

Licensing and Public Nuisance

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Licensing and Public Nuisance in the Headlines

Pub's bid to extend licence is rejected

Aimee Brannen

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A PUB has had its request for longer opening hours and more live entertainment turned down at a hearing last week.

The new owner of The Great Northern in London Road, which is now known as McGowans, wanted to extend alcohol sales until 3am and close half-an-hour later seven



police at the hearing held in the district council chamber last Thursday.

She said that allowing the application would compromise the work undertaken by the police to reduce alcohol-related crime and disorder around the London Road area and she also cited road safety, the well-being of children living in houses behind the premises and unsuitable CCTV coverage among her concerns.

Nightclub: We'll sue town hall if flats go ahead

Late night parties may see licence ban for restaurant

Charlotte Morgan

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LOUD parties and trading into the early hours of the morning could lose a St Albans restaurant and bar its licence for a fortnight.

Buon Amici in Heritage Close, its proprietor Kamillo Bendahman and manager Paul Crossey, were the subject of a licence review last Thursday.

The Italian restaurant, which has its own wine and cocktail bar, The Wax House, on the lower floor, was found to be trading beyond its licensable hours on both Saturday, March 6, and Sunday, March 7.

Licensing compliance officer Graham Hopkins said that at around 12.00am on the first instance he estimated that there were up to 80 people in the building at the time.

He saw two young women with full glasses of what appeared to be a spirit and a mixer and most of the men had full pints.

Loud music

The bar's bouncers were not displaying Secure Industry Authority (SIA) licences, and the music was so loud that he could not hear Mr Bendahman speak.

Mr Hopkins, who also considered that many of the Wax House customers were under the influence of drugs, told Mr Bendahman to clear the bar immediately.

But despite the events of that morning Mr Bendahman, who insisted that the party had all bought their drinks upstairs in the restaurant well before the 12.30am limit, threw a party for the staff at his two St Albans restaurants - Buon Amici and Kamillo's on Marlborough Road - on Sunday night.

Once again, the bar stayed open until the early hours of the morning and the last person did not leave until nearly 3.30am. PC John Cooper, who applied for the review, said that he visited Mr Bendahman on Wednesday and demanded to see the CCTV footage of that night.



Jane's licence to cause sleepless nights



UNRULY MANOR: Jane Seymour is being blamed for all-night parties at St Catherine's Court, Bath

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Disturbances

"I have been logging noise disturbances for years now - it became an obsession at one point

enced for two weeks and that Mr Bendahman

should be removed as the Designated Premises

Supervisor until he had completed a National

Certificate for Personal Licence Holders.

By Andrei Harmsworth



... e is a living music

legend ...

Oi, Macca - turn that music down!



Party poopers: Neighbours complained about noise from the newlyweds, left, who headed for their honeymoon yesterday, right. Pictures: Splash/PA

Westminster city council inspectors. The complaints are thought to have been made when DJ Mark Ronson started playing music which included a number of Beatles hits. Two officials arrived at the property in St John's Wood and said the music, coming from a marquee in the garden,

is friends with John Lennon's son Sean, ended his DJ set with Beatles classic Hey Jude. McCartney took the microphone during the party, singing a number of songs, including a special track he had written for his new bride. Westminster's licensing head Andrew Ralph said: "The volume

