

Report to:	Licensing Sub-Committee	Date of Meeting:	22/03/2024
Subject:	Licensing Act, 2003 – Summary Review Caradoc, 275 Crosby Road South, Seaforth, Liverpool L21 4LU		
Report of:	Assistant Director of Place (Highways and Public Protection)	Wards Affected:	Linacre
Portfolio:			
Is this a Key Decision:	N	Included in Forward Plan:	N
Exempt / Confidential Report:	No - but parts of Annexes 1 & 2 and all of Annex 3 to the report are NOT FOR PUBLICATION by virtue of Paragraphs 1, 2 and 7 of Part 1 of Schedule 12A of the Local Government Act 1972. The Public Interest Test has been applied and favours the information being treated as exempt		

Summary:

To determine an application for summary review of a Premises Licence received from Merseyside Police

Recommendation(s):

The Sub-Committee's instructions are requested.

Reasons for the Recommendation(s):

Under the Scheme of Delegation Officers cannot determine applications which have received relevant representations.

Alternative Options Considered and Rejected: (including any Risk Implications)

N/A

What will it cost and how will it be financed?

(A) Revenue Costs

There are no financial costs associated with the proposals in this report

(B) Capital Costs

There are no financial costs associated with the proposals in this report

Implications of the Proposals:

Resource Implications (Financial, IT, Staffing and Assets):

There are no financial implications arising directly from this Report except in the event of any Appeal made against the Sub-Committee's eventual decision, the costs of which would depend upon the length of the Appeal process.

Legal Implications:

The Chief Legal and Democratic Officer will provide legal advice to the Licensing Sub Committee on the issues set out in this report.

Equality Implications:

There are no equality implications.

Contribution to the Council's Core Purpose:

The Sub-Committee is acting in an administrative capacity under the Licensing Act 2003.

What consultations have taken place on the proposals and when?

(A) Internal Consultations

Consultation has taken place as per the provisions of the Licensing Act 2003.

(B) External Consultations

Consultation has taken place as per the provisions of the Licensing Act 2003.

Implementation Date for the Decision

Any decision taken at the Summary Review hearing by the Sub-Committee will not take effect until the period within which an appeal can be brought has passed (21 days), and then following which until the determination of any such appeal.

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Appendices:

Annex 1 - Existing Premises Licence

Annex 2 - Summary Review Application and accompanying documentation

Annex 3 - Evidence submitted by Merseyside Police

Background Papers:

There are no background papers available for inspection.

1. Review details

<u>Applicant:</u>	Con. Nicola Ireland – Merseyside Police Licensing
<u>Applicable Premises:</u>	Caradoc 275 Crosby Road South Seaforth Liverpool L21 4LU
<u>Ward:</u>	Linacre
<u>Premises Licence Holder:</u>	Ascot Properties UK Limited
<u>Premises Representative:</u>	Mr Mark Davis
<u>Designated Premises Supervisor:</u>	Ms Sheila Maria Green

1.1 GROUNDS FOR REVIEW

At 01:58 hrs on Saturday 24th February 2024, A call came in to Merseyside Police reporting a group of people at the location fighting with weapons. Two rival gangs were allegedly involved. It was confirmed that at least one person was on the floor and requiring medical assistance. Person reporting was also suffering with an asthma attack and requested ambulance.

Police have attended and been unable to gain entry to the premises until 02:23 hours as premises was locked up and secure.

Officers eventually gained entry to find a large group of people inside.

One male suspect located and arrested for a suspected robbery (unconnected)

DPS, was unable to access CCTV as she does not have the password. She was described as uncooperative, refusing to assist offices in any way.

Officers have made licensing unit aware who have attended the following shift.

CCTV has been viewed by officers which has raised concerns.

There are many blatant clear uses of illicit drugs. Males and females openly snorting cocaine off the back of their hands and clearing up each others faces of white powder.

Many people walking round sucking lollipops which as a licensing officer I believe them to actually be "Mollypops" which is actually ecstasy in lollipop form.

One room seems to be solely set aside for drug use.

Upon eight people with their faces covered attending the premises with various weapons, one with a bar, two with bricks, one with a large bladed knife. The customers are seen to be actively resistant to them and manage to force them out of the premises.

A male who appeared to be innocently drinking at the premises was then attacked with punches and kicks and ended up knocked unconscious and left on the floor and repeatedly stamped on.

