence.

In this case the current licence in place and this new application has been applied for by the same person albeit it a different company name this will make any enforcement very difficult should they not adhere to conditions as they could operate under both licences at any one time.

Durham constabulary have made contact with the applicant's consultant on 19th December highlighting our concerns around the 24hr opening and sale of alcohol requested pointing out it was a residential area explaining before we made further comment would they be willing to reduce the hours. To date all we have received back is an email stating that he would speak to the applicant and get back to us, Durham Constabulary have not received any further correspondence.

Durham Constabulary cannot support this application in its current form.

Thankyou

T/Insp 484 Caroline Dickenson
Cohesion & Licensed Economy Team Insp
Safeguarding Neighbourhoods Command
Durham Constabulary

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Appendix 3

Hideway – until midnight

Akbar the Great – 02:00am

Sainsbury – until midnight

Oven Grill – 02:00am

Star of Bengal – 02:00am

Angels Cut – until midnight

Stable Hearth – until midnight

Premier Express – 23:00

VJ Ventures – 04:00

Sol Tapas – 02:30

Flowers By Natrass – 24 hr*

N.B. there may be slight variance with police information as the computer systems used by each organisation are not compatible and search parameters may differ. This is the most up to date information from DBC Licensing System

*Premises opening hours are 08.00 - 16.00

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Annex 1 – Mandatory Conditions

None



Licensing Act 2003 – Part A

PREMISES LICENCE – LAPREM00392

Premise Details:	VJ Ventures Limited 42 Duke Street DARLINGTON DL3 7AJ
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Date Granted:	24 October 2014	Duration of Licence:	Not Time Limited
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Licensable Activities

Activity	Days of Week	Open	Close
Late Night Refreshment	Every Day (In Store)	23:00	03:00
	Every Day (Residential Deliveries)	23:00	04:00
Opening Hours	Every Day (In Store)	23:00	03:00
	Every Day (Residential Deliveries)	23:00	04:00

Non Standard Times N/A

Premises Licence Holder:	VJ Ventures Ltd. 2 Shustoke Road Birmingham B34 7BB
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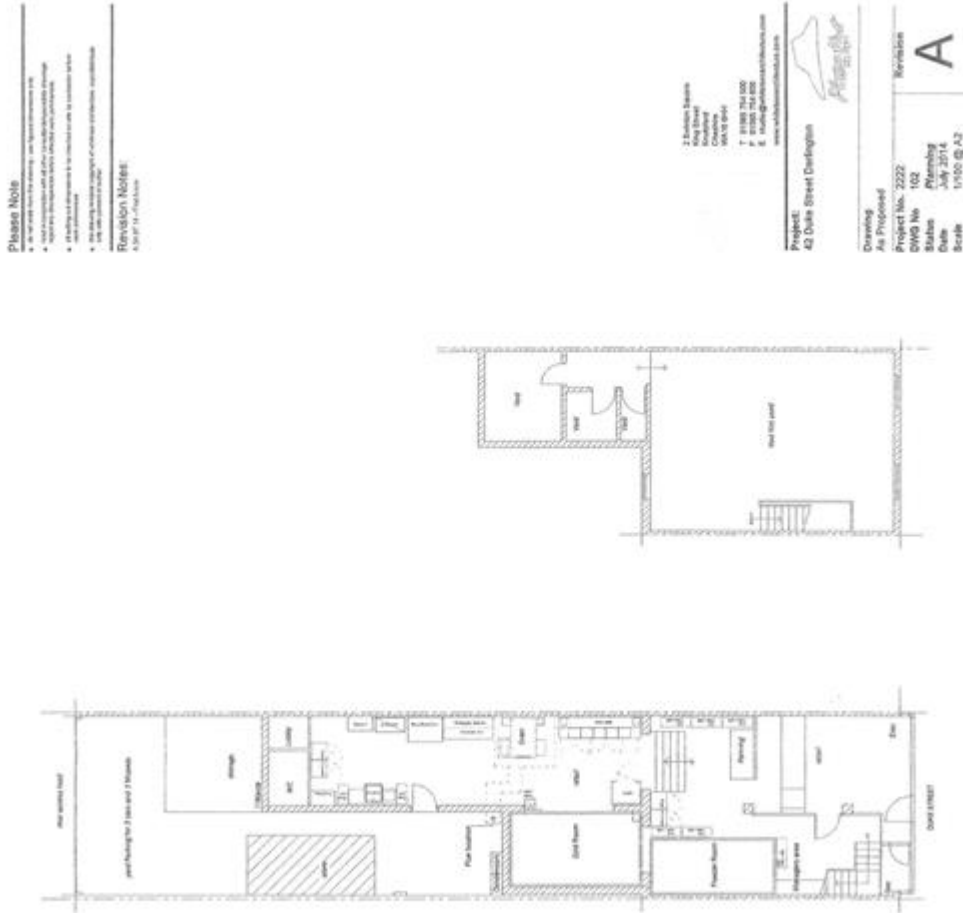
Annex 2 – Conditions consistent with the operating schedule