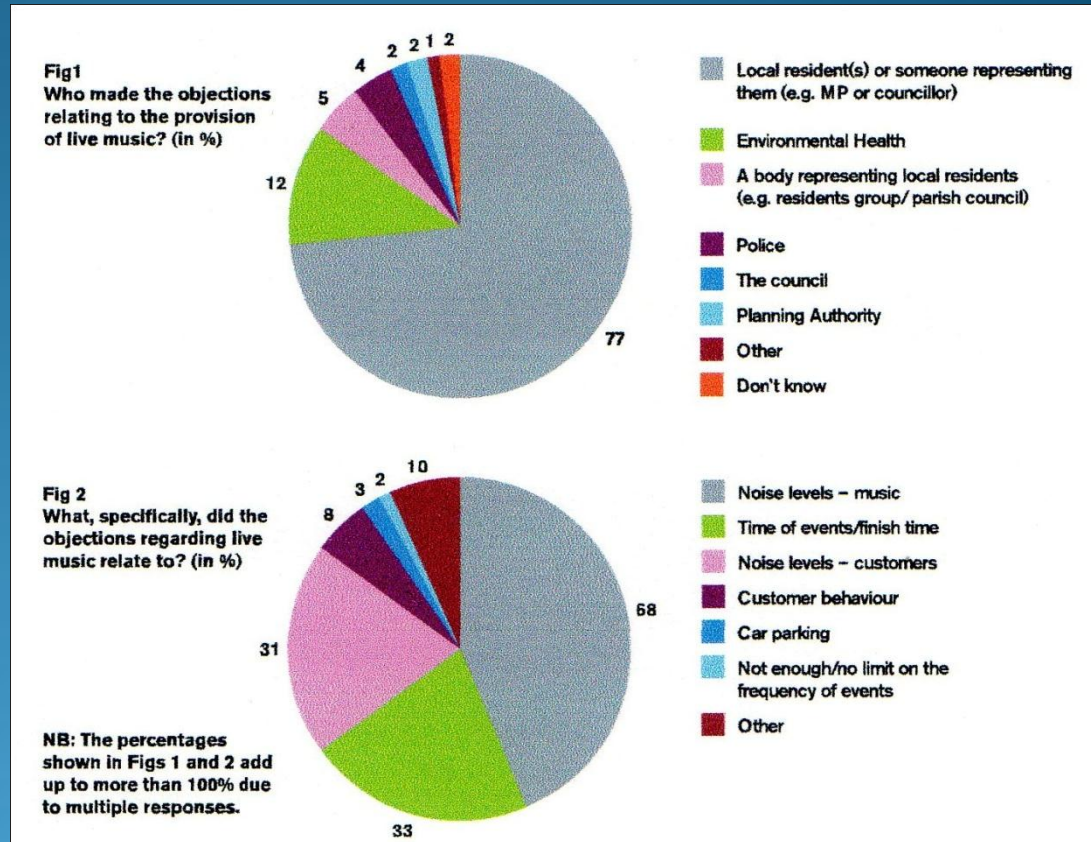
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Licensing and Public Nuisance

MORI Survey 2006

- 77% of all objections to live music applications came from local residents
- 68% of these objections related to concerns about NOISE



Licensing Act 2003

Commentary provided by Live Music Forum

- the Act has not led to the promised increase in live music
- the Act has had a broadly neutral effect on provision of live music
- LAs have acted in a professional, even-handed manner and should be commended for their sensible and pragmatic approach
- the Act has not brought about the devastation once feared
- There is little evidence to support the claim that live music is a widespread source of public nuisance



Licensing Act 2003

Aims: to encourage a flourishing and varied licensed sector whilst providing safeguards to protect neighbourhoods from subsequent harm and disturbance.