This male is subsequently removed to another room, and the area he has bled on is cleared and cleaned by staff. Resulting in zero crime scene preservation.

Upon police attending the premises is locked. Police are shouting and banging at the doors, and the remaining customers either, run round clearing up the evidence of drug use, wiping up the white powder remnants, under the clear instruction from the DPS, or watch the officers struggling to gain entry on the CCTV monitor.

This premises is seriously undermining the licensing objectives especially that of the prevention of crime and disorder.

The suggestion from the initial caller is this is gang related, and as such there may well be further violence in retaliation.

The premises is serving well past its licenced hours. Last transaction being 03:25.

The exact circumstances of the incident inside and outside the premises are not yet fully known at this moment in time. What is clear, is that there was a serious incident of violence at the premises involving high threat harm and risk. No-one from the management team or staff called the police, no-one called an ambulance, no-one preserved a crime scene and upon gaining entry officers were lied to about the incident.

It has also come to light that that this premises was open beyond its hours and the sale of alcohol had continued in breach of the Premises Licence.

The premises is licensed for the sale of alcohol until 00.00 hrs each day of the week. This was reported to us just before 2am.

Had this premises closed at the correct time, this incident may never have occurred. We have checked our records and no TEN was in place.

At this moment in time the motive for the disorder and assaults is yet to be established and as such we believe that there is a risk that there will be further acts of retaliation in response to these incidents or that further acts of violence will occur at the premises.

The timescales involved in a standard review would not address the Police concerns in relation to the threat to public safety at these premises quickly enough, given the serious nature of the allegations and any further risk at the location to public safety.

2. Details of premises licence

Licensable activities applicable:

- The sale of alcohol by retail (on and off the premises);
- The provision of regulated entertainment - live music;
- The provision of regulated entertainment - recorded music;
- The provision of regulated entertainment - entertainment of a similar description to that falling within the category of live music, recorded music, or performance of dance:

Days of Operation	Hours of Operation
Monday to Sunday	11.00 to 00.00

Hours premises to be open to public:

Days of Operation	Hours of Operation
Monday to Sunday	11.00 to 00.30

- 2.1 The Premises Licence in respect of this establishment was originally determined on 15/09/2006, a copy of which is to be found within Annex 1 of this Report.

3. Supporting evidence submitted

- 3.1 Merseyside Police have produced a number of documents, as supporting evidence, and these all accompanied the Review application. These items have also been served by the Licensing Unit upon the Premises Licence Holder and the Responsible Authorities; copies of this evidence can be found within Annex 3.
- 3.2 At the time of compiling this Report (15th March 2024) no evidence has been submitted on behalf of the Premises Licence Holder. Any evidence produced prior to the Hearing will of course be forwarded to Members of the Sub-Committee upon receipt.

4. Interim steps

- 4.1 On 4 March 2024 the Sub-Committee considered whether it was necessary to take interim steps pending the determination of the Summary Review.
- 4.2 At the Meeting the Sub-Committee resolved that

Decision:

The Licensing Sub-Committee, as the Licensing Authority, agrees with the police's recommendation that the premises licence be suspended.

Reason:

The serious breaches of the public safety / prevention of crime and disorder objectives.

5. Objections/representations received

- 5.1 The review application was served upon the Licensing Authority by Con Nicola Ireland Merseyside Police on 29th February 2024.
- 5.2 The Summary Review application form and the accompanying certificate are attached within Annex 2 to this Report.
- 5.3 As required under the Act the Licensing Unit has:
- served copies of the application on all the Responsible Authorities; and,
 - caused the Notice of Summary Review to be displayed on the premises in question, at both Southport and Bootle Town Halls and on the Sefton website for no less than 7 consecutive days.
- 5.4 The consultation period for the review ended on 14th March 2024; no further representations have been received as a result of 5.3 above.