1. **Deliveries after 02.00am:**
 - a) **All deliveries to be taken out of the front door of the premises**
 - b) **All delivery vehicles to be parked at the front of the premises**
 - c) **Delivery drivers to be instructed to enter and leave their vehicles quietly and considerately, not to leave engines running, to park considerately, and at all times to have in mind neighbours (particularly residential occupiers)**
 - d) **Any deliveries from the premises will only be made to a customer's place of residence or place of business**
2. **The premise licence holder shall nominate a senior member of staff as the person responsible for the management, supervision and compliance of licensing conditions.**
3. **The premises will have CCTV digitally recorded with copies being able to be provided to the Police and Licensing Authorities.**
4. **Public nuisance will be minimised in relation to litter and noise from the public.**
5. **Extraction units will have attenuation fitted to a standard which is agreed with the Local Authority.**
6. **Children will not be served during school hours and term time.**

Annex 3 – Conditions attached after a hearing by the licensing authority

None

Annex 4 – Plans



Issued following a change in business name

Authorised Officer
Date of Issue 13 June 2022

PREMISES LICENCE GUIDANCE

1. Your Premises Licence has been granted and is enclosed.
2. The annual fee is due on the anniversary of its grant, unless you are exempt (e.g. community premises). Please ensure that the annual fee is paid on time.
3. Your Premises Licence has been granted for an unlimited period of time and is subject to the conditions mentioned in the licence.
4. You must ensure that the Premises Licence, or a certified copy of it, is kept at the premises in the custody or under the control of yourself or a person (“the nominated person”) who works at the premises and whom you have nominated in writing for these purposes. A person commits an offence if he or she fails, without reasonable excuse, to comply with these requirements. The maximum fine is £500 on conviction.
5. You must ensure that a Summary of the Premises Licence, or a certified copy of that Summary, is prominently displayed at the premises. If you have nominated a person (“the nominated person”), under 4 above, you must prominently display at the premises a notice specifying the position held at the premises by that person. A person commits an offence if he or she fails, without reasonable excuse, to comply with these requirements. The maximum fine is £500 on conviction.
6. A Police Constable or an Authorised Person may require the holder of the Premises Licence or the nominated person to produce the Premises Licence, or a certified copy of it, for examination. A person commits an offence if he or she fails, without reasonable excuse to comply with these requirements. The maximum fine is £500 on conviction.
7. Where a Premises Licence or Summary is lost, stolen, damaged or destroyed, the holder of the licence may apply to the Council for a copy of the licence or Summary. A fee of £10.50 is payable.
8. Subject to reinstatement in certain circumstances, a Premises Licence lapses if the holder the licence dies, becomes mentally incapable, becomes insolvent, or is dissolved.
9. Where the holder of a Premises Licence wishes to surrender their licence they may give the Council notice to that effect. The notice must be accompanied by the Premises Licence or, if that is not practicable, by a statement of the reasons for the failure to provide the licence. The Premises Licence lapses on receipt of the notice by the Council.
10. The holder of a Premises Licence must, as soon as reasonably practicable, notify the Council of any changes in:
 - Name and address
 - Name and address of the Designated Premises Supervisor (unless that Supervisor has already notified the Council)

The notice must be accompanied by the Premises Licence or, if that is not practicable, by a statement of the reasons for the failure to provide the licence. The Premises Licence lapses on receipt of the notice by the Council. A fee of £10.50 is payable.