Licensing Objectives

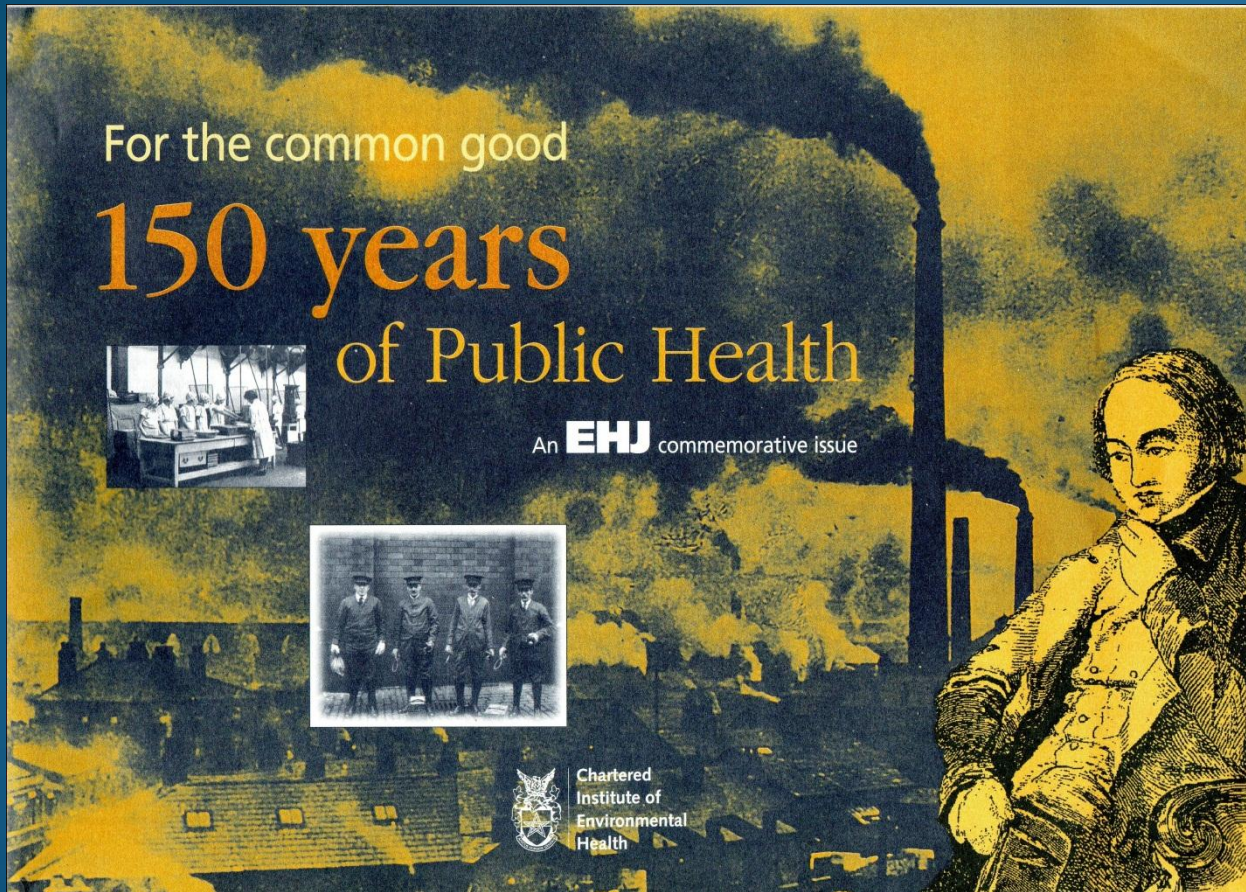
- Prevention of Crime & Disorder
- Promotion of Public Safety
- Protection of Children from Harm
- **Prevention of Public Nuisance**

By considering these objectives in reaching decisions, Licensing Authority must take into account their Statement of Licensing Policy; government guidance under s182; case law.

- Licensable Activities include 'the provision of regulated entertainment'



Origins of the Control of Public Nuisance



- Regulation of public health by local authorities dates back to 1848 Public Health Act
- Origin of Statutory Nuisance based upon codification of common law nuisances



Origins of the Control of Public Nuisance



- Some public nuisances such as being a 'common scold' or 'common barrator' were still offences as late as 1967 before being abolished by Criminal Law Act

