

**BOROUGH COUNCIL OF KING'S LYNN & WEST NORFOLK**

**Minutes of the Licensing Sub Committee Meeting  
held on Thursday 4<sup>th</sup> April 2013 at 10.00am  
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

**PRESENT:**

Sub-Committee Members:	Councillor G Sandell (Chairman) Councillor C Crofts Councillor J Loveless
Borough Council Officers:	Rachael Edwards - Senior Democratic Services Officer John Gilbraith - Licensing Manager
Legal Advisor:	Emma Duncan
Premises:	Heacham Halt Café, South Beach, Heacham, King's Lynn, PE31 7LH
Applicant:	Mrs Julia Moore
Responsible Authorities:	PC Brown – Norfolk Constabulary PC Nash – Norfolk Constabulary

**1. WELCOME AND INTRODUCTIONS**

The Chairman welcomed everyone to the meeting and declared that the Sub-Committee were sitting to consider a premises application in respect of Heacham Halt Café, South Beach, Heacham, PE31 7LH.

He introduced the Sub-Committee Members and the Borough Council Officers and explained their roles. He also introduced the Legal Advisor, Emma Duncan. The applicant, Mrs Julia Moore, introduced herself. PC Brown and PC Nash, representing Norfolk Constabulary introduced themselves.

**2. THE PROCEDURE**

At the request of the Chairman, the Licensing Manager outlined the procedure that would be followed at the hearing and took over the proceedings.

**3. THE APPLICATION**

The Licensing Manager explained that following the publication of the Agenda for the hearing, the applicant had subsequently agreed the recommended condition proposed by the Borough Council's Community Safety & Neighbourhood Nuisance Team in that "regulated

entertainment shall only take place indoors only unless a Temporary Event Notice for an outdoor event is submitted to and approved by the Licensing team at the Borough Council”.

The Licensing Manager presented his report and explained a premises licence was required under the Licensing Act 2003 for the sale of alcohol, regulated entertainment or for the provision of late night refreshment (i.e. the supply of hot food and drink between 11pm and 5am). The four licensing objectives to be considered when determining the application, and relevant representations, were:

- the prevention of crime & disorder,
- public safety,
- the prevention of public nuisance, and
- the protection of children from harm

### **The Application**

Mrs Julia Marion Moore had made an application under Section 17 of the Licensing Act 2003 for the licensable activities of ‘regulated entertainment’ and ‘sale of alcohol’. A copy of the application had been attached to the report at Appendix 1 to the Agenda and if granted would allow the premises to operate as follows:

<b><u>Licensable Activity</u></b>	<b><u>Days</u></b>	<b><u>Times</u></b>
<b>Regulated Entertainment:</b> (indoors and outdoors) ‘Live Music’, ‘Recorded Music’ and ‘entertainment of a similar description’	Monday to Thursday:	3pm – 10pm
	Friday & Saturday:	3pm – 11pm
	Sunday:	3pm – 9pm
<b>Sale of Alcohol by Retail:</b> (For consumption both on and off the premises)	Monday to Thursday:	10am – 10pm
	Friday & Saturday:	10am – 11pm
	Sunday:	10am – 9pm

### **Mandatory Conditions**

The premises licence, if granted would be subject to the following mandatory conditions:

- Under Section 19(2) of the Act, no supply of alcohol shall be made under this premises licence at a time when there is no designated premises supervisor in respect of the premises licence, or at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

- Under Section 19(3) of the Act every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- In relation to the sale of alcohol, the responsible person shall take all reasonable steps to ensure that staff do not carry out, arrange or participate in any irresponsible promotions in relation to the premises. An irresponsible promotion means an activity carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children.
- The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
- The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.
- The premises licence holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. This policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.
- The responsible person shall ensure that where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures-
  - (i) beer or cider: ½ pint;
  - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
  - (iii) still wine in a glass: 125 ml;

And that customers are made aware of the availability of these measures.

### **Conditions Consistent with the Operating Schedule**

The Licensing Manager drew Members attention to page 26 and 27 of the Agenda, (Section P) of the application form which required the applicant to describe the steps that they intended to take to promote the four licensing objectives. The purpose of this section was to identify any conditions that could be incorporated into the operating schedule. However, any such conditions needed to be enforceable and therefore in this instance, no such conditions had been identified.

