



NORTH DEVON DISTRICT COUNCIL

ENVIRONMENTAL PROTECTION TEAM

ENVIRONMENTAL HEALTH UNIT

**PUBLIC NUISANCE AND POTENTIAL ENVIRONMENTAL IMPACTS –
APPLICATIONS FOR PREMISES LICENCES AND CLUB PREMISES
CERTIFICATES UNDER THE LICENSING ACT 2003**

To be read in conjunction with

Annex G of

[Guidance Issued Under Section 182 of The Licensing Act 2003](#) by the

Department For Culture Media and Sport

And

Appendix C of the

[North Devon District Council Licensing Policy Document](#)

Issued under Section 5 of The Licensing Act 2003

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**This document may be subject to change as further regulations and
guidance become available in respect of the Licensing Act 2003 and as
guidance evolves in respect of noise control techniques**

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1. Introduction

- 1.1 The Environmental Protection Team is a division of the Environmental Health Business Unit of North Devon District Council. Its function within the Licensing framework is as a consultee to the process and to consider the potential impacts of Licensing Applications upon those living and working within or visiting North Devon. This document sets out how the Environmental Protection Officer will approach this role.

2. Objectives

- 2.1 A key objective of the Licensing Act 2003 is the prevention of public nuisance. The Environmental Protection Officer will have a role in ensuring that the granting of a Licence to any particular premises will not lead to a nuisance or unreasonable levels of disturbance to local residents. There are many potential sources of public nuisance associated with licenced premises and each Application will be considered on an individual basis. However, of primary concern will be the potential for noise disturbance and particular consideration will be given to Applications where the provision of Regulated Entertainment¹ is indicated. The Officer may also take into account other Environmental Protection issues such as waste disposal, littering and artificial light. Advice contained within this document may also pertain to events held with the benefit of a Temporary Event Notice.

3. Methodology

- 3.1 Each individual Application will be considered and where there are concerns, the Environmental Protection Officer will liaise fully with the Applicant and attempt to achieve agreement upon a course of action to

¹ See Definitions

address such concerns. In accordance with Guidance², this agreed course of action may be incorporated within an Operating Schedule³ accompanying the Application for a Premises Licence. Thereafter, the officer will comment upon each Application and Representations may be made to the Licensing Officer where considered appropriate and necessary. The making of Representations will necessitate the matter being brought before a Licensing Committee for determination and the Committee will have options to approve, refuse or modify the Premises Licence. The Committee may attach Conditions to the Licence provided that they are necessary and tailored to the size, style, characteristics and activities taking place at the premises concerned.

- 3.2 “Grandfather Rights” - Many licenced premises within North Devon currently operate with the benefit of a Public Entertainment (Music or Dancing) Licence, under the Provisions of the Local Government (Miscellaneous Provisions) Act 1982. Where an Application for a Premises Licence is received under the Licensing Act 2003 and it is perceived that there will be no variation to the nature or hours of Regulated Entertainment and provided that there are no outstanding noise complaints against the premises, there may be a presumption that the premises is suitable for the provision of Regulated Entertainment. Information required in support of the Application required by the Environmental Protection Officer will be less detailed than that otherwise required (sufficient only for the Officer to be satisfied that there will be no material change). In this case, the Environmental Protection Officer cannot make representations unless a future Application is made to vary the Licence.

4. Operating Schedule

- 4.1 The Licensing Act 2003 requires amongst other things that the Applicant submit an Operating Schedule as part of the Application.

² See Guidance issued under Section 182 of the Licensing Act 2003 – Department for Culture, Media and Sport, July 2004, para – 7.5

³ See Para – Operating Schedule below

The Schedule will include measures to be taken by the Applicant to prevent public nuisance. It is therefore crucial to achieving the objective above that the schedule is sufficiently comprehensive to satisfy the Environmental Protection Officer in respect of noise and other environmental concerns. Guidance⁴ suggests that the Applicant should liaise with Consultees in preparing the Schedule in order to avoid unnecessary hearings as a result of Representations to the Licensing Authority.

- 4.2 Thereafter, the Environmental Protection Officer will be concerned to ensure that measures incorporated within the Operating Schedule and any Conditions attached to the Licence to address noise and disturbance concerns, are adhered to. The Environmental Protection Officer has formal powers in this regard⁵.