Lack of Precision

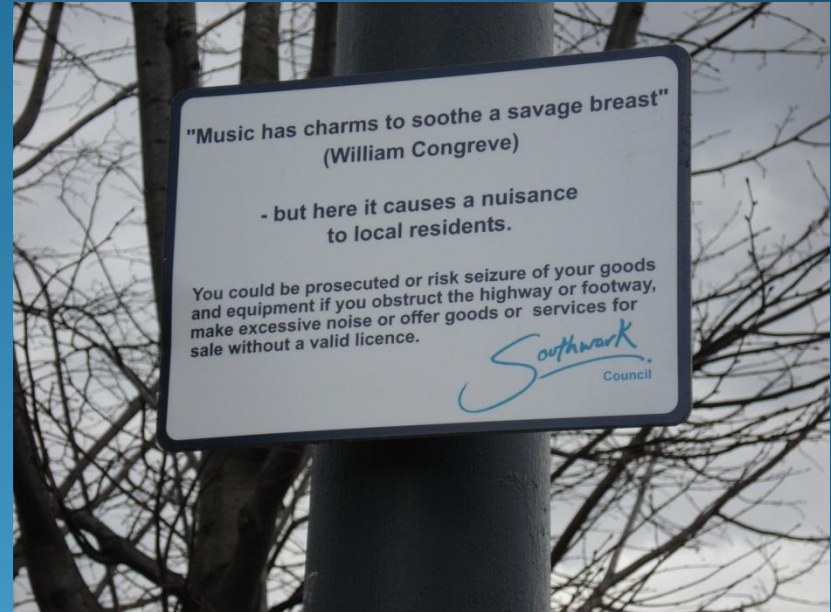
What is nuisance?

'The word nuisance introduces an equivocation which is fatal to any hope of a clear settlement...'

Adding the words that guaranteed him perpetual fame:

'...this cause of action is immersed in undefined uncertainty'

[Erle CJ in *Brand v Hammersmith & City Railway Co.* (1867) QB 223]



Flexibility/ Slippery Concepts

Lord Cooke in *Canary Wharf* said of the principle of “give and take”:

“The principle may not always conduce to tidiness, but tidiness has not had a high priority in the history of the common law. What has made the law of nuisance a potent instrument of justice throughout the common law world has been largely its flexibility and versatility. “

***Hunter v Canary Wharf* [1997] AC 655, 711.**



Private Nuisance v Public Nuisance

Public and Private Nuisances should be seen as separate torts protecting different categories of rights

- *Private Nuisance involves interference with someone's right to enjoy his/her own land ie PROPRIETORIAL RIGHTS*
- **Public Nuisance involves the endangering of health, comfort or property of the public ie a BREACH of RIGHTS (NB: not a larger scale of private nuisance)**



Public Nuisance – the Leading Authorities

Attorney General v PYA Quarries Ltd [1957] 2 QB 169

*“..any nuisance is public which materially affects the reasonable comfort and convenience of life of a class of Her Majesty’s subjects..It is not necessary to prove that every member of the class has been injuriously affected; it is sufficient to show that a representative cross-section of the class has been so affected...a public nuisance is proved by the **cumulative effect** which it is shown to have had on the people living within its sphere of influence....”* [Romer LJ]

“...a public nuisance is a nuisance which is so widespread in its range or so indiscriminate in its effect that it would not be reasonable to expect one person to take proceedings on his own responsibility to put a stop to it, but that it should be taken on the responsibility of the community at large...” [Denning LJ]



Public Nuisance – the Leading Authorities

Conjoint Cases of R v Rimmington; R v Goldstein [2005] UKHL 63

“...It is not enough to point to a collection of private nuisances and to conclude that the point has been reached when they amount to a public nuisance. What is essential, is to identify the breach of rights affecting the public at large – or at least a sufficient section of the public. It is the breach of those rights that constitutes the public nuisance
[Baroness Hale]



Public Nuisance – the Leading Authorities

Corby Group Litigation v Corby Borough Council [2008] EWCA Civ 463

*“The essence of the right that is protected by the tort of private nuisance is the right to enjoy one's property ... The essence of the right that is protected by the crime and tort of public nuisance is the right not to be adversely affected by an unlawful act or omission whose effect is to endanger the life, safety, health etc of the public”.
[Dyson LJ]*

ENVIRONMENT

Corby families win payout

Corby Borough Council has agreed to pay compensation to 19 young people born with birth defects who claim their mothers were exposed to toxins during the redevelopment of Corby Steel Works in the 1980s and 1990s.