## **Representation from Responsible Authorities**

Section 13(4) of the Licensing Act 2003 defined the 'responsible authorities' as the statutory bodies that must be sent copies of an application. Representations made must relate to the licensing objectives.

Norfolk Constabulary were objecting to the application on the grounds that the crime & disorder licensing objective could be undermined. A copy of their letter of objection dated the 15<sup>th</sup> February 2013 had been attached to the report at Appendix 2.

The Licensing Manager reiterated that the applicant had subsequently agreed to the Borough Council's Community Safety & Neighbourhood Nuisance Team's recommended condition.

There were no representations from the other 'responsible authorities' to consider.

## **Representations from 'Other Persons'**

As well as responsible authorities, any other person could play a role in a number of licensing processes under the Licensing Act 2003. This included any individual, body or businesses that were entitled to make representations to applications. Representations made must relate to the licensing objectives.

There were two representations from 'other persons' to consider. Copies of the letters had been attached to the report at Appendix 4. The Licensing Manager explained that as neither party was present at the hearing he would outline their objections at the appropriate time.

## **Notices**

The applicant was responsible for advertising the application by way of a notice in the specified form at the premises for not less than 28 consecutive days and in a local newspaper. The public notice appeared in the Lynn News on Friday 1<sup>st</sup> February 2013 and should have been displayed on the premises until the 20<sup>th</sup> February 2013.

## **Plans**

A plan of the premises had been attached at Appendix 5 of the report and a location plan was attached at Appendix 6. The location of the premises was also displayed using "Google Earth".

There were no specific questions to the Licensing Manager.

#### **4. THE APPLICANT'S CASE**

The applicant, Mrs Moore presented her case and explained that she currently ran the premises as a café which was situated on South Beach. The aim of the application was to provide an additional service by selling alcohol primarily for those people who wished to purchase a meal particularly during the latter part of the evening. She had no intention of running the premises as a pub. Mrs Moore explained that she hoped to build on her current business and in turn, attract more people to the beach. She stated that she currently only opened the café later in the evening during the summer months and mainly opened during the weekend period only during the winter months.

Mrs Moore referred to the representations made by the other persons which referred to an event in July 2012 which had been granted under a Temporary Event Notice which they had complained of experiencing excessive noise, light pollution and vibrations. She explained that the event was to celebrate a 50<sup>th</sup> birthday party and no one had been outside as it had been raining during the event.

Mrs Moore also referred to the representation submitted by Mr Frostick and suggested that his concerns with the application were due to the fact that he already had a licensed premises in very close proximity that sold alcohol and was concerned that he would lose customers. She also suggested that if these premises were licenced to sell alcohol, she could see no reason why the Police had concerns with her application. With reference to the Crime Prevention Officer's report, Mrs Moore explained that she was in the process of trying to address the issues that had been proposed but was also mindful of the financial implications in doing so.

#### **Questions to the applicant**

PC Brown referred to the terminal hour of 11pm which the applicant had applied for (on Friday & Saturday) and explained that this raised some safety concerns with the Police and questioned the applicant on what plans she would put in place to address these concerns. The applicant explained that she would ensure that no underage sales were made and would ensure that customers were supervised. She had no intention to run it as an off-licence and the purchase of alcohol was primarily for those customers who were also purchasing a meal.

PC Brown therefore further questioned the applicant as to whether her intention was to sell alcohol for consumption off the premises (as applied for). The applicant stated that she felt there would not be as much of a demand for off sales but a licenced premises in close proximity did already offer this facility.

PC Brown referred to the location of the premises which was situated in an isolated area and that there was the potential for excessive alcohol consumption close to the dangers of a river and beach. This raised concerns over public safety and he questioned the applicant on how she planned to address these issues. The applicant explained that CCTV would be used but there were limits as to what could be done with the public already drinking/sitting on the beach within the same area.

