

# ESSENTIAL REFERENCE PAPER 'B'

## EAST HERTFORDSHIRE DISTRICT COUNCIL DRAFT STATEMENT OF LICENSING POLICY 2015

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## 1. FOREWORD

This policy supports the East Herts Council's vision '**To improve the quality of people's lives and preserve all that is best in East Herts.**'

East Herts enjoys a widespread and diverse selection of licensed premises and venues. More than 500 premises are currently licensed for either the sale or supply of alcohol; the provision of regulated entertainment; and / or the provision of late night refreshment. These range from off-licences, shops and supermarkets; restaurants, cafes and take-away establishments; to pubs, bars, members clubs, night clubs, theatres, cinemas and indoor sports facilities. Together they combine to provide a wide-range of leisure and cultural opportunities; support tourism; provide employment; and make a significant economic contribution to the local community.

As long as premises management strive to act responsibly; run safe, well managed venues and facilities; and work together with the local community, they can make a positive contribution toward building community cohesion and cultural development.

Of course, negative impacts can also occur if good management practices are not followed. Potential negative impacts may arise in the form of noise, nuisance, disturbance and crime and disorder problems. We recognise that the misuse of alcohol particularly, while maintaining an important position in our leisure activity, does negatively impact upon both public health and the public purse through the demands made upon A and E; additional policing; additional street cleaning; and the criminal justice system.

Our policy, therefore, seeks to provide a necessary balance between providing a platform upon which responsible business operators may contribute towards a thriving business and late night economy while ensuring that the quality of life of those who live and work in the district is protected and enhanced through the licensing system. We believe these aims are achievable if all parties concerned work together.

### **Publication**

This version of the Statement of Licensing Policy was approved by Full Council **TBC**. Together with any published addendum approved by the council, it states the policies that will be used to determine licence applications.

### **Who is affected by this Policy**

This document applies to all places selling or providing:

- Alcohol
- Regulated Entertainment
- Late Night Refreshment  
Including:
  - Pubs and night-clubs,
  - Off-licences,
  - Restaurants serving alcohol,
  - Restaurants and take aways open between 11.00pm and 5.00am,
  - Hotels, guest houses
  - Private member's clubs and social clubs

- Theatre and amateur dramatic groups,
- Cinema operators,
- Organisers of Temporary Events,
- Some community events and village halls.

It is also recognised that how the policy is applied can have an effect on:

- The lives of East Herts Residents
- Visitor to East Herts
- Businesses not directly involved with the licensed trade
- The local economy and prosperity of East Herts

## **About East Herts**

East Herts is the largest of the 10 districts in Hertfordshire. It covers 47,568.68 hectares, around a third of the county, and offers a blend of rural and town living. The benefits of this mixture are greatly appreciated by the 141,076 people who live in the district. The majority of the people who live in the district live in one of the five towns. Bishop's Stortford has the largest population at 37,800, followed by Hertford (26,800), Ware (18,800), Sawbridgeworth (8,500) and Buntingford (5,400).

Although the district is mainly comprised of farmland, five busy market towns (Bishop's Stortford, Buntingford, Hertford, Sawbridgeworth and Ware) and more than 100 villages and hamlets are scattered across the area.

East Herts is regarded as an attractive rural location for those moving out from (and commuting into) London because of its excellent transport links.

The people of East Herts are predominantly employed and enjoy higher than average earnings (£589.90 gross weekly pay for full-time workers compared to £518.10 for the whole of the country<sup>3</sup>). Unemployment is very low (1.3%<sup>4</sup>).

House prices are among the highest in the country; in 2014 for the period April to June the average property price was £338,000<sup>5</sup> while the average salary in 2013 was £31,548 compared to £31,949 in Hertfordshire.

A fifth of people are under 16 and a fifth of people are over 60. The average age in the district is 39.5.

Over 89% of people were born in England, 3% were born in other countries in the European Union and 4% in other countries<sup>6</sup>.

East Herts has a low ethnic minority population of just 4.5%. The largest ethnic minority group is Asian/Asian British at 1.9% with Indian being the highest within that group. The second largest minority group is mixed/multiple ethnic groups at 1.6%.

Over a third of people are educated to level 4 or higher e.g. Bachelor's degree (33.5%, 36,867). However, under a fifth of the population have no qualifications (17.2%, 18,959)

East Herts is one of the safest places to live in Hertfordshire with low levels of burglary and vehicle crime. The district has a crime rate that is well below average. The administration of the Licensing Act and the previous policy contributed, as part of the

East Herts Community Safety Partnership, to the reduction of recorded crime and anti-social behaviour across the district. Recorded crime in East Herts has fallen by 11% 8,261 in 2012/13 to 7,362 in 2013/14 and anti-social behaviour has reduced by 28% 3,039 in 2012/13 to 2,175 in 2013/14.

Whilst the people of East Herts generally enjoy very good health the Public Health Service Herts warn us that Hospital stays for alcohol related harm affects 1364 people per 100,000 of our population. Alcohol specific hospital stays for our under 18 year olds is 19.1 per 100,000 of our population.

Public Health Herts warn that increasing levels of “Risk drinking” and “Higher risk drinking” are not only above the Hertfordshire average but also above the England average.

### **Policy approach**

The Council will administer the licensing function to promote cultural life in the district consistent with the licensing objectives:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance; and
- the protection of children from harm.

Our vision is to create a safe and family-friendly environment within the District, particularly within the town centres.

It is against the background of warnings from Public Health Herts about the impact of alcohol abuse upon our populations health that the East Herts Licensing Committee has decided to place health concerns at the heart of its decision making where appropriate.