The council decided last week to drop its appeal against a High Court ruling, which found that toxic materials disturbed during the redevelopment of the steel works could have caused the children's birth defects (*EHN*, 7 August 2009, page 1).

Chris Mallender, Corby Chief executive, apologised to the children and admitted the council had made 'mistakes' during

families, said the agreement marked the end of an arduous 11-year legal challenge and removed the prospect of further litigation. 'My clients live with the daily reminder of the sub-standard clean-up of the former British Steel plant in Corby. Of course, no financial sum can properly compensate for their lifelong deformities and disabilities. However, they are relieved that their long battle is now over,' he said.

Sarah Pearson, mother of Lewis Waterfield, born with significant deformities affecting both hands, said their fight was over.



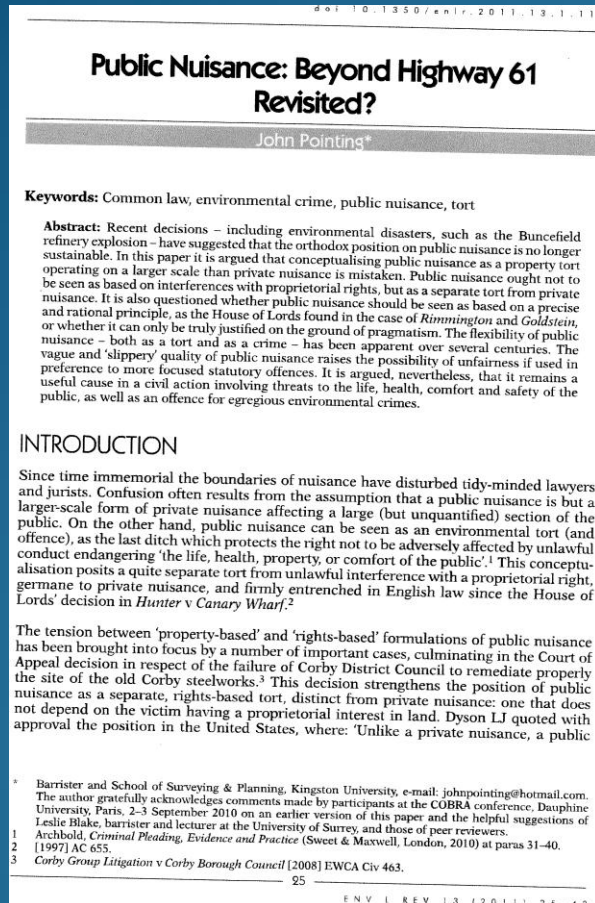
Public Nuisance – the Leading Authorities

Colour Quest Ltd and Others v Total Downstream UK plc and Others [2009] EWHC 540

*“...A private owner’s right to the enjoyment of his land is not a right enjoyed by him in common with other members of the public, nonetheless any illegitimate interference, being the very same interference **contemporaneously** suffered by other members of the public, constitutes a common injury satisfying the public nature of public nuisance...”* [David Steele J]



