

Statutory Licensing Sub-Committee

17th January 2023

Application for the Review of a Premises Licence



Ordinary Decision

Report of Alan Patrickson Corporate Director of Neighbourhoods and Climate Change

Councillor John Shuttleworth, Cabinet Portfolio Holder for Neighbourhoods and Climate Change

Electoral division(s) affected:

Elvet and Gilesgate

Purpose of the Report

The Sub-Committee is asked to consider and determine an application to review the club premises certificate in respect of The Tythe Barn (Durham Prison Officers Club) The Hallgarth, Durham, DH1 3AX

- 1 A plan showing the location of the premises is attached at Appendix 2.

Executive summary

- 2 On 21st November 2022, an application was received from Mr Mark Anslow, Nuisance Action Team Leader, Durham County Council (Responsible Authority) asking for a review of the club premises certificate (licence number LAPRG/05/0601) for The Tythe Barn, Durham Prison Officers Club, The Hallgarth, Durham, DH1 3AX.
- 3 During the consultation period the Licensing Authority received no representations in support of the review application.
- 4 Durham Constabulary, the Fire Safety Authority and the Planning Authority all responded to the consultation with no representations.

Mediation

- 5 On 13th December 2022, Mr Mark Anslow met with Mr Jack Quigley, Club Treasurer - Acting Vice Chairman and it was agreed that additional conditions would be appropriate to resolve the issues set out in the review application.

Recommendation(s)

- 6 The Sub-Committee is asked to determine the review application with a view to promoting the licensing objectives.
- 7 The Sub-Committee is recommended to give appropriate weight to:
- (a) The steps that are appropriate to promote the licensing objectives;
 - (b) The representations (including supporting information) presented by all parties;
 - (c) Durham County Council's Statement of Licensing Policy - Section 3.19 of the policy states that the licensing authority may reinstate or impose conditions about live music following a review of a Premises Licence or Club Premises Certificate (relating to premises authorised to supply alcohol for consumption on the premises) where it can be demonstrated that live music has undermined the promotion of the licensing objectives and such action is appropriate.

Other relevant parts of the policy are attached at Appendix 6;
 - (d) The Guidance issued to local authorities under Section 182 of the Licensing Act 2003 (as amended December 2022). The relevant parts of the guidance are attached at Appendix 7.

Background

- 8 Background information

| | | |
|--|--|---|
| Applicant | Mr Mark Anslow | |
| Type of Application: Review of a Club Premises Certificate | Date received: 21st November 2022 | Consultation ended: 19th December 2022 |
| Certificate Holder | Durham Prison Officers Club | |

- 9 The club premises certificate in respect of The Tythe Barn, Durham Prison Officers Club, The Hallgarth, Durham currently permits the following licensable activities:

| Licensable Activity | Days & Hours |
|--------------------------------------|---|
| Supply of Alcohol (on and off sales) | Monday to Saturday: 11:00 – 23:00 hrs Sunday: 12:00 – 22:30 hrs Christmas Day: 12:00 – 15:00 and 19:00 22:30 hrs |
| Live Music (indoors) | Monday to Thursday: 11:00 – 23:00 hrs Friday 11:00 – 23:30 hrs Saturday 11:00 – 00:00 hrs |
| Recorded Music & Dancing (indoors) | Monday to Thursday: 11:00 – 23:00 hrs Friday 11:00 – 23:30 hrs Saturday 11:00 – 00:00 hrs |
| Opening Hours | Monday to Saturday: 11:00 – 23:20 hrs Sunday 12:00 – 22:50 hrs Christmas Day: 12:00 – 15:20 and 19:00 - 22:50 hrs |

10 A copy of the club premises certificate is attached at Appendix 3.

Details of the application

11 The review application submitted by Mr Mark Anslow was received on 21st November 2022.

12 The application is deemed by the Licensing Authority to be relevant, and the application was advertised in accordance with the regulations.

13 The application for review relates to the following licensing objective:

- The Prevention of Public Nuisance

A copy of the review application, and communication emails agreeing additional conditions are attached at Appendix 4.

The Representations

14 During the consultation period, the Licensing Authority received no representations in support of the review application.

Durham Constabulary, the Fire Safety Authority and the Planning Authority all responded to the consultation with no representations. Copies attached for information only, see Appendix 5.

Mediation

- 15 On 13th December 2022, Mr Mark Anslow met with Mr Jack Quigley and it was agreed that additional conditions would be appropriate to resolve the issues set out in the review application. These are attached in Appendix 4.

The Parties

- 16 The Parties to the hearing will be:
- Mr Mark Anslow, Nuisance Action Team Leader, Environmental Health, Durham County Council (Applicant)
 - Mr Jack Quigley, Club Treasurer, Acting Vice Chairman for Durham Prison Officers Club (Club Premises Certificate holder)

Options

- 17 The options open to the Sub-Committee are:
- (a) To modify the conditions of the certificate;

Under section 177A(4) of the Licensing Act 2003, a licensing authority may add a condition relating to music as if music were regulated entertainment, and as if the club premises certificate licensed the music.
 - (b) To exclude a qualifying club activity from the scope of the certificate;
 - (c) To suspend the certificate for a period (not exceeding three months);
 - (d) To withdraw the club premises certificate.

Main implications

Legal Implications

- 18 The Committee should be aware of several stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.

See Appendix 1.

Consultation

19 The review application was subject to a 28 day consultation.

See Appendix 1

Conclusion

20 The Sub-Committee is asked to determine the application for the review of the club premises certificate for The Tythe Barn, Durham Prisons Officers Club, The Hallgarth, Durham DH1 3AX.

Background papers

- Durham County Council's Statement of Licensing Policy
- Guidance issued under Section 182 of the Licensing Act 2003 (as amended December 2022)

Other useful documents

- None

Contact: Karen Robson

Tel: 03000 265104

Appendix 1: Implications

Legal Implications

The case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court (Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943, Before the Honourable Mrs Justice Black.

In this case it was summed up that:

A licensing authority must have regard to guidance issued by the Secretary of State under section 182. Licensing authorities may depart from it if they have reason to do so but will need to give full reasons for their actions.

Furthermore the Thwaites case established that only conditions should be attached to a licence with a view to promoting the Licensing objectives and that 'real evidence' must be presented to support the reason for imposing these conditions.

This judgement is further supported in the case of The Queen on the Application of Bristol Council v Bristol Magistrates' Court, CO/6920/2008 High Court of Justice Queen's Bench Division The Administrative Court, 24 February 2009, [2009] EWHC 625 (Admin) 2009 WL648859 in which it was said:

'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'.

In addition to this, it was stated that any condition attached to the licence should be an enforceable condition.

Consultation

The premises licence review application was subject to a 28 day consultation in accordance with the Licensing Act 2003 and its regulations.

The Responsible Authorities were consulted on the application.