In response to a question in relation to what specific measures recommended in the Crime Prevention Officer's report the applicant had or intended to implement, she explained that plastic glasses would be provided and a specific area had been designated as a secure alcohol storage area with the appropriate shutters and a new security door being installed. The Legal Advisor questioned PC Brown as to what the Police were specifically proposing in the way of conditions if the Sub-Committee were minded to grant a premises licence. PC Brown explained that the Police were seeking a reduction in the hours applied for to 8pm for the sale of alcohol and that any such sale should be as an ancillary to the purchase of food. The Police were also proposing, because of the isolated location and proximity of the river/sea, no off-sales of alcohol should be permitted.

Mrs Moore reiterated that there was a premises in close proximity that had been granted a licence for the sale of alcohol off the premises and that the premises was in fact closer to the beach/sea. PC Brown explained that he had not been party to that application and it was in fact the Borough Council who made any decisions on whether to grant premises licences (and associated conditions) and not the Police. PC Brown further stated that he was at the hearing to consider the application submitted by Mrs Moore which had raised a number of concerns with the Police. He questioned whether Mrs Moore was willing for a condition to be attached to the licence to restrict the sale of alcohol to be an ancillary to food purchase. Mrs Moore again referred to the licensed premises located close to her café and that if the sale of alcohol was restricted on her licence, the public would just be able to go round the corner and purchase alcohol from this premises. PC Brown reiterated that the Police had concerns with public safety given the isolated location of the premises and the close proximity to the river/sea.

In response to PC Brown's questions in relation to the applicant's previous experience in running a licensed establishment, the applicant explained that she had taken on the lease of the Bushel & Strike public house in 2005. In reference to the Police's representation that there had been problems under her tenure, Mrs Moore stated that there had been a number of complaints in relation to noise disturbance but these had all been made by one particular individual. She explained that any other complaints that had been received were prior to or after she had surrendered the leasehold. For clarification purposes, the Licensing Manager confirmed that Mrs Moore's son was the leaseholder in 2005

and on his departure, Mrs Moore took over the lease in October 2007. In November 2008, Mrs Moore transferred the lease to Enterprise Inns.

In response to PC Brown's reference to a number of incidents that had been reported to the Police in 2011 to 2012 concerning problems at the premises, Mrs Moore explained that she had transferred the lease in 2008. She also explained that she had run a pub for a considerable number of years in Leicester with no problems. Mrs Moore also clarified that in relation to Heacham Halt Café, her son was employed to do the cooking.

In response to a question from Councillor C J Crofts, the Licensing Manager clarified that Mr Frostick's premises was licensed for the sale of alcohol for consumption off the premises until 7pm although the premises was permitted to open later. Councillor C J Crofts also questioned whether the applicant envisaged the public purchasing just alcohol as opposed to purchasing it as an accompaniment to a meal, Mrs Moore stated that they would "hopefully" purchase it when buying food. She also clarified, on the plan of the premises (page 54) where she was planning to ensure that there was a safe and secure storage facility for alcohol products.

Councillor C J Crofts also referred to the application form (Section P (a) – page 26) where the applicant indicated that she would be providing staff training and questioned as to what format this would take. Mrs Moore explained that the staff consisted of mainly her and her son but such training would be in the form of health and safety, underage drinkers etc.

In response to a query raised by Councillor J Loveless, the Licensing Manager clarified that the applicant's residential address had been removed from the application form for data protection reasons. It was confirmed that she did not live on the premises.

In response to a question raised by the Chairman, the applicant confirmed that the café was a single storey and of block build construction.

The Licensing Manger outlined to the Sub-Committee the letters of objections submitted by 'other persons' (page 52 & 53). The applicant explained that she did not know Mr Haley personally but understood that Mr Frostick was his son. The Licensing Manager highlighted that concern had been expressed that the application had been submitted and subsequently advertised during the winter months when the majority of caravans were not occupied. The applicant explained that she had submitted the application in order that any necessary works could be carried out during the quieter winter months.

The Licensing Manager referred to page 27 (Section P (b)) which asked the applicant to stipulate what steps they intended to take to promote the crime and disorder licensing objective and highlighted that the applicant

had stated that “having already been a tenant in a public house for 12 years I feel I am aware of problems which could arise”. He questioned how the applicant intended to actually promote the crime and disorder licensing objective. The applicant explained that she was aware of her responsibilities and confirmed that this statement had been made in relation to her previous experience in running a pub in Hinckley in Leicestershire.

