

Cheltenham Borough Council

Licensing Sub Committee – 24th September 2018

Licensing Act 2003: Determination of an application for a premises licence

28 Denman Avenue, Cheltenham, Gloucestershire, GL50 4GH

Report of the Licensing Officer

1. Introduction

1.1 The Licensing Act 2003 (the Act) allows for an application to be made for a premises licence at any time. In this case, an application has been made by Thibaut Bernard Paul Grosdemouge in respect of 28 Denman Avenue, Cheltenham, Gloucestershire, GL50 4GH. A copy of the application form is attached at **Appendix A**.

1.2 The applicant has supplied an explanation in support of the application, which is attached at **Appendix B**. An internal layout plan is attached at **Appendix C** and a location plan at **Appendix D**.

1.2 The application is for a new premises licence to authorise the following licensable activities:

Sale by retail of alcohol for consumption on and off the premises

Every day, 10:00 - 20:00

1.3 Implications

1.3.1 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. 18/01604/PRMA)

2.1 Applicant: Thibaut Bernard Paul Grosdemouge

2.2 Premises: 28 Denman Avenue, Cheltenham, Gloucestershire, GL50 4GH

3. Responsible Authorities

3.1 The Act identifies the following responsible authorities as statutory consultees for applications for premises licences. Each of the responsible authorities received a full copy of the application.

- 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;
- The Home Office.

3.2 During the statutory consultation process, no representations were received from any of the responsible authorities.

3.3 Gloucestershire Constabulary agreed the following additional condition with the applicant:

- A CCTV system will be installed to cover the area where alcohol will be kept, which will record and store images for a minimum of 28 days and will be made available to Gloucestershire Constabulary, Cheltenham Borough Council Officers and Trading Standards Officers within 48 hours of a request being made.

4. Other People

4.1 Seven representations were received from other people, of which three were withdrawn in light of the letter provided by the applicant in support of his application (**Appendix B**). Those that were not withdrawn are reproduced at **Appendix E**. The representations are objections to the application and relate to the potential impact that the sale of alcohol will have on residents. The objections relate to public nuisance, public safety, the safety of children and crime and disorder.

5. Local Policy Considerations

5.1 The 2003 Act introduced a unified system of regulation through two types of licence: 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 (approved December 2015) includes the following:

5.4 The objective of this policy is to: a) promote the four licensing objectives; b) ensure that the premises are appropriate for their proposed use; c) ensure the premises

layout and condition is acceptable for the proposed use; d) ensure that the premises are being managed responsibly; and e) promote the policy vision statement. (para 1.9)

- 5.5 This policy also seeks to promote the council's wider priorities, in particular that: Cheltenham has a clean and well-maintained environment; Cheltenham has a strong and sustainable economy; communities feel safe and are safe; people are able to lead healthy lifestyles; and our residents enjoy a strong sense of community and are involved in resolving local issues. (para 1.10)
- 5.6 The council's powers and duties as the licensing authority are delegated by the council to its licensing committee, sub-committees and officers. The council approaches these delegations in accordance with the table of delegation or otherwise in accordance with the council's adopted constitution. (para 1.11)
- 5.7 The policy will be used as a basis in coming to consistent and transparent decisions in respect of licence applications. (para 1.12)
- 5.8 The policy does not: (a) Undermine the right of any individual to apply for a variety of permissions and to have each application considered on its individual merits; or (b) Override the right of any person to make representations on an application, or seek a review of a licence or certificate, where the Act allows. (para 1.13)
- 5.9 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 necessary to promote the licensing objectives will be imposed. (para 1.16)
- 5.10 The council will also have regard to wider considerations affecting the residential population and the amenity of the area. These include littering, noise, street crime and the capacity of the infrastructure. (para 1.17)
- 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. (para 1.18)

Crime and Disorder

- 5.12 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. (para 3.10)
- 5.13 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. (para 3.11)
- 5.14 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/or
 - f) Anti-social behaviour. (para 3.12)
- 5.15 In making their decision, regard should be given to the levels of crime and disorder in and around the venue, the level of compliance with conditions on existing licences and any available evidence on crime and disorder issues. (para 3.13)
- 5.16 Applicants are recommended to consult the Reducing Alcohol Related Violence Codes of Practice when considering their operating schedule. (para 3.14)
- 5.17 A pool of model conditions has been prepared and individuals preparing operating schedules are at liberty to use these conditions, or volunteer any other measures(s) to promote the licensing objectives. Please see Appendix C for the pool of model conditions for the prevention of crime and disorder. (para 3.15)