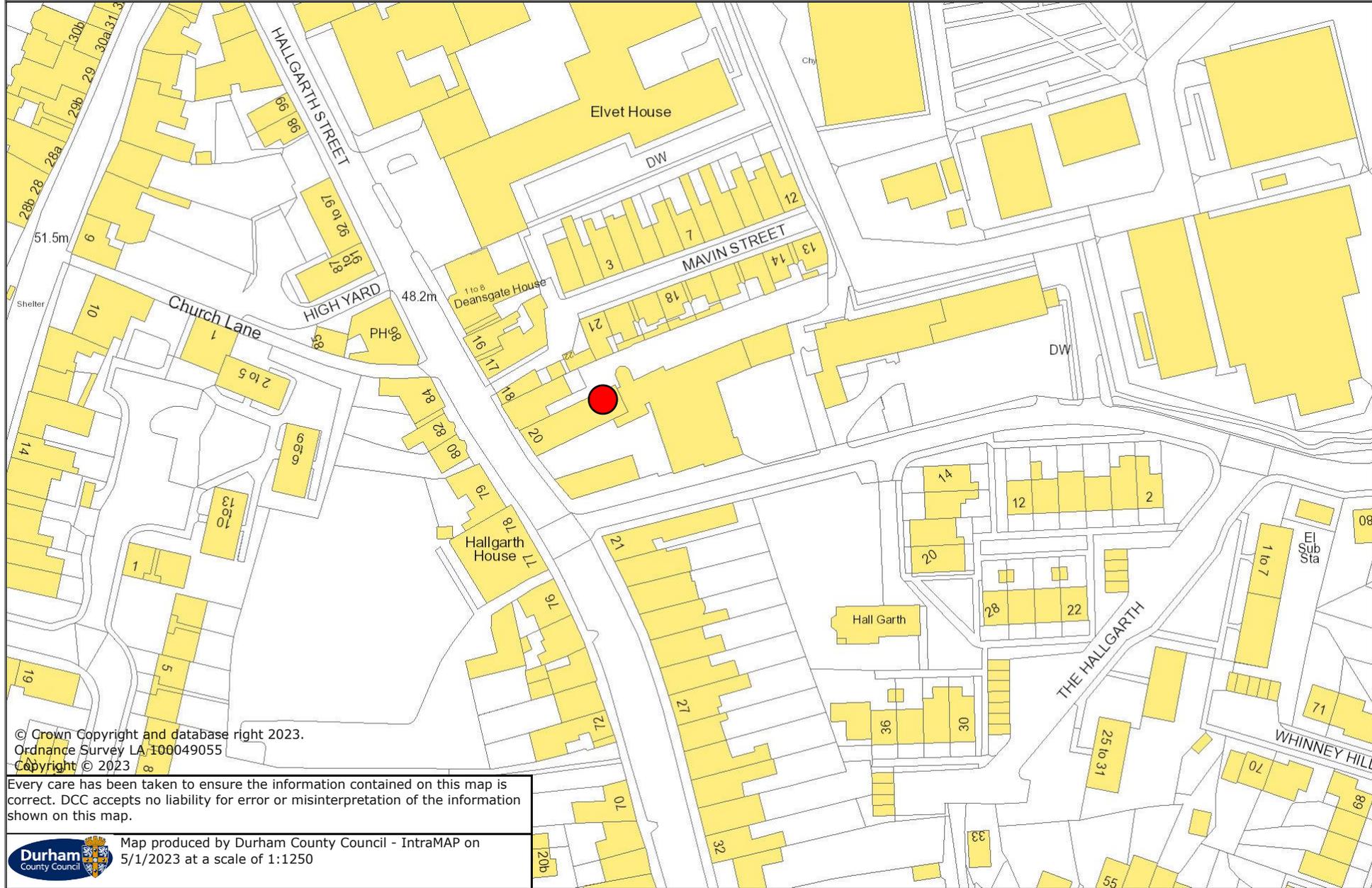
The notice of application was displayed on the premises for a period of 28 days.

Notice of the application was displayed at the Council's Head Office at County Hall, Durham.

In addition, details of the application were available to view on the Council's website throughout the 28 day consultation period.

Appendix 2: Location Plan

Durham County Council - IntraMAP



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Ordnance Survey LA 100049055
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Every care has been taken to ensure the information contained on this map is correct. DCC accepts no liability for error or misinterpretation of the information shown on this map.



Map produced by Durham County Council - IntraMAP on 5/1/2023 at a scale of 1:1250

Appendix 3: Club Premises Certificate



Club Premises Certificate

Licensing Act 2003 Part A

Regulation 35,36

| | |
|---|----------------|
| Club Premises Certificate Number | LAPRCG/05/0601 |
|---|----------------|

Club Details

| |
|---|
| Name of club in whose name this certificate is granted and relevant postal address of club, including Post Town and Post Code. Tythe Barn The Hallgarth Durham DH1 3AX |
| Contact Details Telephone Number : |

| | |
|--|------------------|
| If different from above the postal address of club premises to which this certificate, relates, if any, or if none, ordnance survey map reference or description. | |
| Post town | Post code |
| Telephone number | |

| |
|---|
| Where the club premises is time limited the dates - |
|---|

Qualifying club activities authorised by the Certificate and the times the Certificate authorises the carrying out of qualifying club activities

| | | |
|-----------------|--------------------|---------------|
| Sale of Alcohol | Sunday | 12:00 - 22:30 |
| Sale of Alcohol | Christmas Day | 12:00 - 15:00 |
| Sale of Alcohol | Christmas Day | 19:00 - 22:30 |
| Sale of Alcohol | Good Friday | 12:00 - 22:30 |
| Sale of Alcohol | Monday to Saturday | 11:00 - 23:00 |
| Live Music | Friday | 11:00 - 23:30 |
| Live Music | Saturday | 11:00 - 00:00 |
| Live Music | Monday to Thursday | 11:00 - 23:00 |
| Recorded Music | Friday | 11:00 - 23:30 |
| Recorded Music | Saturday | 11:00 - 00:00 |
| Recorded Music | Monday to Thursday | 11:00 - 23:00 |
| Dancing | Friday | 11:00 - 23:30 |
| Dancing | Saturday | 11:00 - 00:00 |
| Dancing | Monday to Thursday | 11:00 - 23:00 |

The opening hours of the club

| | |
|--------------------|---------------|
| Sunday | 12:00 - 22:50 |
| Christmas Day | 12:00 - 15:20 |
| Christmas Day | 19:00 - 22:50 |
| Good Friday | 12:00 - 22:50 |
| Monday to Saturday | 11:00 - 23:20 |

Non Standard Timings

Where the certificate authorises supplies of alcohol whether these are on and/ or off supplies

Alcohol is supplied for consumption both on and off the Premise

Annex 1 - Mandatory Conditions

Any alcohol supplied for consumption off the premises must be in a sealed container and must be made to a member of the club in person and made at a time when the premises are open for the purposes of supplying alcohol, in accordance with the club premises certificate, to members of the club for consumption on the premises.

The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

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 club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol: -

The 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:-

(a) Where any of the following alcoholic drinks is sold or supplied for sale or 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:-

1. Beer or cider - ½ pint;
2. Gin, rum, vodka or whisky - 25ml or 35ml; and
3. Still wine in a glass - 125ml; and

(b) Customers are made aware of the availability of these measures.