A person commits an offence if he or she fails, without reasonable excuse, to comply with these requirements. The maximum fine is £500 on conviction.

11. The holder of a Premises Licence may apply to the Council at any time for variation of the licence. Amongst other things, an application form will need to be completed, a fee will need to be paid and the application will need to be advertised and served on the Responsible Authorities. Please contact the Council for an application form and a guidance leaflet on how to apply for a variation. Please note that a Licence may not be varied to extend the period

for which a licence has effect, or to vary substantially the premises to which it relates – in those cases an application for a new Premises Licence will need to be made; please contact the Council for further details.

12. The holder of a Premises Licence may, if the licence authorises the supply of alcohol (or if it is intended to vary a licence so that it authorises the supply of alcohol), apply to vary the licence so as to specify the individual named in the application as the Designated Premises Supervisor. Amongst other things, an application form will need to be completed, a fee will need to be paid and the notice of the application must be given to the Police. It is possible for the applicant to ask for such a variation to have immediate effect on an interim basis. Please contact the Council for an application form and guidance leaflet on how to apply for a variation.
13. The Premises Licence may be transferred following an application made to the Council for a transfer of the Licence. Amongst other things, an application form will need to be completed, a fee will need to be paid and notice of the application must be given to the Police. It is possible for the applicant to ask for a transfer to have immediate effect on an interim basis. Please contact the Council for an application form and a guidance leaflet on how to apply for a transfer.
14. Where a Premises Licence has effect, and Interested Party or a Responsible Authority may apply to the Council for a review of the licence. You will be notified if an application is made to review your Premises Licence and you will have the opportunity to make representations about a review and to attend before the Council's Licensing Committee.
15. Your attention is drawn in particular to Part 7 of the Licensing Act 2003 which concerns offences under the Licensing Act 2003.

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Appendix 4

BROTHERHOOD VENTURES LTD 42 DUKE STREET, DARLINGTON, DL3 7AJ

Application

1. Supply of alcohol Monday to Sunday 00:00hrs - 24:00hrs for consumption off the premises
2. Late night refreshment Monday to Sunday 23:00hrs - 05:00hrs.
3. Hours the premises are open to the public Monday to Sunday 00:00hrs - 24:00hrs.

The business will be a hot food takeaway and retailer of convenience products (not a store).

The owner of the current licence is VJ Ventures Ltd and the applicant for the new licence is Brotherhood Ventures Ltd. Both companies are owned by Mr Vikas Phouhat, there will be no change in ownership or operation of the business. Creating a new company for this new venture is only to reflect the new progression of this business.

Background & merits of the case

The applicant has owned this business since 2014 and opens every day at 11:00 and sells hot food until 03:00 in person, 04:00 for delivery. It has therefore operated (without problems) for 17 hours a day for 9 years. The reason for this application is that since 2014 the owner has been part of a franchise and he wants to move away from that model and provide the same service but independently.

Part of that change is to create the convenience element of the business and his experience in this side of thing is also extensive. The applicant has owned his own convenience store since 2017 and in November 2022 was honoured by the Asian Trader Awards when they won the Best Off Licence Award. He is an extremely diligent and responsible retailer.

It is essential (and mandatory under the licensing legislation) that the merits of this applicant are fully taken into account, his many years of flawless trading at this location are clear. He is not a new owner to your area, he has been operating, contributing to your local economy, and creating jobs for all that time, he has proven his regard for the licensing objectives and compliance in general and that must be taken into consideration.

Each licensable activity is dealt with separately below.

Late Night Refreshment

The nature of the business will not change.

Currently the food take away is open for people coming to the premises to collect in person between 11:00 & 03:00, and for the delivery of the food until 04:00. Under the terms of this

compromise, that will remain the same as it is now **but with 1 additional hour** for the delivery of hot food to 05:00.

The interpretation of LNR and it needing to be for both on and off sale is not correct. The application for LNR is for the SALE of the goods (indoors) and has no connection to where the food is consumed. Consumption never has and never will be consumed on this premises, is a takeaway and delivery service only.