The Licensing Manager highlighted that the applicant had made a representation of objection when Mr Frostick had submitted his premises licence application stating that “I feel that selling alcohol on the beach even though there are licensed shops and bars a quarter of a mile away, is totally inappropriate” and questioned how circumstances had changed in order for her to have made an application involving the sale of alcohol. The applicant explained that given that a licence had been granted including the sale of alcohol to a neighbouring premises, she had submitted her application, whereas previously, she had considered that any such application would be refused.

## **5. THE RESPONSIBLE AUTHORITIES CASE**

PC Brown from Norfolk Constabulary presented his case and explained that the Police wished to make a representation regarding the application on the grounds that the crime prevention and disorder objective could be undermined. He explained that the Police had concerns that without placing strict conditions on the licence there was a likelihood that it could attract persons who just wanted to drink and get drunk in what was an isolated location.

PC Brown referred to the neighbouring premises which was licensed to sell alcohol (off-sales) until 7pm whereas the applicant had applied on a Friday and Saturday night until 11pm. He explained that given the isolated location of the premises, excessive alcohol consumption in an area close to the dangers of a beach/river also raised concerns. The single track vehicular/pedestrian highway was a real personal safety consideration and also made it more difficult for emergency services to access the premises and respond effectively.

PC Brown referred to the Crime Prevention Officer’s report that included a number of recommendations, some of which the applicant had confirmed she had completed and some of which she had indicated that she intended to complete. He stated that the Police would have serious concerns if all the recommendations were not implemented. PC Brown explained that there was no other premises licenced within the vicinity that offered the sale of alcohol until 11pm and if the licence was granted as applied, there was a potential for it to become a late night drinking establishment. The “off-sales” of alcohol were also of particular concern and would provide an opportunity for customers to purchase alcohol late at night within the close proximity of the beach/river. He suggested that no sales should be made after 8pm to help ensure safe and responsible



drinking and also proposed that the sale of alcohol should be an ancillary to the purchase of food.

In conclusion, PC Brown reiterated that the Police's main concerns were for the potential for the premises to become a late night drinking establishment in such close proximity to the beach.

### **Questions to the Responsible Authority**

In response to a question raised by the applicant in relation to Silver Sands, which was situated on North Beach being licensed to a late hour together with facilities for the performance of live music, PC Brown explained that he was not familiar with the area in question and apologised that because he had been asked to attend the hearing at the last minute, he had not had sufficient time to carry out any research.

In response to a question from Councillor J Loveless as to whether there were in fact any other premises along the particular stretch of coastline that were licensed to sell alcohol after 7pm/8pm at night, PC Brown reiterated that because he had only received the paperwork at the last minute, he had not had any time to conduct any research.

The Licensing Manager took the opportunity to access the public register and confirmed that Silver Sands was licensed until 1am for the performance of live music and sale of alcohol (until 3am on New Year's Eve). As part of the conditions of the licence, it stipulated that no unaccompanied children under 16 years of age would be allowed on the premises, no children under 16 would be allowed on the premises after 23.00 hours and that should be a no admission or re-admittance policy after 23.30 hours. The location of Silver Sands, in comparison to that of Heacham Halt Cafe was displayed. The Licensing Manager, however advised that in accordance with the Council's Statement of Licensing Policy, every application should be dealt impartially and on its own individual merits.

In response to questions raised by the Legal Advisor, the applicant clarified (with the aid of the plan of the premises, page 54) where she intended to locate the secure store for the storage of alcohol. She explained that the small window would be blocked off, a shutter would be erected and a new security door would be installed which would only allow access to the area from inside the café.

The Legal Advisor questioned what the applicant's views were on the Police's recommendations that the sale of alcohol should cease at 8pm, that alcohol should only be permitted as an ancillary to the purchase of a meal and that there should be no off-sales. The applicant stated that she felt that 9pm would be a more reasonable hour and that she was willing to agree to the exclusion of the sale of alcohol off the premises. However, in relation to the sale of alcohol being restricted to an ancillary

to the purchase of a meal, she stated that it was difficult to determine what constituted a meal (i.e. bag of crisps).