**Whilst we recognise that each application must be considered on its individual merits and must be granted in the absence of any relevant representations, policies will be implemented to achieve our overall aims.**

The Council hopes that this policy will help create better opportunities for local people and visitors to enjoy their leisure time safely without fear of violence, intimidation or disorder while on, arriving at or leaving licensed premises.

Protecting local residents and avoiding blight from disturbance and anti-social behaviour caused by the conduct of inconsiderate people visiting places of entertainment, is central to our Licensing Policy. This focus aims to address concerns about the impact of trading hours on behaviour and disturbance at night.

The Council has to balance protecting the amenity of its local population with the expectations of commercial occupiers to have an environment that is attractive and sustainable for their business.

An effective Licensing Policy, with other initiatives, can help promote improvements (increasing the leisure industry provision for the community and encouraging regeneration of town centres), as well as reducing the negative impacts (noise, nuisance, anti-social behaviour and crime and disorder).

Our aim is to have a lighter touch for the majority of businesses and community activities, which enhance peoples' lives by providing worthwhile opportunities for the enjoyment of leisure time without having a negative impact. Premises which cause problems within our communities, allow disorder, threaten public safety, cause public nuisance, or threaten the wellbeing of children, will be targeted for enforcement action.

This Policy is designed to build upon the work presently carried out by the Council to maintain a dynamic, innovative and attractive place to live, work and relax. The Council has a number of strategies in place that contain the visions, aims and objectives to promote, improve and protect the area. This Licensing Policy has been prepared to promote the four licensing objectives, and the Council has had regard to the local strategies which have been developed for the district, its residents, businesses, workers and visitors. The Council is working to secure the proper integration with local crime prevention, planning, transport, tourism, cultural strategies, race equality schemes and disability and gender discrimination strategies, by ensuring the Licensing Policy is consistent with the aims and objectives of these strategies.

### **The Licensing Act 2003**

The Act has been in operation since 24 November 2005, and is administered by local authorities.

The Licensing Authority for the East Hertfordshire District Council (hereafter referred to as 'the Council') makes this Statement of Licensing Policy in accordance with section 5 of the Licensing Act 2003. It is kept under constant review and an updated version has to be published at no more than 5 year intervals.

The Council will have regard to this Policy when carrying out its functions under the Licensing Act 2003 and it will be used as a guide in decision making with regard to licensing matters.

Licensing regulates licensable activities. Conditions attached to licences will address matters on the premises, and near the premises, which are within the control of individual licence holders. The direct impact of the activities at the licensed premises on members of the public living, working or engaged in everyday activity in the area will be considered.

The central purpose of the Licensing Act is to promote the four licensing objectives, and the council will use its powers working with the police and other agencies to protect residents from disturbance.

The Act also aims to provide the entertainment/leisure industry with freedom and flexibility over provision of licensable activities and opening hours.

Every holder of a licence, certificate or permission should accept and be responsible for minimising the impact of their activities and anti-social behaviour by their patrons within the vicinity of their premises by taking appropriate measures and action consistent with that responsibility.

Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour caused by people once they are away from the premises, and therefore beyond the direct control of the licence holder. Nonetheless, licensing is one aspect of such control and is part of a holistic approach.

Police powers to deal with any disorder are continually being strengthened and they have a key role in the prevention of crime and disorder on licensed premises. The Council retains its power as local planning authority to control opening times of all new establishments seeking planning permission, where harm would otherwise arise.

The primary responsibility for controlling activities on licensed premises firmly rests on the licence holders and managers of such premises. This Council, with support from the other enforcement agencies will keep the activities of these licence holders under review. This means that all concerned must work closely together in partnership for the community of which both businesses and residents form a part.

Nothing in this Policy will prevent any person from applying for a variety of permissions under the Act. Every application made to the Council will be considered on its own merits. This Policy will be used to inform and assist consistent and transparent decisions on licence applications.

### **Fundamental Principles**

Applicants are expected to write an operating schedule that shows how they will promote the licensing objectives. The operating schedule will be used as a basis for licence conditions for the individual premises.

Conditions attached to licences and certificates will:

- be appropriate for the promotion of the licensing objectives;
- be precise and enforceable;
- be unambiguous and clear in what they intend to achieve;
- not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- be tailored to the individual type, location and characteristics of the premises and events concerned;
- not be standardised, as it may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- not replicate offences set out in the 2003 Act or other legislation;
- be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);
- not seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- be written in a prescriptive format.

Licence holders must ensure that they and their premises comply with any conditions attached to a licence while licensable activities are taking place, otherwise they commit an offence.

Where we have discretion because relevant representations have been made about licensing applications, we may also take into account the following factors to fulfil our vision:

- (1) what contribution the application can make to creating a family-friendly town centre, specifically in terms of offer to a wide-range of customers; family-friendly policies and facilities; operating hours; and pricing;
- (2) entertainment aimed at over-25 year olds;
- (3) links with other activities in the town, to encourage day-time users to stay in the evening;
- (4) provision of a full food menu and not only alcohol;
- (5) the controlled and safe sale of alcohol;
- (6) transport/dispersal provision, particularly during periods when public transport is unavailable;
- (7) style and type of venue. The licensing authority wants to attract only high-quality operators who can provide a family-friendly environment, characterised by a range of activities and offers that would appeal to families of all backgrounds. A family-friendly environment may (but need not) be characterised by:
  - a range of alcoholic and soft drinks suitable for all ages;
  - a food menu, including healthy options which caters for different tastes and needs, available throughout the duration of the premises' operating times;
  - facilities suitable for assisting customers with young children, such as high-chairs and baby-changing facilities, and facilities for family groups such as suitably laid-out seating/table areas;
  - a range of activities or entertainment that appeals to a range of age groups, whether provided at the same time or at separate times.
- (8) involvement in local community events and organisations
- (9) commitment to involvement in community safety partnership initiatives.
- (10) use of pavement licences for outdoor table areas.