Alcohol & other convenience products

The sale of convenience products (including alcohol) is a diversification for this business due to demand from local people who prefer for products to be delivered to them in person at home. This is now widespread practise not only have times changed due to Covid, the national presence of companies such as UberEats and Just Eat (amongst others) means that all products are freely accessible to be delivered 24/7. Orders can be made from the large supermarkets on these websites and delivered at any time, why therefore should a smaller retailer not also provide this service?

It is understood that there are businesses with 24-hour alcohol sales in the area, if that is the case why then is this applicant being discriminated against?

This applicant is asking to do nothing more that others are not already doing.

Compromise – Opening times for the premises

In light of police concerns the applicant is prepared to agree that customers do not attend the premises for any reason from after 03:00, the same time that he is licensed for at present. Therefore, no additional hours for people attending the premises are being requested.

Compromise – Deliveries

In the interest of compromise and to demonstrate the quality of the service he will provide and that it will have no negative impact, a compromise is offered as follows:

Deliveries of alcohol will take place between 06:00 to 04:00 Monday to Sunday (deliveries of all other products to be 24 hours).

Shadow licence

As a company Licensing Matters is experienced in applying for shadow licenses nationally and can clarify the points raised. Firstly, the word “shadow” does not indicate the licence should be similar to the one issued, if that had been the intention the government would have expressly said so. An applicant is entitled to apply for what they want on a second licence, the assessment of

the new application remains the same simple assessment of if the licensing objectives will be upheld or not.

In addition to that, our experience is that it is not only landlords that utilise this facility. It is the applicants right to hold more than one licence on his property, again the assessment of the new application remains that of the upholding of the licensing objectives.

That said the point about making enforcement difficult is entirely taken on board and that is usually managed by way of conditions so there is no doubt which licence is in use as follows:

In the event that more than one premises licence exists for the premises, this premises licence (number) will not be used for the conduct of licensable activities without prior written notification to the licensing authority. That notification will include the time and date from which the premises licence will be in effect.

Should the licence holder want to end the use of this premises licence in favour of another premises licence, they will notify the licensing authority immediately in advance that a changeover is to be made & provide the time and date of that changeover.

Conclusion

It appears from reading the police representation that they want to maintain a status quo and that approach flies directly against what the licensing act requires them to do. Their role is to assess this retailer and his abilities to uphold the licensing objectives. The evidence of the applicant's flawless record of trading is unequivocal, no party can claim that he will not continue in this way according to his responsible attitude and working practises.

The key to assisting a thriving night-time economy is to support the good responsible retailers and not give a blanket NO to all. It is to let the good retailers in, let them thrive as it is they that help weed out the bad ones.

Gill Sherratt
Licensing Matters

OFF LICENCE OF THE YEAR



“Cobra Beer are extremely proud to sponsor the Asian Trader Awards 2022 and play a part in supporting and recognising the very best retailers across the country. Cobra’s smooth mouthfeel and finer bubbles make it the perfect serve alongside all spicy Asian cuisines, so we hope you enjoy a glass with your meal - Where There’s Spice, There’s Cobra. We wish all entrants the best of luck and look forward to celebrating with you on the evening.”

Hena Chandarana, Off Trade Customer Activation & Sales Operations Director

Supported by



”



Neha Phoghat, Shera's Premier, Birmingham

Neha’s store boasts one of the cleanest, brightest, well laid-out beer caves, supported by great traditional alcohol fixtures. They have been trading for six years on the same parade of shops and now moved to new premises as a Premier concept store in June this year. The store is still in expansion mode as far as the services are concerned, and their latest offerings – pizza and deliveries – are being welcomed enthusiastically by the shoppers.

Kay Patel, Costcutter My Blue Rose, Farncombe, Surrey

Kay bought the empty Farncombe site in 2020, and opened after a full re-fit and extension, with lots of premium lines introduced, in particular in the wine range, which is displayed in a semi beer cave. Based in a highly residential area which is not affluent, the store used to stock the less expensive wines but his customers told them they would like the quality wines, and he was happy to oblige!



ous Retailer of the Year.

Martyn Parkinson, Sales Director – Booker Wholesale, said: “Huge Year, congratulations to all four stores and their teams. It’s fantastic to see so of the many Premier stores collecting awards once again for their hard work ience and commitment.”