5. Relevant Considerations

- 5.1 In considering the Application for a Premises Licence to include Regulated Entertainment, the Environmental Protection Officer will have regard to a number of factors, to include:

- 5.1.1 Locality – Whether a commercial or a residential⁶ area and location of the premises in relation to dwellings and number of dwellings in the near vicinity;
- 5.1.2 Existing noise environment and sources of noise surrounding the premises;
- 5.1.3 Nature and scale of the business – whether the premises is a public house, nightclub or other place of entertainment and the number of patrons;

⁴ See Guidance issued under Section 182 of the Licensing Act 2003 – Department for Culture, Media and Sport, July 2004, para – 7.5

⁵ See Para – Enforcement - below

⁶ See Para – Definitions - below

- 5.1.4 Previous complaints – whether there is a history of noise complaints to the Local Authority and whether the complaints were found to be justified and formal action (i.e. Noise Abatement Notice) resulted⁷;
- 5.1.5 The nature of construction of the building – physical attributes that influence its ability to contain music or other noise and its physical relationship with neighbouring buildings⁸;
- 5.1.6 Noise mitigation measures in place – physical works that have been carried out in order to improve the building in terms of its ability to contain music and other noise from within⁹;
- 5.1.7 Management strategies – established procedures that mitigate for noise breakout and disturbance e.g. keeping doors and windows closed¹⁰;
- 5.1.8 Acoustic Consultant's report – in certain circumstances the Environmental Protection Officer may require an independent report in respect of noise issues¹¹;

6. Factors Affecting Noise Disturbance and Noise Mitigation measures

- 6.1 In considering the suitability of particular premises for Regulated Entertainment there are many elements to consider. The Environmental Protection Officer will expect the Applicant to demonstrate that the following aspects have been taken into account and where appropriate have been incorporated within the Operating Schedule:

⁷ See Guidance issued under Section 182 of the Licensing Act 2003 – Department for Culture, Media and Sport, July 2004, para – 7.19

⁸ See Para - Noise Mitigation - below

⁹ See Para - Factors Affecting Noise Disturbance and Noise Mitigation measures - below

¹⁰ See Para - Factors Affecting Noise Disturbance and Noise Mitigation measures - below

¹¹ See Para – Acoustic Consultant's Report - below

6.1.1 Physical Elements

- 6.1.2 Proximity to other properties – in particular, noise sensitive properties such as houses and flats. If there are dwellings in close proximity, it is more likely that noise breakout from Regulated Entertainment will lead to disturbance;
- 6.1.3 Nature of construction of the building – walls, windows, roofs and doors. Identify weak points within the structure and potential sources of noise breakout. Single glazed windows and doors and windows that have gaps around them are potential areas for noise breakout;
- 6.1.4 Potential noise pathways – in particular shared party walls, shared chimney breast, dwellings above premises, adjoining premises or properties directly opposite. Noise and vibration will travel readily through party walls, particularly if poorly constructed and shared chimney breasts are potential noise pathways;
- 6.1.5 Plant and equipment – for example, ventilation units that may themselves generate noise and may provide a noise pathway;
- 6.1.6 Location of loudspeakers within premises.

6.2 In mitigation of noise breakout the Applicant will need to consider works to improve the acoustic integrity of the structure:

- 6.2.1 Improvements to party walls, acoustic insulation within roof voids, the provision of acoustic double or triple glazing¹² and the provision of lobby areas (incorporating two sets of doors)¹³ at entrance and exit points can be employed to good advantage. In addition, the provision of ventilation and air handling plant

¹² NB – works to improve the acoustic performance of ceiling voids and windows etc. will not necessarily be the same as those to improve thermal insulation. For example, the design of double-glazing for acoustic performance is markedly different to that required for good thermal performance. Where there is doubt, expert advice should be sought.