## **2. PRE-APPLICATION CONSIDERATIONS**

Our experience in administering the licensing regime since 2005 shows us that many disputes start from poor communication. For example, the Act doesn't always allow applicants to fully explain their proposals, leading residents to misunderstand what is being proposed. In that case, formal representations are made and licensing hearings held to simply clarify what is being proposed.

We would strongly encourage applicants to hold pre-application discussions with us, other relevant statutory bodies and local residents or businesses before submitting all but the most straight-forward applications. These discussions at the earliest possible

stage will reduce the risk of a dispute arising and avoid the unnecessary time and expense involved in a Licensing Sub-Committee hearing.

Prospective holders of new premises licences, and those seeking variations of existing premises licences, are advised to consult with the Council and the various responsible authorities at the.

Licensing is about the regulation of licensed premises, qualifying members' clubs and temporary events. We may only impose conditions on premises licences and club premises certificates in one of two circumstances:

- (1) where the applicant volunteers them as part of their operating schedule; or
- (2) on receipt of relevant representations from potentially affected parties, or from responsible authorities .

We will produce a separate document containing pools of model conditions for premises licences and club premises certificates. Applicants are under no compulsion to use these when preparing their operating schedules, but doing so may reduce the likelihood of representations being made about the application. Should relevant representations be received, we may use conditions from the pool to address the concerns raised before we consider whether to refuse an application.

Conditions attached to premises licences or club premises certificates in these circumstances will be appropriate, reasonable, proportionate, and relevant and will be focused on matters within the control of the individual licence-holders and others granted relevant permissions. Conditions will be tailored to the style and characteristics of the individual premises. These matters will centre on the premises and places being used for licensable activities and have regard to the vicinity of those premises or places.

Our officers will draft appropriate conditions for premises licence and club registration certificates from the information supplied in operating schedules accompanying premises licence and club premises certificate applications.

We recognise that we have no statutory power to place conditions where a temporary event notice has been given and no objections have been received from the police or Environmental Health, but urge premises users to take note of the guidance in this policy in appropriate circumstances. However, if the temporary event notice is given for premises that has a premises licence or club premises certificate, and an objection is received, then existing conditions relevant to the activities requested may be attached.

Where no representations have been received, we must grant the authorisations in the terms sought.

### **3. CUMULATIVE IMPACT**

The authority will, where appropriate, and having received relevant representations, take into account the cumulative effect that the existence of a concentration of premises in one area may have. A concentration of licensed premises can attract customers to the area to such a degree that it has an adverse impact on the surrounding area beyond the control of individual licence holders.

Where the cumulative effect of many licensed premises within an area gives rise to problems of public disorder and nuisance in the surrounding area the Council may consider it inappropriate for any further licensed premises to be established in the area and / or capacities to be increased. In these circumstances, and where suitable and sufficient evidence is provided, the Licensing Authority will consider declaring a cumulative impact area.

If such a policy were adopted it would not override the duty on the Council to consider each application on its own merits.

The absence of a special policy does not prevent any responsible authority or other party making representations on a application for the grant of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.

In coming to any decision about cumulative impact the Council will also have regard to other mechanisms outside of the licensing regime which may also be available to address this issue.

#### **4. LICENSING HOURS**

The Council recognises the principle of flexibility and the potential benefits of avoiding concentrations of customers leaving premises simultaneously. The Council will consider relevant representations, for example:

##### **Premises definitions**

For the purposes of the policy we define licensed premises as set out below. Upon receiving an application the Licensing Authority will place the premises in one of the categories shown, this category may be referred to at any subsequent Licensing Sub-Committee.

<b>Premises</b>	<b>Use</b>
<b>Restaurants</b>	The sale of food and drink for consumption on the premises with full waiter service and/or full food menu throughout the trading period, and which typically has only incidental background music. Alcohol sales do not predominant over activities. It may occasionally include the provision of other licensable activities such as recorded or amplified music and limited facilities for the provision of dancing.
<b>Public houses, wine bars or other drinking establishments</b>	Primarily for the sale of alcohol and food for consumption on the premises, and which may include the provision of other licensable activities. Will include a “drinking up period” between the last sale of alcohol and the closing time of the premises.
<b>Café-bars</b>	The sale of food and or light refreshments, and where alcohol sales are not a predominant feature of the premises
<b>Hotel bars</b>	The sale of alcohol and/or food, either to hotel residents or to non-residents

<b>Night-clubs</b>	Primarily for the provision of licensable activities at night (typically including music and dancing), where alcohol sales are a strong feature
<b>Off-licences</b>	The sale of alcohol for consumption away from the premises
<b>Qualifying clubs</b>	Qualify for a club premises certificate under the Licensing Act 2003
<b>Take-aways</b>	The provision of late night refreshment (hot food and drink) between 11 pm and 5 am for consumption away from the premises
<b>Other entertainment venues</b>	The sale of alcohol and provision of late night refreshment (hot food and drink) is either absent or only ancillary to other licensable activities

### Location and operation of premises

The table below sets out our approach to licensing premises when we have received relevant representations to a licensing application, notwithstanding that each application will be considered on its merits:

<b>Premises type</b>	<b>Town centres*</b>	<b>Other areas</b>
<b>Café-bars</b>	Will generally be granted according to the application	
<b>Hotel bars</b>	Will generally be allowed alcohol sales and late night refreshment to residents 24-hours a day and to non-residents on the same basis as restaurants (see below)	
<b>Night-clubs (including lap-dancing clubs)</b>	Will generally be allowed licensable activities to 1 am only and until 10.30 pm on Sunday (other than for special occasions)	Will generally be allowed licensable activities to midnight only (other than for special occasions)
<b>Off-licences</b>	Will generally be allowed alcohol sales to Midnight only	Will generally be allowed alcohol sales in accordance with the normal opening hours of the shop
<b>Other entertainment venues not listed</b>	Will generally be granted for the hours and activities requested	May be limited to midnight
<b>Public houses, wine bars and other drinking establishments</b>	Will generally be allowed alcohol sales to midnight only, and until 10.30 pm on Sunday (other than for special occasions).	
<b>Qualifying clubs</b>	Will generally be granted for the hours and activities requested	
<b>Restaurants</b>	Will generally be allowed	Will generally be allowed alcohol

	licensable activities to 2 am only (other than for special occasions)	sales to midnight only (other than for special occasions)
<b>Take-aways</b>	Will generally be allowed late-night refreshment sales to 1 am only (other than for special occasions)	Will generally be allowed late-night refreshment sales to midnight only (other than for special occasions)

Where we have to consider an application that involves alcohol sold for consumption on the premises, our policy will be to generally grant the licence with 30 minutes between the end of any sales of alcohol and the closing time of the premises (which we refer to as the “terminal hour”).

We recognise that flexible licensing hours for alcohol sales can help to reduce concentrations of customers from leaving premises simultaneously, and to reduce conflict at late-night take-aways and taxi ranks. At the same time, we recognise that taxis/private hire vehicles (and private vehicles) are effectively the only form of post-midnight transport in the District.

We are adopting this approach with the Government’s recommendations at paragraph 13.44 of the statutory guidance in mind<sup>1</sup>. This states that the Government acknowledges different licensing approaches may be appropriate for promoting the licensing objectives in different areas, and licensing authorities – in consultation with others – are best placed to make those decisions subject to the over-riding principle that opening hours must be not pre-determined without giving individual consideration to the merits of each application.

This justifies a more restrictive approach in residential areas when relevant representations have been made.

## 5. PETROL FILLING STATIONS

Section 176 of the Licensing Act prohibits alcohol sales from premises that are used primarily as, or are part of premises that are primarily used, as garages for one or more of the retailing of petrol or derv; or the sale and maintenance of vehicles.

If premises that are primarily used as a garage are granted a licence, that licence is “of no effect” and alcohol may not be lawfully sold.

It follows that we must be satisfied whether or not any premises are used primarily as a garage before we grant a licence for it. This is not to restrict the granting of a licence in such cases but for all parties to be clear as to whether the licence is an effective one or not.

In determining applications for garages, we require applicants to demonstrate that their premises are not primarily used as a garage based on intensity of use. Such evidence must be based on **income** and the **numbers of individual sales** over the previous two years to show that petrol and derv sales, and vehicle maintenance and sales, are not the premises main feature to show intensity of use. Where such information is not available (because for example the premises have only just started

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<sup>1</sup> All references to the Revised Guidance issued under section 182 of the Licensing Act 2003 refer to the October 2014 revision.

trading), we will consider imposing a condition requiring this information to be provided to the licensing authority on a regular basis for the following two years to ensure the premises are not primarily a garage.

Where insufficient evidence exists to establish primary use, we will decide whether or not grant a licence and deal with any subsequent issues using our enforcement powers in conjunction with other responsible authorities.

Where relevant representations have been made and a premises licence is granted in these circumstances, we shall treat it as an off-licence and grant hours accordingly.

Paragraph 5.22 of the statutory guidance issued under the Act makes it clear that we must decide whether or not any premises is used primarily as a garage. We are aware that different licensing authorities take a number of different approaches to this question. This approach allows us to obtain the necessary information for us to reach that decision.

## **6. CREATING FAMILY FRIENDLY TOWN CENTRES**

For the purpose of this policy Town Centres are:

### HERTFORD

The area bounded by and including Bircherley Green, Bull Plain, Fore Street, South Street, Maidenhead Street, Market Street, Railway Street, Old Cross, Parliament Square, Salisbury Square, Market Place, Mill Bridge, Old Cross, St Andrews Street and The Wash.

### BISHOP'S STORTFORD

The area bounded by and including North Street, Potter Street, South Street, Water Lane, Bridge Street, High Street, Riverside, Adderley Road, Station Road and Anchor Street.

### WARE

The area bounded by and including – Baldock Street, High Street, Star Street, Viaduct Road and Amwell End.

Our starting point is to seek a reduction in crime and disorder, consistent with our statutory duty under the Licensing Act and under section 17 of the Crime and Disorder Act 1998 (as amended), and an improvement in local amenity through the reduction in alcohol-related anti-social behaviour.

We want to encourage more restaurants, cafes, food establishments and venues offering entertainment and would positively encourage applications for those type of premises whilst discouraging alcohol-led premises. Whether there is a need or not for further premises of a particular type, in accordance with the Secretary of State's guidance at paragraph 13.18, will not be a consideration.

Our approach will be:

1. Where relevant representations have been received, we will consider granting applications which limit the hours of operation to those set out in this policy unless the exceptions detailed below can be demonstrated.

2. Where relevant representations have been received and exceptions can be shown for applications for public houses and night-clubs, we will consider whether to require waiter/table service for alcohol sales between 9 pm and the final time for the sale of alcohol.
3. Where relevant representations have been received against the sale of alcohol after 10 pm and exceptions can be shown, we will consider whether premises shall be required to demonstrate they have an effective dispersal management plan in place; to install a closed-circuit television system that meets the reasonable requirements of Hertfordshire Constabulary; installing an electronic identification entry system; and to have use of a Pubwatch radio.