This Club Premises Certificate has been granted upon conversion under schedule 8 of the Licensing Act 2003 of the previous Justices' Club Registration Certificate, and such rights and restrictions that applied to such Certificate are hereby incorporated into this Club Premises Certificate, subject to any express terms to the contrary hereinafter specified, and/or any restriction applying to a Club Premises Certificate and/or any licensable activity.

Annex 2 – Conditions consistent with the Club Operating Schedule

The Premises shall have a sufficient frontage to a road or to an open space having sufficient access to a road to ensure the rapid dispersal of people from the premises in emergency.

Adequate arrangements shall be provided for access for the Fire Brigade for fire fighting.

The maximum number of people permitted within the premises shall be determined by the Council.

The premises shall be provided with adequate facilities to monitor and control the number of people present.

Suitable provisions shall be made to enable disabled people to use the premises including the provision of adequate access and means of escape.

All necessary safety checks shall be carried out before the admission of the public. Details shall be entered in the fire log book.

The premises shall be arranged to minimise the risk of noise nuisance to nearby properties.

There shall be adequate means of escape from all parts of the premises.

The premises and the fitments therein shall be constructed and maintained so as to minimise any risk of structural failure or collapse.

Adequate barriers or guarding shall be provided throughout the premises to minimise, so far as practicable, the risk of any person falling.

The premises shall be adequately protected against the effects of a fire occurring within the building or in any adjacent building.

Adequate provision shall be made to control the spread of smoke through the premises in the event of fire.

Where the safety curtain is provided, it shall be arranged so as to protect the audience from the effects of a fire or smoke on stage, for sufficient time to enable the safe evacuation of the auditorium.

Adequate protection against lightening shall be provided.

Details of any fire control measures incorporated in the premises shall be provided for the Fire Brigade.

The electrical installation [including temporary installations] shall be mechanically and electrically safe and suitable for the intended use of the premises.

All parts of the premises shall be provided with adequate illumination. All routes of escape and all parts of the premises to which the public have access shall be provided with adequate and assured illumination from two independent supplies and systems.

Adequate ventilation shall be provided to all parts of the premises so as to maintain healthy conditions.

Permanent means of heating all regularly occupied parts of the premises shall be provided and shall be arranged so as not to cause a safety or fire hazard.

The premises shall be provided with a permanent water supply [including water for fire fighting] and adequate drainage.

Adequate and free sanitary accommodation shall be provided, having regard to the type of entertainment to be given at the premises.

Adequate cloakrooms for patrons together with adequate changing rooms for staff including performers shall be provided, having regard to the operation of the premises.

Facilities for the preparation, cooking or sale of food shall prevent any risk of contamination of the food.

An adequate supply of free drinking water shall be provided for all staff including performers, together with free drinking water for patrons if required.

Adequate provision shall be made for the safe storage and ready removal of refuse.

A fire alarm warning system and efficient means of communication in case of an emergency shall be provided throughout the premises.

Efficient means shall be provided for calling the fire brigade in the event of fire.

Adequate fire-fighting equipment shall be provided for the premises.

Where a generator is installed it shall not present any fire or electrical hazard to the rest of the premises.

Where a generator is installed to provide an alternative electricity supply to emergency equipment or to emergency lighting it shall have sufficient capacity and be able to start operating sufficiently quickly to ensure safety in the event of the failure of the normal electricity supply.

An adequate supply of first aid equipment and materials must be available on the premises and at least one suitably trained first-aider must be on duty when the public are present. A First Aid Room shall be provided in any premises with an accommodation limit of 1000 or more people [or 1500 or more people in the case of a closely-seated auditorium].

The premises shall have adequate facilities for communication with the staff and the public.

Adequate safety signs shall be provided throughout the premises.

Curtains, hangings and temporary decoration and/or scenery, must be maintained flame-retardant. These must not obstruct exits, fire safety signs, or fire-fighting equipment. Any upholstered seating must meet the pass criteria for testing in accordance with section 5 of BS 5852 : 1990.

All facilities intended for use by the public shall be clearly indicated.

Any mechanical installation shall be arranged so as to minimise any risk to the safety of the public, performers and staff.

Any special effects shall be arranged so as to minimise any risk to the public, performers and staff. Written consent from the council is required before such special effects as fireworks, lasers, etc. may be used. Ten days notice in writing of any proposal to use special effects must be received.

Appropriate certificates shall be provided as evidence to the Council that the premises may be safely opened to the public.

The premises shall not without the written consent of the Licensing Authority be opened or used for the licensed purposes on Christmas Day.

The maximum number of persons in the premises at any one time is 120 persons. We ensure that exits, passageways and gangways are kept clear so as not to obstruct egress from the premises.

Annex 3 – Conditions attached after a hearing by the Licensing Authority

None

Annex 4 - Plans

ion date checked



HM PRISON SERVICE
CONSTRUCTION UNIT

BERT & PARTNERS
2 THEOBALD COURT BOREHAMWOOD HERTFORDSHIRE WD6 4RN

ishment
DU 02

STAFF CLUB
FLOOR PLANS

| | | |
|------------|-----------------|---------------------|
| 1:100 | record | drawn H&P |
| MARCH 1999 | drwg no 020. | checked STAFFCLB |