6. Additional licensing information

- 6.1 The Summary Review process allows:
- the police to trigger a fast track process to review a Premises Licence where they consider that the premises are associated with serious crime or serious disorder (or both); and
 - the Licensing Authority to respond by taking interim steps quickly, where appropriate, pending a full review.
- 6.2 The local chief officer of police may apply to the Licensing Authority for an expedited review of a Premises Licence where a senior police officer has issued a certificate stating that in his/her opinion the premises are associated with serious crime or serious disorder (or both).
- 6.3 Pending the determination of the Summary Review, the Licensing Authority has to consider, within 48 hours of receiving the application (excluding those hours which fall on non working days), whether it is necessary to take interim steps pending the determination of the Review (the Authority must undertake the review within 28 days of receipt of the application). This consideration may take place without the Premise Licence Holder being given the opportunity to make any representations on his/her behalf. Details of these matters are contained within 3.0 above.
- 6.4 The Sub-committee must hear the review within 28 days of receiving the Police's application. The hearing must take place even if the Police ask to withdraw the application or representations. Interested parties or responsible authorities can make representations in relation to any of the licensing objectives, not just crime and disorder.

- 6.5 With regard to any interim steps that may still be in force, the Sub-committee must:
- (a) consider whether the interim steps are appropriate for the promotion of the licensing objectives;
 - (b) consider any relevant representations; and
 - (c) determine whether to withdraw or modify the interim steps taken.
- 6.6 In respect of the review itself, the action the licensing authority can take is as follows:
- the modification of the conditions of the premises licence;
 - the exclusion of the sale of alcohol by retail (or other licensable activities) from the scope of the licence;
 - the removal of the designated premises supervisor from the licence;
 - the suspension of the licence for a period not exceeding 3 months; and
 - the revocation of the licence.
- 6.7 Modification of the conditions of the Premises Licence can include altering or modifying existing conditions or adding any new conditions, including those that restrict the times at which licensable activities authorised by the Licence can take place.
- 6.8 Paragraph 11.20 of the Guidance, issued under Section 182 of the Act, states that in *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.*
- 6.9 The Licensing Act 2003 at Paragraph 52 (11) states:
- “Determination under this section does not have effect-
- a) until the end of the period given for appealing against the decision, or
 - b) if the decision is appealed against, until the appeal is disposed of”
- 6.10 Schedule 5 of the Act, Paragraph 9 (2) states that an “appeal under this Part must be commenced by notice of appeal given by the appellant to the justices' chief executive for the magistrates' court within the period of 21 days...”
- 6.11 Therefore any decision taken at the Summary Review hearing by the Sub-Committee will not take effect until the period within which an appeal can be brought has passed, and then following which until the determination of any such appeal.
- 6.12 However, any interim steps previously imposed will remain in force during this period if they have not been withdrawn by the Sub-Committee.

7. Section 53A Licensing Act 2003 Summary Review Guidance issued by the Home Office – August 2012.

7.1 Paragraph 2.4 of the above Guidance states that *“In deciding whether to sign a certificate, the senior officer will want to consider the following (as applicable):*

- *The track record of the licensed premises concerned and whether the police have previously had cause to give advice about serious criminal or disorderly conduct (or the likelihood of such conduct) attributable to activities taking place on the premises – it is not expected that this power will be used as a first response to a problem.*
- *The nature of the likely crime and/or disorder – is the potential incident sufficiently serious to warrant using this power?*
- *Should an alternative power be deployed? Is the incident sufficiently serious to warrant use of the powers in sections 161 to 165 of the 2003 Act to close the premises? Or could the police trigger a standard licence review to address the problem? Alternatively, could expedited reviews be used in conjunction with other powers (for example, modifying licence conditions following the use of a closure power).*
- *What added value will use of the expedited process bring? How would any interim steps that the licensing authority might take effectively address the problem?”*

7.2 Paragraph 2.5 continues that *“It is recommended that these points are addressed in the chief officer’s application to the licensing authority. In particular, it is important to explain why other powers or actions are not considered to be appropriate. It is up to the police to decide whether to include this information in the certificate or in section 4 of the application for summary review. The police will also have an opportunity later to make representations in relation to the full review.”*

7.3 Paragraph 3.2 states that *“The licensing authority may want to consult the police about the steps that it thinks are appropriate, pending the determination of the review, to address the immediate problems with the premises, in particular the likelihood of serious crime and/or serious disorder. The licensing authority may consider the interim steps without the holder of the premises licence having been given an opportunity to make representations. This does not, of course, mean that the licensing authority cannot afford such an opportunity if it thinks it appropriate and feasible to do so in all the circumstances.”*

7.4 Paragraph 3.6 indicates that *“The licensing authority, in deciding when its decision on interim steps should take effect, should consider the practical implications of compliance in relation to the premises. For example to comply with a modification of the conditions of a licence that requires employment of door supervisors, those running the premises may need some time to recruit appropriately qualified and accredited staff.”*