Exceptions will not be made on the grounds that:

- (1) the building design is of a high standard; we would expect all applicants will want to ensure the highest design standards possible;
- (2) that the applicant is of good character. It is a legal requirement that premises selling alcohol must be under the management of a designated premises supervisor, who must themselves hold a personal licence to sell alcohol;
- (3) the premises are small. Even small premises can contribute to crime, disorder and nuisance.

We will consider whether to grant an application, even when relevant representations have been received, if the application:

- (1) contributes to the family-friendly development of the town centre; or
- (2) effects a real reduction in capacity of alcohol sales; or
- (3) replaces vertical drinking establishments with seated consumption and waiter service.

Where an applicant wishes an exception to be considered it is their responsibility to evidence this.

## **7. PREVENTION OF CRIME AND DISORDER**

The Council will expect the applicant to detail in their operating schedule the steps proposed to deter and prevent crime and disorder, on and in the vicinity of the premises. The proposals made should have regard to the location, character, and condition of the area, the nature and extent of the proposed use, the types and numbers of persons likely to visit the premises.

The Council will expect the applicant to demonstrate how they will prevent disorderly conduct, prevent sale of alcohol to a person who is drunk, and prevent the obtaining of alcohol for a person who is drunk on the licensed premises, and how the licence holder will exercise these duties so as to prevent or reduce the risk of anti-social behaviour by customers occurring elsewhere after they have left the premises.

In considering licensing applications, the Council will have regard to relevant representations. The following issues, and/or how they are addressed by the operating schedule may be examined:

- (1) the ability and competency of the person in charge of the premises to monitor the premises at all times it is open;

- (2) the training given to staff in how to defuse or manage conflict amongst patrons and crime prevention measures appropriate to those premises;
- (3) the physical security features installed in the premises. This may include matters such as the position of cash registers, and the security of cash boxes in gaming machines on the premises; where alcohol is stored in 'off-licences'; the standard of CCTV that is installed; adequate lighting; metal detection and search facilities; the use of toughened drinking glasses in pubs and clubs; the removal of glasses or glass bottles used or discarded outside of the applicants premises;
- (4) risk assessment of drinks promotions which may contribute to the impact on crime and disorder (e.g. 'happy hours'), and plans for minimising risks;
- (5) measures to prevent the consumption or supply of illegal drugs, including any search procedures and entry policies. On licensed hotel or B and B premises, this should extend to keeping proper registrations of guests, with proofs of identification, and records of car registration numbers. Where applicable, applicants are encouraged to show that they can comply with the Home Office guidance *Safer Clubbing* in relation to the control of illegal drugs on their premises, and they should agree a protocol with the police on the handling of illegal drugs found on their premises.;
- (6) where premises are subject to age-restrictions, the procedures in place to conduct age verification checks;
- (7) the likelihood of any violence, public disorder or policing problem if the licence is granted;
- (8) whether design of the premises has been considered having regard to reducing conflict and minimising opportunities for crime;
- (9) the measures taken to control admission to, and dispersal from, the premises, including the use of registered door supervisors;
- (10) any other such measures as may be appropriate, such as participation in a local pub watch scheme or other body designed to ensure effective liaison with the local community, 'music wind-down policies', restrictions on 'happy hours', and other examples of industry best practice;
- (11) The arrangements for delegating and accounting for responsibility for the supply of alcohol on community premises operated without a DPS.

Conditions will, so far as possible, reflect local crime prevention strategies, and the Council will also have regard to the views of the local Crime and Disorder Reduction Partnership.

It is recommended that applicants discuss the crime prevention procedures and management arrangements for their premises with the Council and the police before making a formal application.

## 8. PUBLIC SAFETY

The Council will expect the applicant to detail in their operating schedule the steps proposed to ensure the physical safety of people using the relevant premises or place.

Conditions to promote public safety will be those that are appropriate, in particular circumstances of any individual premises or club premises, and will not duplicate other requirements of the law. Equally, the attachment of conditions to the premises licence or certificate will not in any way relieve employers of the statutory duty to comply with the requirements of other legislation including the Health and Safety at Work Act 1974, Associated Regulations and especially the requirements under the management of Health and Safety at Work Regulations 1999 and Regulatory Reform (Fire Safety) Order 2004, to undertake risk assessments. Employers should assess the risks, including risks from fire and take measures necessary to avoid and control these risks. Licence conditions enforcing those requirements will therefore not be attached.

Where legislation does not cover the unique circumstances of licensing and entertainment at specific premises, licence conditions will be used, as appropriate. Maximum occupancy limits in the premises licence will be specified only where necessary for the promotion of public safety or the prevention of disorder. In such a case, the Council will set a capacity in consultation with the Hertfordshire Fire and Rescue Service and the Council's Building Control service.

It will be expected that the operating schedule will specify occupancy limits for the following premises:

- (1) High Volume Vertical Drinking
- (2) Nightclubs
- (3) Cinemas
- (4) Theatres
- (5) Other premises where regulated entertainment is likely to attract large numbers of persons.

The Council will consider whether any measures or restrictions are placed on alcohol sales to prevent binge drinking and promote 'sensible drinking', including commitments to comply with approved codes of practice.

### Preventing alcohol abuse related Public Health issues within East Herts

East Herts Council's Environmental Health services and the Licensing section already work closely together. Further, the service now also incorporates Community Safety alongside its Public Health officers. The alignment of these different service areas has highlighted synergies, which, with appropriate policies and partnership support, could see significant benefits for residents.

The Police Reform and Social Responsibility Act 2011 made primary care trust's (PCT) or local health board's (LHB) a responsible authority under the Licensing Act 2003. Therefore they are able to make representations against licence applications. Currently, unlike in Scotland, England does not have a fifth licensing objective relating to Public Health.

