

Cheltenham Borough Council

Licensing Sub Committee – 23 October 2015

Licensing Act 2003: Determination of application for a Premises Licence

The Old Fire Station and Engine House, St James Square, 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 28th August 2015 from Pioneer (City) Pub Company Limited, in respect of The Old Fire Station and Engine House, St James Square, Cheltenham GL50 3PU. A copy of the application is attached at **Appendix A**.

1.2 The licensable activities sought are:

The sale / supply of alcohol	10:00 – 23:00 Sun-Thurs
The sale / supply of alcohol	10:00 – 00:00 Fri-Sat
The provision of late night refreshment	23:00 – 23:30 Sun-Thurs
The provision of late night refreshment	23:00 – 00:30 Fri-Sat

1.3 Implications

1.4.1 Financial **Contact officer: Sarah Didcote**
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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. 15/01274/PRMA)

2.1 Applicant: Pioneer (City) Pub Company Limited

2.2 Premises: The Old Fire Station and Engine House, St James Square, Cheltenham GL50 3PU

The applicants have identified in their operating schedule a number of steps that they propose to take to promote the licensing objectives. These steps are listed below and are included in Appendix A as an annex to the application form. If the premises licence is granted it will be subject to conditions consistent with these steps.

1. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.

2. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.

3. Odour from any flue used for the dispersal of cooking smells serving the building shall not cause nuisance to the occupants of any properties in the vicinity.

4. An approved proof of age scheme shall be adopted) implemented and advertised within the premises such as "Challenge 25" whereby an accepted form of photographic identification shall be requested before any alcohol is sold to any person who appears to be under 25 years of age.

Acceptable proof of age shall include identification bearing the customers photograph, date of birth and integral holographic mark or security measure. Suitable means of identification would include PASS approved proof of age card. photo-card driving licence and passport.

5. All staff to be trained in the prevention of underage sales to a level commensurate with their duties. All such training to be updated as necessary, for instance when legislation changes, and should include training on how to deal with difficult customers. The training should be clearly documented and signed and dated by both the trainer and the member of staff receiving it. The documentation shall be available for inspection on request by an authorised officer of the Licensing Authority or a constable.

6. The premises licence holder shall require the designated premises supervisor, or in his/her absence other responsible person, to keep an 'incident/refusals logbook in a bound book in which full details of all incidents are recorded. This shall include details of any refused sales and shall give details of the persons involved, incident description, time and date, actions taken and final outcome of the situation. This shall be completed as soon as possible and in any case no later than the close of business on the day of the incident. The time and date when the report was completed, and by whom) is to form part of the entry. The logbook is to be kept on the premises at all times and shall be produced to an authorised officer of the Licensing Authority or a constable when required.

7. (i) Where a CCTV system is to be installed, extended or replaced, it shall be to an appropriate standard as agreed with the Licensing Authority in consultation with the Police. Where a CCTV system is to be installed it shall be fully operational by (insert date). Where existing CCTV systems are to be replaced or extended the replacement or extension to the system shall be concluded by (insert date) and the system be fully operational on that date.

(ii) The CCTV equipment shall be maintained in good working order and continually record when licensable activity takes place and for a period of two hours afterwards.

(iii) The premises licence holder shall ensure images from the CCTV are retained for a period of 31 days. This image retention period may be reviewed as appropriate by the licensing Authority

(iv) The correct time and date will be generated onto both the recording and the real time image screen.

(v) If the CCTV equipment (Including any mobile units in use at the premises) breaks down the

Premises Licence Holder shall ensure the designated premises supervisor, or in his/her absence other responsible person verbally informs the Licensing Authority and the Police as soon as is reasonably practicable. This information shall be contemporaneously recorded in the incident report register and shall include the time) date and means this was done and to whom the information was reported. Equipment failures shall be repaired or replaced as soon as is reasonably practicable and without undue delay. The licensing Authority and the Police shall be informed when faults are rectified.

(vi) The premises Licence holder shall ensure that there are trained members of staff available during licensable hours to be able to reproduce and download CCTV images into a removable format at the request of an authorised officer of the Licensing Authority or a constable.

(vii) There shall be clear signage indicating that CCTV equipment is in use and recording at the premises.

8. The venue shall provide information of local taxi firms and transport links to all patrons leaving the venue.

9. The premises licence holder shall devise and implement a dispersal policy to ensure that patrons do not congregate outside the premises, and they disperse from the premises in an orderly and quiet manner so as not to disturb the residents within the vicinity.

10. A clear notice shall be displayed at any exit to the premises to instruct customers to respect the needs of local residents and leave the premises and the area quietly.

11. Notice shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly. The premises shall be cleared of customers within 30 minutes of the last supply of alcohol on any day.