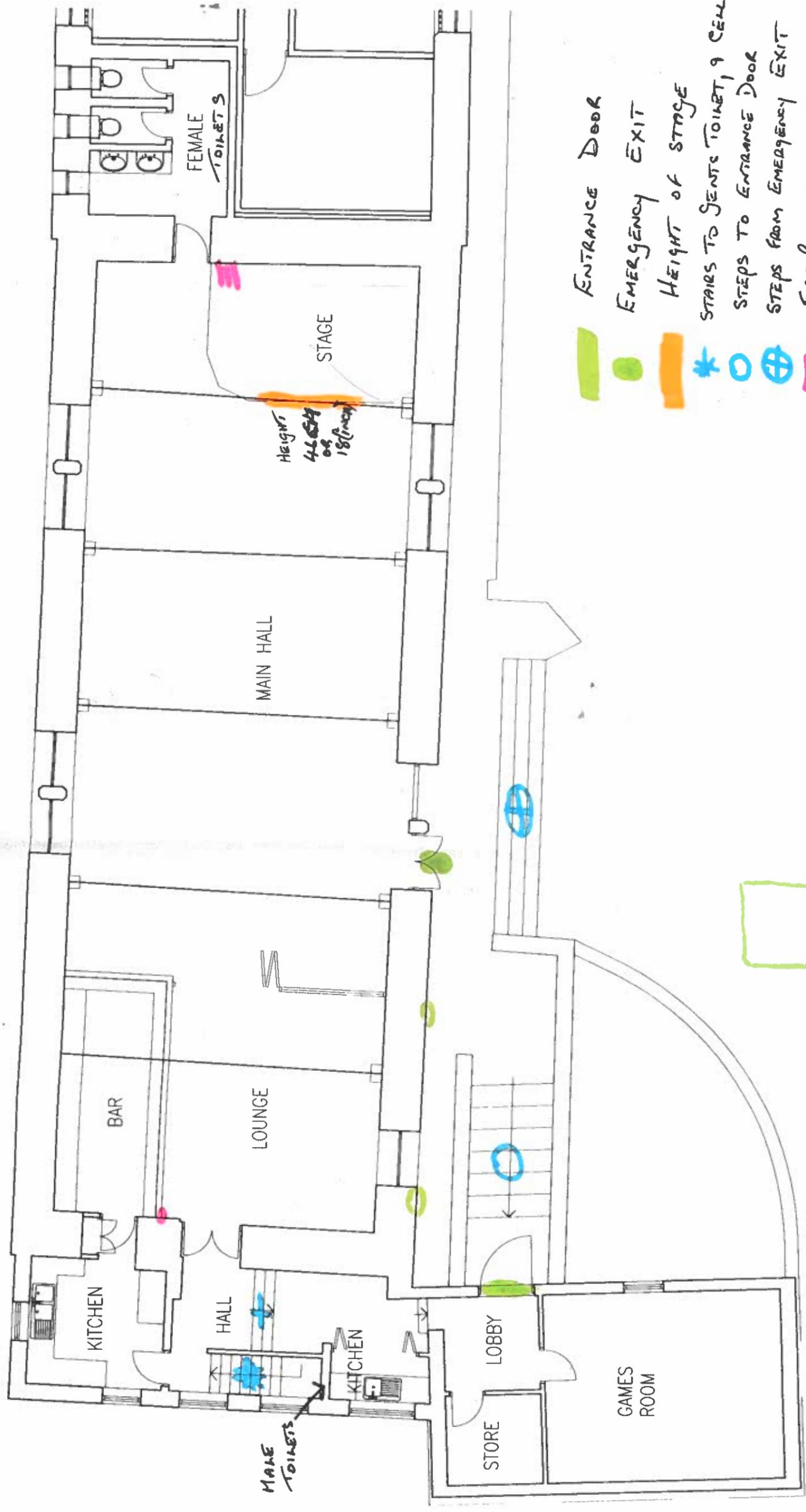
not scale off this drawing. Check all dimension on site



Original Scale 1:1



LOWER
GROUND FLOOR PLAN
LEVEL 1



-  ENTRANCE DOOR
-  EMERGENCY EXIT
-  HEIGHT OF STAGE
-  STAIRS TO GENTS TOILET, 9 CELLAR
-  STEPS TO ENTRANCE DOOR
-  STEPS FROM EMERGENCY EXIT
-  FIRE POINT LOCATION OF FIRE EXTINGUISHERS.
-  SECURITY LIGHTING
-  FIRE ALARM BUTTON
-  SMALL PATIO AREA
-  STEPS IN HALL



APPROX 8' X 5'
3 TABLES, SEATS 18 PEOPLE

GROUND FLOOR PLAN
LEVEL 2

Appendix 4: Review application and Mediation

DURHAM COUNTY COUNCIL, Licensing Services, PO Box 617, Durham. DH1 9HZ

Application for the review of a premises licence or club premises certificate under the
Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.
If you are completing this form by hand please write legibly in block capitals. In all cases ensure
that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.
You may wish to keep a copy of the completed form for your records.

I **Mark Anslow**

(Insert name of applicant)

**apply for the review of a club premises certificate under section 87 of the Licensing Act 2003
for the premises described in Part 1 below (delete as applicable)**

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description

The Tythe Barn Prison Officers Club, The Hallgarth

Post town Durham

Post code (if known) DH1 3AX

Name of premises licence holder or club holding club premises certificate (if known)

Number of premises licence or club premises certificate (if known)

LAPRCG/05/0601

Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible
authority (please read guidance note 1, and complete (A)
or (B) below)

2) a responsible authority (please complete (C) below)

x

3) a member of the club to which this application relates
(please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick ✓ yes

Mr

Mrs

Miss

Ms

Other title

(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick ✓ yes

**Current postal
address if
different from
premises
address**

Post town

Post Code

Daytime contact telephone number

**E-mail address
(optional)**

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

| |
|--|
| Name and address Mark Anslow Nuisance Action Team Leader Community Protection Neighbourhoods and Climate Change Durham County Council Annand House Meadowfield Durham DH7 8RS |
| Telephone number (if any) |
| E-mail address (optional) |

This application to review relates to the following licensing objective(s)

- Please tick one or more boxes ✓
- | | |
|---|-------------------------------------|
| 1) the prevention of crime and disorder | <input type="checkbox"/> |
| 2) public safety | <input type="checkbox"/> |
| 3) the prevention of public nuisance | <input checked="" type="checkbox"/> |
| 4) the protection of children from harm | <input type="checkbox"/> |

Please state the ground(s) for review (please read guidance note 2)

The Prevention of Public Nuisance Licencing Objective

Please provide as much information as possible to support the application (please read guidance note 3)

The Tythe Barn is located in close proximity to residential properties (approximately 25m from closest residential receptor). It is a historic building and as such does not offer significant acoustic protection due to its construction/glazing. Whilst the entrance is into a lobbied area there is a fire door which opens directly into the main hall. The Hall is rented out to members for private functions and there is a monthly night also arranged, all of which have high music levels via a disco, band or live performers.

The Nuisance Action team received a complaint of excessive music noise arising from the Tythe Barn on the 18/7/22 from a local resident. An investigation was carried out in relation to the complaint made.

The investigation demonstrated that the noise breakout is excessive at times and likely to significantly impact on residential properties. Excessive noise from music and patrons outside was witnessed by officers of the Nuisance action Team on the 27/08/22. The breakout of music has also been demonstrated within recordings provided by the complainant on the 15/7/22, 5/8/22, 6/8/22, 18/9/22, 24/9/22, 24/10/22, 5/11/22 where music was alleged to be causing a disturbance for a number of hours up until 11.30pm at times.

From the investigation it became evident that the impact was not from every event or the “normal” operation of the venue, however it was associated with the management and nature of events. This mainly relates to the control of the music level at source, ensuring the fire doors are kept shut and ensuring the congregation of persons outside is managed.

I have been in discussions with Jack Quigley, the Club Treasurer in relation to the above impact. Mr Quigley has been generally compliant and seemed keen to address the impact on local residents. A visit was carried out to the premises and we discussed the importance of ensuring the fire door was kept closed and the noise level and congregations being managed. When this is in place, whilst there is some break out of noise, it is considered acceptable considering the time of night, regularity of events and nature of the area. It was agreed that the committee would make sure that the mitigation measures would be implemented during the above visit on the 6/10/22.

However unfortunately since that time we have received evidence demonstrating that an event on the 5/11/22 has caused a significant impact again, with accusations that the fire doors was left open, music excessive and a noisy congregation of persons outside.

Mr Quigley was contacted on the 9/11/22 to advise of the complaint and responded on the 19/11/22. Within the response he advised that the noise was unavoidable due to an issue with the heating meaning the fire door needed to be kept open. As Mr Quigley was well aware of our concerns in this area I might have expected contact to advise of the heating issues directly

following the event. Instead a response explaining this was not received for some 14 days following the issue.