Public Safety

- 5.18 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. (para 3.16)
- 5.19 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 council, 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. (para 3.17)
- 5.20 The council seeks to encourage the use of toughened glassware and polycarbonate where appropriate in licensed premises. Where a relevant representation is received the council will consider imposing a condition prohibiting the sale of alcohol in

annealed glass containers and require the use of polycarbonate or other safer alternatives in order to promote public safety in licensed venues. (para 3.18)

- 5.21 A pool of model conditions has been prepared and individuals preparing operating schedules are at liberty to use these conditions, or volunteer any other measures(s) to promote the licensing objectives. Please see Appendix C for the pool of model conditions for public safety. (para 3.19)

Public Nuisance

Measures to limit 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. (para 3.20)
- 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. (para 3.21)
- 5.24 Applicants will be expected to have included measures in their operating schedules that make adequate provision to:
- a) restrict the generation of noise within the premises and from activities associated with the premises in the vicinity, or from an open air site;
 - b) limit the escape of noise from the premises or open air site;
 - c) restrict noise emissions to below levels that could affect people in the vicinity going about their business, at work and when at home both while relaxing and while sleeping;
 - d) minimise and control noise from customers arriving at the premises, or open air site outside it and departing from it;
 - e) minimise and control noise from staff, contractors and suppliers and their activities;
 - f) minimise and control noise from vehicles associated with and providing services to the premises or open air site and their customers;
 - g) determine whether people standing or sitting outside premises are likely to cause obstruction or other nuisance;
 - h) whether the premises are under or near to residential accommodation;
 - i) the hours of the sale of alcohol in open containers or food for consumption outside the premises;
 - j) measures to make sure that customers move away from outside premises when such sales cease;
 - k) measures to collect drinking vessels and crockery, cutlery and litter;

- l) the extent and location of areas proposed to be set aside for the consumption of food and alcoholic drink and for smoking;
 - m) whether there is a need for door supervisors to prevent or to control customers congregating in outdoor areas to smoke, consume food or drink (whether supplied from the premises or not).
 - n) adequate measures to prevent the following arising from the proposed licensable activity that may cause disturbance to people in the vicinity:
 - a. litter, smells, fumes, dust, smoke, or other emissions;
 - b. street fouling;
 - c. light pollution. (para 3.22)
- 5.25 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. (para 3.23)
- 5.26 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. (para 3.24)
- 5.27 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 23:00, 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. (para 3.25)
- 5.28 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. (para 3.26)
- 5.29 The '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 council expects applicants to provide details in their application of:
- a) the location of open air areas; and
 - b) how the outside areas will be managed to prevent noise, smell, or obstruction and nuisance to neighbours and the public. (para 3.27)
- 5.30 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. (para 3.28)
- 5.31 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. (para 3.29)

- 5.32 Conditions may include maximum noise levels over particular time periods, the installation of acoustic lobbies, provision of signs, publicity and dispersal policies. (para 3.30)
- 5.33 A pool of model conditions has been prepared and individuals preparing operating schedules are at liberty to use these conditions, or volunteer any other measures(s) to promote the licensing objectives. Please see Appendix C for the pool of model conditions for the prevention of public nuisance. (para 3.31)

Protection of Children from Harm

- 5.34 The council needs to satisfy itself that there are appropriate measures in place to protect children from harm. (para 3.32)
- 5.35 To this extent it will expect applicants, where necessary, to consider the measures necessary to promote the licensing objective of protecting children from harm when on the premises. (para 3.33)
- 5.36 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; and
 - c) attractions or performances likely to attract children. (para 3.34)
- 5.37 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. (para 3.35)
- 5.38 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) exclusive or primary purpose of the services provided at the premises;
 - c) 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;
 - d) 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;

- e) due regard is paid to industry codes of good practice on the labelling and display of alcoholic drinks;
- f) are there 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;
- g) the likelihood of children being attracted to the premises by the nature of activities or facilities provided whether or not these are licensed;
- h) is there evidence of heavy, binge or underage drinking on the premises;
- i) if the premises commonly provides entertainment or services of an adult or sexual nature;
- j) is there a strong element of gambling on the premises;
- k) age restricted films are to be shown classified in accordance with the recommendations of the British Board of Film Classification;
- l) 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. (para 3.36)

6. National Guidance

- 6.1 Statutory guidance has been issued under Section 182 of the Licensing Act 2003 (guidance updated April 2018). The committee must have regard to the guidance when determining this application. Below are relevant extracts for the benefit of the committee.