The council in considering the importance of Public Health within this policy has considered the Revised Guidance at length.

East Herts council has taken the decision, with the full understanding and knowledge of the section 182 Revised Guidance and relevant legislation, to place Public Health as a central consideration in its decision making process. As a result, where a relevant representation is made regarding the undermining of the Public Safety objective, and that representation relates to public health and is supported by evidence, that representation will be considered during the decision making process. This includes considering information about the impact of alcohol abuse upon wider Public Health issues, such as alcohol related illness and harms, and not just immediate impacts such as slips trips and falls from intoxication. The purpose of this is not to attempt to make Public Health the fifth licensing objective, rather using the natural and wider definition of the Public Safety objective to help address obvious, real and documented alcohol related health issues within our communities.

(See appendix A for further information)

## **9. PREVENTION OF NUISANCE**

The Council will expect the applicant to demonstrate within the operating schedule how they intend to prevent nuisance and disturbance arising.

In considering an application, the Council will consider the adequacy of proposed measures to remove or effectively manage the potential for nuisance and anti-social behaviour.

The Council will expect applicants to demonstrate they have considered:

- (1) the proximity of residential accommodation;
- (2) the type of use proposed, and the likely numbers of customers;
- (3) proposed hours of operation and the frequency of activity;
- (4) the steps taken or proposed to be taken by the applicant to prevent noise and vibration escaping from the premises, including music, noise from ventilation equipment, and human voices. This may include the installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices;
- (5) the steps taken or proposed to be taken by the applicant to prevent disturbance by customers arriving at or leaving the premises. This will usually be of greater importance between 10 p.m. and 7 a.m. than at other times of the day;
- (6) the steps taken or proposed to be taken by the applicant to prevent queuing (either by pedestrian or vehicular traffic). If some queuing is inevitable then queues should be diverted away from neighbouring premises or be otherwise managed to prevent disturbance or obstruction;
- (7) the steps taken or proposed to be taken by the applicant to help ensure patrons and staff leave the premises quietly;
- (8) the arrangements made or proposed for parking by patrons, and the effect of parking by patrons on local residents;

- (9) the provision for public transport in the locality (including taxis and private hire vehicles) for patrons;
- (10) the level of likely disturbance from associated vehicle movements;
- (11) the use of smoking shelters, gardens and other open-air areas;
- (12) the location of delivery and collection areas and delivery/collection times;
- (13) the appropriate placing of external lighting, including security lighting;
- (14) refuse storage and litter (including fly posters and illegal placards);
- (15) the history of nuisance complaints against the premises, particularly where statutory notices have been served on the present licensees;
- (16) the applicant's past success in controlling anti-social behaviour and preventing nuisance;
- (17) odour nuisance, e.g. cooking smells;
- (18) any other relevant activity likely to give rise to nuisance;
- (19) any representations made by the Police, or other relevant agency or representative.

## **10. PROTECTION OF CHILDREN FROM HARM**

The Council will expect operating schedules to specify the measures and management controls in place to protect children from harm.

The Council will consider public health data when exercising this duty and the likely impact of alcohol misuse upon children.

This includes considering information about the impact of alcohol abuse upon wider Public Health issues, such as alcohol related illness and harms, and not just immediate impacts such as slips trips and falls from intoxication.

The legislation recognises the right of licence holders (serving alcohol) to allow accompanied children into their premises at any time. The Council will not normally seek to limit their access (above that specified in the Act) to any premises unless it is necessary for the prevention of physical, moral or psychological harm. Where relevant representations are received, and harm is likely, conditions may be imposed that restrict children from entering all or part of licensed premises:

- (1) at certain times of the day;
- (2) when certain licensable activities are taking place;
- (3) under certain ages, e.g. 16 or 18;
- (4) unless accompanied by an adult.

Examples of premises where these conditions may be considered include premises where:

- (1) there is any entertainment or services of an adult nature provided;
- (2) there have been convictions for serving alcohol to minors or premises with a reputation for under-age drinking;
- (3) there is a known association with drug taking or dealing;
- (4) there is a significant element of gambling on the premises;
- (5) there is a presumption that children under 18 should not be allowed (e.g. to enter nightclubs, except when under 18 discos are being held);
- (6) there have been representations from police, the area safeguarding children's board or other relevant agency or representative.

Applicants and licence holders of premises intending to offer public entertainment where it will be lawful and not contrary to this policy for children to be admitted without an accompanying adult, the applicant or licensee will be expected to provide adequate numbers of adult staff to ensure the safety and well-being of the admitted children. Details of such arrangements must be included in the operating schedule.

The Council will expect the operating schedule to specify the measures and management controls in place to prevent alcohol being served to children, other than in those limited circumstances permitted by the Act.

The Council will expect the operating schedule to state what arrangements will be put in place to ensure that children will be restricted from viewing age-restricted films classified according to the recommendations of the British Board of Film Classification.

Nothing in this statement prevents a licence holder excluding children from their premises. Conditions requiring the admission of children to premises cannot be attached to licences.

The 'Responsible Authority' in relation to the protection of children from harm is the Hertfordshire Safeguarding Children Board at Hertfordshire County Council. An emerging issue highlighted by the Board is child sexual exploitation.

Child sexual exploitation is a form of child abuse which is complex and can manifest itself in different ways. Essentially it involves children and young people receiving something – for example, accommodation, alcohol, drugs, gifts or affection – in exchange for sexual activity or having others perform sexual activities on them.