¹³ NB – any such works must be carried out in consultation with the Fire Officer to ensure that fire safety is not compromised.

should be considered¹⁴ so that doors and windows can be closed whilst entertainment is being provided during periods of hot weather;

- 6.2.2 Gaps around doors and windows, even if small, will compromise the acoustic integrity and should be sealed. Doors (particularly fire doors) should be tight fitting and of dense construction and not capable of being restrained in the open position;
- 6.2.3 The location and mounting of loudspeakers within the premises should be carefully considered. Rigid mountings may transfer sound and vibration to the structure of the building and speakers located near to doors, windows and party walls are more likely to result in noise breakout;
- 6.2.4 An electronic noise-limiting device can be an effective tool for the operator to ensure that internal music noise levels do not increase beyond pre-set limits¹⁵.

7. Management Elements

7.1 Noise disturbance can be minimised by good management practices and by consideration of some basic preventative measures:

- 7.1.1 Ensuring that doors and windows remain closed whilst Regulated Entertainment is taking place – Fire doors should be closed and doors used by patrons should not be restrained in the open position. The provision of a lobby can ensure that one set of doors is closed at any one time, particularly if a door steward is employed to see customers in and out. The provision of air conditioning within the premises can ensure that customers do not open windows and doors and windows can be

¹⁴ NB – The provision of air handling plant may in itself generate noise disturbance and consideration must be given to location of plant and the provision of acoustic attenuation. Again, expert advice may be required.

¹⁵ Such devices need to be carefully selected and may not be effective in all circumstances. They should not be regarded as a solution in themselves and expert advice should be sought.

alarmed to alert the operator of the premises when they are open;

- 7.1.2 Restricting hours of entertainment – The Applicant may specify hours of Regulated Entertainment within the Operating Schedule. In assessing the impact of Regulated Entertainment upon the locality the time of day, duration and frequency of such entertainment will be considered a crucial factor;
- 7.1.3 Control over internal music levels – Applicants will be expected to demonstrate that they have sufficient control over music levels within the premises and take suitable steps to monitor levels both within the premises and in the vicinity of the premises and to reduce such levels as appropriate
- 7.1.4 Training of staff – Staff should be aware of all measures in place to manage noise emissions and to actively implement procedures e.g. monitoring doors and windows to ensure they are closed;
- 7.1.5 Location of exits – At certain times it may be preferable to use specific entrance and exit points to minimise disturbance within the community;
- 7.1.6 Garden and car-park areas – The use of garden areas and car-parks late at night should be considered in respect of proximity to neighbouring dwellings and potential disturbance;
- 7.1.7 Queuing, winding down period and departure – The management of queues for entrance to a premises and a strategy for ensuring that patrons leave quietly should be considered;
- 7.1.8 Bottling up and deliveries – The disposal and storage of glass bottles into waste bins can be a potential source of disturbance late at night and should be avoided. Deliveries to the premises at unsociable hours should also be avoided.

8. Acoustic Consultant's Report

- 8.1 In some circumstances there may be concerns that the structure of a building or its proximity to residential accommodation may render it unsuitable for the provision of Regulated Entertainment or that significant works will be required to make it suitable. In such cases, the Environmental Protection Officer will require a report from an independent and suitably qualified person. This will usually be an Acoustic Consultant who is a member of a recognised professional body (Institute of Acoustics or similar). The Applicant will be expected to facilitate this and to cover associated costs. The Officer will only require such a report where it is necessary having regard to the scale of the Regulated Entertainment and its potential effects upon the local community, taking into account all relevant considerations¹⁶.
- 8.2 The Environmental Protection Officer will provide further details to the Applicant in respect of his requirements from such a report. Notwithstanding the above, it will be sufficient to establish that upon implementation of a recommended course of action, the key objective in respect of public nuisance and noise disturbance will be satisfied.

9. Quality of Supporting Information

- 9.1 The detail required by the Environmental Protection Officer in support of an Application that includes the provision of Regulated Entertainment will be commensurate with the nature and scale of the Entertainment proposed and its potential effect upon the local community. Applicants should demonstrate that they have considered all the guidance above in relation to the particular premises and included sufficient information. Where information is not given, the Applicant should provide explanation as to why it is not considered relevant. Applications considered to be incomplete may delay the process unnecessarily.

¹⁶ See Para – Relevant Considerations - above

9.2 The Applicant should consider specifying the type of entertainment and the hours that entertainment would be provided, within the **Operating Schedule**. An Application for a Premises Licence that allows the provision of all forms of Regulated Entertainment at all hours would necessitate a greater burden of supporting information than the provision of quieter forms of entertainment, restricted to certain hours.

