

Cheltenham Borough Council

Licensing Sub Committee – 1 May 2015

Licensing Act 2003: Determination of Application for a Premises Licence

Sandford Parks Lido, Keynsham Road, Cheltenham

Report of the Licensing Officer

1. Introduction

- 1.1 The Licensing Act 2003 (the Act) allows applicants to apply for a premises licence at any time. In this case, an application for a new premises licence was received on 5th March 2015 from Sandford Lido Limited, in respect of Sandford Parks Lido, Keynsham Road, Cheltenham. A copy of the application is attached at **Appendix A**.
- 1.2 Licensable activities are sought for a limited number of events during February to November, and daily during a six week annual winter experience, as shown below.
- 1.3 Subsequent to the application being made and in light of some comments received by residents, the applicants amended the licensable activities and times applied for in order to reduce the scope of the application. The licensable activities and times under consideration are therefore as follows:

Licensable activities sought February to November			
Licensable activity	Days and times		Maximum number of events per year (excluding winter event)
Sale / supply of alcohol	Fri – Sat	19:30-21:30	20
	Sun	19:30-20:00	
	Mon – Thurs	None	
Performance of a play	Fri – Sun	19:30-22:00	7
	Mon – Thurs	None	
Exhibition of a film	Fri – Sun	19:30-22:00	7
	Mon – Thurs	None	
Performance of live music	Fri – Sat	19:30-22:00	5
	Sun	19:30-21:00	
	Mon – Thurs	None	
Performance of recorded music	Fri – Sat	19:30-22:00	1
	Sun	19:30-21:00	
	Mon – Thurs	None	
Performance of dance	Fri – Sat	19:30-22:00	1
	Sun	19:30-21:00	
	Mon – Thurs	None	

Licensable activities sought during annual 6 week winter event, dates to be notified to the Council 30 days in advance			
Licensable activity	Days and times		Maximum number of events during 6 week winter event
Sale / supply of alcohol	Mon – Sat	16:00-21:30	Daily during 6 week winter event
	Sun	16:00-20:00	
Performance of a play	Fri – Sun	19:30-22:00	6
	Mon – Thurs	None	
Exhibition of a film	Fri – Sun	19:30-22:00	6
	Mon – Thurs	None	
Performance of live music	Fri – Sat	19:30-22:00	1
	Sun	19:30-21:00	
	Mon – Thurs	None	
Performance of recorded music	Fri – Sat	19:30-22:00	1
	Sun	19:30-21:00	
	Mon – Thurs	None	
Performance of dance	Fri – Sat	19:30-22:00	1
	Sun	19:30-21:00	
	Mon – Thurs	None	

1.4 **Appendix B** is a plan showing the normal layout of the premises, **appendix C** shows the layout of the premises during the annual 6 week winter event, and **appendix D** shows the location of the premises and the surrounding area.

1.5 Implications

1.5.1 Financial **Contact officer: Sarah Didcote**
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1.5.2 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. 15/00319/PRMA)

2.1 Applicant: Sandford Lido Limited

2.2 Premises: Sandford Parks Lido, Keynsham Road, Cheltenham, GL53 7PU

2.3 The applicants have identified a number of steps that they will take to promote the licensing objectives. These steps are listed at section **M** of the application form, which is attached at **appendix A**. If the premises licence is granted it will be subject to conditions consistent with these steps, as well as such mandatory conditions as may be applicable under the Act.

3. Responsible Authorities

3.1 The Act identifies 9 responsible authorities as statutory consultees for applications for premises licences. Those consultees are:

- the relevant licensing authority (Cheltenham Borough Council);
- the chief officer of police;
- the local fire and rescue authority;
- the relevant health and safety enforcing authority;
- the local authority with responsibility for environmental health;
- the local planning authority;
- the body with responsibility for the protection of children from harm;
- the local director of public health;
- the local trading standards authority.

3.2 No representations were received from responsible authorities.

4. Other People

4.1 49 representations have been received. These are summarised below and are reproduced at **Appendix E**. The relevance or otherwise of some of the objections is discussed further at paragraph 7 onwards under Licensing Comments.

Hilary Atwell, Keynshambury Road, has objected to the application on the grounds that noise from events at the premises has caused irritation and has said that the activities could cause unruliness.