Considering the above information I do not believe the informal approach stated above is sufficient in ensuring the outbreak of noise is suitably controlled going forward. I therefore believe that appropriate conditions are required to safeguard residents and ensure that the prevention of public nuisance licensing objective is met.

I would therefore ask that the licencing committee remove the exemption allowed under the Live Music act 2012 and affix the following conditions to the club licence:

- Ensure all doors and windows serving the main hall are kept shut whilst recorded or live music is being played at a level likely to be audible at residential properties.
- A noise limiting device shall be installed and used at all times where recorded or live music is to be played at a level likely to be audible at residential properties. The noise limiter shall be set by a competent person to a volume so as to ensure that the music break out is managed at a level so as not to be intrusive to residential properties. Details of the noise level the limiter is set to shall be provided to the Local Authorities Nuisance Action Team.
- The beer garden area to the front of the premises shall only be used between the hours of 10am-9pm Sunday-Thursday and 10am-10pm Fri-Saturday. Whilst the beer garden is in use regular checks shall be carried out to ensure the behaviour of patrons does not lead to a noise level likely to be intrusive to residential properties.

Please tick ✓ yes

Have you made an application for review relating to the premises before

If yes please state the date of that application

Day Month Year

| | | | | | | | |
|--|--|--|--|--|--|--|--|
| | | | | | | | |
|--|--|--|--|--|--|--|--|

If you have made representations before relating to the premises please state what they were and when you made them

| |
|--|
| |
|--|

Please tick ✓

yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant’s solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature

.....

Date

21/11/2022

.....

Capacity

.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)

Community Protection
Neighbourhoods and Climate Change
Durham County Council
Annand House
Meadowfield
Durham
DH7 8RS

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

From: Mark Anslow
Sent: 15 December 2022 09:20
To: Karen Robson
Cc: Jack Quigley
Subject: Scheduled Committee Hearing - REVIEW of a Club Premise Certificate - The Tythe Barn (Durham Prison Officers Club) The Hallgarth, Durham, DH1 3AX

Dear Karen

Myself and members of the Club committee have met to discuss the representation and potential relevant conditions. We have I believe agreed on relevant conditions which if affixed to the licence would remove my concerns regarding the "prevention of Public Nuisance" licensing objective. Should the below be formally agreed by the licence holder prior to the hearing, then I believe the matter has been mediated and I do not intend to submit further documents or raise further matters at the hearing.

1. Ensure all doors and windows serving the main hall are kept shut whilst recorded or live music is being played at a level likely to be audible at residential properties
2. Live or recorded music within the venue shall not be played at a level in excess of 90dBA LAeq (5 mins) at a position no more than 2m from the forward facing speaker position. A measurement shall be taken every hour and the results recorded and provided at the request of Durham County Councils Environmental Health Team. Bass type noise shall be minimised, and checks will be undertaken to ensure it is not intrusive at the nearest noise sensitive receptors. On the instruction of Durham County Councils Environmental Health Team, following receipt of a valid complaint and completion of an appropriate investigation, a noise impact assessment will be undertaken and a noise limiter provided to ensure that the break out of music noise is managed.
3. The beer garden to the front of the premises shall only be used between the hours of 10am-9pm Sunday-Thursday and 10am-10pm Friday-Saturday. Whilst the beer garden is in use, regular checks shall be carried out to ensure behaviour of patrons does not lead to a noise level likely to be intrusive to residential properties.

I will be in attendance at the hearing to answer any questions the committee may have.

regards

Mark Anslow
Nuisance Action Team Leader
Community Protection
Neighbourhoods and Climate Change
Durham County Council
Annand House
Meadowfield
Durham
DH7 8RS

From: Mark Anslow
Sent: 14 December 2022 16:37
To: Jack Quigley
Cc: Karen Robson
Subject: Re: Conditions

Hi Jack,

I have copied your email to Karen who is the officer organising the hearing, so she can give advice in relation to whether it can be heard in absentia of yourself or whether you will need to send someone else.

I will put together a formal email proposing the conditions and send this to the licensing team. You will receive a copy from licensing, however I will also copy you in and would ask that you respond to licensing agreeing the conditions, so they have the mediated agreement from both parties.

Thank you for your time and effort in getting this sorted and my apologise that it needs to all the fuss of a hearing.

thanks

Mark Anslow
Nuisance Action Team Leader
Community Protection
Neighbourhoods and Climate Change
Durham County Council
Annand House
Meadowfield
Durham
DH7 8RS

From: Jack Quigley
Sent: 14 December 2022 16:00
To: Mark Anslow
Subject: :Re: Conditions

Hi Mark

Yes I have received the email from the council regarding the 9th January however I am scheduled to be in that day at work so more than likely will not be able to attend.

As for the amended proposed conditions you have stated we are happy for these to be added and proceed with these going forward.

Thanks

Jack

Get [Outlook for Android](#)

From: Mark Anslow
Sent: Wednesday, December 14, 2022 1:49:47 PM
To: Jack Quigley
Subject: Conditions

Hi Jack,

Thank you very much for meeting with me yesterday.

You have probably seen the email about the hearing and the date to submit further information by now. So we need to get these conditions drawn up and agreed if possible. I have redrafted them as per below. Have tried to keep them fairly straightforward and not going into any detail in relation to bass levels etc, but as I said you need to watch how prominent the bass is as that can still be a problem even if the music is within the 90dB. As I advised I have put the second part in to condition 2 as yesterday was hardly a detailed and full assessment of the noise, however it appears that at the level agreed there is unlikely to be significant impact. However this does rely on you guys making sure that any visiting DJs etc stick to it otherwise we are going to get complaints again and you will need to put in a noise limiter which will need to be informed by a proper assessment. It makes sense to make this all part of the condition as this negates the need for us potentially going back through all of this process, but have also made sure that there is a quantifier in there i.e. we have to demonstrate to you that there is a problem first.

see what you think and let me know asap so we can get it agreed prior to the 20th:

1. Ensure all doors and windows serving the main hall are kept shut whilst recorded or live music is being played at a level likely to be audible at residential properties
2. Live or recorded music within the venue shall not be played at a level in excess of 90dBA LAeq15mins at the mixing desk location. A measurement shall be taken every hour and the results recorded and provided at the request of Durham County Councils Environmental Health Team. Bass type noise shall be minimised, and checks will be undertaken to ensure it is not intrusive at the nearest noise sensitive receptors. On the instruction of Durham County Councils Environmental Health Team, following receipt of a valid complaint and completion of an appropriate investigation, a noise impact assessment will be undertaken and a noise limiter provided to ensure that the break out of music noise is managed.
3. The beer garden to the front of the premises shall only be used between the hours of 10am-9pm Sunday-Thursday and 10am-10pm Friday-Saturday. Whilst the beer garden is in use, regular checks shall be carried out to ensure behaviour of patrons does not lead to a noise level likely to be intrusive to residential properties.

thanks

Mark Anslow
Nuisance Action Team Leader
Community Protection
Neighbourhoods and Climate Change

Appendix 5: Responses from Responsible Authorities

Tue 22/12/2022 10:10

Hi Karen

Having looked at police systems regarding the mentioned premises, Durham Constabulary have no comments or representations.