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;
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 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP). (2.1)
- 6.10 In the exercise of their functions, licensing authorities should seek to co-operate with the Security Industry Authority ("SIA") as far as possible and consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed. (2.2)
- 6.11 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition. (2.3)
- 6.12 The inclusion of radio links and ring-round phone systems should be considered an appropriate condition for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. These systems allow managers of licensed premises to communicate instantly with the police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises. (2.4)
- 6.13 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety. (2.5)
- 6.14 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work

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

Public Safety

- 6.15 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene. (2.7)
- 6.16 A number of matters should be considered in relation to public safety. These may include:
- Fire safety;
 - Ensuring appropriate access for emergency services such as ambulances;
 - Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts (see paragraph 2.4 above);
 - Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;
 - Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);
 - Ensuring appropriate and frequent waste disposal, particularly of glass bottles;
 - Ensuring appropriate limits on the maximum capacity of the premises (see paragraphs 2.12-2.13, and Chapter 10; and
 - Considering the use of CCTV in and around the premises (as noted in paragraph 2.3 above, this may also assist with promoting the crime and disorder objective). (2.8)
- 6.17 The measures that are appropriate to promote public safety will vary between premises and the matters listed above may not apply in all cases. As set out in Chapter 8 (8.38-8.46), applicants should consider when making their application which steps it is appropriate to take to promote the public safety objective and demonstrate how they achieve that. (2.9)

Ensuring safe departure of those using the premises

6.18 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. (2.10)

Maintenance and repair

6.19 Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be inappropriate for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if appropriate, checks on this equipment to be conducted at specified intervals and for evidence of these checks to be retained by the premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for licensing authorities, if they receive relevant representations from responsible authorities or any other persons, to attach conditions which require equipment of particular standards to be maintained on the premises. Responsible authorities – such as health and safety authorities – should therefore make their expectations clear in this respect to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules. (2.11)

Safe capacities

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

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

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

Public nuisance

- 6.23 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter. (2.15)
- 6.24 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health. (2.16)
- 6.25 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues. (2.17)
- 6.26 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate. (2.18)
- 6.27 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave. (2.19)

- 6.28 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues. (2.20)
- 6.29 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. (2.21)

Protection of children from harm

- 6.30 The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment). Licensing authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions. (2.22)
- 6.31 The Government believes that it is completely unacceptable to sell alcohol to children. Conditions relating to the access of children where alcohol is sold and which are appropriate to protect them from harm should be carefully considered. Moreover, conditions restricting the access of children to premises should be strongly considered in circumstances where:
- adult entertainment is provided;
 - a member or members of the current management have been convicted for serving alcohol to minors or with a reputation for allowing underage drinking (other than in the context of the exemption in the 2003 Act relating to 16 and 17 year olds consuming beer, wine and cider when accompanied by an adult during a table meal);
 - it is known that unaccompanied children have been allowed access;
 - there is a known association with drug taking or dealing; or
 - in some cases, the premises are used exclusively or primarily for the sale of alcohol for consumption on the premises. (2.23)
- 6.32 It is also possible that activities, such as adult entertainment, may take place at certain times on premises but not at other times. For example, premises may operate as a café bar during the day providing meals for families but also provide entertainment with a sexual content after 8.00pm. It is not possible to give an exhaustive list of what amounts to entertainment or services of an adult or sexual nature. Applicants, responsible authorities and licensing authorities will need to consider this point carefully. This would broadly include topless bar staff, striptease, lap-, table- or pole-dancing, performances involving feigned violence or horrific incidents, feigned or actual sexual acts or fetishism, or entertainment involving strong and offensive language. (2.24)