In response to a further question from the Legal Advisor, the applicant confirmed that she was intending to operate a proof of age scheme. She also clarified that, apart from the recommendations in relation to the secure alcohol store, she was willing to implement all other recommendations contained within the Crime Prevention Officer's report and that she was willing for this to be a condition of the licence.

The Licensing Manager outlined to the Sub-Committee that following the end of the consultation period, he had received a complaint from the Chairman of the Resident's Association because the application had been advertised during the winter months, there had been no opportunity for him/other residents to register their objections.

The Licensing Manager explained that the Bushel & Strike's licence had been subject to a review in September 2007 as a result of a number of complaints that had been received when the applicant had been the leaseholder (and her son the Licence Holder) and as a result, a number of amendments had been made to the licence. The applicant acknowledged that she had been present and party to the hearing but the complaints had been made by one local resident. The Licensing Manager stated that a number of representations had been received in relation to a catalogue of incidents that had occurred at the premises.

In relation to a question from the Chairman as to the Police's representation that a condition should be imposed that stipulated that there should be "robust management of the operation likely to take place at the premises", PC Brown stated that when the applicant was visited by the Licensing Officer, she could not produce her Personal Licence card for examination and she also gave the impression that her knowledge of the current licensing laws was not necessarily up to date as it had been a long time since she had run a licensed venue. He explained that he had spoken to the Licensing Officer prior to the hearing who had informed him that there had been a number of complaints in relation to the Bushel & Strike (including the suggestion of lock-ins). PC Brown stated that any conditions attached to the licence were for the Sub-Committee to determine but reiterated that the Police did have concerns with the late hour applied for and suggested that after 7pm, a different type of clientele may be attracted to the premises. A late night licence could make the premises vulnerable to crime and disorder and it was the responsibility of the licence holder to ensure no authorised access was permitted.

In response to a further question from the Chairman as to whether the applicant's submission/evidence satisfied the Police's concerns in relation to the recommendations outlined in the Crime Prevention Officer's report, PC Brown stated that it was difficult to ascertain particularly as the report had gone into some depth. He still had

concerns as to what the applicant had actually implemented and what she was intending to implement and suggested that a condition could be imposed to clearly identify the requirements.

The Legal Advisor stated that the applicant had agreed to exclude the sale of alcohol off the premises and questioned what the Police's views were on her proposal that regulated entertainment (indoors only) and the sale of alcohol (on the premises) should cease at 9pm. PC Brown stated that overall he was not comfortable with the proposal and highlighted that the neighbouring premises was only licensed for the sale of alcohol until 7pm.

## **6. OTHER PERSON'S CASE**

There were no other persons present at the hearing therefore the Licensing Manager drew Members of the Sub-Committee's attention to Appendix 4 of the report (pages 51 – 53) which outlined their concerns about the application. In particular he highlighted that Mr Frostick had raised concerns in relation to problems that had occurred when the applicant, in July 2012, was granted a Temporary Event Notice.

In relation to the representation from Mr Haley, the Licensing Manager explained that he also had raised concerns in relation to the event in July 2012 which had caused a great nuisance from noise, light pollution and vibrations with many people gathering inside and outside of the premises. He had also expressed disquiet that the application had been advertised during the winter months when many of the caravans were not occupied. The Licensing Manager advised that there was nothing under the Act that stipulated when an application should be advertised only that the applicant was responsible for advertising the application in the specified form and for not less than 28 consecutive days.

## **7. SUMMING UP**

### **Responsible Authority**

PC Brown from Norfolk Constabulary summed up their case and reiterated that the Police had concerns on the grounds that the crime and disorder licensing objective could be undermined. Particular concerns related to the late hour as applied for and for the safety of individuals given the isolated location of the premises and its close proximity to the beach.

PC Brown also reiterated that the Police had concerns with the applicant's knowledge of the current licensing laws and that there had been problems experienced when she had been the leaseholder of a previous public house.

## **Applicant**

Mrs Moore, the applicant summed up her case and thanked the Sub-Committee for the opportunity to present her application. She reiterated that her aim was to promote the beach and offer customers additional services.