Phil and Liz Cork, Murvagh Close, have objected because they feel that noise from events at the premises – and noise caused by people leaving the premises – will impact on residents and businesses in the area as well as staff, visitors and patients at Cheltenham General Hospital.

The Revd Geoffrey Cox, Murvagh Close, has objected on the grounds that the sale of alcohol at the premises may cause crime and disorder, that the sale of alcohol in proximity of a swimming pool may cause a public safety risk and a risk of harm to children, and that music at the premises could cause a public nuisance.

Mr & Mrs Dallas, Keynsham Road, have objected on the grounds that events at the premises will cause a public nuisance in terms of noise and a crime and disorder issue in terms of drunkenness from people leaving the premises.

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Mr & Mrs Dormer, Sandford Park Place, have submitted an objection on the grounds that noise at the premises will cause a public nuisance and that there is potential for crime and disorder.

Helen Downes has objected on the grounds that noise of music at the premises will be a public nuisance, that the application may cause an increase in crime, drug taking, traffic, parking problems and air pollution in the vicinity.

Simon and Kay Flynn, Keynshambury Road, have objected on the basis that the Lido is already a noisy venue and that the application will exacerbate drunken and antisocial behaviour in the vicinity.

Adam and Jennifer Gillespie, Keynshambury Road, have objected on the grounds that the availability of alcohol at the premises will cause noise and antisocial behaviour.

G. Gosling, Sandford Park Place, has objected on the basis that the licence will cause noise in a domestic area and an increase in traffic and antisocial behaviour in the vicinity.

Joyce Green, Murvagh Close, has objected on the basis that noise nuisance will be caused by the music and by people leaving the venue having consumed alcohol, and that increased traffic would cause a problem.

Doreen Hardy has objected on the grounds that the premises licence will increase traffic, noise, disturbance and antisocial behaviour.

HJO Harries, Keynshambury Road, has objected to the application on the grounds that a public nuisance will be caused by music at the premises.

Steve and Lesley Hayes, Sandford Park Place, have objected on the grounds that music and noise at the premises has caused problems to them in the past and would cause a public nuisance if the licence is granted.

Tom Hindley, Keynsham Road, has objected on the grounds that the application will cause a noise disturbance and increase crime and disorder as people leave the premises.

Tessa and Mike Holloway, Murvagh Close, have objected on the grounds that the activities will cause an increase in crime and disorder and noise issues.

Henry James, Priory Place, has objected on the grounds that the application will increase noise and nuisance in nearby Sandford Park as people leave the premises.

Mr and the Rev Knight, Keynshambury Road, have objected on the grounds of potential noise nuisance, light pollution, increased traffic and parking problems.

Mr RVA Knight, Sandford Park Place, has submitted a representation in support of the application on the grounds that the modified proposals are a good compromise and that the activities at the premises will be widely enjoyed.

Rob Lacey, Keynsham Road, has submitted a representation in support of the application as he feels the activities would be of benefit to people in the area and would not cause problems.

Hilary Larsen, Sandford Park Place, has objected to the application on the basis of public nuisance caused by noise and crime and disorder caused by people leaving the premises having consumed alcohol.

Emma Levings, Murvagh Close, has objected on the grounds that the activities could cause noise pollution, problems with parking and increased crime and vandalism.

Suzanne Lonterman has objected on the grounds that the availability of alcohol at the premises could have a detrimental effect on people in the vicinity and the safety of children.

Roger McNair, Sandford Park Place, has written to support the application which he believes will benefit both the Lido and the wider community.

Ian Melican and Marianne Crossman, Keynshambury Road, have objected to the application on the grounds of public nuisance caused by entertainment and large groups of people, and crime and disorder caused by the consumption of alcohol.

Rowena Michaels has objected to the application due to concerns that the application could increase noise levels and could cause antisocial behaviour due to the sale of alcohol.

Gordon Milden, Keynsham Road, objected due to concerns about the safety of children if alcohol is sold at the premises as well as noise problems and increased traffic.

Richard Miller, Keynsham Road, has objected due to concerns about noise and disturbance from people leaving the premises and noise nuisance caused by live amplified music.

Nigel Millington, College Gate, has objected due to concerns that noise from recorded music will cause a nuisance and the potential impact on crime and littering of alcohol sales.