7.5 Paragraph 3.7 goes on *“In addition, very careful consideration needs to be given to interim steps which would require significant cost or permanent or semi-permanent adjustments to premises which would be difficult to remove if the*

outcome of the subsequent full review was to withdraw or modify those steps. For example, making structural changes, installing additional CCTV or replacing all glassware with safer alternatives may be valid steps, but might be disproportionate if they are not likely to be deemed necessary following the full review (or any subsequent appeal). The focus for interim steps should be on the immediate measures that are necessary to prevent serious crime or serious disorder occurring. In some circumstances, it might be better to seek suspension of the licence pending the full review, rather than imposing a range of costly conditions or permanent adjustments.”

8. Sefton’s Statement of Licensing Policy

8.1 PREVENTION OF CRIME & DISORDER

Paragraph 3.5 states that when making licence applications, in providing evidence within the Operating Schedule that suitable and sufficient measures will be in place to address the Crime and Disorder objective, applicants should consider the following matters in particular:

- The capability of the person in charge to ensure effective and responsible management of the premises;
- The training given to staff in crime prevention measures;
- Procedures for risk assessing promotions and events, such as ‘happy hours’ in relation to crime and disorder, and the plans to minimise such risks;
- Adoption of best practice in relation to safer clubbing etc;
- Physical security features installed in the premises (i.e. location and standard of CCTV equipment, toughened drinking glasses etc);
- Measures to prevent the supply of illegal drugs, including search and entry policies;
- Employment of SIA licensed door supervisors;
- Participation in an appropriate crime prevention scheme (e.g. ‘pubwatch’);
- Measures to be taken for the prevention of violence and disorder;
- The presence, or access to, sufficient transport facilities to ensure that customers can leave the premises safely and swiftly;
- Weapon detection and search facilities;
- Illegal sale of alcohol to those who are already drunk;
- Participation in any existing radio network scheme

8.2 PUBLIC SAFETY

Paragraph 3.7 advises applicants when making licence applications, in providing evidence within the Operating Schedule that suitable and sufficient measures will be in place to address the Public Safety objective, to consider the following matters in particular:

- The safe occupancy capacity of the premises, in particular having regard to floor area and means of escape;
- The age, design and layout of the premises, including the means of escape;

- The nature of the licensable activities provided, in particular the sale of alcohol;
- Hours of operation;
- Customer profile (age, disability etc);
- The necessary Health and Safety and Fire risk assessments for the premises, and other measures to reduce risk to public safety;
- The number of people employed or engaged to secure the safety of all persons attending the premises or event;
- Where appropriate, noise exposure controls, for both staff and public, which have been detailed in accordance with the appropriate legislation;
- Arrangements to ensure that litter, generated by activities at the premises, does not present a fire hazard;
- Implementation of appropriate crowd management measures

8.3 PUBLIC NUISANCE

In relation to the prevention of public nuisance objective, paragraph 3.9 advises applicants to consider the following matters when making an application:

- The type of activity, its frequency and the number and nature of customers likely to attend;
- Measures taken, or proposed, to prevent noise and/or vibration escaping from the premises given its location and proximity to residential and other noise sensitive premises. This would include music, plant noise and human voice, whether amplified or not;
- Measures taken to prevent the transmission of sound and/or vibration to adjoining properties;
- Measures taken, or proposed, for management and supervision of the premises and open areas to minimise unreasonable disturbance by customers and staff arriving or leaving the premises, including the delivery of goods and services;
- The proposed hours of operation for all, or parts, of the premises;
- Measures taken to prevent cooking odours and other smells escaping from the premises;
- Means of access to and egress from the premises, including customer entrances and exits on principal pedestrian routes;
- Whether routes to and from the premises pass residential premises;
- Whether the premises would result in increased refuse storage, disposal problems or additional litter in the vicinity of the premises, including measures taken to ensure the collection and disposal of litter and waste outside the premises;
- Measures to be taken to reduce drunkenness on the premises, e.g. the “Drink Less Enjoy More” scheme;
- If appropriate, a ‘wind down’ period between the end of the licensable activities and closure of the premises;