Thanks

A/Sgt Iain Robertson
Licensed Economy Team
Durham Constabulary

From: Karen Robson

Sent: 21 November 2022 12:53

Subject: REVIEW of a Club Premise Certificate - The Tythe Barn (Durham Prison Officers Club) The Hallgarth, Durham, DH1 3AX

Dear Sir/Madam

The following application has been received by Durham County Council Licensing Services and a copy of the application will be delivered by the applicant to the licence holder and all responsible authorities.

Application Type - Application for the Review of a Club Premises Certificate
(to address concerns relating to the Prevention of Public Nuisance objective)

Applicant – Mr Mark Anslow, Nuisance Action Team Leader, Community Protection
**Premises – The Tythe Barn (Durham Prison Officers Club) The Hallgarth,
Durham, DH1 3AX**

Club Premises Certificate Number LAPRCG/05/0601

Date of Application – 21st November 2022

Last date for representations –

19th December 2022

A redacted copy of the review application and the current club premises certificate licence are attached.

Please note the last date for representations.



Chief Fire Officer: Stuart Errington

Fire and Rescue Service Headquarters,
Belmont Business Park, Durham, DH1 1TW

Date: 28 November 2022

This matter is being dealt with by: Amy Davison

Ext:

Our Ref: 7E40850040

Your Ref:

Direct Dial Telephone:

E-mail:

By email :

Dear Sir / Madam

Licensing Act 2003

Regulatory Reform (Fire Safety) Order 2005

The Tythe Barn (Prison Officers Club), Hm Prison Durham, Hallgarth, Durham, DH1 3HU

I acknowledge your application dated 21 November 2022 for a review of a Club Premises Certificate under The Licensing Act 2003 in respect of the above named premises.

No representations will be made to the Licensing Authority subject to the responsible person for the above premises ensuring compliance with the requirements of the Regulatory Reform (Fire Safety) Order 2005.

A suitable and sufficient fire safety risk assessment must be carried out in order to comply with the above Order.

For further guidance please refer to <https://www.gov.uk/workplace-fire-safety-your-responsibilities/fire-safety-advice-documents> which provides information about the Regulatory Reform (Fire Safety) Order 2005.

Should you require any further information please do not hesitate to contact me on the telephone number or e-mail address shown above or visit our website www.ddfire.gov.uk and follow the link to Fire safety at work.

Yours faithfully

Amy Davison
Fire Safety Section



Contact: Jess White
Direct Tel:
email:
Your ref:
Our ref: CON28/22/03294



Karen Robson
Annand House
Meadowfield
Durham
DH7 8RS

15th December 2022

Dear Karen Robson

Town and Country Planning Act 1990 (as amended)

Proposed Review of a club premises certificate .
At The Tythe Barn Prison Officers Club The Hallgarth Durham DH1 3AX
For Karen Robson

A consultation has been forwarded on to the Local Planning Authority regarding the Review of a club premises certificate ..

The Tythe Barn Prison Officers Club is currently under use 'Sui Generis' as it is a drinking establishment, and has Planning Permission for this use class. No further objections.

Yours sincerely

Jess White
Assistant Planning Officer

Regeneration, Economy and Growth

Durham County Council, Planning Development (Central East), Room 4/86-102, County Hall,
Durham, DH1 5UL Main Telephone:

Appendix 6: Statement of Licensing Policy

7.3 Prevention of Public Nuisance - Licensed premises, especially those operating late at night and in the early hours of the morning, can cause a range of nuisances impacting on people living, working or sleeping near the premises.

The concerns relate, amongst other things, to litter, light pollution, noxious odours and noise nuisance resulting from music, human voices, ventilation equipment and vehicles. The **council will expect** applicants to demonstrate that suitable and sufficient measures have been identified, and will be implemented and maintained, with the intention of preventing public nuisance relevant to the individual style, location and characteristics of the premises and events.

If an external structure or area is to be used by customers, whether for consumption of alcohol or for smoking, the **applicant will be expected** to offer measures designed to minimise its impact on residents in respect of both public nuisance and crime and disorder. These measures may include a restriction on hours that areas / structures will be used or appropriate signage requesting customers to consider residents and monitoring of such areas by staff.

The placement of tables and chairs outside of licensed premises may give rise to public nuisance including noise and litter. When tables and chairs are situated on the public highway, relevant authorisations will often be required from the Highways Authority. Enquiries concerning such consents should be made to the Council's Highway's Section (see Appendix III). In predominantly commercial areas, such as shopping centres, the use of tables and chairs outside may be allowed however, the **council will normally expect** them to be removed before the premises close, and any resulting litter/debris cleared away.

Applicants should consider reducing potential noise nuisance by, for example (this list is not exhaustive):

- Assessment of likely noise levels in the premises
- Assessment of likely noise levels if outdoor drinking is allowed
- The sound insulation the building would provide (e.g. double glazing, double doors / lobbies to entrances, windows used for ventilation)
- The distance and direction to the nearest noise sensitive premises.
- Likely noise sources outside of the premises (e.g. emptying bottle bins, taxis, unruly customers leaving the premises)
- Dispersal of patrons – where necessary the council will expect a dispersal policy for patrons at the end of the evening. The policy will specify such issues as alterations to the style and volume of music played, public address announcements and use of appropriate signage at exits
- Ways to limit noise / disorder from patrons leaving the premises

The extent to which the above matters will need to be addressed will be dependent on the nature of the area where the premises are situated, the type of premises concerned, the licensable activities to be provided, operational procedures and the needs of the local community.

Applicants are advised to seek advice from Durham County Council's Environmental Health team and incorporate any recommendations in their operating schedule before submitting their applications.

Takeaways and fast-food outlets - The council expects takeaways and late-night refreshment premises to take reasonable steps in clearing litter from outside their premises and along the pavement in either direction as necessary, whilst the premises are open and at the end of the working day. These premises should maintain clean, dirt or grease free frontages. Such premises should also display notices advising customers of the location of bins and patrons should be encouraged to use the bins made available.

Important note: The council considers that it will be inappropriate to grant a premises licence permitting the sale of alcohol at premises which are principally used for selling hot food for consumption off the premises (“takeaway” premises).

Takeaway premises are often open late at night and in the early hours of the morning. They can be associated with disorder as people under the influence of alcohol may congregate outside takeaways after leaving or in some cases having been ejected from late-night licensed premises.

Takeaways operate within the night time economy but without the same framework around them, e.g. pubwatch, use of security staff etc. In addition, alcohol sold from takeaways could readily be consumed in public spaces and may not be subject to the same controls associated with other types of licensed premises.

