

MINUTES OF A MEETING OF THE LICENSING AND APPEALS COMMITTEE
HELD IN THE COUNCIL CHAMBER, COUNCIL OFFICES, CORKS LANE,
HADLEIGH ON THURSDAY 4 OCTOBER 2012

PRESENT: Mr P J Holbrook – Chairman

Mr J R B Cave	Mr J M Owen
Mr P Jones	Mr A J Ward
Mr D G Grutchfield	Mr L H Young

The following Members were unable to be present:

Mr M J Deacon, Mr B Riley, Mr J R A Sayers, Mr R C Smith and Mr R W Thake.

12 DECLARATION OF INTERESTS

None declared.

13 MINUTES

RESOLVED

That the Minutes of the meetings held on the following dates be confirmed and signed as correct records:-

2 August 2012: 22 August 2012: 3 September 2012 (9.30 a.m.)

14 PETITIONS

None received.

15 QUESTIONS FROM MEMBERS

None received.

16 PROPOSED CHANGES TO THE LICENSING ACT 2003 STATUTORY GUIDANCE BY COMMENCEMENT OF THE LIVE MUSIC ACT 2012

The Corporate Manager – Licensing introduced Paper [M98](#), advising Members of a recent consultation exercise and suggesting a response (Appendix B) which the Committee might wish to submit to the Department for Culture, Media and Sport (DCMS). Members were aware that a similar response had been submitted by Mid Suffolk District Council to the DCMS and to the local MPs.

Members agreed that comments should be made on the DCMS technical consultation, based on Appendix B to Paper M98, notwithstanding that the deadline for responses had passed. The Corporate Manager was asked to reinforce some wordings to provide a more robust submission. It was also agreed to forward a copy of the response to Tim Yeo MP with a covering letter signed by the Chairman on behalf of those Members present at the meeting, requesting his support for the Council's position, particularly at the time when the proposed licensing guidance is laid before Parliament at the end of October.

In response to a question, the Corporate Manager confirmed that Members would be advised, initially by email, of any impacts arising from the new arrangements following a review after a suitable period of operation.

RESOLVED

- (1) That the content of Paper M98 and the consultation document (Appendix A) be noted.**
- (2) That a response be made to the DCMS technical consultation of 'Chapter 15: Regulated Entertainment' of the Guidance issued under Section 182 of the Licensing Act 2003 based on the draft commentary in Appendix B to Paper M98, and taking into account the comments made by Members regarding the robustness of the submission. Further, that a copy of the response be forwarded to the local MP with a covering letter outlining the Council's serious concerns about the proposed changes.**

Note:

A copy of the letter and the finalised response are appended to these minutes, for information.

The business of the meeting was concluded at 10.15 a.m.

.....
Chairman

Place Directorate

Responsible for the Economy and
the Environment



Tim Yeo MP
House of Commons
LONDON
SW1A 0AA

Please ask for: **Licensing Team (Babergh)**
Direct line ☎: 01473 825719/826658
Fax number 📠: 01473 825738
Your reference:
Our reference: M98
E-mail ✉: licensingsection@babergh.gov.uk
Please reply to: **Babergh Office (see footer)**

04 October 2012

Dear Tim,

LIVE MUSIC ACT 2012 - POTENTIAL COMMUNITY IMPACTS BABERGH DISTRICT

At a meeting of the Licensing and Appeals Committee on 04 October 2012, all the members present (listed below) requested that I write to you to register our serious concerns over the above Act and the accompanying licensing guidance (section 182 of the Licensing Act 2003) being laid before parliament at the end of October 2012.