Should the applicant, or a responsible authority, identify possible sound leakage from the premises paragraph 3.10 indicates that the Authority would expect this to be addressed in practical ways, such as:

- Keeping doors and windows closed and providing adequate mechanical ventilation, or if necessary, air conditioning;
- Reducing sound levels and installing a sound limiting device to prevent sound exceeding the appropriate level;
- Installing soundproofing measures to contain sound and vibration

In premises where customers leave late at night, or early in the morning paragraph 3.11 states that the Authority would expect the applicant to have included, in the Operating Schedule, such practical steps as:

- Erecting prominent notices at the exits to the premises asking customers to leave quietly and not to slam car doors;
- At appropriate time making loud speaker announcements to the same effect;
- Instructing door staff to ask customers leaving the premises to do so quietly;
- Reducing the volume of music towards the end of the evening and where appropriate playing quieter, more soothing music as the evening winds down;
- Improving availability of licensed taxis or private hire vehicles to take customers from the premises;
- Refusing entry to people known to regularly leave in a noisy manner;
- The supervision of any queues so as to keep noise and disturbance to a minimum

8.4 PROTECTION OF CHILDREN FROM HARM

In relation to the protection of children from harm objective, paragraph 3.13 advises applicants to consider the following matters when making an application:

It is not possible to anticipate every issue of concern that could arise with regard to each individual premises in respect of children, however, when making licence applications, in providing evidence within the Operating Schedule that suitable and sufficient measures will be in place to address the protection of children from harm objective, applicants should, in particular, consider how they will prevent children from:

- Acquiring or consuming alcohol;
- Being exposed to drugs, drug taking or drug dealing;
- Being exposed to gambling;
- Being exposed to entertainment of an adult or sexual nature;
- Being exposed to incidents of violence or disorder;
- Being exposed to excessive noise.

Paragraph 3.14 states that with regard to the mandatory conditions (imposed as of 1st October 2010) the Authority recommends that the following documents should be used as proof of age:

- Passport;
- 'Photocard' Driving Licence; or,

- Any PASS (Proof of Age Standards Scheme) card (details from www.pass-scheme.org.uk)

In paragraph 3.15, the Authority states that it will normally require persons working with children, in respect of premises holding under 18 regulated entertainment, to undergo an enhanced Criminal Records Bureau check before they are appointed.

Paragraph 3.16 underlines that it is *this Authority's opinion that Child Safeguarding is everyone's responsibility and that licensed premises should be vigilant in this regard particularly those premises which may be expected to attract under 18 year olds such as nightclubs, fast food outlets, cinemas screening children's films etc. Operators of licensed premises should have in place appropriate child safeguarding measures and should seek the advice of the Council's Safeguarding Children's Unit in this respect.*

9. Guidance Issued under Section 182 of the Licensing Act 2003

9.1 PREVENTION OF CRIME & DISORDER

Paragraph 2.1 states that the *"Licensing authorities should look to the police as the main source of advice on crime and disorder."*

Paragraph 2.2 states that in the exercise of their functions *"licensing authorities should seek to co-operate with the Security Industry Authority ("SIA") as far as possible and consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed."*

Paragraph 2.3 states that *"Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises... For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition."*

Paragraph 2.4, with regard to radio links and ring-round phones systems, states that these *"should be considered an appropriate condition for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density*

of licensed premises. These systems allow managers of licensed premises to communicate instantly with the police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises."

Paragraph 2.5 states that "Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety."

Paragraph 2.6 underlines that the "prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that evidence of a right to work check, either physical or digital (e.g. a copy of any document checked as part of a right to work check or a clear copy of the online right to work check) are retained at the licensed premises."

9.2 PUBLIC SAFETY

Paragraph 2.7 states that under the Act "Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene."

Paragraph 2.8 underlines that a "number of matters should be considered in relation to public safety. These may include:

- Fire safety;*
- Ensuring appropriate access for emergency services such as ambulances;*
- Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts...;*

- *Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;*
- *Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);*
- *Ensuring appropriate and frequent waste disposal, particularly of glass bottles;*
- *Ensuring appropriate limits on the maximum capacity of the premises...; and*
- *Considering the use of CCTV in and around the premises.”*

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

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

9.3 PUBLIC NUISANCE

Paragraph 2.15 states that the 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. Paragraph 2.16 states that it is *“however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.”*

Paragraph 2.17 states that 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...Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.”*

Paragraph 2.18 continues that 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 necessary and appropriate conditions should normally focus on the most sensitive periods, Paragraph 2.19 stating for example *“the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.”*

Paragraph 2.20 states that measures to control light pollution should 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.”*

Finally Paragraph 2.21 underlines that 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.”