ENIENCE THE YEAR

DCH, GLASGOW

“Owner Girish Jeeva retailer who has f in the world of vape. e refurbishment the its vape offering in a handised three metre fixture was especially its hygienic presentation merchandising, backed ensive social media

OFF LICENCE RETAILER OF THE YEAR

SHERA’S PREMIER, BIRMINGHAM

The judges said: “The store is a beer enthusiast’s dream! After a complete refit, Neha Phouhat has developed his store with the help of Premier and the results are stunning. The store boasts a wide selection of wines and spirits catering to every price point and taste, all perfectly merchandised. But at the heart of the store is its spectacular beer cave, featuring an impressive selection of beers and lagers, all beautifully merchandised, creating great in-store theatre.”

December 2022 **TalkingShop 7**

Independent
26/12/2022 and
£500 & 18 x £100



23rd January 2023

Good afternoon Gill

I have looked at your proposal in detail and will address each point in turn

1. This is new premise licence application so therefore must be treated as such, therefore all the licensable activities requested as part of the new application are measured against the promotion of the 4 licensing objectives with consideration to Darlington Borough Council's statement of licensing policy. The terms of the existing licence which allows certain activities does not carry an automatic right to have them on any new application.
2. In relation to the LNR You have stated in the attached document that currently the food take away is open for people coming to the premises to collect in person between 11:00 & 03:00, and for the delivery of the food until 04:00. Under the terms of this compromise, that will remain the same as it is now **but with 1 additional hour** for the delivery of hot food to 05:00.

As per Darlington Borough Council's statement of licensing policy implemented on 1st October 2022 point 9.3 the Licensing Authority will normally, on the receipt of relevant representations, encourage a closing time of 11pm for licensed premises in predominantly residential areas. As you will be aware the provision of LNR is regulated primarily because it is often linked to alcohol fuelled crime and disorder and as the applicant is also wanting sale of alcohol until 3am in the shop in addition to LNR there is a likelihood there will be an increase in crime and disorder and public nuisance.

3. In relation to alcohol sales in the area you have stated It is understood that there are businesses with 24-hour alcohol sales in the area, if that is the case why then is this applicant being discriminated against?

I can confirm the only other premises in DARLINGTON which routinely offers 24hr alcohol sales is a petrol station on HIGH NORTHGATE which is some distance from 42 DUKE STREET and does not allow access to the public after 11pm and all sales are through a night safe hatch. The other businesses which currently have 24hr sales are the major supermarkets in the town namely Sainsburys, Morrison's and Asda who only exercise their 24hr licence in the week leading up to Christmas when they are open 24hrs.

There is nowhere in Darlington who offers 24hr alcohol deliveries the major supermarkets only deliver to 11pm at the latest and there are no businesses on uber eats/just eat/Deliveroo who offer 24hr alcohol deliveries.

There are 2 shops currently on Duke Street which offer alcohol sales both of which close at 11pm.

The makeup of Duke Street has significantly changed since the grant of the original license in 2014. As mentioned in my original objection the premise is within a residential area and the premise is situated in what is now a one-way street with no parking outside of the premise. Delivery drivers and taxis must exit Duke Street via residential streets, this wasn't the case when the original license was granted.

I note you state that the applicant has been trading since 2014 however it is my understanding that he was trading as Pizza Hut delivery which subsequently closed in 2016 , following receipt of this application I carried out a site visit and saw that the business name was now spice toss/slice toss which started trading in January 2022, however Durham Constabulary have not received an application to change the premise name.

Due to the applicant wanting both late-night refreshment and sale of alcohol I feel by allowing the hours proposed and those offered as compromise will still undermine the licensing objectives and the risk or public nuisance and likelihood of increased crime and disorder.

I therefore will agree to the sale of alcohol until 11pm and the provision of LNR until 3am with the premise closing at 3am.

Thankyou

Caroline

Sgt 484 Caroline Dickenson
Licensed Economy Team Sgt
Governance & Insights Command
Durham Constabulary

Information from Darlington's Licensing Policy

9.0 PREVENTION OF NUISANCE

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

9.1 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.

9.2 Additional information:

The Government's view is 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 believe that shops and public houses should generally be permitted to sell alcohol during the hours they intend to open. The Government wishes 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.

