

Cheltenham Borough Council

Licensing Sub Committee – 20 December 2013

Licensing Act 2003: Determination of Application to Vary a Premises Licence

Manor by the Lake, Arle Court, Hatherley Lane

Report of the Licensing & Business Support Team Leader

1. Introduction

1.1 The Licensing Act 2003 (the Act) allows applicants to apply to vary a premises licence at any time. In this case, a variation application was received on 29 October 2013 from Mr Michael Chittenden & Ms Tammy Madge in respect of Manor by the Lake, Arle Court, Hatherley Lane. A copy of the application is included at **Appendix A**.

1.2 The application is to:

- 1.2.1 Regularise licensable hours on all days (see table below);
- 1.2.2 To remove the maximum capacity limits on the licence; and
- 1.2.3 To permit live and recorded music outdoors.

Licensable Activities	Current	Proposed
Sale/Supply of Alcohol	Friday to Saturday 09:00 - 00:00	Everyday 09:00 – 00:00
	Sunday to Thursday 09:00 - 23:00	Both
	Both	
Performance of Dance	Friday to Saturday 09:00 - 00:00	Everyday 09:00 – 00:00
	Sunday to Thursday 09:00 - 23:00	Indoors & Outdoors
	Indoors & Outdoors	
Exhibition of a Film	Every Day 09:00 - 23:00	Everyday 09:00 – 00:00
	Indoors	Indoors
Performance of Live Music	Friday to Saturday 09:00 - 00:00	Everyday 09:00 – 00:00
	Sunday to Thursday 09:00 - 23:00	Indoors & Outdoors
	Indoors	
Performance of Recorded Music	Friday to Saturday 09:00 - 00:00	Everyday 09:00 – 00:00
	Sunday to Thursday 09:00 - 23:00	Indoors & Outdoors
	Indoors	

Other/Similar Entertainment	Friday to Saturday 09:00 - 00:00 Sunday to Thursday 09:00 - 23:00 Indoors & Outdoors	Everyday 09:00 – 00:00 Indoors & Outdoors
Performance of a Play	Every Day 09:00 - 23:00 Indoors	Everyday 09:00 – 00:00 Indoors
Late Night Refreshment	Friday to Saturday 23:00 - 00:00 Indoors & Outdoors	Everyday 09:00 – 00:00 Indoors & Outdoors

1.3 A copy of the existing licence is attached at **Appendix B**.

1.4 In total 18 objections were received from local residents and the Grace Gardens Residents' Association. The objections are summarised below and attached at **Appendix C**.

1.4 Implications

1.4.1 Financial

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1.4.2 Legal

A sub committee is required to discharge its duty and determine an application with a view to promoting the licensing objectives. These objectives, which are set out in section 4(2) of the Licensing Act 2003, are: (a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm.

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2. Application (Ref. 13/01937/PRMV)

2.1 Applicant: Mr Michael Chittenden

2.2 Agent: N/A

2.3 Premises: Manor by the Lake, Arle Court, Hatherley Lane, Cheltenham

2.4 Steps to promote the four licensing objectives are identified in the application at page 28.

3. Responsible Authorities

3.1 No objections were received from responsible authorities.

3.2 Members are to note however that the following condition proposed by the Environmental Health officer has been agreed by the applicant:

“The playing of amplified live or recorded music in outdoor areas shall be limited to the hours of 8AM - 9PM, in connection with weddings, civil ceremonies, blessings and similar events, for a maximum duration of 1 hour per day.”