Inga Moss-Jones, Keynshambury Road, has opposed the granting of the licence because of concerns about noise from music at the premises, as well as concerns about children using swimming facilities at premises where alcohol is sold.

John Moss-Jones has objected due to concerns that noise from amplified live music, film, theatre and dance will cause a public nuisance and that the sale of alcohol will cause an increase in crime and disorder.

Beryl Newman, Priory Place, has opposed the granting of the licence due to concerns about drunken behaviour and additional noise.

John Phair, Murvagh Close, has objected to the application due to concerns about noise and disruption caused by open air functions and nuisance behaviour from people leaving the premises having consumed alcohol.

John Potter, Carol Potter and Ashley Parsons, Keynsham Road, have opposed the application on the grounds of public nuisance caused by loud noise from events at the premises.

Andrea Ramsey, Orrisdale Terrace, has objected to the application due to concerns about noise caused by events and people leaving the premises, and the potential for crime and disorder if people using the premises consume alcohol.

Judith Rhodes has objected due to concerns about the sale of alcohol at the premises causing noise and disruption to people living in the vicinity.

Mr & Mrs Richards, Murvagh Close, have objected on the grounds that evening events at the premises will cause a noise nuisance to local residents.

Mrs Carol Rose, Murvagh Close, has objected on the grounds that the sale of alcohol in proximity to water may be cause a danger to children.

Adam and Emma Rye, Sandford Park Place, have objected on the grounds that events at the premises have caused a public nuisance which will be aggravated by the licence being granted.

Geraldine Sheridan, Keynshambury Road, has objected due to concerns about noise from the premises and the potential for increased antisocial behaviour if the sale of alcohol is authorised.

Vic Stannard has objected on the grounds that events at the premises will cause noise which will be a public nuisance.

Alan and Gwen Taylor have objected on the basis that the proposals will cause litter and noise pollution.

Maxine Taylor, Keynshambury Road, has objected due to concerns that the sale of alcohol will cause public nuisance due to noise and antisocial behaviour from people at the premises and vacating it afterwards.

Richard Taylor, Keynshambury Road, has objected due to concerns that the sale of alcohol will cause public nuisance due to noise and antisocial behaviour from people at the premises and vacating it afterwards.

Thomas Turnbull, Murvagh Close, has objected due to concerns about noise nuisance from music at the premises, traffic noise caused by events at the premises and the potential for light pollution.

NH Turner has objected on the grounds that the application may cause noise pollution.

Christopher Walls, Priory Lawn, has objected due to concerns that the licence will cause drunkenness, antisocial behaviour and nuisance.

Mrs Michelle Way, Keynsham Road, has objected to the application on the grounds that there will be a public nuisance caused by music at the premises and by people leaving the premises.

Karen Woodley, Keynsham Road, has objected on the grounds that the sale of alcohol in proximity to water is a public safety concern and that noise nuisance will be caused by events.

Sir Simon Wratten, College Road, has objected on the grounds of public nuisance caused by noise at the premises and crime and disorder caused by people leaving the premises.

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 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)

Crime and disorder

- 5.16 The promotion of the licensing objective to prevent crime and disorder, places a responsibility on licence holders to become key partners in promoting this objective. (Paragraph 5.11)
- 5.17 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)
- 5.18 When addressing the issue of crime and disorder, the applicant should demonstrate that those factors that impact on crime and disorder have been considered. These factors may include (a) Underage drinking; (b) Drunkenness

on premises; (c) Public drunkenness; (d) Drugs; (e) Violent behaviour; and (f) Anti-social behaviour. (Paragraph 5.13)

5.19 Where relevant representations are received the Council may impose appropriate conditions on premises licences and club premises certificates. Appropriate conditions include:-

