



**Report to:** Licensing and Enforcement Sub Committee

**Date of Meeting:** 28 August 2019

**Public Document:** Yes

**Exemption:** None

**Agenda item:** 6

**Subject:** Application for the grant of a time limited premises licence under the Licensing Act 2003

**Purpose of report:** The report summarises an application for the grant of a time limited premises licence to be considered by the committee.

**Recommendation:** Recommendation

**That members consider an application for the grant of a time limited premises licence to allow the provision of recorded music, live music and the sale of alcohol for consumption ON the premises at H fest, Lower Halsdon Farm, Mudbank Lane, Exmouth. EX8 3EG. The application is to cover the period 30 August – 31 August 2019.**

**Reason for recommendation:** To comply with statutory processes.

**Officer:** Lesley Barber – [lesley.barber@eastdevon.gov.uk](mailto:lesley.barber@eastdevon.gov.uk)

**Financial implications:** The only financial implication is if the applicant appeals against the decision made, with the possibility of court costs.

**Legal implications:** Legal implications are included within the report.

**Equalities impact:** Low Impact

**Risk:** Low Risk

**Links to background information:** **Appendices**

- Appendix A – Licensing Application
- Appendix B – Plans of the premises
- Appendix C – Event Management Plan
- Appendix D – Event Risk Assessments
- Appendix E - Representations
- Appendix F - Map detailing the event location compared to location of residential properties.
- Appendix G– Responses to Notices of Hearing & supporting documents
- Appendix H – Operating Schedule

**Link to Council Plan:** Not applicable

## 1 Description of Application

- 1.1 An application has been received from Hospitality Events, 43 The Strand, Exmouth, EX8 1AL. The application was received and accepted by the Licensing Authority on 5 July 2019 to allow consultation to commence with responsible authorities.
- 1.2 The application is provided at **APPENDIX A**.
- 1.3 The proposed timings and licensable activities applied for are as follows:
- |                             |                   |              |
|-----------------------------|-------------------|--------------|
| Provision of live music     | Friday & Saturday | 12:00-22:00  |
| Provision of recorded music | Friday & Saturday | 12:00-22:00  |
| Sale of alcohol             | Friday & Saturday | 12:00-22:00  |
| Opening hours               | Friday & Saturday | 12:00 -22:00 |
- 1.4 The application seeks to licence a field adjacent to Lower Halsdon Farm, Mudbank Lane, Exmouth. This is to provide licensable activities at an event known as H fest. The event is proposed to run 30 – 31 August 2019.
- 1.5 A plan of the site (with the area for licensable activities marked in red) along with additional plans and photos detailing the location of the stage, bar, additional non licensable activities and camping were submitted in support of the application. These are provided at **APPENDIX B**.
- 1.6 The event will operate in accordance with an Event Management Plan, at **APPENDIX C**. This is the current version of the EMP (version 3) id dated 14/08/19. Risk assessment documents are provided at **APPENDIX D**

## 2 Statutory Bodies' Response

- 2.1 Devon & Cornwall Police  
A representation has been received – an agreed position has been reached between Police and the applicant. **APPENDIX E**
- 2.2 Devon & Somerset Fire & Rescue Service  
No representations have been received.
- 2.3 Area Child Protection Committee and Local Safeguarding Children Board  
No representations have been received.
- 2.4 Devon Trading Standards  
No representations have been received.
- 2.5 East Devon District Council, Environmental Health Service  
A representation has been received. **APPENDIX E**
- 2.6 East Devon District Council, Planning & Countryside Service  
No representations have been received.
- 2.7 Primary Care Trust  
No representations have been received.
- 2.8 Home Office

No representations have been received.