3.3 If the licence were to be granted the licence will be subject to the above condition.

4. Other People

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- 4.1 18 objections were received from local residents as outlined below.
- 4.2 **Mr Steven Sayers (47 Grace Gardens)** – Has objected on the grounds of public nuisance. Mr Sayers is concerned that the extended hours and use of the outdoor area will result in noise nuisance.
- 4.3 **John and Pauline Lee (44 Grace Gardens)** - Has objected on the grounds of public nuisance. Mr & Mrs Lee are concerned that the extended hours and use of the outdoor area will result in noise nuisance.
- 4.4 **Rosemary Lynn on behalf of Heather Lynn (18b Wade Court)** – Ms Lynn has submitted an objection on behalf of her mother Heather Lynn. Ms Lynn has objected on the grounds of public nuisance. She is concerned that the extended hours and use of the outdoor area will result in noise nuisance late at night.
- 4.5 **Ms Christine Samuel (36 Grace Gardens)** – Has objected on the grounds of public nuisance. She identified a number of existing nuisance related problems with the premises and commented that the grant of this application will give them carte blanche which will continue to cause nuisance problems.
- 4.6 **Andrew English (9 Grace Gardens)** – Mr English has objected on the grounds of public nuisance and public safety. He is concerned that the proposed extended hours is likely to cause a public nuisance. He has also commented that he has recently experienced noise nuisance as a result of the operation of the premises which is likely to increase should this application be granted.
- 4.7 **Justine Woodley on behalf of the Grace Gardens Residents Association (Signatories at Appendix C)** - Ms Woodley, treasurer of the resident’s association has objected on the grounds of the prevention of public nuisance, prevention of crime and disorder and the protection of children from harm. She commented that the grant of this licence is likely to result in increased noise nuisance to local residents. In her objection she lists a number of more specific examples of how residents are likely to be affected. They have also commented on the proposed increase in the capacity of the premises.
- 4.8 **Angela Applegate (24 Grace Gardens)** - Has objected on the grounds of public nuisance. She is concerned that the extended hours and use of the outdoor area will result in noise nuisance.
- 4.9 **Susannah Lawrence (19D Wade Court)** – Ms Lawrence has objected on the grounds of public nuisance. He is concerned that the extended hours and use of the outdoor area will result in unacceptable levels of noise nuisance.
- 4.10 **Mr Richard Medley (12 Grace Court)** – Mr Medley has objected on the grounds of public nuisance. He is concerned that the extended hours and use of the outdoor area will result in unacceptable levels of noise nuisance.
- 4.11 **Peter Jeffrey and Joan Chadwick (29 Grace Gardens)** – Mr & Mrs Chadwick objected on the basis of the prevention of public nuisance. They are concerned that the extended hours and use of the outdoor area will result in noise nuisance.

- 4.12 **Cllr Nigel Britter (Glyndon, The Reddings)** – Cllr Britter has objected on the grounds of prevention of crime and disorder, public safety and the prevention of crime and disorder. Cllr Britter commented that the grant of this licence is likely to result in increased noise nuisance to local residents. Cllr Britter commented that there are existing noise nuisance and anti-social behaviour issues and the grant of this application will exaggerate these issues.
- 4.13 **Justine Woodley (39 Grace Court)** – In addition to objecting on behalf of the Grace Gardens Residents Association, Ms Woodley also submitted an individual objection on the grounds of the prevention of public nuisance and the protection of children from harm. She commented that the grant of this licence is likely to result in increased noise nuisance to local residents. She has also commented on the proposed increase in the capacity of the premises.
- 4.14 **Mr and Mrs Curtis (8 Grace Gardens)** – Mr & Mrs Curtis have objected on the basis of prevention of public safety and the protection of children from harm. Mr & Mrs Curtis commented that if music were allowed outside and the increase in capacity be granted that local residents will suffer public nuisance. They continued that the noise nuisance will also harm children as they will be unable to sleep and harm adults due to stress having to listen to the music.
- 4.15 **Jeremy and Lindsey Power (45 Grace Gardens)** – Mr & Mrs Power objected on the basis that the grant of extended out door hours will have a negative impact on local residents. They have also commented on the proposed increase in the capacity of the premises.
- Mr & Mrs Power proposed a condition limiting the outside noise to 30dBA measured at the boundary of their shared boundary.
- 4.16 **Jason and Caroline Berry (50 Grace Gardens)** – Mr & Mrs Berry objected on the basis that the grant of extended out door hours will have a negative impact on local residents. They have also commented on the proposed increase in the capacity of the premises.
- 4.17 **Mr & Mrs Button (43 Grace Gardens)** – Mr & Mrs Button objected on the basis of the prevention of public nuisance. They are concerned that the extended hours and use of the outdoor area will result in an increase of noise nuisance.
- 4.18 **Jean Dickinson (5 Wade Court)** – Ms Dickinson objected on the basis that the extended hours will cause a nuisance by noisy individuals and late night music. She is also concerned that the extended hours will result in people remaining at the premises longer for drinking up causing a nuisance.
- 4.19 **Mr K Parker (10 Wade Court)** – Mr Parker has objected on the grounds of prevention of crime & disorder and the prevention of public from nuisance. He is concerned that the extended hours and use of the outdoor area will result in unacceptable levels of noise nuisance.