- (a) adoption of a 'Challenge 21 or Challenge 25' policy;
- (b) adoption of best practice guidance including our voluntary code of practice for Reducing Alcohol Related Violence (RARV);
- (c) agreeing a prescribed capacity for the premises;
- (d) requirements for an appropriate ratio of tables and chairs to customers, based on capacity, and for areas to be allocated permanently for seated customers in order to prevent overcrowding, which can lead to disorder and violence;
- (e) a requirement for Security Industry Authority registered door supervisors to control numbers of persons entering the premises and to deny entry to individuals who appear drunk, disorderly or intent on crime;
- (f) requirements that drinking vessels be made of toughened glass or plastic or other materials that do not form a sharp edge when broken, and that glass bottles are not passed to customers. This may be a particular concern if drinks are to be consumed outside premises;
- (g) restrictions on drinking in areas within and outside the premises;
- (h) limitations on the types of promotions of alcoholic drinks, so as not to encourage excessive drinking, or drunkenness;
- (i) the maintenance of good order by the management, particularly where alcohol is supplied for consumption and where large numbers of people are admitted;
- (j) dedicated communications networks between management teams, local police and other licensed premises to provide early warning of disorder;
- (k) warning signs about crime prevention measures;
- (l) clear policies and measures to prevent weapons or illegal drugs being brought onto the premises and measures to discourage the use of illegal drugs; and/or
- (m) the installation and maintenance of appropriately sited closed circuit television cameras (CCTV) to be operational during the period of the licence, and other appropriate times both inside and immediately outside the premises which can provide images of a suitable quality for use as evidence. (Paragraphs 5.15-5.16)

Public safety

5.20 The Council in its role as Licensing Authority must try to ensure the safety of people visiting and working in licensed premises. The Council will need to be satisfied that measures to promote public safety including risk assessments, setting safe capacities and adequate means of escape are put in place and maintained, if not adequately provided for by other regulatory regimes. (Paragraph 5.17)

5.21 Consideration should be given to whether:

- (a) appropriate and satisfactory general and technical risk assessments, management procedures and certificates have been made available to the relevant responsible authority and to the Licensing Authority, that demonstrate that the public will be safe within and in the vicinity of the premises;

- (b) the premises already has a licence or a fire certificate that specifies the maximum number of people that can attend it or be present and, if not, whether a risk assessment has been undertaken to assess the maximum number of people in terms of capacity in various parts of the premises, so that they can be operated safely and can be evacuated safely in the event of an emergency;
- (c) there are procedures proposed to record and limit the number of people on the premises with opportunities for going outside and readmission;
- (d) patrons can arrive at and depart from the premises safely;
- (e) music, dance and performance venues will use equipment or special effects that may affect public safety (i.e. moving equipment, pyrotechnics, strobe lights, smoke machines);
- (f) there are defined responsibilities and procedures for medical and other emergencies and for calling the emergency services, and/or
- (g) the levels of compliance with conditions on existing licences relating to public safety. (Paragraph 5.18)

Prevention of Public Nuisance

- 5.22 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)
- 5.23 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)
- 5.24 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)
- 5.25 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)
- 5.26 Where relevant representations are received, the Council may attach appropriate conditions to licences, necessary 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)
- 5.27 The provision of tables and chairs outside the premises, either on the highway or on private land, and the provision of beer gardens, can enhance the attractiveness of the venue. It can have the benefit of encouraging a continental style café culture and family friendly venues. However, late at night,

tables and chairs and beer gardens can cause significant public nuisance to residents whose homes overlook these areas. (Paragraph 5.27)

- 5.28 More recently the introduction of the new ‘smoke free public places’ legislation in July 2007 has led to an increase in the number of people outside licensed venues. Where outside facilities are provided the licensing authority expects applicants to provide details in their application of:-
- (a) the location of open air areas;
 - (b) how the outside areas will be managed to prevent noise, smell, or obstruction and nuisance to neighbours and the public. (Paragraph 5.28)
- 5.29 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)
- 5.30 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)
- 5.31 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)

Protection of children from harm

- 5.32 The Council needs to satisfy itself that there are appropriate measures in place to protect children from harm. (Paragraph 5.32)
- 5.33 The Council will expect applicants, where necessary to consider the measures necessary to promote the licensing objective of protecting children from harm when on the premises. (Paragraph 5.33)
- 5.34 These measures may include staff training on how to control the entry of children and young people under 18 and the vetting of staff who will supervise them. Applicants will have to give particular regard to these measures in applications for licences involving:-
- (a) the sale of alcohol;
 - (b) children’s performances;
 - (c) attractions or performances likely to attract children. (Paragraph 5.34)
- 5.35 It is an offence to sell alcohol to children. In this context, children are defined as individuals under 18. The provisions of the Act are that unaccompanied children under 16 should not be on “premises being used exclusively or primarily for the supply of alcohol” (eg “alcohol led” premises such as pubs, bars and nightclubs). In addition, it is an offence to allow unaccompanied children under 16 on premises licensed to sell alcohol for consumption on the premises after midnight but before 05:00. (Paragraph 5.35)
- 5.36 Issues for consideration include:-
- (a) installing effective measures to check the age of those young people who appear under 21 to ensure that alcohol is not sold to those under 18 and those under 16 are accompanied in alcohol led premises;