- 6.33 Applicants must be clear in their operating schedules about the activities and times at which the events would take place to help determine when it is not appropriate for children to enter the premises. Consideration should also be given to the proximity of premises to schools and youth clubs so that applicants take appropriate steps to ensure that advertising relating to their premises, or relating to events at their premises, is not displayed at a time when children are likely to be near the premises. (2.25)
- 6.34 Licensing authorities and responsible authorities should expect applicants, when preparing an operating schedule or club operating schedule, to set out the steps to be taken to protect children from harm when on the premises. (2.26)
- 6.35 Conditions, where they are appropriate, should reflect the licensable activities taking place on the premises. In addition to the mandatory condition regarding age verification, other conditions relating to the protection of children from harm can include:
- restrictions on the hours when children may be present;
 - restrictions or exclusions on the presence of children under certain ages when particular specified activities are taking place;
 - restrictions on the parts of the premises to which children may have access;
 - age restrictions (below 18);
 - restrictions or exclusions when certain activities are taking place;
 - requirements for an accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and
 - full exclusion of people under 18 from the premises when any licensable activities are taking place. (2.27)
- 6.36 Please see also Chapter 10 for details about the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010. (2.28)
- 6.37 Licensing authorities should give considerable weight to representations about child protection matters. In addition to the responsible authority whose functions relate directly to child protection, the Director of Public Health may also have access to relevant evidence to inform such representations. These representations may include, amongst other things, the use of health data about the harms that alcohol can cause to underage drinkers. Where a responsible authority, or other person, presents evidence to the licensing authority linking specific premises with harms to children (such as ambulance data or emergency department attendances by persons under 18 years old with alcohol-related illnesses or injuries) this evidence should be considered, and the licensing authority should also consider what action is appropriate to ensure this licensing objective is effectively enforced. In relation to applications for the grant of a licence in areas where evidence is presented on high levels of alcohol-related harms in persons aged under 18, it is recommended that the licensing authority considers what conditions may be appropriate to ensure that this objective is promoted effectively. (2.29)
- 6.38 The 2003 Act provides that, where a premises licence or club premises certificate authorises the exhibition of a film, it must include a condition requiring the admission

of children to films to be restricted in accordance with recommendations given either by a body designated under section 4 of the Video Recordings Act 1984 specified in the licence (the British Board of Film Classification is currently the only body which has been so designated) or by the licensing authority itself. Further details are given in Chapter 10. (2.30)

- 6.39 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. (2.31)

Offences relating to the sale and supply of alcohol to children

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

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.
- 7.3 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.
- 7.4 On the final page of the application form (**Appendix A**) the applicant has provide an operating schedule listing a number of steps that he will take to promote the four licensing objectives. If this application is granted it will be subject to conditions consistent with those steps as well as conditions agreed between the applicant and the responsible authorities and any additional conditions deemed to be appropriate by the sub-committee.
- 7.5 Members will note that objectors have made reference to the following issues:

Parking: This is only a relevant matter if members are satisfied that the granting of a premises licence is likely to increase parking issues and that such issues would constitute a public nuisance. Pre-existing problems are not within the applicant's control.

Problems with alcohol consumption elsewhere in the town: This application should be determined on its own merits and not in relation to other premises or other locations.

Demand: The question of whether there is a need for such a service and whether such a venture is likely to succeed are not relevant considerations for the sub-committee which must consider the impact of the application on the four licensing objectives.

Representations which object without providing reasons are not relevant and should not be taken into account as they do not relate to any of the licensing objectives.

- 7.6 Members are reminded that the 2003 Act provides for any person at any time to apply to review a premises licence. Therefore if the application is granted and the activities at the premises subsequently compromise the licensing objectives, any person can apply to review the premises licence.
- 7.7 The sub-committee, having full regard to the application and the representations received, must take such steps as it considers appropriate for the promotion of the licensing objectives. The sub-committee may:
- Grant the application subject to such conditions as the sub-committee considers appropriate for the promotion of the licensing objectives; or
 - Refuse all or part of the application.
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Background Papers

Service Records

Licensing Act 2003

Guidance issued under section 182 of the
Licensing Act 2003 revised April 2018

Cheltenham Borough Council's Licensing Policy
Statement revised 2015

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