## **8. OUTSTANDING MATTERS**

The Licensing Manager addressed the Sub-Committee and referred them to the current Statement of Licensing Policy which was approved by full Council on the 25<sup>th</sup> November 2010 and highlighted the following extracts that may be relevant to the application:

### **3.0 Fundamental Principles**

3.1 The 2003 Act requires that the Council carries out its various licensing functions so as to promote the following four licensing objectives:

- (a) the prevention of crime and disorder,
- (b) public safety,
- (c) the prevention of public nuisance, and
- (d) the protection of children from harm.

3.2 Nothing in this 'Statement of Policy' will:

- (a) undermine the right of any individual to apply under the terms of the 2003 Act for a variety of permissions and to have any such application considered on its own merits;
- (b) override the right of any person to make representations on an application.

3.3 Every application will be dealt with impartially and on its individual merits. The Borough Council will not refuse to grant or vary an application unless it has received a representation from a responsible authority, such as the Police or an environmental health officer, or an interested party, such as a local resident or local business, which is a relevant representation.

3.4 Licensing is about regulating licensable activities on licensed premises and any conditions that are attached to premises licences or club premises certificates will be focused on matters which are within the control of the individual licensee or club, i.e. the premises and its vicinity.

## 18.0 **Conditions**

18.1 The Borough Council will not impose conditions unless it has received a representation from a responsible authority, such as the Police or an environmental health officer, or an interested party, such as a local resident or local business, which is a relevant representation, or is offered in the applicant's Operating Schedule. Any conditions will be proportional and necessary to achieve the Licensing Objectives.

### **Guidance issued under Section 182 of the Licensing Act 2003**

The Licensing Manager also reminded Members that under Section 4 of the Licensing Act 2003, licensing authorities must have regard to guidance issued under Section 182. The current guidance was issued by the Home Office in October 2012 and offered advice to licensing authorities on the discharge of their functions under the Act.

The following extracts may be relevant to the application and assist the Sub-Committee:

#### **Licence Conditions – General Principles**

1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will”, is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met, (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.

### **Each application on its own merits**

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

### **Public Nuisance**

2.18 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.

2.19 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

2.20 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific

premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.

- 2.21 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.
- 2.22 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late-evening or early-morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave.
- 2.23 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.
- 2.24 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.

### **Other Persons**

- 8.12 As well as responsible authorities, any other person can play a role in a number of licensing processes under the 2003 Act. This includes any individual, body or business entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their

geographic proximity to the premises. In addition, these persons may themselves seek a review of a premises licence. Any representations made by these persons must be 'relevant', in that the representation relates to one or more of the licensing objectives. It must also not be considered by the licensing authority to be frivolous or vexatious. In the case of applications for reviews, there is an additional requirement that the grounds for the review should not be considered by the licensing authority to be repetitious. Chapter 9 of this guidance (paragraphs 9.4 to 9.10) provides more detail on the definition of relevant, frivolous, vexatious and repetitious representations.

### **Determining Applications**

9.1 When a licensing authority receives an application for a new premises licence or an application to vary an existing premises licence, it must determine whether the application has been made in accordance with section 17 of the 2003 Act, and in accordance with regulations made under sections 17(3) to (6), 34, 42, 54 and 55 of the 2003 Act. It must similarly determine applications for the grant of club premises certificates made in accordance with section 71 of the 2003 Act, and in accordance with regulations made under sections 71(4) to (7), 84, 91 and 92 of the 2003 Act. This means that the licensing authority must consider among other things whether the application has been properly advertised in accordance with those regulations.

### **Where no representations are made**

9.2 A hearing is not required where an application has been properly made and no responsible authority or other person has made a relevant representation. In these cases, the licensing authority must grant the application in the terms sought, subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions under the 2003 Act. This should be undertaken as a simple administrative process by the licensing authority's officials who should replicate the proposals contained in the operating schedule to promote the licensing objectives in the form of clear and enforceable licence conditions.

### **Where representations are made**

9.3 Where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating schedule and it is relevant, (see paragraphs 9.4 to 9.10 below) the licensing authority's discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious (see paragraphs 9.4 to 9.10 below). Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.



### **Representations from the Police**

9.12 In their role as a responsible authority, the Police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The Police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The Police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regards to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the Police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the Police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

### **Hearings**

9.33 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation.

9.34 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy.

9.35 The licensing authority should give its decision within five working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition that is merely aspirational. For example,

conditions may not be attached which relate solely to the health of customers rather than their direct physical safety.