- (b) the supply of alcohol for consumption on the premises is the;
- (c) exclusive or primary purpose of the services provided at the premises;
- (d) accompanied children under 16 on the premises of which the primary purpose is supply of alcohol for consumption on the premises are taking a table meal or are being entertained by a live performance;
- (e) the hour to which accompanied children under 16 are proposed to be on the premises where the exclusive or primary purpose of the services provided at the premises is the supply of alcohol for consumption on the premises;
- (f) due regard is paid to industry codes of good practice on the labelling and display of alcoholic drinks;
- (g) there are adequate procedures for identifying unaccompanied or lost children and ensuring that they are kept safe and adequately supervised until they can be handed over to a responsible adult;
- (h) the likelihood of children being attracted to the premises; eg by the nature of activities or facilities provided whether or not these are licensed;
- (i) there is evidence of heavy, binge or underage drinking on the premises;
- (j) the premises commonly provides entertainment or services of an adult or sexual nature;
- (k) there is a strong element of gambling on the premises;
- (l) age restricted films are to be shown classified in accordance with the recommendations of the British Board of Film Classification;
- (m) the number of adults required for the supervision of children and the suitability and vetting of those adults to ensure they pose no risk to children. Obtaining Enhanced Disclosure from the Criminal Records Bureau may be appropriate in some cases. (Paragraph 5.36)

6. National Guidance

- 6.1 Statutory guidance has been issued under Section 182 of the Licensing Act 2003 (guidance updated March 2015). The committee must have regard to the guidance when determining this application. Below are relevant extracts 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)

Crime and disorder

- 6.9 Conditions should be targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition. (Paragraph 2.3)

Public safety

- 6.10 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. (Paragraph 2.6)
- 6.11 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;

- 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; and
 - Considering the use of CCTV in and around the premises (this may also assist with promoting the crime and disorder objective). (Paragraph 2.7)
- 6.12 The measures that are appropriate to promote public safety will vary between premises and the matters listed above may not apply in all cases. 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. (Paragraph 2.8)
- 6.13 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. (Paragraph 2.9)
- 6.14 “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. (Paragraph 2.11)

Public nuisance

- 6.15 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. (Paragraph 2.14)
- 6.16 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. (Paragraph 2.15)

- 6.17 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 15). 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. (Paragraph 2.16)
- 6.18 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. (Paragraph 2.17)
- 6.19 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. (Paragraph 2.18)
- 6.20 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. (Paragraph 2.19)
- 6.21 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. (Paragraph 2.20)

Protection of children from harm

- 6.22 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. (Paragraph 2.21)
- 6.23 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. (Paragraph 2.22)
- 6.24 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. (Paragraph 2.25)
- 6.25 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. (Paragraph 2.26)
- 6.26 Licensing authorities should give considerable weight to representations about child protection matters. (Paragraph 2.28)
- 6.27 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. (Paragraph 2.29)
- 6.28 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. (Paragraph 2.30)

7. Licensing Comments

7.1 When determining this application the sub-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. In particular, the sub-committee must seek to promote the four licensing objectives when determining the application. The four licensing objectives 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.

7.2 Entertainment deregulation

The sub-committee is advised that since this application was made, the Legislative Reform (Entertainment Licensing) Order 2014 has come into force. The effects of the Order relevant to this application are as follows:

Live and recorded music

From 6th April 2015, live music and recorded music are no longer regulated between 08:00 and 23:00 hours for audiences up to 500 people at premises licensed to sell alcohol for consumption on the premises.

Performance of plays and performance of dance

From 6th April 2015 these forms of entertainment are no longer licensable between 08:00 and 23:00 hours in the presence of an audience up to 500 people.

In the interests of clarity, this means that as long as the activity is within the times and audience limits shown above:

- any premises can have plays and dance performances; and
- any premises licensed to sell alcohol for consumption on the premises can provide live and recorded music without needing to license those activities.

7.3 Representations which do not relate to one or more of the licensing objectives must not be taken into account. In particular Members should bear in mind the following comments in relation to some of the representations received.