10. Enforcement Under The Licensing Act 2003 and Other Regulatory Functions

10.1 The Environmental Protection Act 1990 confers powers on the Environmental Protection Officer to deal with complaints of Nuisance. This would include complaints made to the Authority of noise disturbance from licenced premises. The 1990 Act requires that the Authority take formal action where Statutory Nuisance is found or is likely to occur and this would normally take the form of a Noise Abatement Notice. Non-compliance with an Abatement Notice becomes a criminal offence.

10.2 The Licensing Act 2003 does not affect the continued use of such powers (and any powers available under the Licensing Act would be in addition to these). However, these general duties will not always adequately cover specific issues that arise on the premises in connection with, for example, certain types of entertainment. Where additional and supplementary measures are necessary to promote the licensing objectives these measures will be incorporated within the Operating Schedule or may be specified as Conditions attached to the licence.

10.3 Should the Environmental Protection Officer become aware that the premises is not being run in accordance with the Operating Schedule (or that Conditions attached to the Licence are not being complied with)

and this is leading to disturbance or public nuisance, the matter will be reported to the Licensing Authority. The Licensing Authority may then review the Licence or take action for a criminal offence as appropriate.

Annexe 1. - Definitions

Regulated Entertainment -

- (a) A performance of a play
- (b) An exhibition of film
- (c) An indoor sporting event
- (d) A boxing or wrestling entertainment
- (e) A performance of live music
- (f) Any playing of recorded music
- (g) A performance of dance
- (h) Entertainment of a similar description to that falling within paragraph (e), (f) or (g) where the entertainment takes place in the presence of an audience and is provided for the purpose, or for purposes which include the purpose, of entertaining that audience. Any reference to an audience includes a reference to spectators. This definition is subject to Part 3 of Schedule 1 to the Licensing Act 2003 (interpretation).

Residential Area –

For the purposes of consultation in respect of noise issues, the Environmental Protection Officer will consider any area to be residential where there are dwellings of any number or description in proximity to the premises subject of the Premises Licence.

Annexe 2. - Legislation and Guidance:

The Licensing Act 2003

The Environmental Protection Act 1990 (As Amended).

Guidance issued under Section 182 of the Licensing Act 2003 – Department for Culture, Media and Sport, July 2004.

Good Practice Guide on Control of Noise from Pubs and Clubs - Institute of Acoustics 2003. The Institute of Acoustics, 77A St. Peters Street, St. ALBANS, Herts AL1 3BN. acoustics@clus1.ulcc.ac.uk www.ioa.org.uk

Code of Practice on Environmental Noise at Concerts - Noise Council 1995.
<http://www.health.gov.je/uploads/6075-1245.doc>

World Health Organisation – Criteria for Sleep Disturbance: Berglund 1995

British Standard BS9142 – Managing Environmental Noise. **Currently in draft.** British Standards Institution Linford Wood, MILTON KEYNES MK14 6LE. www.bsi-global.com

British Standard BS4142 1997 – Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas. British Standards Institution Linford Wood, MILTON KEYNES MK14 6LE. www.bsi-global.com

British Standard BS7445 – Description and Measurement of Environmental Noise. British Standards Institution Linford Wood, MILTON KEYNES MK14 6LE. www.bsi-global.com

British Standard BS 8233:1999 - Sound insulation and noise reduction for buildings. Code of practice. British Standards Institution Linford Wood, MILTON KEYNES MK14 6LE. www.bsi-global.com

Annexe 3. - Further Information and reference

Licensed Property: Noise Control. Produced by the British Beer and Pub Association, Market Towers, 1 Nine Elms Lane, LONDON SW8 5NQ.
enquiries@beerandpub.com www.beerandpub.com

Noise Levels and Noise Exposure of Workers in Pubs and Clubs – Health and Safety Executive Research Report 026 2002. HSE Books, PO Box 1999 Sudbury, Suffolk CO10 2WA. www.hsebooks.co.uk www.hse.gov.uk

Implications for Noise Disturbance Arising from the Liberalisation of Licensing Laws – MCM Research Ltd. (for DEFRA) 27/28 St. Clements, OXFORD, OX4 1AB mcm@sirc.org