9.3 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.**

9.4 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.

9.4.1 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.

9.4.2 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.

9.4.3 However, some commercial areas in the Borough, 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.

9.4.4 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 if it can be shown that there will not be an adverse impact.

9.5 **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.

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Section 182 Guidance

1. Introduction

The Licensing Act 2003

1.1 The Licensing Act 2003 (referred to in this Guidance as the 2003 Act), its explanatory notes and any statutory instruments made under it may be viewed online at www.legislation.gov.uk. The statutory instruments include regulations setting out the content and format of application forms and notices. The Home Office has responsibility for the 2003 Act. However, the Department for Culture, Media and Sport (DCMS) is responsible for regulated entertainment, for which there is provision in Schedule 1 to the 2003 Act (see Chapter 16).

Licensing objectives and aims

1.2 The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.

1.3 The licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

1.4 Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.

1.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
- giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;
- recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;
- providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and

- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them. 2 | Revised Guidance issued under section 182 of the Licensing Act 2003

The guidance

1.6 Section 182 of the 2003 Act provides that the Secretary of State must issue and, from time to time, may revise guidance to licensing authorities on the discharge of their functions under the 2003 Act. This revised guidance takes effect as soon as it is published. Where a licence application was made prior to the publication of the revised guidance, it should be processed in accordance with the guidance in effect at the time at which the application was made; the revised guidance does not apply retrospectively. However, all applications received by the licensing authority on or after the date the revised guidance was published should be processed in accordance with the revised guidance.

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.

Licensing policies

1.11 Section 5 of the 2003 Act requires a licensing authority to determine and publish a statement of its licensing policy at least once every five years. The policy must be published before it carries out any licensing functions under the 2003 Act.

1.12 However, determining and publishing a statement of its policy is a licensing function and as such the authority must have regard to this Guidance when taking this step. A licensing authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives. But once again, it is important that it should be able to give full reasons for departing from its published statement of licensing policy. Where revisions to this Guidance are issued by the Secretary of State, there may be a period of time when the licensing policy statement is inconsistent with the Guidance (for example, during any consultation by the licensing authority). In these circumstances, the licensing authority should have regard, and give appropriate weight, to this Guidance and its own existing licensing policy statement.

Licensable activities

1.13 For the purposes of the 2003 Act, the following are licensable activities:

- The sale by retail of alcohol;
- The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club;
- The provision of regulated entertainment; and
- The provision of late night refreshment.

Further explanation of these terms is provided in Chapter 3.

Authorisations or permissions

1.14 The 2003 Act provides for four different types of authorisation or permission, as follows:

- Premises licence – to use premises for licensable activities.
- Club premises certificate – to allow a qualifying club to engage in qualifying club activities as set out in Section 1 of the Act.
- Temporary event notice – to carry out licensable activities at a temporary event.
- Personal licence – to sell or authorise the sale of alcohol from premises in respect of which there is a premises licence.

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.

Additional guidance

1.18 From time to time, the Home Office may issue additional supporting guidance to licensing authorities and other persons on the Gov.uk website. This supporting guidance is good practice guidance and should be viewed as indicative and subject to change. Such supporting guidance will broadly reflect but will not be part of the statutory guidance issued by the Secretary of State under section 182 of the 2003 Act. Licensing authorities may wish to refer to, but are under no statutory duty to have regard to such supporting guidance issued by the Home Office.

The licensing objectives

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).

2.2 In the exercise of their functions, licensing authorities should seek to co-operate with the Security Industry Authority (“SIA”) as far as possible and consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed.

2.3 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). 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.

2.4 The inclusion of radio links and ring-round phone systems should be considered an appropriate condition for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. These systems allow managers of licensed premises to communicate instantly with the police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises.

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.

2.6 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises.

Public safety

2.7 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the

prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

2.8 A number of matters should be considered in relation to public safety. These may include:

- Fire safety;
- Ensuring appropriate access for emergency services such as ambulances;
- Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts (see paragraph 2.4 above);
- Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;
- Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);
- Ensuring appropriate and frequent waste disposal, particularly of glass bottles;
- Ensuring appropriate limits on the maximum capacity of the premises (see paragraphs 2.12-2.13, and Chapter 10; and
- Considering the use of CCTV in and around the premises (as noted in paragraph 2.3 above, this may also assist with promoting the crime and disorder objective).