5. Local Policy Considerations

- 5.1 The 2003 Act introduces a unified system of regulation through two new types of licences: the premises licence (club premises certificates for qualifying clubs) and the personal licence. The Borough Council, as the licensing authority, is responsible for licensing all outlets in the borough that sell or supply alcohol or carry out any other 'licensable activities': public entertainment, theatre, cinema, or late night refreshment.

- 5.2 The new system is underpinned by four objectives: i) the prevention of crime and disorder; ii) public safety; iii) the prevention of public nuisance; and, iv) the protection of children from harm. The licensing authority must promote these objectives in carrying out its functions.
- 5.3 The Council's adopted licensing policy statement (Council 10th Feb 2012) includes the following:
- 5.4 The main purpose of this policy is to provide clarity to applicants, interested parties and responsible authorities on how the Council will determine applications for the sale/supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment and also to provide a basis for all licensing decisions taken by the Council over the next three years. It will also inform elected Members of the parameters within which licensing decisions can be made. (Paragraph 1.3)
- 5.5 Through this policy the Council hopes that residents of and visitors to Cheltenham will be able to enjoy their leisure time safely and without fear of violence, intimidation or disorder while at licensed premises. (Paragraph 1.4)
- 5.6 An effective licensing policy, alongside other initiatives, will work towards promoting the positive aspects of deregulation under the Act, such as promoting tourism, increasing leisure provision and encouraging the regeneration of the town centre as well as controlling the negative impacts such as increase in noise, nuisance, anti-social behaviour and crime and disorder. (Paragraph 1.5)
- 5.7 It should be understood that this policy and the section 182 Guidance cannot anticipate every scenario or set of circumstances that may arise and as such there may be circumstances where the policy or guidance may be departed from in the interests of the promotion of the licensing objectives and where it is deemed appropriate to do so. In such cases the Council will give full reasons for departing from this policy. (Paragraph 1.6)
- 5.8 The Council will carry out its licensing functions under the Act with a view to promoting the four licensing objectives, which are:-
- (a) The prevention of crime and disorder;
 - (b) Public safety;
 - (c) The prevention of public nuisance; and
 - (d) The protection of children from harm. (Paragraph 4.1)
- 5.9 The aim of the licensing process is to regulate licensable activities so as to promote the licensing objectives. (Paragraph 4.2)
- 5.10 In determining a licensing application, the overriding principle adopted by the Council will be that each application is determined on its merits. Licence conditions will be tailored to the individual application and only those appropriate to promote the licensing objectives will be imposed. (Paragraph 4.3)
- 5.11 Each of the four objectives is of equal importance and will be considered in relation to matters centred on the premises or within the control of the licensee and the effect which the operation of that business has on the vicinity. (Paragraph 4.5)
- 5.12 Through their operating schedule, applicants will be expected, where necessary, to demonstrate the positive steps taken to promote the licensing objectives. (Paragraph 5.3)
- 5.13 The operating schedule is a key document and, if prepared comprehensively, will form the basis on which premises can be licensed without the need for additional extensive conditions. The