### **3 Representations and Responses to Notices of Hearing**

- 3.1 Devon & Cornwall Police have submitted a representation, attached at **APPENDIX E**. The Police have raised a concern that no 'drinking up time' has been allowed for. An agreed position has been reached between the Police and the applicant. The applicant has agreed that there will be a 30 minute drinking up time. The sale of alcohol is to cease at 23:30, with the event closing time remaining at midnight.
- 3.2 A representation has been received from Environmental Health, raising concerns relating to the prevention of public nuisance licensing objective. This relates to the provision of live and recorded music at the event. The Environmental Health objection is attached at **APPENDIX E**
- 3.3 A representation has been received from Exmouth Town Council. This is attached at **APPENDIX E**. The representation relates to the prevention of public nuisance licensing objective.
- 3.4 In the response to Notice of Hearing the Environmental Health Officer has indicated that she hopes to come to an agreed position with the applicant. **APPENDIX G2** shows the noise measuring positions requested by Environmental Health. Since returning the notice of hearing document a further email exchange has taken place between the applicant and the Environmental Health Officer. This is attached at **APPENDIX G4**. However, at the time of writing this report it is unclear if an agreement has been reached by both parties on all points and therefore the Environmental Health representation remains in place.
- 3.5 Representations have been received from thirty local residents. These are attached at **APPENDIX E**. The residents live in Halsdon Avenue, Highbury Park and Carberry Avenue. A map showing the location of these streets in relation to the Lower Halsdon Farm field is attached at **APPENDIX F**
- 3.6 Details of the responses to the statutory Notice of Hearing are attached at **APPENDIX G**.
- 3.7 In the Response to Notice of Hearing the applicant has submitted five letters from individuals in support of his application. These are attached at **APPENDIX G1**. Each supporter has stated that they are content that the licensing objectives have been met, given that a list of safeguards have been put in place by the applicant. The committee are asked to note the following:
- Two of the supporting letters state that they are content there is a challenge 21 policy in place to ensure that alcohol is not sold to anyone under the age of eighteen. However, the EMP for this event clearly states that the policy will be challenge 25 not challenge 21.
  - Two of the supporting letters list four CCTV that they are content with. However, there is no suggestion that CCTV will be in place for this event. It is not included within the EMP.
- 3.8 In the Response to Notice of Hearing (**APPENDIX G**) Exmouth Town Council have indicated that they are content to withdraw their representation, subject to three conditions as agreed during mediation:
1. Amplified music to finish at 22:30
  2. The whole event to finish at 23:00
  3. All car parking to be provided on site.
- However, points 2 & 3 above were not agreed during the mediation meeting and therefore the representation has not been treated as withdrawn. Confirmation has been received from Exmouth town Council that their representation remains in place.

## 4 Proposed Operating Schedule and Mediation

- 4.1 The conditions offered by the applicant in the operating schedule are attached at **APPENDIX H**. In the operating schedule the applicant is asked to describe the steps they intend to take to promote the four licensing objectives. In this application those steps are set out within the EMP (**APPENDIX C**). A condition has been offered by the applicant confirming that the event will be run in accordance with the EMP. An Event Management Plan may be updated and added to at any stage prior to the event taking place. At the time of writing this report the current EMP is version 3, dated 14/08/19.
- 4.2 A mediation meeting chaired by the Licensing Authority was held at Exmouth Town Hall on 13 August. The meeting was attended by the applicants, the Environmental Health Officer, Cllr Brian Toye (attending on behalf of Exmouth Town Council) and six residential objectors.
- 4.3 The Licensing Authority arranges mediation when representations have been received against new licensing applications to clarify whether an agreed position can be reached between objectors and applicant(s). Applications remain as contested for a hearing before the Licensing Sub-Committee unless all representations are withdrawn at a mediation meeting.
- 4.4 Concerns were raised regarding the event at mediation. Those concerns included the finish time of the event, the number of hours in total that music would be played for, any respite between live music acts and concerns relating to the number of cars attending the event and the likelihood that cars would park in the residential streets.
- 4.5 Residents also raised concerns regarding the impact this event may have on wildlife in the vicinity. Residents were advised that this would not be a consideration under the Licensing Act and that should this matter proceed to a hearing the Licensing Sub-Committee would have regard to the four licensing objectives only.
- 4.6 The applicants advised those present that the purpose of this event is to provide a beneficial and meaningful recovery activities for wounded, injured or sick service personnel and veterans to aid their recover. The intention is also to raise awareness and funds for the Royal Marines and Veterans charities.
- 4.7 The applicant indicated that he would be willing to consider some compromises to the hours of operation. It was agreed by all parties present that the regulated entertainment (live and recorded music) would cease at 22:30 daily. Background music, which is not a licensable activity, would continue after that time.
- 4.8 Discussion between the applicant and the Environmental Health Officer centred on the steps in place to monitor noise and the respite periods between acts. The Environmental Health Officer has requested additional steps be put in place (and included within the EMP) to mitigate the risk of disturbance to residents. At the time of writing this report it is unclear if all the Environmental Health requirements have been met and therefore the representation has not been treated as withdrawn.
- 4.9 The Environmental Health Officer had also expressed concerns regarding the location of the stage within the event arena and specifically the orientation of the stage, which could cause additional noise disturbance to local residents. The applicant agreed that the stage would be moved. The applicant was advised by the Licensing Authority that any amendment to the plan that had been submitted as part of the licensing application would need to be considered by the Licensing Sub-Committee and any changes could not be agreed during the informal mediation meeting.