- 9.36 Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities in the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that those involved have the most current information.

### **Determining Actions that are Appropriate for the Promotion of the Licensing Objectives**

- 9.38 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case by case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.
- 9.39 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 9.40 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

### **Consistency with Steps Described in the Operating Schedule**

- 10.6 The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and

there have been no relevant representations made by responsible authorities or any other person, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required under the 2003 Act.

- 10.7 Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule. If conditions are broken, this may lead to a criminal prosecution or an application for a review and it is extremely important therefore that they should be expressed on the licence or certificate in unequivocal and unambiguous terms. The duty imposed by conditions on the licence holder or club must be clear to the licence holder, club, enforcement officers and the courts.

### **Imposed Conditions**

- 10.8 The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.
- 10.9 It is possible that, in certain cases, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions are appropriate to promote the licensing objectives.

### **Proportionality**

- 10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case by case basis and standardised conditions which ignore these individual aspects should be avoided. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

The Licensing Manager addressed the Sub-Committee and requested that having regard to the representations received, the Council's own Statement of Licensing Policy and the Section 182 Guidance, they consider the application, the report and take such steps as they considered to be appropriate for the promotion of the licensing objectives. These steps were:

- a) To grant the application under the terms and conditions applied;

- b) To grant the application with conditions that the Sub-Committee considers appropriate for the promotion of the licensing objectives;
- c) To reject all or part of the application.

The Licensing Manager advised that in terms of rejecting all or part of the application, the Sub-Committee could reduce the number of hours from that which had been applied for. The Sub-Committee was reminded that full reasons for their decision must be given as both the applicant responsible authority and other persons had a right of appeal against that decision to the Magistrates' Court.

The Legal Advisor stated that she had no further advice to offer.

## **9. REACHING A DECISION**

The Sub-Committee retired to consider their decision in private, accompanied and advised by the Legal Advisor on specific points of law and procedure and the Senior Democratic Services Officer for administration purposes, neither of whom took part in the decision making process. On all parties returning to the room, at the request of the Chairman, the Legal Advisor explained she had offered no further legal advice to the Sub-Committee in relation to their decision but had offered advice as to appropriate conditions.

## **10. PRELIMINARY DECISION**

The Chairman read out the preliminary decision and reasons for the decision as follows:

### **APPLICATION**

Kings Lynn and West Norfolk Borough Council, being the relevant licensing authority, received an application for a premises licence for Heacham Halt Café, South Beach, Heacham, Kings Lynn 7LH.

During the 28 day representation period, the Council received representations from the following:

### **RESPONSIBLE AUTHORITIES**

Norfolk Constabulary – objection.

Norfolk Fire Service – no representation.

Norfolk Trading Standards – no representation.

Norfolk Children's Safeguarding Board – no representation.

Norfolk Health Authority – no representation.

Planning – no representation.

Environmental Health (Health & Safety) – no representation.

Environmental Health/ Community Safety (Environmental Protection Team) – objection.  
Licensing Authority – report considered

### **OTHER PERSONS**

Two letters of objection were received from ‘other persons’ and were attached to the report before the Licensing Sub-Committee at Appendix 4.

### **HEARING**

On 4<sup>th</sup> April 2013, a hearing was held to consider the application. The Sub-Committee determined the application with a view to promoting the four licensing objectives. It considered this application on its own merits. In reaching its determination, the Sub-Committee had regard to the following matters:

- The relevant parts of the written and oral evidence before them;
- The Kings Lynn and West Norfolk Borough Council Licensing Policy;
- Statutory guidance issued under the Licensing Act 2003 ;
- The Human Rights Act.

The Sub-Committee listened to all the evidence and submissions. It heard from:

- The Licensing Manager
- Norfolk Constabulary (PCs Nash and Brown)
- The Applicant (Mrs Moore)

### **SUMMARY OF EVIDENCE**

The Licensing Manager presented his report. The Licensing Manager pointed out that CSNN Team had withdrawn their objection to the grant of the premises application on that basis that there would be no outdoor entertainment, which the applicant had agreed to.