9.4 PROTECTION OF CHILDREN FROM HARM

The Guidance states that the *“includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment). Licensing authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions.”*

Paragraph 2.23 states that the *“Government believes that it is completely unacceptable to sell alcohol to children. Conditions relating to the access of children where alcohol is sold and which are appropriate to protect them from harm should be carefully considered. Moreover, conditions restricting the access of children to premises should be strongly considered in circumstances where:*

- *adult entertainment is provided;*
- *a member or members of the current management have been convicted for serving alcohol to minors or with a reputation for allowing underage drinking (other than in the context of the exemption in the 2003 Act relating to 16 and 17 year olds consuming beer, wine and cider when accompanied by an adult during a table meal);*
- *it is known that unaccompanied children have been allowed access;*
- *there is a known association with drug taking or dealing; or*
- *in some cases, the premises are used exclusively or primarily for the sale of alcohol for consumption on the premises.”*

Paragraph 2.24 indicates that it *“also possible that activities, such as adult entertainment, may take place at certain times on premises but not at other times. For example, premises may operate as a café bar during the day providing meals for families but also provide entertainment with a sexual content after 8.00pm. It is not possible to give an exhaustive list of what amounts to entertainment or services of an adult or sexual nature. Applicants, responsible authorities and licensing authorities will need to consider this point carefully. This would broadly include topless bar staff, striptease, lap-, table- or pole-dancing, performances involving feigned violence or horrific incidents, feigned or actual sexual acts or fetishism, or entertainment involving strong and offensive language.”*

Paragraph 2.25 states that applicants *“must be clear in their operating schedules about the activities and times at which the events would take place to help*

determine when it is not appropriate for children to enter the premises. Consideration should also be given to the proximity of premises to schools and youth clubs so that applicants take appropriate steps to ensure that advertising relating to their premises, or relating to events at their premises, is not displayed at a time when children are likely to be near the premises.”

Paragraph 2.26 underlines that *“Licensing authorities and responsible authorities should expect applicants, when preparing an operating schedule or club operating schedule, to set out the steps to be taken to protect children from harm when on the premises.”*

Paragraph 2.27 goes on to state that *“Conditions, where they are appropriate, should reflect the licensable activities taking place on the premises. In addition to the mandatory condition regarding age verification, other conditions relating to the protection of children from harm can include:*

- *restrictions on the hours when children may be present;*
- *restrictions or exclusions on the presence of children under certain ages when particular specified activities are taking place;*
- *restrictions on the parts of the premises to which children may have access;*
- *age restrictions (below 18);*
- *restrictions or exclusions when certain activities are taking place;*
- *requirements for an accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and*
- *full exclusion of people under 18 from the premises when any licensable activities are taking place.”*

Paragraph 2.29 indicates that *“Licensing authorities should give considerable weight to representations about child protection matters. In addition to the responsible authority whose functions relate directly to child protection, the Director of Public Health may also have access to relevant evidence to inform such representations. These representations may include, amongst other things, the use of health data about the harms that alcohol can cause to underage drinkers. Where a responsible authority, or other person, presents evidence to the licensing authority linking specific premises with harms to children (such as ambulance data or emergency department attendances by persons under 18 years old with alcohol-related illnesses or injuries) this evidence should be considered, and the licensing authority should also consider what action is appropriate to ensure this licensing objective is effectively enforced. In relation to applications for the grant of a licence in areas where evidence is presented on high levels of alcohol-related harms in persons aged under 18, it is recommended that the licensing authority considers what conditions may be appropriate to ensure that this objective is promoted effectively.”*

Finally Paragraph 2.31 states that *“Theatres may present a range of diverse activities and entertainment including, for example, variety shows incorporating adult entertainment. It is appropriate in these cases for a licensing authority to consider restricting the admission of children in such circumstances. Entertainments may also be presented at theatres specifically for children. It will be appropriate to consider whether a condition should be attached to a premises*

licence or club premises certificate which requires the presence of a sufficient number of adult staff on the premises to ensure the wellbeing of the children during any emergency.”