- 4.10 Since the mediation meeting an updated EMP has been received, attached at **APPENDIX C**. This does contain an amended plan (see EMP appendix A, plan six) which clearly shows that the stage and the bar have been repositioned. It is also noted that the food vendors and children's area have been repositioned. This plan differs from the plan attached to the licence application submitted on 5 July (**APPENDIX B**). Should the Licensing Sub-Committee be minded to grant the licence it must be clear which one of these plans the applicant is asking the Sub-Committee to consider and which will therefore be the authorised plan. It is noted that the latest plan included within the EMP was not considered by the responsible authorities as part of the consultation process.
- 4.11 During the mediation meeting residents asked if the sale of alcohol could cease at 23:00 with the event closing at this same time. Residents were advised that the Police had reached an agreement with the applicant that a 30 minute drinking up time would be factored in, to allow those attending to finish their drink and move away from the event.
- 4.12 The applicant suggested he would not be content for the sale of alcohol to finish at 22:30 to allow the event to close at 23:00 and did suggest a compromise in that the sale of alcohol would cease at 23:00 with the event to close at 23:30. No overall agreement was reached between the applicant and residents on this matter.
- 4.13 It is noted that many residents who had raised an objection did not attend the mediation meeting. Those who did attend were advised that the matter would proceed to a hearing for a decision to be made by the Licensing Sub-Committee.

## **5 Relevant Licensing Policy**

### **Licensing Objectives**

- 5.1 Section 3.1.1 of the Policy states: 'The Licensing Authority has a duty under the Act to carry out its licensing functions with a view to promoting the four licensing objectives.'

These are:-

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

- 5.2 Section 3.1.2 of the policy states: These objectives are the only matters to be taken into account in determining the application and any conditions attached must be appropriate in achieving the licensing objectives.

- 5.3 Section 3.1.3 of the Policy states: A licence will only be granted where the Licensing Authority is satisfied that these objectives have been met.

### **Conditions**

- 5.4 Section 6 of the policy sets out what the Sub Committee should consider before imposing conditions on a licence.

- 5.5 Section 6.3 of the policy states: Generally it is recognised that the licensing function is not to be seen as a mechanism for the general control of anti-social behaviour by individuals/groups once they are beyond the direct control of the licence holder of any premises concerned. But the Licensing Authority's discretion may be engaged if relevant representations are made and there is an evidential link between the disturbance and the licensed venue.

### **Licensing Hours**

- 5.6 Section 10.1 of the Policy states: The licensing authority will deal with the issue of licensing hours on the individual merits of each application. When the Authority's discretion is engaged

consideration will be given to the individual merits of an application but the presumption will be to grant the hours requested unless there are objections to those hours raised by Responsible Authorities or any other person on the basis of the licensing objectives. However, when issuing a licence with hours beyond midnight higher standards of control will generally need to be included in operating schedules to promote the licensing objectives especially for premises which are situated near residential areas.