Among these are:

- The length of time for comments and consultation on vital guidance (22/08/2012 to 28/09/2012) was totally inadequate added to which we were not directly informed by the DCMS. Our Council has resolved to still issue a response – albeit later than the DCMS published deadline.
- The statutory guidance comes before parliament on 31st October AFTER the Act has taken effect.
- The Act proposes the suspension of many existing conditions of licence, which will inevitably result in many expensive and resource consuming review hearings.
- The effect of the Act will be to curtail the proactive work on which Local Authorities have been concentrating and rely on reactive work triggered by cases of nuisance (both undesirable and expensive).
- Many events will be hard to classify and are likely to cause disturbance and nuisance in quiet rural or residential areas. The proposals appear to support 'raves' and similar events which may take place reliant on the 'workplace' exemption.

These are some of the many reasons the Licensing and Appeals Committee unanimously oppose this Act. Attached is a technical reply prepared for and approved by the committee. The guidance proposed fails to recognise or address many of the concerns and scenarios obvious to those local authority officers and members who have the task of implementing Licensing legislation.

Continued overleaf ⇨

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Strategic Director (Place): Lindsay Barker
Head of Economy: Peter Burrows Head of Environment: Chris Fry

I am requested to seek your support for the views expressed and that you confirm your stance on this very important matter.

Yours sincerely



**Peter Holbrook Chairman of Licensing & Appeals Committee
Babergh District Council
(Bures St.Mary ward)**

Trot Ward Vice Chairman of Licensing & Appeals (Alton ward)
Peter Jones (Brook Ward)
Jack Owen (Sudbury East ward)
Len Young (Glemsford & Stanstead ward)
Richard Cave (Nayland ward)
David Grutchfield (Hadleigh South ward)

Enc: BDC response to guidance consultation

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**BABERGH DISTRICT COUNCIL RESPONSE ON TECHNICAL CONSULTATION OF
'CHAPTER 15: REGULATED ENTERTAINMENT' OF THE GUIDANCE ISSUED UNDER
SECTION 182 OF THE LICENSING ACT 2003**

Introduction

- 1.1 It is unfortunate that essential guidance is delayed in this manner. Commencement of legislation should not precede statutory guidance, especially given the technicalities involved in this area - which are only being considered/consulted upon now.
- 1.2 Licensing Authorities, operators and communities need reliable, consistent and unambiguous guidance and less 'pragmatism'. Clear guidance from the outset on common transitional scenarios is vital. The resource impacts of the LMA2012 on rural authorities in particular should not be underestimated. The guidance must endeavour to promote consistency and best practice across district/borough boundaries.
- 1.6 This guidance should also have been influenced by previous consultation stakeholder responses made in relation to deregulation of regulated entertainment and the Live Music Bill, including those from local Licensing Authorities.
- 1.7 We sincerely hope that practitioner technical responses will be taken into account and influence this guidance, as past consultation responses from regulators/practitioners seem to have carried less weight than views expressed by the Live Music Forum. The previous Culture Secretary's (John Penrose MP) comments to our neighbouring Council Mid Suffolk District Council dated 09 July 2012 should also be compatible with this guidance – specifically that the LMA provisions should not mean a "free for all".

The Proposed new Chapter 15

REGULATED ENTERTAINMENT

15.2

These duties are often general/reactive and neither sufficient nor proportionate - as already referenced within the section 182 guidance at paragraph 2.36. The DCMS statement here should therefore be consistent with paragraph 2.36, and also link to guidance on triggering reviews to reactivate conditions/add new conditions for live music. Revising chapter 15 in isolation will cause conflict with other areas of the guidance.

PRIVATE EVENTS

15.3

This section needs expansion to cover more common scenarios, to ensure clarity for Licensing Authorities, operators and communities. For example, how the removal of entertainment facilities (dance floor, sound equipment, disco lights etc) from regulation will affect village/community hall hirings (for profit). Furthermore, how does the exemption affect the regulated entertainment activity of 'entertainment of a **similar description to live** or recorded music or dancing'? This section on private events has actually **reduced** [from the April 2012 version] from four paragraphs to now two, when some expansive clarification is actually necessary.