East Herts council recognises that this sort of exploitation could potentially be linked to licensed premises and as such will seek to promote knowledge and understanding of the issue amongst those in the licensed trade. Where potential instances of child sexual exploitation are identified to the Licensing Authority these will be referred to the appropriate bodies.

“Child sexual exploitation is one of the biggest child protection issues of our

time, but together we can make a real difference. By spotting the signs early, we can all take practical steps to protect children.” (Anne Marie Carrie, Chief Executive, Barnardo’s).

## **11. INSPECTION OF PREMISES**

Officers will check that statutory notices are correctly displayed in compliance with the requirements of the legislation.

During the course of its inspections, the Council may refer to any other agency any circumstance it finds that appears to it to be a contravention of the legislation enforced by that agency. Equally where a premises user appears unaware of a requirement that is outside of the Licensing Authority’s remit officers will do their best to signpost people to the appropriate authority.

The frequency of subsequent inspections will be according to the determined level of risk.

## **12. ENFORCEMENT POLICY**

Enforcement action and investigation will be targeted on premises where unauthorised licensable activities or breaches of conditions take place or where complaints from the public are received.

The Council has a Enforcement Policy, based around the principles of consistency, transparency and proportionality set out in the Department of Trade and Industry’s *Enforcement Concordat* and which also takes into account the Attorney-General’s Guidelines to Crown Prosecutors for bringing prosecutions.

A graduated response will be taken where contraventions of legislation are found or where conditions have been contravened. For instance an isolated administrative offence, such as failing to maintain records, may be dealt with by a written warning whilst more serious offences, which has either been committed over a period of time or which jeopardise public safety may result in a referral for prosecution.

The Council will seek to work with the police in enforcing licensing legislation and strive to have a joint enforcement protocol with all the relevant agencies.

Results of enforcement or investigation will be made available to responsible authorities who may wish to include this evidence in a Review of a premises licence or club premises certificate

## **13. DEALING WITH COMPLAINTS**

In all instances complaints received about licensed premises, events and activities will be recorded. Where appropriate, contact will be made to the premises to advise the premises licence holder or designated premises supervisor of the complaint

Where appropriate, relevant authorities will be advised of complaints received.

Where complaints relate to a breach of licence conditions, action will be taken to gather evidence in order that, in conjunction with the enforcement policy, the appropriate steps are taken to address the issues.

## **14. REVIEWS**

A responsible authority or other person may apply for the review of a premises licence at any stage, or may make a representation about an existing application for review on the grounds that any of the four licensing objectives is being undermined.

## **15. APPEALS**

Any party to licensing proceedings (including residents) aggrieved by licensing decisions of the Council are (in most cases) entitled to appeal to the Magistrates court with 21 days of the receiving the decision notice.

Where a party enters an appeal against a decision notice issued by Licensing Sub-Committee, the Head of Legal Services is authorised to negotiate, in consultation with Chair of Licensing Committee and Director of Neighbourhood Services.

## **16. ADMINISTRATION, EXERCISE AND DELEGATIONS OF FUNCTIONS**

The Licensing Committee will consist of between ten and fifteen Councillors that will sit usually three times per year, but at least annually. The Council will review this Policy at least every 3 years. Any changes to the Policy will include full consultation.

Sub-Committee(s) of at least two and usually three Councillors will determine applications where representations have been received from responsible authorities or other parties. Ward Councillors will not serve on a Sub-Committee involving an application within their own ward.

The Licensing Committee will also deal with other licensing matters not associated with the Licensing Act 2003.

Where a Councillor who is a member of a Licensing Committee or a Sub-Committee has had direct involvement in the affairs of an application before them, in the interests of good governance they will disqualify themselves from any involvement in the decision-making process affecting the premises licence in question.

A Sub-Committee may also refer to the Licensing Committee any matter it is unable to deal with because of the number of its members who are unable to take part in the consideration or discussion of any matter or vote on any question with respect to it.

Each decision of the Licensing Committee or its Sub-Committee(s) shall be accompanied with clear reasons for the decision. A summary of the decision will be sent to the applicant and all other parties.

The Council's authorised officers will deal with all other licence applications where either no representations have been received, or where representations have been received and it is agreed by all the parties that a hearing is not necessary.

Council officers will make the decisions on whether representations or applications for licence reviews should be referred to the Licensing Committee or Sub-Committee(s) and whether representations are frivolous or vexatious. Where representations are rejected, the person making that representation will be given written reasons why that is the case.

Council officers will draft appropriate conditions for premises licences and club registration certificates that are consistent with the operating schedule.

The Council will seek to integrate the Licensing function with its various other strategies and policies to promote the licensing objectives through utilising the collaborative and partnership working arrangements and networks that engage with responsible authorities, other parties and other key stakeholders.

## **17. MONITORING OF LICENSING FUNCTION**

The police, fire authority and other responsible authorities will be encouraged to report to the Council annually on the operation of the licensing function.

The Director (Neighbourhood Services) will report annually to the Licensing Committee on the licensing function.

## **18. MISCELLANEOUS AND SUPPLEMENTARY**

### Promotion of other strategies

The Council will monitor the impact of licensing in relation to the National Alcohol Harm Reduction Strategy, in particular the effect of alcohol misuse on health, crime and public disorder, productivity at work, family and social networks.

This Statement of Licensing Policy contributes to the Councils Public Health role and supports the Councils Health and Wellbeing strategy 2013 -18.

Arrangements have been made for licensing committees to receive, when appropriate, information on the needs of the local tourist economy.

The council will keep the licensing committee apprised of the employment situation in the area and the need for new investment and employment where appropriate.

The licensing authority will report to Hertfordshire County Council with regard to the need to disperse people from town centres in order to avoid concentrations of people which can produce nuisance and disorder.