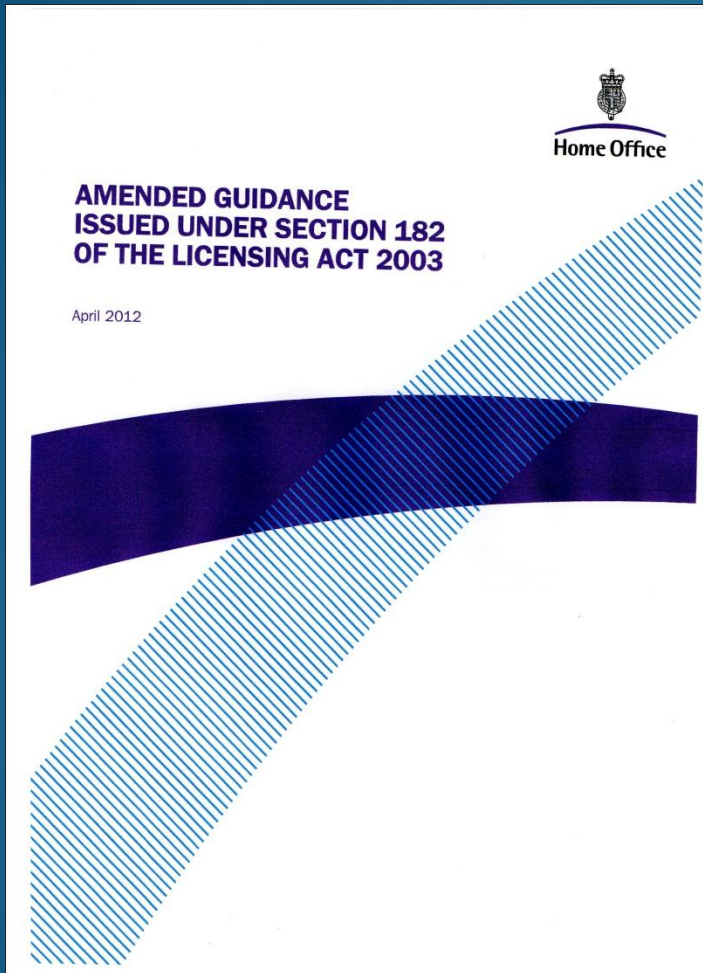
Public Nuisance v Private Nuisance



“In light of recent judgements, it would appear that a collection of private nuisances can amount to a public nuisance where all of the following conditions are met:

- (1) There is a **serious** breach of rights **endangering** the life, health, safety, comfort or property of the public;*
- (2) A sufficient group or class of the public is sufficiently affected by the nuisance;*
- (3) There is a sufficient common element to make the link between the individual private nuisances.”*

Where the government confused itself



PUBLIC NUISANCE

“It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally, as well as major disturbance affecting the whole community.” [s2.34]

- Crosby Homes v Birmingham City Council : District Judge Zara rejected s182 Guidance as ‘a fudge’ in appeal hearing in Magistrates’ Court – not binding authority



Licensing Act 2003

Role of Environmental Health Service

- EHS is 'responsible authority' and can make representations on new applications on grounds of noise with reference to licensing objective of preventing public nuisance and can ask for suitable conditions to be attached to any licence granted
- EHS can also ask for a review of licence on the same grounds



Licensing Act 2003

Licensing Authority having regard to any representations may:

- grant the premises licence subject to conditions deemed necessary to promote licensing objectives
- exclude any of the licensable activities from scope of the premises licence
- refuse to specify a person as the premises supervisor
- reject the application



Licensing Act 2003

Conditions relating to Noise

- Based on guidance and noise criteria from recognised, published sources
- Test for licensing conditions analogous to advice on Planning Conditions in Circular 11/95

-necessary

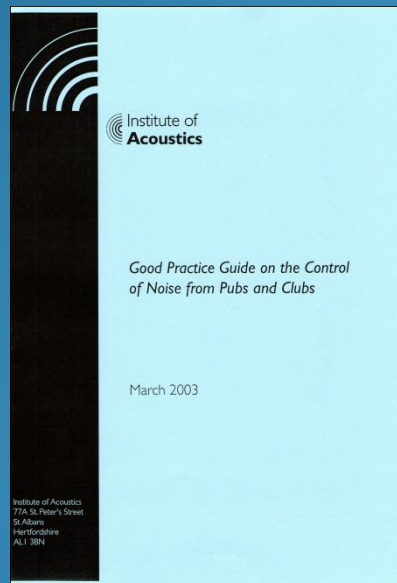
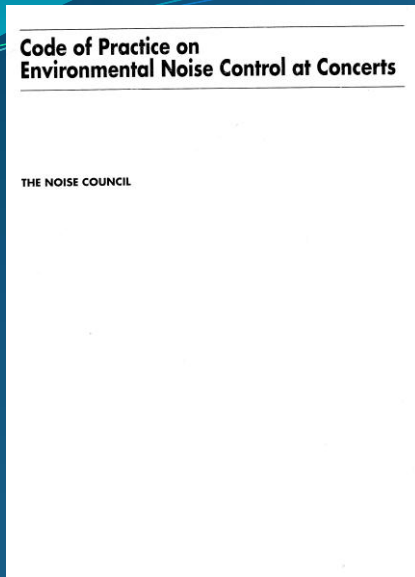
-relevant to licensing objectives