Council expects an operating schedule to indicate the steps that the applicant proposes to take to promote the licensing objectives. (Paragraph 5.4)

- 5.14 Applicants will be expected to propose practical measures to prevent disturbance to local residents and to indicate what action will be taken to prevent or reduce noise emanating from the premises. (Paragraph 5.6)
- 5.15 The complexity and detail required in the operating schedule will depend upon the nature and use of the premises. For premises such as a public house where public entertainment is not provided, only a relatively simple document will be required. For a major public entertainment venue it will be expected that issues such as public safety and crime and disorder will be addressed in detail. (Paragraph 5.7)
- 5.16 Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events. (Paragraph 5.12)

Public nuisance

- 5.17 The Council will expect applicants to set out in their operating schedules the steps taken, or proposed to be taken, to deal with the potential for public nuisance arising from the operation of the premises. (Paragraph 5.22)
- 5.18 Applicants should identify and describe through a risk assessment how these risks will be managed. Public nuisance could include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. (Paragraph 5.23)
- 5.19 The role of the Council is to maintain an appropriate balance between the legitimate aspirations of the entertainment industry and the needs of residents and other users of the town including businesses, workers, shoppers and visitors. (Paragraph 5.24)
- 5.20 Playing of music can cause nuisance both through noise breakout and by its effect on patrons, who become accustomed to high sound levels and to shouting to make themselves heard, which can lead to them being noisier when leaving premises. Other major sources of noise nuisance are vehicles collecting customers, the slamming of car doors and the sounding of horns. These noises can be particularly intrusive at night when ambient noise levels are lower. (Paragraph 5.25)
- 5.21 Where relevant representations are received, the Council may attach appropriate conditions to licences, appropriate to support the prevention of undue noise disturbance from licensed premises. Where premises remain open after midnight the licence holder, will be expected to provide facilities which are relevant to controlling noise and the patrons of those premises late at night. The Council also expects that premises which produce noise generating licensable activities are acoustically controlled and engineered to a degree where the noise from the premises when compared to the ambient noise level will not cause undue disturbance. (Paragraph 5.26)
- 5.22 Licensees and their staff are expected to have sufficient measures in place to prevent such problems arising including a suitable litter and waste management program to ensure that the area outside the premises is kept free of litter at all times. (Paragraph 5.29)

- 5.23 Where the Council receives relevant representations, or where a responsible authority or an interested party seeks a review, the Council may consider imposing conditions to improve the management of the outside area or prohibiting or restricting the use of these areas in order to promote the public nuisance objective. (Paragraph 5.30)
- 5.24 Conditions may include maximum noise levels over particular time periods, the installation of acoustic lobbies; provision of signs, publicity and dispersal policies. (Paragraph 5.31)

6. National Guidance

- 6.1 Statutory guidance has been issued under Section 182 of the Licensing Act 2003. The committee must have regard to the guidance when determining this application. Below are relevant extract for the benefit of the committee. Emphasis added.

Licensing objectives and aims

- 6.2 The legislation provides a clear focus on the promotion of four statutory objectives *which must be addressed when licensing functions are undertaken*. (1.2)
- 6.3 The licensing objectives are:
- The prevention of crime and disorder;
 - Public safety;
 - The prevention of public nuisance; and
 - The protection of children from harm. (1.3)
- 6.4 *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*. (1.4)
- 6.5 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. (1.5)

Legal status

- 6.6 *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. (1.9)

Licence conditions – general principles

- 6.7 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:
- must be appropriate for the promotion of the licensing objectives;
 - must be precise and enforceable;
 - must be unambiguous and clear in what they intend to achieve;
 - should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
 - must be tailored to the individual type, location and characteristics of the premises and events concerned;
 - should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
 - should not replicate offences set out in the 2003 Act or other legislation;
 - should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);
 - cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
 - should be written in a prescriptive format. (1.16)

