

APPENDIX C

Local Policy Considerations and National Guidance

Dacorum Borough Council Licensing Policy 2016-2021

5. Public nuisance

- 5.12. The licensing authority will interpret the term 'public nuisance' widely, and when considering this objective will take into account issues relating to noise, vibration, light, litter, offensive odours and anti-social behaviour arising from or in connection with the provision of licensable activities.
- 5.13. This objective does not mean the complete prevention of all of the above issues, but rather the prevention of such unreasonable levels of these as would constitute a nuisance to the public or a section thereof. A degree of noise, for example, is an inevitable consequence of the provision of most forms of regulated entertainment. The licensing authority will therefore seek to exercise its powers in a way which promotes the licensing objective, to discourage and eliminate the carrying on of licensable activities in a way that causes unreasonable inconvenience, upset or distress to others.
- 5.14. The authority notes that, as with other licensing objectives, other regulatory regimes exist which may be used by statutory bodies to control the adverse effects of these issues, and will seek to avoid duplication with these regimes. The Environmental Protection Act 1990 in particular allows environmental health officers to require the abatement of a statutory nuisance. However, the licensing authority also notes that this regime is largely reactive, whereas licensing may be used to establish proactive controls, preventing a nuisance from reaching a statutory level in the first instance.
- 5.15. Nuisance may arise directly as a result of licensable activities (for example, noise from music), or indirectly (noise from customers at the premises). Applicants and licence-holders are strongly encouraged to consider all possible sources of nuisance when compiling operating schedules, and to implement appropriate measures for the promotion of this objective. For many types of nuisance, this process will begin in the initial design stages prior to the construction or redevelopment of premises. The Council's Regulatory Services officers may be consulted for informal advice, prior to the making of a licence application, on proposed measures likely to reduce or prevent the likelihood of public nuisance arising from the operation of licensed premises.
- 5.16. The licensing authority will have regard to best practice guidance when considering this licensing objective, including but not limited to:¹
- Guidelines on Community Noise (World Health Organisation)
 - Effective Management of Noise from Licensed Premises (British Beer and Pub Association)
 - Code of Practice on Environmental Noise Control at Concerts (Noise Council)
- 5.17. Where premises which are the subject of licensing applications involving amplified musical entertainment beyond 11pm are in close proximity to residential properties, the licensing authority will require a comprehensive operating schedule listing

¹ See Annex B for links to these documents

measures that the applicant intends to implement to ensure the promotion of this licensing objective.

- 5.18. The licensing authority will also pay close regard to premises in close proximity to residential property proposing or permitted to trade after 11pm, where the premises includes one or more external areas for use by customers (for example, beer gardens, external dining areas, or smoking areas), as use of such areas by customers has the potential to lead to a public nuisance if not closely controlled. Applicants are required to include measures within their operating schedule setting out how they intend to control the use of such areas, in order to promote this licensing objective.

7. Other persons

- 7.5. In addition to responsible authorities, any other person may make representation in respect of an application which is subject to public notice requirements, or apply for a review of a premises licence or club premises certificate. As well as people who live or work near licensed premises, this provision also allows any company, charity, community organisation or similar body, to make representations and apply for reviews in their own right.
- 7.6. Representations and review applications may also be made by persons who are democratically elected, such as borough, county, town or parish councillors, or an MP. Such representatives are free to make representations and review applications in their own right, and no specific evidence of being asked to represent any other person will be required.

10. Licensing hours

- 10.1. Flexible hours for licensable activities and particularly the sale of alcohol can help to ensure that large concentrations of customers leaving premises simultaneously are avoided. Requiring a number of similar premises to close at the same time could lead to friction at late night food outlets, taxi ranks, transport hubs and other 'pinch points'. By encouraging a staggered approach to closing times, it is possible to achieve a steadier dispersal of patrons from town centres, with fewer incidents of disorder and disturbance.
- 10.2. For this reason, the licensing authority will not seek to impose rigid terminal hours on premises in particular areas (a concept known as zoning), which is considered likely to increase the potential for crime, disorder and nuisance. That said, if the authority becomes aware of a proliferation in disorder or nuisance in a particular area linked cumulatively to the operations of licensed premises, it may consider imposing restrictions on opening hours through the use of its various powers, including early morning alcohol restriction orders.
- 10.3. Licensing hours should not inhibit the development of a thriving and safe evening and night time economy. This is important for investment, local employment, tourism and local services associated with the night time economy. Providing consumers with greater choice and flexibility is an important consideration, but should always be balanced carefully against the duty to promote the licensing objectives and the interests of local residents.
- 10.4. The licensing authority expects that issues relating to licensing hours, and in particular measures to limit the potential for nuisance or disorder arising from later

hours of trading, will be addressed by the applicant in their operating schedule.

- 10.5. In addition to their licensable activities, applicants are also expected to set out the proposed opening hours of their premises within their operating schedule. The licensing authority expects these times to be provided for all premises which may be accessed by members of the public, as these will inform the authority, responsible authorities and other persons of the full extent of the operation of the premises, and allow all parties to consider the application and the effect on the licensing objectives fully. The hours given should include all times when the premises may trade to the public (whether licensable activities are being provided or not), when individuals may be present on the premises.
- 10.6. At premises licensed to supply alcohol for consumption on the premises, the licensing authority encourages the inclusion of a 'cooling-off' or 'drinking-up' period between the terminal hour for supplies of alcohol, and the end of other licensable activities, typically of around 20 to 30 minutes. Inclusion of such a measure will ensure patrons have the opportunity to finish their drinks and gather their belongings prior to leaving the premises. This should be indicated within the timings given in the operating schedule for supplies of alcohol and opening hours. Where music is being played, applicants may also wish to consider a slower tempo of music within this period.
- 10.7. The licensing authority will deal with the issue of licensing hours on the individual merits of each application. However, when issuing a licence, stricter conditions are more likely to be considered appropriate for the promotion of the public nuisance objective in the case of premises that are situated in predominantly residential areas.

National Guidance

Each application on its own merits

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

Public nuisance

- 2.15 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. 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.
- 2.19 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.
- 2.21 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.
- 8.44 It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of

the licensing objectives, and where there are no known concerns, acknowledge this in their application.

Determining applications

- 9.37 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.
- 9.38 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are appropriate to promote the licensing objectives;
 - the representations (including supporting information) presented by all the parties;
 - Section 182 Guidance;
 - its own statement of licensing policy.

Determining actions that are appropriate for the promotion of the licensing objectives

- 9.42 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.
- 9.43 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.