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11. Notice shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly. The premises shall be cleared of customers within 30 minutes of the last supply of alcohol on any day.

2.4 Plans showing the location of the premises and its internal layout are attached at **Appendices B and C.**

3. Responsible Authorities

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

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

3.2 No representations were received from any of the responsible authorities, but the Council's senior environmental health officer agreed the following additional conditions with the applicant and as a consequence of that agreement did not object to the application:

- The full height doors to the ex-fire house are to remain closed whenever live or amplified recorded music is played at the premises and after 9:00PM each night.
- No live or amplified recorded music is to be played between 6:00PM and 9:00PM on Fridays. No noise from amplified music will be audible in neighbouring premises at any time.
- No customers will be permitted to take drinks outside the premises.

- The Management will take effective action to prevent nuisance arising from customers outside the premises.
- No deliveries or collections of waste from the site will take place between 11:00PM and 7:30AM.

4. Other People

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

4.2 **Louise Drew** has objected to the application due to concerns about noise disturbance caused by people using the premises and deliveries and other vehicles.

Rev Robin and Felicity Littlewood have objected on the grounds of public safety, noise and light pollution, crime and disorder and the protection of children. They have requested that if the licence is granted, the contact details of the designated premises supervisor should be made available to residents.

Mrs L Elliott has objected to such a licence being granted in a residential area.

Jenny Silverston of Cheltenham Hebrew Congregation has objected due to concerns about noise nuisance potentially travelling from the premises into the adjoining synagogue.

Maggie Powell has objected on the grounds of nuisance caused by the premises being in a residential area and adjacent to a place of worship and potential nuisance problems relating to smokers and increased traffic.

Dr Rebecca Nicholson and Dr Liam Stanbury have objected on the grounds of potential noise disturbance with their property adjoining the premises and the noise of increased traffic and people congregating outside. They have also spoken about the potential for nuisance caused by smells of cooking, antisocial behaviour by people who have been drinking, and the potential for their privacy to be compromised.

Roger Gilbert has objected due to concerns about noise and increased traffic caused by the operation of 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.
- 7.2 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. The sub-committee must base its decision on protecting these objectives and should not take into account objections which relate to other matters.
- 7.3 Some objectors have referred to potential problems from music and entertainment at the premises. Members are advised that the licensable activities being applied for are the sale / supply of alcohol and the provision of late night refreshment. No regulated entertainment is sought as part of the application. Some forms of entertainment can be provided without a licence as they are not regulated in law, such as live and recorded music, which can be provided between 8am and 11pm on any premises that are licensed to sell alcohol for consumption on the premises.
- 7.4 Some objectors have expressed concerns about potential crime and disorder, noise nuisance, public safety problems and potential harm to children, but not all of the objectors have explained *why* they think such problems will exist. Members should avoid the assumption that licensable activities will automatically have harmful effects, as it does not automatically follow that premises licensed to sell alcohol and provide late night refreshment will cause such problems. There are many well-run premises where such problems do not exist. Therefore such concerns should only be taken into account where Members are satisfied that there are sufficient reasons *in this individual case* to believe that such problems will occur.
- 7.5 The sub-committee is reminded that each application is determined entirely on its own merits and not in relation to other premises. Consequently Members should disregard comments relating to there being "no need" for another licensed premises, or comments relating to there already being sufficient premises nearby. Likewise Members should not take into account comments regarding problems associated with other licensed premises. The applicants have the right to make an application without it being prejudiced by other premises in the vicinity over which they have no control. Likewise Members should not be concerned over whether their decision will set a precedent, because each application is determined on its own merits.
- 7.6 Objections relating to planning permission should not be taken into account because planning legislation is in place and the sub-committee must avoid duplicating legislation. The local planning authority has been consulted on this application and has not submitted representation. Likewise matters relating to construction of the premises, such as damp-proofing, should only be taken into account if Members are satisfied that those matters relate to one or more of the licensing objectives and that they are a result of the licensable activities being applied for (the sale / supply of alcohol and the provision of late night refreshment).

- 7.7 Objections relating to such matters as traffic, parking, litter and smoking should be taken into account only if Members are satisfied that there is evidence that such problems are likely to happen, and that they would be a result of the licensable activities being carried out at the premises, and that those problems relate to one or more of the licensing objectives.
- 7.8 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 businesses, and the reasonable needs and expectations of residents and other users of the town, who have a right to expect the licensing authority to take such steps as are appropriate and within its power to protect children from harm, prevent public nuisance, prevent crime and disorder and protect public safety.
- 7.9 The sub-committee, having full regard to the steps the applicants have proposed in their operating schedule, the conditions agreed by the applicant and the Council's as well as the relevant representations received, must take such steps as it considers appropriate for the promotion of the licensing objectives.
- 7.10 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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