The Race Relations Act 1976 as amended obliges public authorities to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups. The Council has produced a race equality scheme, and will monitor this Policy for any adverse impact on the promotion of race equality.

### Planning permission

Any premises which needs a licence should preferably also have a permitted or lawful use under planning legislation. If the premises do not have this, then it will need to be obtained separately before the licensed activity can lawfully take place.

The Council Planning Department is a Responsible Authority, and receives copies of premises licence applications. Where there is no planning consent for the use for which the licence is sought, Planning will be responsible for pointing this out to the

applicant outside of the remit of this policy, and the paragraphs below are included for information only.

The Council's Planning Policies are set out in its Adopted Local Plan. For further information see [www.eastherts.gov.uk](http://www.eastherts.gov.uk).

In many cases where an application is made for a new licence or variation, the planning use will already be authorised by a previous planning permission or because the premises has a long-standing lawful use. Therefore, a new application for planning permission is often not required. However, the existing planning permission might, and if recently granted is very likely to have conditions restricting the use of the premises in some way: e.g. the hours of operation. In that case, anybody seeking a licence to operate beyond those hours will need to seek and obtain a revised planning permission or a variation or removal of the relevant planning condition.

### Early Morning Restriction Orders and Late Night Levy

The Licensing Authority is aware of its powers to implement Early Morning Restriction Orders and impose a Late Night Levy on licensed premises. Consideration of these two powers has taken place and at the time that this policy was published no such Orders or Levies had been implemented. The council will review this decision should evidence for the need for either measure comes to light.

### Contact

For further information about this policy, or to discuss any current or future application, please contact:

Licensing Team, Community Safety and Health Services, Wallfields, Pegs Lane, Hertford SG13 8EQ (tel. 01279 655261 or email: [community.protection@eastherts.gov.uk](mailto:community.protection@eastherts.gov.uk))

Contact details for the responsible authorities can be found at: [www.eastherts.gov.uk](http://www.eastherts.gov.uk)

Contact details for East Herts Magistrates' Courts (licensing appeals);  
The Licensing Clerk, Watford Magistrates' Court, Clarendon Road, Watford, Hertfordshire, WD17 1ST (tel. 01923 297505).

## Appendix A

### Rationale - Including wider Public Health concerns in Licensing decision making.

- The guidance – Legal position

Revised Guidance issued under section 182 of the Licensing Act 2003  
October 2014 (now referred to as 'The guidance.')

Under the heading 'Legal Status', the above document states

1.9 Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. This Guidance is therefore binding on all licensing authorities to that extent. However, this Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons.

- The guidance - "Properly understood the guidance, good reason to do so"

Members of the East Herts Licensing Committee have undergone comprehensive required training and consequently understand their obligations.

Further, East Herts Council held a seminar in its Council Chamber on the 4th April 2014 to understand and discuss how the Licensing Committee could support the Council's duty of care towards its residents in respect of Public Health.

At this seminar, there were presentations from the Licensing team, the County Community Safety Unit, the County Domestic Violence coordinator, Public Health and paramedics. In addition, Licensing Professionals and Other Licensing Chairmen from all over Hertfordshire attended and provided contributions to the discussion.

The presentations at the seminar provided powerful information, empirical and anecdotal, about the impact of alcohol abuse in East Herts.

Following the seminar, the matter was raised at the full East Herts Licensing committee on 17th July 2014 and members supported a Chairman's announcement that he thought that further consideration should be given to public health and in particular, alcohol abuse and that their Statement of Licensing Policy should be rewritten to place Public Health as a major consideration in their decision making.

- The guidance - Public Safety

2.8 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.

First view of this appears to allow licence holders to not have to consider Public Health when considering applications they make and how they will operate under the Licensing Act 2003.

- Home Office Additional guidance 2014

Home Office advice to Public Health in “Additional Guidance for health bodies on exercising functions under the Licensing Act 2003” says:

It should also be noted that public safety only concerns the physical safety of people using licensed premises and not wider alcohol-related health harms such as liver disease, alcohol-related deaths and other issues around the promotion of public health. Any representation made therefore needs to focus on the physical safety of individuals, such as alcohol-related accidents and injuries.

This document was issued in September 2014 as guidance to Public health bodies following their attaining Responsible Authority status, but it carries no statutory weight or obligation. Indeed it concludes with:

“This good practice guidance should be viewed as indicative and may be subject to change. The content of this guidance broadly reflects but is not the statutory guidance (or any part of the statutory guidance) issued by the Secretary of State under section 182 of the Licensing Act 2003.”

#### East Herts Council view

In respect of paragraph 1.9 “a licensing authority must ‘have regard to’ guidance issued”, the use of the phrase ‘have regard to’ clearly indicates that it was not the intent of Parliament that the guidance must always be complied with. This is also indicated by the document being called ‘Guidance’ rather than a stronger word indicating that compliance is required.

Since a Public Health body has recently become empowered to make representations in response to an application, there appears to be no logical nor legal reason why, acting as a Responsible Authority, it cannot make a representation about the Licensing Objective ‘Public Safety’ when that safety concern is a public health matter.

Indeed the *raison d’être* for Public Health is to improve the health and well-being of the general public, a fact that must have been clearly obvious to the legislators at the time they made them a Responsible Authority.

The fact that the Home Office proposes that Public Health bodies limit their objections to physical safety such as accidents and injuries was discussed at the seminar and subject to further comment at the subsequent Licensing Committee.

Members agreed to have regard to Home Office guidance, but also decided that as gate keepers to the supply of alcohol in East Herts, wider Public Health concerns arising from alcohol abuse were far too significant to ignore. Members agreed to consider information from Public Health bodies as appropriate, providing it could be shown to relate to the particular application before them.