- 5.7 Section 10.4 of the Policy states: The terminal hours will normally be approved where the applicant can show that the proposal would not adversely affect the licensing objectives unless, after hearing relevant representation the licensing authority believe it necessary, proportionate and reasonable to restrict the hours required.

### **Nuisance**

- 5.8 Section 16.1 of the Policy states: To promote the licensing objectives, applicants for licences for licensable activities will be required to demonstrate the measures they have in place for the prevention of public nuisance. The impact of the licensable activities on people living in the vicinity should not be disproportionate or unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter. The prevention of public nuisance can include low-level nuisance affecting a few people living locally as well as a major disturbance affecting the whole community. It may also include the prevention of the reduction of the living and working amenity and environment of interested parties.

### **Capacity**

- 5.9 Section 17.1 of the Policy states: Where it is considered necessary to control the maximum numbers of persons attending premises for the purpose of preventing crime and disorder or for public safety the licensing authority will expect this to be addressed in the operating schedule. The licensing authority, if relevant representations are made and only then if such conditions are deemed necessary, proportionate and reasonable, may impose a condition stipulating a maximum number of persons permitted to attend premises where it considers it necessary to prevent crime and disorder or for public safety purposes.

- 5.10 The **Guidance** issued under Section 182 Licensing Act 2003 states:

The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It may then only impose conditions that are appropriate to promote one or more of the four licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute.

It is perfectly possible that in certain cases, because the test is one of appropriate, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned.

Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose.

Licensing authorities should only impose conditions which are appropriate and proportionate for the promotion for the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be appropriate to impose the same or similar duties.

In relation the Prevention of Public Nuisance licensing objective the Section 182 Guidance states:

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.

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.

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.

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.

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.

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.

Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in antisocial 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.

## 6. Observations

- 6.1 Following the implementation of the first set of regulations under the Police Reform and Social Responsibility Act on 25 April 2012 a new provision relating to the 'test' that Licensing Committees should consider when deciding on licensing applications was introduced. The evidential level for Licensing Committees has been lowered so that the test now is that their decisions need only be 'appropriate' and no longer 'necessary'.
- 6.2 The application being considered is for the grant of a Premises Licence to allow:
- Regulated Entertainment (live & recorded music)
  - Sale of alcohol for consumption ON the premises
- 6.3 The H fest event ran in 2018 at this same location. Licensing activities were authorised under a Temporary Event Notice, the capacity of the event being less than 500 people.
- 6.4 The EMP for this year's event states 'the overall capacity is anticipated to reach a maximum of 1000' (at any one time)
- 6.4 As noted at **APPENDIX E** the Police have requested a 30 minute 'drinking up time' at the end of the event period. Whilst the Licensing Act 2003 does not set out a requirement for 'drinking up time' the Police consider this best practice and vital to preventing crime and disorder.
- 6.5 Although no response has been received from a number of the outstanding objectors their original written representations will have to be considered by the committee (**APPENDIX E**).
- 6.6 A small number of objectors have responded to the notice of hearing indicating that they wish to attend the hearing to address the committee. Those who have responded and cannot attend have nominated another to represent them. Details of the response to notice of hearing and additional comments in support of the representations are attached at **APPENDIX G**
- 6.7 Mr George Nightingale is nominated as the Designated Premises Supervisor. Mr Nightingale has held a Personal Licence with this Authority since 2005.
- 6.8 The Sub Committee will now need to consider whether to grant this application as it stands or in the light of the representations to refuse the application or grant it in a different form.

## Legal Advice

1. As relevant representations have been made in respect of the application, this hearing must be held. (Relevant representations are about the likely effect of the grant of the application on the promotion of the licensing objectives, by any person, bodies representing them or

responsible authorities). The Licensing Sub-Committee must disregard any information or evidence not relevant to the licensing objectives.