2.9 The measures that are appropriate to promote public safety will vary between premises and the matters listed above may not apply in all cases. As set out in Chapter 8 (8.38- 8.46), applicants should consider when making their application which steps it is appropriate to take to promote the public safety objective and demonstrate how they achieve that.

Ensuring safe departure of those using the premises

2.10 Licence holders should make provision to ensure that premises users safely leave their premises. Measures that may assist include:

- Providing information on the premises of local taxi companies who can provide safe transportation home; and
- Ensuring adequate lighting outside the premises, particularly on paths leading to and from the premises and in car parks.

Maintenance and repair

2.11 Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be inappropriate for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if appropriate, checks on this equipment to be conducted at specified intervals and for evidence of these checks to be retained by the premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for

licensing authorities, if they receive relevant representations from responsible authorities or any other persons, to attach conditions which require equipment of particular standards to be maintained on the premises. Responsible authorities – such as health and safety authorities – should therefore make their expectations clear in this respect to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules.

Safe capacities

2.12 “Safe capacities” should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.

2.13 The permitted capacity is a limit on the number of persons who may be on the premises at any time, following a recommendation by the relevant fire and rescue authority under the Regulatory Reform (Fire Safety) Order 2005. For any application for a premises licence or club premises certificate for premises without an existing permitted capacity where the applicant wishes to take advantage of the special provisions set out in section 177 of the 2003 Act¹, the applicant should conduct their own risk assessment as to the appropriate capacity of the premises. They should send their recommendation to the fire and rescue authority which will consider it and decide what the “permitted capacity” of

2.14 Public safety may include the safety of performers appearing at any premises, but does not extend to the prevention of injury from participation in a boxing or wrestling entertainment.

Public nuisance

2.15 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.

2.16 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 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring

that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.

2.18 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.

2.19 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.

2.20 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.

2.21 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.

Protection of children from harm

2.22 The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment). Licensing authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions.

2.23 The Government believes that it is completely unacceptable to sell alcohol to children. Conditions relating to the access of children where alcohol is sold and which are appropriate to protect them from harm should be carefully considered. Moreover, conditions restricting the access of children to premises should be strongly considered in circumstances where:

- adult entertainment is provided;
- a member or members of the current management have been convicted for serving alcohol to minors or with a reputation for allowing underage drinking (other than in the context of the exemption in the 2003 Act relating to 16 and 17 year olds consuming beer, wine and cider when accompanied by an adult during a table meal);
- it is known that unaccompanied children have been allowed access;
- there is a known association with drug taking or dealing; or
- in some cases, the premises are used exclusively or primarily for the sale of alcohol for consumption on the premises.

2.24 It is also possible that activities, such as adult entertainment, may take place at certain times on premises but not at other times. For example, premises may operate as a café bar during the day providing meals for families but also provide entertainment with a sexual content after 8.00pm. It is not possible to give an exhaustive list of what amounts to entertainment or services of an adult or sexual nature. Applicants, responsible authorities and licensing authorities will need to consider this point carefully. This would broadly include topless bar staff, striptease, lap-, table- or pole-dancing, performances involving feigned violence or horrific incidents, feigned or actual sexual acts or fetishism, or entertainment involving strong and offensive language.

2.25 Applicants must be clear in their operating schedules about the activities and times at which the events would take place to help determine when it is not appropriate for children to enter the premises. Consideration should also be given to the proximity of premises to schools and youth clubs so that applicants take appropriate steps to ensure that advertising relating to their premises, or relating to events at their premises, is not displayed at a time when children are likely to be near the premises.

2.26 Licensing authorities and responsible authorities should expect applicants, when preparing an operating schedule or club operating schedule, to set out the steps to be taken to protect children from harm when on the premises.