-relevant to site

-enforceable

-precise

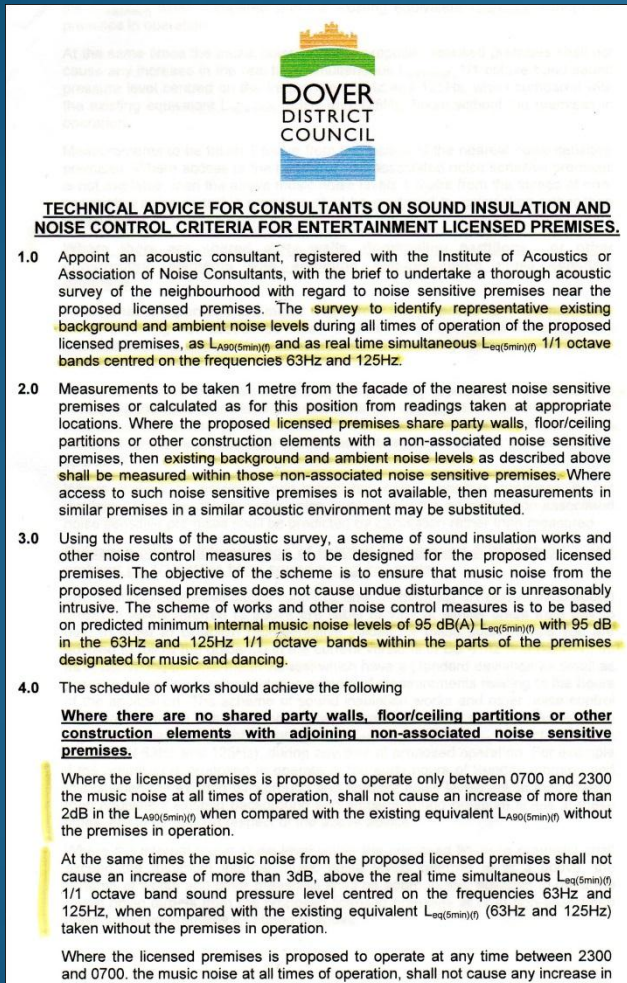
-reasonable



Licensing Act 2003

Conditions relating to Noise

- Better to draft conditions from criteria enshrined in a corporate policy
- Institute of Licensing CoP
- Need to be tailored to the size, style, characteristics and activities taking place – ie circumspect in use of Standard Conditions
- Should be proportionate eg reflecting non-commercial nature of charity/community events
- References to noise being 'inaudible' at 'nearest noise-sensitive premises' judged to be 'so vague as to be unenforceable' [*R v Developing Retail Ltd v East Hampshire Magistrates Court* [2011] EWHC 618]



Recent Changes to Licensing Act 2003

- Licensing authority itself, primary care trusts and local health boards are now included as 'responsible authorities'
- Evidential threshold lowered enabling licensing authorities to make decisions which are *appropriate* rather than *necessary* for promotion of licensing objectives
- Residents making representations no longer have to live in the vicinity
- Changes to processing of Temporary Event Notices allowing EHS to object on public nuisance grounds
- Licensing conditions relating to music entertainment in small venues (< 200 persons capacity) SUSPENDED [Live Music Act likely to be enacted through Legislative Reform Order in October 2010] - will apply mainly to pubs



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