2. The Licensing Sub-Committee must consider this application in accordance with Section 4 of the Licensing Act 2003, which requires that licensing functions must be carried out with a view to promoting the four licensing objectives. The Licensing Authority must also have regard to its own licensing policy and the Secretary of State's guidance, but may depart from both if it has good reason to do so. Those reasons should be stated.
3. Section 18 of the Act requires the Licensing Authority to grant a premises licence unless it considers additional steps are needed for the promotion of the licensing objectives having regard to any relevant representations.

The steps are:

- (a) to grant the licence subject to:
  - (i) the conditions in the operating schedule modified to such extent as members consider necessary for the promotion of the licensing objectives, and
  - (ii) any condition which must under sections 19, 20 or 21 be included in the licence;
- (b) to exclude from the scope of the licence any of the licensable activities to which the application relates
- (c) to refuse to specify a person in the licence as the premises supervisor
- (d) to reject the application.

The conditions of the licence are modified if any are altered or omitted or any new condition is added. Different conditions may be applied to different parts of the premises, and to different licensable activities. The Licensing Sub-Committee must give its reasons for its decision to take any of these steps. Similarly, if any part of an application is rejected, the Licensing Sub-Committee must give its reasons.

4. The Act requires mandatory conditions to be imposed where supplying alcohol or exhibiting films are approved as licensed activities. It also requires a mandatory condition to be imposed where door supervisors or other individuals carrying out security activities are conditions on the licence.

**(a) Section 19 - Mandatory conditions relating to the supply of alcohol**

1. (a) There shall be no sale or supply of alcohol when there is no designated premises supervisor in respect of this premises licence or at a time when the said premises supervisor does not hold a personal licence or when his/her licence is suspended.
  - (b) Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.  
Source: Section 19 Licensing Act 2003
2. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
  - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises -
    - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to-

- (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
    - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
  - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective.
  - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective.
  - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.
  - (e) dispensing alcohol 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).
3. The responsible person shall ensure that free potable water is provided on request to customers where it is reasonably available.
4. (1) The premises licence holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) 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 either –
- (a) a holographic mark, or
  - (b) an ultraviolet feature.
5. The responsible person must ensure that-
- (a) 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
  - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises and
  - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

6. (1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
  - (2) For the purposes of the condition set out in paragraph 7(1) —
    - (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
    - (b) “permitted price” is the price found by applying the formula —
 
$$P = D + (D \times V)$$
 where—
      - (i) P is the permitted price,
      - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
      - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
    - (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence—
      - (i) the holder of the premises licence,
      - (ii) the designated premises supervisor (if any) in respect of such a licence, or
      - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
    - (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
    - (e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.
  - (3) Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
  - (4) (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.
  - (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.
- Source: Section 19A Licensing Act 2003
7. Any person used to carry out a security activity as required under any condition of this licence/certificate must be licensed or authorised to do so by the Security Industry Authority.

5. The sub-committee will need to consider the hours of operation proposed in relation to the licensable activities in the light of the promotion of the licensing objectives, the effectiveness

of the operating schedule proposed by the applicant, the representations received, the location of the premises in relation to residential and other commercial properties including other licensed premises, the history of the management of the premises and how it is proposed to be run in the future, the evidence produced of any problems in the past, and the likely impact of any extension of hours and activities. These issues, and any other relevant ones, may be explored at the hearing.