From a health perspective, obesity levels are rising nationally and locally; without action the health of the population will continue to suffer. Responsible licensees can support the ‘Working toward a healthy weight in County Durham’ goals and the council would see the following steps as a contribution to reducing health harms and health inequalities:

- Menu to display calories per portion information for all food offers.
- Menu to offer at least one clear and stated, 'healthy option' and to be priced competitively.
- Menu to display recommended daily calorie limits for adults (For women the recommended limit is 2,000 calories a day for men it's 2,500).
- Menu to offer smaller / half portions.
- Salt and pepper available upon request rather than always on the table

In addition to the information provided above, **Table 3 in Appendix IV** provides recommendations, suggestions and examples of how to prevent the specific nuisance type outlined. This table is not exhaustive, and every applicant must consider the specific situation, location and circumstances associated with their premises, activities, clientele and workforce when identifying hazards, assessing risks and identifying controls.

3.10 Review of a premises licence or club premises certificate - At any stage during the life of an authorisation, any premises that has a premises licence or club premises certificate may have that licence reviewed by any of the named responsible authorities or by a person defined in the Act as 'any other person' e.g. residents, councilors, MPs etc. At any time following the grant of a licence or Club Premises Certificate, any person or responsible authority may apply for a review of it.

The Police may also submit a summary review if there is a premises associated with serious crime and disorder. When the council instigates a review, it will ensure that there is a clear separation of functions between the officer acting as the licensing authority and the officer acting as a responsible authority.

Applications for review must relate to one or more of the licensing objectives and must not (where the review is submitted by any person who is not a responsible authority) be considered as frivolous, vexatious or repetitious by the licensing authority. Where an application for a review is frivolous vexatious or repetitious, or where an application for a review is considered not relevant to the licensing objectives, the council will reject it.

The council expects responsible authorities and other parties to give early notice to licence holders of any concerns about issues identified at premises and of the need for improvement. It is expected that requests for a review of any licence will be sought only if such notice has failed to resolve the matter or problem. It is always worth considering other options before requesting a review of a licence, including:

- Talking to those who manage the premises to let them know about the problem and give them the opportunity to address the issues;
- Asking DCC Licensing Services to talk to those who manage the premises on your behalf; or
- Talking to the relevant "responsible authority" e.g. environmental health in relation to noise nuisance, or the police in relation to crime and disorder, about the problem.

A review application is also subject to a similar consultation period to that of a new licence or variation, during which relevant representations may be submitted. The Act provides strict guidelines, timescales and procedures for review applications and hearings and the council will deal with every review application in accordance with these rules. Further details on review applications can be found in Appendix IV of this policy.

At a review, the council may take the following steps (if any) where such steps are considered appropriate for the promotion of the licensing objectives:

- a) Modify the conditions of the licence
- b) Exclude a licensable activity from the scope of the licence
- c) Remove the designated premises supervisor
- d) Suspend the licence for a period not exceeding three months
- e) Revoke the licence.

In cases where there is evidence that the crime prevention objective is being undermined, revocation of the licence will be seriously considered by the authority, even in the first instance.

There is a right of appeal to the Magistrates' Court against the decision of the licensing sub-committee, and if an appeal is lodged by the licence-holder, the original decision of the licensing authority will not take effect until the appeal is determined or withdrawn. There is an exception to this in the case of a summary review brought only by the police.

**Appendix 7: Section 182 Guidance & Extract from the Licensing
Act 2003**

Public nuisance

- 2.15 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- 2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.
- 2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 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.
- 2.18 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.
- 2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive

period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.

- 2.20 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.
- 2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

11. Reviews

The review process

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.3 An application for review may be made electronically, provided that the licensing authority agrees and the applicant submits a subsequent hard copy of the application, if the licensing authority requires one. The licensing authority may also agree in advance that the application need not be given in hard copy. However, these applications are outside the formal electronic application process and may not be submitted via GOV.UK or the licensing authority's electronic facility. The applicant must give notice of the review application to the responsible authorities and holder of the licence or certificate. The licensing authority is required to advertise a review application.
- 11.4 In addition, the licensing authority must review a licence if the premises to which it relates was made the subject of a closure order by the police based on nuisance or disorder and the magistrates' court has sent the authority the relevant notice of its determination, or if the police have made an application for summary review on the basis that premises are associated with serious crime and/or disorder.
- 11.5 Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder or the sexual exploitation of children. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.
- 11.6 Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities. Further information on how licensing authorities should

achieve this separation of responsibilities can be found in Chapter 9, paragraphs 9.13 to 9.19 of this Guidance.

- 11.7 In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives. Following the grant or variation of a licence or certificate, a complaint regarding a general issue in the local area relating to the licensing objectives, such as a general (crime and disorder) situation in a town centre, should generally not be regarded as relevant unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time, could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.
- 11.8 Where a licensing authority receives a geographic cluster of complaints, consideration may be given as whether these issues are the result of the cumulative impact of licensed premises within the area concerned. In such circumstances, the licensing authority may be asked to consider whether it would be appropriate to publish a cumulative impact assessment. Further guidance on cumulative impact assessments can be found in Chapter 14 of this Guidance.
- 11.9 Responsible authorities and other persons may make representations in respect of an application to review a premises licence or club premises certificate. They must be relevant (i.e., relate to one or more of the licensing objectives) and, in the case of other persons, must not be frivolous or vexatious. Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent hard copy, unless the licensing authority waives this requirement.
- 11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.
- 11.11 If the application for a review has been made by a person other than a responsible authority (for example, a local resident, residents' association, local business or trade association), before taking action the licensing authority must first consider whether the complaint being made is relevant, frivolous, vexatious or repetitious. Further guidance on determining whether a representation is frivolous or vexatious can be found in Chapter 9 of this Guidance (paragraphs 9.4 to 9.10).

Repetitious grounds of review

- 11.12 A repetitious ground is one that is identical or substantially similar to:

- a ground for review specified in an earlier application for review made in relation to the same premises licence or certificate which has already been determined; or
 - representations considered by the licensing authority when the premises licence or certificate was granted; or
 - representations which would have been made when the application for the premises licence was first made and which were excluded then by reason of the prior issue of a provisional statement; and, in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or grant.
- 11.13 Licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a further means of challenging the grant of the licence following the failure of representations to persuade the licensing authority on an earlier occasion. It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, it is recommended that more than one review originating from a person other than a responsible authority in relation to a particular premises should not be permitted within a 12 month period on similar grounds save in compelling circumstances or where it arises following a closure order or illegal working compliance order.
- 11.14 The exclusion of a complaint on the grounds that it is repetitious does not apply to responsible authorities which may make more than one application for a review of a licence or certificate within a 12 month period.
- 11.15 When a licensing authority receives an application for a review from a responsible authority or any other person, or in accordance with the closure procedures described in Part 8 of the 2003 Act (for example, closure orders), it must arrange a hearing. The arrangements for the hearing must follow the provisions set out in regulations. These regulations are published on the Government's legislation website (www.legislation.gov.uk). It is particularly important that the premises licence holder is made fully aware of any representations made in respect of the premises, any evidence supporting the representations and that the holder or the holder's legal representative has therefore been able to prepare a response.

Powers of a licensing authority on the determination of a review

- 11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.
- 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.
- 11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account

when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.