2.27 Conditions, where they are appropriate, should reflect the licensable activities taking place on the premises. In addition to the mandatory condition regarding age verification, other conditions relating to the protection of children from harm can include:

- restrictions on the hours when children may be present;
- restrictions or exclusions on the presence of children under certain ages when particular specified activities are taking place;
- restrictions on the parts of the premises to which children may have access;
- age restrictions (below 18);
- restrictions or exclusions when certain activities are taking place;

- requirements for an accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and
- full exclusion of people under 18 from the premises when any licensable activities are taking place.

2.28 Please see also Chapter 10 for details about the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010.

2.29 Licensing authorities should give considerable weight to representations about child protection matters. In addition to the responsible authority whose functions relate directly to child protection, the Director of Public Health may also have access to relevant evidence to inform such representations. These representations may include, amongst other things, the use of health data about the harms that alcohol can cause to underage drinkers. Where a responsible authority, or other person, presents evidence to the licensing authority linking specific premises with harms to children (such as ambulance data or emergency department attendances by persons under 18 years old with alcohol-related illnesses or injuries) this evidence should be considered, and the licensing authority should also consider what action is appropriate to ensure this licensing objective is effectively enforced. In relation to applications for the grant of a licence in areas where evidence is presented on high levels of alcohol-related harms in persons aged under 18, it is recommended that the licensing authority considers what conditions may be appropriate to ensure that this objective is promoted effectively.

2.30 The 2003 Act provides that, where a premises licence or club premises certificate authorises the exhibition of a film, it must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under section 4 of the Video Recordings Act 1984 specified in the licence (the British Board of Film Classification is currently the only body which has been so designated) or by the licensing authority itself. Further details are given in Chapter 10.

2.31 Theatres may present a range of diverse activities and entertainment including, for example, variety shows incorporating adult entertainment. It is appropriate in these cases for a licensing authority to consider restricting the admission of children in such circumstances. Entertainments may also be presented at theatres specifically for children. It will be appropriate to consider whether a condition should be attached to a premises licence or club premises certificate which requires the presence of a sufficient number of adult staff on the premises to ensure the wellbeing of the children during any emergency.

Offences relating to the sale and supply of alcohol to children

2.32 Licensing authorities are expected to maintain close contact with the police, young offenders' teams and trading standards officers (who can carry out test purchases under section 154 of the 2003 Act) about the extent of unlawful sales and consumption of alcohol by minors and to be involved in the development of any strategies to control or prevent these unlawful activities and to pursue prosecutions. Licensing authorities, alongside the police, are prosecuting authorities for the purposes of these offences, except for the offences under section 147A (persistently selling alcohol to children). Where, as a matter of policy, warnings are given to retailers prior to any decision to prosecute in respect of an offence, it is important that each of the enforcement arms should be aware of the warnings each of them has given.

Hearings

9.31 The Licensing Act 2003 (Hearings) Regulations 2005 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, where the applicant and all of the persons who made relevant representations have given notice to the authority that they consider a hearing to be unnecessary. Where this is the case and the authority agrees that a hearing is unnecessary, it must forthwith give notice to the parties that the hearing has been dispensed with. Notwithstanding those regulatory provisions, in cases where the licensing authority believes that a hearing is still necessary, it is recommended that the authority should, as soon as possible, provide the parties with reasons in writing for the need to hold the hearing. 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.

9.32 Responsible authorities should try to conclude any discussions with the applicant in good time before the hearing. The 2005 Hearings Regulations permit licensing authorities to extend a time limit provided for by those Regulations for a specified period where it considers this to be necessary in the public interest. For example, 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. Where the authority has extended a time limit it must forthwith give a notice to the parties involved stating the period of the extension and the reasons for it.

9.33 The 2005 Hearings Regulations 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.

9.34 Applicants should be encouraged to contact responsible authorities and others, such as local residents, who may be affected by the application 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.

9.35 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.

9.36 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.

9.37 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 and should be allowed sufficient time to do so, within reasonable and practicable limits.

9.38 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.

9.39 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 the relevant mandatory conditions and any conditions that are consistent with the operating schedule. Any additional 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.

9.40 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.

9.41 In the context of variations or minor variations, which may involve structural alteration to or change of use of a building, the decision of the licensing authority will not exempt an applicant from the need to apply for building control approval, planning permission or both of these where appropriate.

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

9.42 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.

9.43 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.

9.44 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 any 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.

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