## **6. Human Rights Act 1998**

- 6.1 The Licensing Sub-Committee must also have regard to the provisions of the Human Rights Act 1998 when determining this application. The 1998 Act made the European Convention of Human Rights directly enforceable in British courts. The relevant provisions are Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 11 (freedom of association) and Article 1 of the First Protocol (right to peaceful enjoyment of one's possessions). These provisions are explained below. Essentially, they require the sub-committee to identify correctly the competing interests, give each appropriate weight in the circumstances of the case, and balance them against each other in order to arrive at a fair and reasonable decision.
- 6.2 Under Article 6, "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". The procedures established by this Council for hearings under the Licensing Act 2003 are compliant with Article 6.
- 6.3 Under Article 8, "everyone has the right to respect for his private and family life, his home and his correspondence". This right may not be interfered with except in accordance with the law and as may be "necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". In Licensing Act cases this means that the Licensing Sub-Committee must have regard to the effect of its decisions on local residents, and balance their interests against those of the public at large (e.g. the customers of the premises under consideration) and the people operating the business from the premises.
- 6.4 Under Article 11, "everyone has the right to freedom of peaceful assembly and to freedom of association with others" except where it is lawful to restrict that freedom in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others". In Licensing Act cases this means, for example, that the Licensing Sub-Committee is entitled to impose conditions to ensure that patrons of licensed premises do not unreasonably disturb others living or working nearby. Again, the sub-committee should balance the competing interests.
- 6.5 Article 1 of the First Protocol (that is, the first amendment to the Convention) says that every natural or legal person (meaning a human being or a company) is entitled to peaceful enjoyment of his possessions, except where the law provides for restrictions on that right in the public interest. This means, for example, that it is compliant with the Convention to impose restrictions, such as those provided in the Licensing Act 2003, upon business premises where it is in the public interest to do so. On the other hand the same applies to the owners and occupiers of neighbouring premises.

## **7. Appeals**

If the Licensing Sub-Committee imposes conditions on the licence with which the applicant disagrees, or modifies the licensable activities permitted or refuses to specify a person a designated premises supervisor, he or she may appeal within 21 days of notification of the decision to the Magistrates' Court. The applicant may also appeal if an application for a premises licence is rejected. Those making relevant representations may appeal if they believe that the licence should not have been granted, or that, when granting the licence, the licensing

authority ought to have imposed different or additional conditions or excluded a licensable activity or refused to specify a person as designated premises supervisor. The Magistrates' Court may dismiss the appeal, or substitute its own decision, or send back the case to the licensing authority with directions as to how the case is to be dealt with. The Magistrates' Court may make any costs order it thinks fit.

#### **8. Review Provisions**

If extended hours/licensable activities are granted, the Licensing Act contains review provisions which enable any person, bodies representing them or any of the responsible authorities to apply to this licensing authority for a review of the licence. A hearing follows which enables the sub-committee to use the normal powers at a hearing (set out above) but also to suspend the licence for a period of up to three months or to revoke it.

#### **9. Police Closure**

A senior police officer may close any premises for 24 hours (this can be extended) where s/he reasonably believes there is or is likely imminently to be disorder on, or in or in the vicinity of the premises and their closure is necessary in the interests of public safety. Closure can also be affected if public nuisance is being caused by noise coming from the premises and closure of the premises is necessary to prevent that nuisance

#### **10. Surveillance Camera Code of Guidance-June 2013**

Where a relevant authority has licensing functions and considers the use of surveillance camera systems as part of the conditions attached to a licence or certificate, it must in particular have regard to guiding principle one in this code. Any proposed imposition of a blanket requirement to attach surveillance camera conditions as part of the conditions attached to a licence or certificate is likely to give rise to concerns about the proportionality of such an approach and will require an appropriately strong justification and must be kept under regular review. Applications in relation to licensed premises must take into account the circumstances surrounding that application and whether a requirement to have a surveillance camera system is appropriate in that particular case. For example, it is unlikely that a trouble-free community pub would present a pressing need such that a surveillance camera condition would be justified. In such circumstances where a licence or certificate is granted subject to surveillance camera system conditions, the consideration of all other guiding principles in this code is a matter for the licensee as the system operator.

Guiding principle one states:

Use of a surveillance camera system must always be for a specified purpose which is in pursuit of a legitimate aim and necessary to meet an identified pressing need.

Legitimate aim and necessity are considered in relation to the four licensing objectives which are set out elsewhere within this report if the Committee is considering conditioning any premises licence with the installation of a CCTV surveillance system.