Each application on its own merits

- 6.8 *Each application must be considered on its own merits and in accordance with the licensing authority’s statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case. (1.17)*

Public nuisance

- 6.9 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. (2.18)
- 6.10 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole

community. It may also include, in appropriate circumstances, the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health. (2.19)

- 6.11 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues. (2.20)
- 6.12 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. (2.21)
- 6.13 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late-evening or early-morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave. (2.22)
- 6.14 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night. (2.24)

Protection of children from harm

- 6.15 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 with alcohol 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). (2.25)

Variations

- 6.16 Where a premises licence holder wishes to amend the licence, the 2003 Act in most cases permits an application to vary to be made rather than requiring an application for a new premises licence. The process to be followed will depend on the nature of the variation and its potential impact on the licensing objectives.
- 6.17 *As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add*

further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation. (9.33)

- 6.18 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. (9.34)

Planning

- 6.19 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. (9.37)
- 6.20 The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. *The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa.* (13.55)
- 6.21 There are circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. *Premises operating in breach of their planning permission would be liable to prosecution under planning law.* Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee. (13.56)

7. Licensing Comments

- 7.1 The committee must have regard to the statutory guidance issued by the Secretary of State, the Council's adopted policy statement, the representations made and the evidence it hears when determining this application. In particular, the committee must seek to promote the four licensing objectives when determining the application.
- 7.2 The committee, having regard to the all of the above, must take such steps as it considers appropriate for the promotion of the licensing objectives which can include:
- Granting the application as requested;
 - Modifying the conditions of the licence; or
 - Rejecting all or part of the application.
- 7.3 A plan of the location of the premises is attached **Appendix D** and of the premises is attached at **Appendix E**.
- 7.4 The objectors have raised a number of issues that is dealt with in turn below:

- **Parking** – Members are to note that comments relating to the impact of parking and/or vehicular access cannot be considered relevant because it does not relate to any of the four licensing objectives.
- **Planning** – Residents have made reference to the planning permission granted to the premises recently. Members are to note that the guidance (see above) and common law are clear that planning restrictions are not relevant for the purpose of determining a licensing application. The guidance makes it clear that a decision to grant a licence does not exempt an applicant from the need to apply for building control approval, planning permission or both of these where appropriate but that “licensing committees are not bound by decisions made by a planning committee, and vice versa.”
- **Fireworks** – A number of residents made reference to a recent fireworks display. Members are to note that the display of fireworks is not a relevant consideration for the committee because it is not a licensable activity and therefore falls outside the scope of the Licensing Act 2003.
- **Capacity** – A number of residents have commented in the possible adverse effect increasing the capacity limit will have on the promotion of the licensing objectives. For the information of Members, the Regulatory Reform (Fire Safety) Order 2005 amended the Licensing Act 2003 with the effect that the Council can no longer impose or enforce capacity numbers in so far as it relates to fire and public safety.

Members are to note that the current capacity was transferred over from the public entertainment licence (05/00655/PELINA) which would have originally been put on there for fire safety purposes.

In essence, as a result of the 2005 Order, the Council is only entitled to impose conditions relating to capacity if such a condition is appropriate for the prevention of public nuisance, the prevention of crime and disorder or public safety in so far as it does not relate to matters that can be dealt with under the 2005 order.

- **Premises in Suffolk** – Members are to note that any information relating to the operation of the other premises in Suffolk is not relevant because this application must be determined on its individual merits.
- **Noise condition** – Members are to note that Mr & Mrs Power suggested a noise condition seeking to limit the noise to 30dBS. A limit of 30dBS is extremely low and there is a suggestion by the environmental health officer that it is possible that normal background noise will exceed 30dBS without the use of the outdoor area by the premises. A 30dBS noise limit will effectively mean that any use of the outdoor area will be impossible.
- **Litter** – Members are to note that comments relating to litter cannot be considered relevant because it does not relate to any of the four licensing objectives and there is other legislation that can be deal with the problem of litter.

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