- 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:
- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)¹⁰;
 - remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
 - suspend the licence for a period not exceeding three months;
 - revoke the licence.
- 11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.
- 11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.
- 11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.
- 11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough

action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

Reviews arising in connection with crime

- 11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.
- 11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.
- 11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.
- 11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:
- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
 - for the sale and distribution of illegal firearms;
 - for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
 - for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
 - for prostitution or the sale of unlawful pornography;
 - by organised groups of paedophiles to groom children;
 - as the base for the organisation of criminal activity, particularly by gangs;

- for the organisation of racist activity or the promotion of racist attacks;
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

Review of a premises licence following closure order or illegal working compliance order

11.29 Licensing authorities are subject to certain timescales, set out in the legislation, for the review of a premises licence following a closure order under section 80 of the Anti-social Behaviour, Crime and Policing Act 2014 or an illegal working compliance order under section 38 of and Schedule 6 to the Immigration Act 2016. The relevant time periods run concurrently and are as follows:

- when the licensing authority receives notice that a magistrates' court has made a closure order it has 28 days to determine the licence review – the determination must be made before the expiry of the 28th day after the day on which the notice is received;
- the hearing must be held within ten working days, the first of which is the day after the day the notice from the magistrates' court is received;
- notice of the hearing must be given no later than five working days before the first hearing day (there must be five clear working days between the giving of the notice and the start of the hearing).

Review of a premises licence following persistent sales of alcohol to children

11.29 The Government recognises that the majority of licensed premises operate responsibly and undertake due diligence checks on those who appear to be under the age of 18 at the point of sale (or 21 and 25 where they operate a Challenge 21 or 25 scheme). Where these systems are in place, licensing authorities may wish to take a proportionate approach in cases where there have been two sales of alcohol within very quick succession of one another (e.g., where a new cashier has not followed policy and conformed with a store's age verification procedures). However, where persistent sales of alcohol to children have occurred at premises, and it is apparent that those managing the premises do not operate a responsible policy or have not exercised appropriate due diligence, responsible authorities should consider taking steps to ensure that a review of the licence is the norm in these circumstances. This is particularly the case where there has been a prosecution for the offence under section 147A or a closure notice has been given under section 169A of the 2003 Act. In determining the review, the licensing authority should consider revoking the licence if it considers this appropriate.

Licence conditions - Live Music or recorded music

16.36 Any existing licence conditions (or conditions added on a determination of an application for a premises licence or club premises certificate) which relate to live music or recorded music remain in place, but are **suspended** between the hours of 08.00 and 23.00 on the same day where the following conditions are met:

- at the time of the music entertainment, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption on the premises;
- if the music is amplified, it takes place before an audience of no more than 500 people; and
- the music takes place between 08.00 and 23.00 on the same day.

16.37 Whether a licence condition relates to live or recorded music will be a matter of fact in each case. In some instances, it will be obvious that a condition relates to music and will be suspended, for example “during performances of live music all doors and windows must remain closed”. In other instances, it might not be so obvious: for example, a condition stating “during performances of regulated entertainment all doors and Windows must remain closed” would be suspended insofar as it relates to music between 08.00 and 23.00 on the same day to an audience of up to 500, but the condition would continue to apply if there was regulated entertainment after 23.00.

16.38 More general licence conditions (e.g. those relating to overall management of potential noise nuisance) that are not specifically related to the provision of entertainment (e.g. signage asking patrons to leave quietly) will continue to have effect.

16.39 Chapter 9 of this Guidance sets out how a licensing authority must determine applications for a new licence or to vary an existing premises licence. Licence conditions imposed, in accordance with paragraphs 9.41 to 9.43, for live or recorded music activities will only apply if the activity meets the criteria of having more than 500 people present, and/or the activities are taking place between 23.00 and 08.00.

16.40 These conditions will, in effect, be suspended between 08.00 and 23.00 if a performance of live music or the playing of recorded music takes place before an audience of 500 people or fewer, but will remain on the face of the licence for when these activities may take place under other circumstances.

16.41 Where a performance of live music or the playing of recorded music on relevant licensed premises is not licensable, it remains possible for anyone to apply for a review of a licence or certificate, if there are appropriate grounds to do so.

Licence reviews: Live and recorded music

16.55 On a review of a premises licence or club premises certificate, section 177A(3) of the 2003 Act permits a licensing authority to lift the suspension⁷⁴ and give renewed effect to an existing condition relating to music. Similarly, under section 177A(4), a licensing authority may add a condition relating to music as if music were regulated entertainment, and as if that premises licence or club premises certificate licensed the music. In both instances the condition should include a statement that Section 177A does not apply to the condition

16.56 An application for a review in relation to relevant premises can be made by a licensing authority, any responsible authority or any other person. Applications for review must still be relevant to one or more of the licensing objectives and meet a number of further requirements

Extract from the Licensing Act 2003

177A Licence review for live and recorded music

(1) Subsection (2) applies where—

(a) music takes place on premises which are authorised by a premises licence or club premises certificate to be used for the supply of alcohol for consumption on the premises,

(b) at the time of the music, the premises are open for the purposes of being used for the supply of alcohol for consumption on the premises,

(c) if the music is amplified, it takes place in the presence of an audience of no more than 500 persons, and

(d) the music takes place between 8am and 11pm on the same day (or, where an order under section 172 has effect in relation to music, during any times specified under that order).

(2) Any condition of the premises licence or club premises certificate which relates to live music, recorded music or both does not have effect in relation to the music unless it falls within subsection (3) or is added to the licence in accordance with subsection (4).

(3) A condition falls within this subsection if, on a review of the premises licence or club premises certificate it is altered so as to include a statement that this section does not apply to it.

(4) On a review of a premises licence or club premises certificate a licensing authority may (without prejudice to any other steps available to it under this Act) add a condition relating to **F5**... music as if—

(a) the **F5**... music were regulated entertainment, and

(b) the licence or certificate licensed the music.

(4A) This section does not apply to music which, by virtue of a provision other than paragraph 12A or 12C of Schedule 1, is not regarded as the provision of regulated entertainment for the purposes of this Act.

(5) In this section—

- “condition” means a condition—

(a) included in a premises licence by virtue of section 18(2)(a) or (3)(b), 35(3)(b), 52(3) or 167(5)(b),

(b) included in a club premises certificate by virtue of section 72(2)(a) or (3)(b), 85(3)(b) or 88(3),

(c) added to a premises licence by virtue of its inclusion in an application to vary the licence in accordance with section 34 or 41A which is granted under section 35(2) or 41B(3) (as the case may be), or

(d) added to a club premises certificate by virtue of its inclusion in an application to vary the certificate in accordance with section 84 or 86A which is granted under section 85(2) or 86B(3) (as the case may be);

- “live music” means entertainment of a description falling within, or of a similar description to that falling within, paragraph 2(1)(e) of Schedule 1;
- “music” means live music or recorded music or both;
- “recorded music” means entertainment of a description falling within, or of a similar description to that falling within, paragraph 2(1)(f) of Schedule 1; and
- “supply of alcohol” means—
 - (a) the sale by retail of alcohol, or
 - (b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.