STAND UP COMEDY

15.6

It is unclear what this last statement on enforcement is getting at, and it should be clarified.

LIVE MUSIC

15.7 (bullet 3)

- an example for clarity may assist – e.g. if a pub or members club were hosting band practice in the presence or an audience whilst not open for alcohol sales (a likely scenario).

An expansion here on who should be the ‘responsible person’ for monitoring and ensuring compliance with the exemption criteria is vital for clarity – it should be the premises licence holder/club or their representative and not the performer, hirer or anyone else.

KEY TERMS USED IN THE LIVE MUSIC ACT 2012

15.8

Clarification of where this definition of ‘live music’ comes from will be of benefit.

This guidance needs to give specific examples/scenarios to help support consistency rather than deferring such consideration to the Licensing Authority/Courts.

There is a resource implication for the Licensing Authority seeking additional detail from operators of licensed venues and the Government should give due consideration to this and also to updating of prescribed forms, which are in the main still a prescribed format from 2005. More detailed information relating to the music activity of an alcohol licensed venue is necessary – and whether the venue management intend to rely on any exemption in whole or in part for their operation.

Exemption of outdoor areas, including workplaces, for amplified live music is very likely to lead to complaints and resource impacts on the Local Authority – particularly in rural/residential areas.

It should be explicitly stated here that premises not licensed for alcohol via a PL or CPC, and submitting a TEN for alcohol supply, cannot benefit from the live music exemption, and that the premises-user should therefore include any live music as regulated entertainment on the TEN. The situation of premises licences being ‘overridden’ by temporary event notices for one-off occasions needs consideration and commentary by the DCMS.

LIVE MUSIC - CONDITIONS AND REVIEWS

15.10

The sentence including “suspended between the hours of 23.00 and 08.00” has the timings the wrong way round. The potential problems with sub-division of premises, enforcement and monitoring of the 200 audience limit are self-evident. See also our comments at 15.7 above.

Reference must be made to the potential resource and cost implication for Licensing Authorities in having to ‘re-run’ hearings, including those originally instigated by the local community, and ensure that the self-set fee regulations (due later in 2012-13)

clearly make allowance for full cost recovery of this **additional** burden, including any subsequent appeals.

This guidance should expand on scenarios whereby a review may be appropriate, and acknowledge the likelihood of 'reinstatements' being high in some localities (particularly rural). Explicit reference should be made to section 109 of the Police Reform and Social Responsibility Act 2012, which **reduces** the evidential burden on Licensing Authorities from 'necessary' to 'appropriate' for promotion of the licensing objectives, and that that same test shall apply to reviews related to live music.

A statement on how the new live music provisions react with the localism and 'empowering of local communities' brought about by the separate Licensing Act 2003 reforms via the Police Reform and Social Responsibility Act 2011 will be helpful for our communities. The DCMS/Home Office should clearly address this inconsistency, preferably in this guidance, and not leave it to Local Authorities to try and rationalise when explaining these changes to our communities.

Another absolutely critical area, where the guidance should not be silent, is whether a licensing Sub-Committee determination (or a mediated agreement), for a **new or varied** premises licence or club premises certificate can, at that determination/issuing stage, still attach conditions relating to live music even if they are inactive for 'exempt' live music activities. Section 177A of the Act refers to review being the (only) process to activate removal of the exemption and conditions, but no reference is made to the validity of imposing 'dormant' live music conditions via section 17 or 34 processes - particularly where there are relevant representations relating to prevention of public nuisance.

By extension of this issue, the Licensing Act 2003 forms should be updated to require additional detail on whether a premises operator/club is intending to rely on exempt music activity and to require some level of detail on that.

Another key transitional area is the scenario whereby a recent review decision has added live music controls – whether specifically or as part of general prevention of nuisance – following complaints/representations. Conditions may have been attached via a review hearing which is now in the appeal process. What happens to (a) the recent review decision (is a FURTHER review necessary to remove the exemption/reactivate conditions in such circumstances?), and (b) the appeal as far as it relates to live music? This is a real transitional scenario and this guidance needs expansion to advise accordingly.