Other premises

Several of the objectors have suggested that there are other alcohol and entertainment venues in the area and that there is therefore no need for another. Members should consider such comments to be irrelevant because each application is decided on its own merits and the availability of other premises in the area is not related to any of the licensing objectives. Cheltenham Borough Council does not have a cumulative impact policy, and therefore the cumulative effect of licensable activities in the Borough as a whole should not be taken into consideration. This application should be considered alone.

Vandalism and antisocial behaviour

Several objectors have referred to antisocial behaviour and damage to property in the vicinity, in the wider area and in the adjacent Sandford Park. Public nuisance and crime and disorder are relevant considerations for the sub-committee, but Members must be mindful that they are considering the merits of this application alone and should only take into account the effects on the licensing objectives of the licensable activities applied for.

Statutory guidance makes it clear that outside the immediate vicinity of the premises, individuals engaging in antisocial behaviour are accountable for their own actions and such matters are the personal responsibility of individuals, rather than that of the premises operators. Conditions imposed by a licensing authority on a premises licence *“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”*. (Statutory guidance paragraph 1.16)

Future applications

Members should not take into account comments that this application may be “the thin end of the wedge” and may lead to applications to extend the scope of the licence in the future. The reason that such concerns are not relevant is that the sub-committee is only determining the application as it currently stands, not future applications. Any future application to extend the scope of licensable activities at the premises would require another application to be made, which would include another public consultation process in which any person may make representation.

Parking and littering

Several objectors have expressed concerns about environmental factors such as difficulty parking and increased litter in the vicinity of the premises. Whilst these are not irrelevant considerations, Members must consider whether such factors relate to one or more of the licensing objectives – for example the prevention of public nuisance – and if so, whether there is evidence that such nuisance is likely to be a result of the licensable activities applied for.

Inability to change a licence once granted

Some objectors have expressed concern that if the licence is granted, it would be difficult to do anything about it if it caused problems in the future. In fact as Members will be aware, the Act provides for a review process that any person or responsible authority can engage at any time if a premises licence has a detrimental effect on any of the licensing objectives.

Alcohol free zone

Objectors have pointed out that Sandford Park is an ‘alcohol-free zone’ and that an application for a licence to sell alcohol in the vicinity is incompatible with that. Members should bear in mind firstly that the application relates solely to the premises Sandford Parks Lido, not the park itself, and secondly that an ‘alcohol-free zone’ does not mean that alcohol is banned. Rather, in an alcohol-free zone, an offence is committed if an individual continues to consume alcohol after they have been asked by a police officer not to do so.

Alcohol and water

Several representations refer to the potential danger, particularly to children, of authorising the sale of alcohol in the vicinity of a swimming pool. Members should consider the steps the applicants have proposed in their operating schedule to avoid the risk of harm to children, and whether these are sufficient to remove the risk if one exists.

Problems from other premises

Members should not take into account representations which relate to problems caused by events at other premises. This application should be considered on its merits and the applicants are not accountable for activities held in the past at other premises.

Property values

Representations relating to the value of property are not relevant as they do not relate to one or more of the licensing objectives.

Planning

Representations relating to planning permission and 'change of use' consent are not relevant considerations for this sub-committee as this is a licensing application rather than a planning application. The Planning Authority is a statutory consultee under the Act and has been consulted on this application without objecting. If further planning consent is required that will be a matter for the applicants to discuss with planning officers, but it is not a matter for this sub-committee.

- 7.4 The role of the licensing authority is to ensure the promotion of the licensing objectives and, in so doing, to maintain an appropriate balance between the legitimate aspirations of applicants and the needs of residents and other users of the town.
- 7.5 The sub-committee, having full regard to the steps the applicants have proposed in their operating schedule as well as the relevant representations received, must take such steps as it considers appropriate for the promotion of the licensing objectives.
- 7.6 Having considered all relevant issues, the sub-committee may:
- Grant the application subject to such conditions as are consistent with the operating schedule, and any additional conditions that the sub-committee considers appropriate for the promotion of the licensing objectives; or
 - Refuse all or part of the application.

Background Papers

Service Records

Licensing Act 2003

Revised Guidance issued under section 182 of the Licensing Act 2003

Cheltenham Borough Council's Statement of Licensing Policy

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