The applicant Mrs Moore informed the Sub-Committee that she wanted the premises licence to do meals later in the evening and that she wanted to serve an alcoholic drink with a meal to build the business and promote the beach. She said that it was not her intention to run a pub.

Mrs Moore pointed out the availability of alcohol from nearby licensed premises.

Mrs Moore pointed out that she had been a licence holder previously.

Mrs Moore said that she would have a secure room for the storage of alcohol and comply with the conditions identified in the Crime Prevention

report with the exception of the secure alcohol storage requirement which she would deal with the construction of a secure storage area in the kitchen area and provision of a door and glazing in line with the crime report.

Mrs Moore volunteered that she would not need off sales and that she would be content with a 9pm end time.

Mrs Moore also stated that she would run an age approval scheme.

Norfolk Constabulary expressed their concerns that the premises were isolated and close to the beach which presents a greater degree of harm because of the risk of drowning whilst intoxicated.

The location and accessibility of the premises would affect the ability of the Police to get to it if there was a need.

An end time of 11pm was too late and that an end time of 8pm was more appropriate and in line with other premises in the area. The Police felt that an end time of 9pm was too late.

They were concerned about the potential off sales late at night.

Alcohol sales should be accompanied by a food purchase, if granted.

In addition the Police raised concerns about Mrs Moore's previous management history in relation to licensed premises and the lack of Mrs Moore's knowledge of the Licensing Act and its objectives.

Furthermore the Police pointed out that they were not aware that any of the alterations as required by the Crime Prevention Report had been undertaken.

No other persons objecting to the application were present, but the Sub-Committee considered those written representations received from them which were relevant to the four licensing objectives.

## **FINDINGS**

The Sub-Committee were of the view that the applicant had previous experience of running licensed premises and that the premises licence in the current case was for essentially a café. The Panel noted the applicant's agreement to no outside entertainment, no off-sales and her willingness to curtail the hours of operation.

The Sub-Committee considered the views of the 'other persons'/ Responsible Authorities and found that with the imposition of suitable conditions and the variations to the licence application suggested by the applicant that issues of noise, nuisance and public safety could be overcome.

The Sub-Committee considered only relevant representations. It disregarded any comments which did not assist with considering the likely effect of grant of the premises licence on the promotion of the licensing objectives

The Sub-Committee balanced the need of the applicant with the needs of other persons and/or the responsible authorities which made representations.

### **DETERMINATION**

The Sub-Committee does grant the application subject to the following conditions/exclusions:

### **CONDITIONS**

The Sub-Committee recognised that conditions will only be imposed on a licence where conditions are necessary for the promotion of one or more of the 4 licensing objectives. The Sub-Committee will only impose conditions on a licence where relevant representations have been made and it considers that it is necessary to impose conditions as a result of those representations. The following conditions were found to be appropriate:

1. The mandatory conditions applicable under the Licensing Act 2003.
2. The conditions consistent with the operating schedule.
3. The following additional conditions were imposed by the Sub-Committee, considered to be necessary and proportionate:

Condition 1 Regulated Entertainment shall only take place indoors only unless a Temporary Event Notice for an outdoor event is submitted to and approved by the Licensing Team at the Borough Council.

Condition 2 Regulated Entertainment and the sale of alcohol shall finish at 9pm every night of the week.

Condition 3 To comply with the recommendations contained in the Crime Prevention Officer's report and to include the construction of a secure alcohol storage area to be approved by the Crime Prevention Officer.

Condition 4 Prominent clear notices shall be displayed at all exits requiring customers to respect the needs of local residents and leave the premises and area quietly.

**EXCLUSION OF LICENSABLE ACTIVITIES:**

Sales of alcohol off the premises are excluded from this licence.

**RIGHT OF APPEAL**

There is a right of appeal against this decision to the Magistrates' Court. An appeal must be commenced within 21 days beginning with the day on which you receive notification of the decision. You may wish to seek independent legal advice from a solicitor or the Citizens Advice Bureau regarding this.

**Comments on the Decision**

At the invitation of the Chairman, the Licensing Manager confirmed he had no comments on the preliminary decision.

**11. DECISION**

The Chairman therefore confirmed the decision and the reasons as outlined above. He thanked everybody for their attendance and contributions and declared the meeting closed.

**The Meeting closed at 11.56pm**