It is also noted that 'mediation' to avoid a hearing to include the statement that section 177 does not apply to the relevant licence or certificate is not viable as it is clear from the review provisions of the Act (section 52(2) for premises or 88(2) for clubs) that a hearing must take place. The resource impact for Licensing Authorities holding a hearing where the licence-holder or club are not contesting disapplication of section 177 is a significant concern.

15.11

This paragraph would benefit from clearer wording and some re-stating of the legislation at section 177A. Please refer to our comments above for this section.

15.12

A clear statement here to the 'appropriate' test should be made.

A statement here to the effect that in borderline cases where a condition is disputed over whether it relates solely to live music or not, that the condition should remain in effect for non-exempt activity. Also perhaps a firm recommendation for licence holders to voluntarily vary their licences to update (e.g. separate) conditions for the sake of clarity, where they wish to rely on the live music exemption, may be beneficial.

APPLYING CONDITIONS TO NON-LICENSABLE ACTIVITIES

15.13

The potential pit falls, or increased risk of legal challenge, for instigating a review of a licence for a non-licensable activity needs to be better clarified in this guidance. The presence of the live music alone, not directly 'combined' with alcohol consumption risks, may need to generate a review (i.e. noise nuisance grounds). The resource impact on Local Authorities needs to be considered.

15.14

The impact of this exemption on dance floors, disco equipment and karaoke equipment – and linked hirings of licensed venues - must be clearer stated.

MORE THAN ONE EVENT IN THE SAME PREMISES

15.15

This also raises the issue of larger venues operating exempt sub-200 audience activities and how they are going to effectively monitor and control capacity to ensure they stay within the exemption criteria. This is also an area that will be difficult to monitor for responsible authorities. It should be stated as the clear responsibility of the premises licence holder or qualifying members club to ensure the exemption is monitored/correctly applied.

This section implies that it is permissible to 'sub-divide' an outdoor area licensed – as further referenced below in 15.16.

BEER GARDENS

15.16

This is a very significant issue for rural LAs in particular and is likely to result in a major increase in noise complaints and follow-up actions – including reviews reliant on section 177A (where forming part of licensed premises).

Many outdoor areas of licensed premises in residential areas are proportionately controlled, following community contested applications in relation to prevention of public nuisance, so to have to resort to review to reinstate existing controls, at significant cost to Local Authorities is a major concern. The review mechanism available to local residents and businesses, as well as responsible authorities, means that Local Authorities are not in a position to control the volume of reviews it administers.

Clarification on how these provisions impact on permanent or time-limited premises licences authorising ON sales for **outdoor** areas (i.e. parks, grounds and other open spaces) needs to be given. The proposed DCMS guidance at 15.10 suggesting splitting of a building into separate rooms, controlled and exempt, raises concerns that a large outdoor music event/festival on alcohol licensed grounds could be split into separately defined sub-200 audience areas to avoid licence controls for a

significant live music event. This would of course be a likely review situation, although if permissible in law then that could give rise to some difficulty. A statement in this guidance addressing this issue is vital and there may be conflict between the guidance and legislation in this area.

15.17

When this paragraph refers to 'unlicensed beer gardens' it should be expanded to clarify whether this is meaning unlicensed for ON sales of alcohol, unlicensed for any regulated activity or, if it is already shown on a licence plan, for non-licensable consumption of alcohol.

MORRIS DANCING

15.19

An example of what may constitute a 'similar activity' to morris dancing will be helpful.

Compliance with the Code of Practice on Consultation

Criterion 2 of the code recommends a 12 week minimum consultation period. This consultation is running for less than half of that time and with the intention that it is laid before parliament to take effect 31 October 2012, how much influence are technical responses going to have at this late stage?