

## Appendix 2

### Draft Dudley MBC Response to Consultation proposal to examine the deregulation of Schedule One of the Licensing Act 2003

Dudley Metropolitan Borough Council agrees that the events outlined in paragraph 1.5. of the consultation document should be excluded from the need to licence as regulated entertainment. Similarly we do not have any concerns with the deregulation of the performance of plays or the exhibition of films provided an appropriate age classification remains in place. However, we do not see any merit in the wholesale dismantling of the existing entertainment licensing controls for live and recorded music, karaoke and dance in alcohol licensed premises such as pubs and clubs.

Accordingly, we have limited our responses to the consultation to those questions where we do have concerns.

#### **Q4. Do you agree with our estimates of potential savings and cost to local authorities as outlined in the impact assessment? If you do not, please outline the areas of difference and any figures you think need to be taken into account.**

We do not agree with the estimates of £1.03m savings by Licensing Authorities to be offset by an estimated £417K to £787K cost of dealing with extra noise complaints and licensing reviews. The estimates are based on an expected increase in noise complaints of 5-10%, which we believe is underestimated, and an increase in licensing reviews of 10-15%. However, some additional cost burdens have not been estimated.

Dudley MBC investigates approximately 175 noise complaints each year about entertainment at licensed premises (3 year average figure 2008-2011). Based on the estimate of 10% increase in noise complaints about entertainment in pubs and clubs following deregulation, this would generate 18 extra complaints a year at 10 hours per investigation, 20 hours per abatement notice served and any additional prosecutions costing approximately £10,000 each. We believe the 5-10% increase in noise complaints to be underestimated as it is not known how many pubs which currently do not have entertainment will start to do so if licensing restrictions are removed. The vast majority of pubs in built up areas are in close proximity to residential properties and many may have structures not suitable to sound attenuation (e.g. single glazed opening windows); hence a significant increase in noise complaints may occur if licensing restrictions on entertainment are removed.

The impact assessment states that the cost of informally dealing with noise complaints by licensing authorities after deregulation has not been costed. We would suggest that there will be an administrative burden on licensing authorities in receiving noise complaints, explaining the change in licensing

rules to complainants and passing complaints onto environmental health and that this should have been considered in the impact assessment.

The consultation document estimates the increase in premises licence reviews as a result of deregulation of entertainment as a 10-15% increase at a cost of £1,200 per review to the licensing authority. However, no consideration has been given to the costs of calling a review by the Responsible Authority applicant. In Dudley MBC, environmental health have applied for 2 premises licence reviews in the past 12 months, both in relation to regulated entertainment at pubs. The cost to environmental health in calling each review has been estimated as £1,066 per review in officer time to prepare the application, take witness statements, prepare advance disclosure and administration. One of the reviews was also supported by the police with subsequent additional costs for police preparation, disclosure and administration. Therefore the figures given in Table 8 of the impact assessment estimating the cost burden of an increase in reviews are well underestimated as they do not consider the costs to Responsible Authorities.

We note that conditions attached to existing premises will remain in force unless removed by the holder by way of a variation application. The costings do not appear to include the administrative burden upon licensing authorities which would occur if the vast majority of licensed premises already licensed for entertainment sought to remove existing conditions relating to entertainment by way of a variation application. We would question in any case whether conditions in relation to entertainment would be enforceable even if a variation application was not applied for. If entertainment is deregulated then the status of all conditions relating to entertainment is directly undermined.

**Q5. Would you expect any change in the number of noise complaints as a result of these proposals? If you do, please provide a rationale and evidence, taking into account the continuation of licensing authority controls on alcohol licensed premises and for late night refreshment.**

We would expect an increase in the number of noise complaints from pubs, clubs and similar premises who under the new proposals would be able to hold live music, recorded music, discos, and karaoke events without any prior notification or approval. The impact assessment which estimates an increase of 5-10% in noise complaints is based on the assumption that only 50% of noise complaints about commercial premises are from pubs and clubs (CIEH Noise Survey 2008-09). However in urban areas such as Dudley which has approximately 360 pubs and clubs, the vast majority in or close to residential properties, this percentage is much higher. Analysis of data for Dudley commercial noise complaints over the 3 years 2008-2011 shows 72% of the total commercial noise complaints received were in relation to pubs and clubs and only 28% from other commercial outlets such as shops, restaurants and other leisure outlets not licensed for alcohol.

**Q11. Do you agree that events for under 5,000 people should be de-regulated across all activities listed in Schedule One of the Licensing Act 2003?**

No, we do not agree. A figure of 5,000 would exclude virtually all entertainment events taking place indoors and outdoors at premises in the Dudley borough from requiring licensing with the exception of very large scale outdoor events. This will result in events which would require intervention by Responsible Authorities under other legislation (either for noise control or health and safety enforcement for environmental health officers or for fire safety enforcement for Fire Authorities) going ahead without any opportunity for the enforcing authorities to proactively and proportionately deal with issues prior to an event taking place. Hence, the proposals will put public safety at risk and increase the likelihood of safety related incidents and accidents occurring at events. Under the existing system, potential safety issues can be pre-empted at the application stage by enforcement authorities and advice and guidance issued to the organiser to ensure that the event has been properly risk assessed and all necessary controls put in place. This will be lost under the new proposals, which can only lead to an increase in safety related incidents at events which do not require licensing.

Although Dudley has a proactive Safety Advisory Group, which offers advice and guidance to organisers of large events intending to be held on Council owned or public land or open spaces, this does not cover entertainment events in privately owned premises such as pubs and clubs; hence such events would not come to the local authority's prior attention if the proposed deregulation of licensed entertainment goes ahead.

We would suggest that instead of fixing a limit on the number of people below which licensing is not required, that it would be preferable to de-regulate those low risk premises and activities which the consultation document acknowledges do not generally give rise to either noise or safety related issues (e.g. schools and other examples listed in paragraph 1.5 of the consultation document) and maintain a licensing requirement for entertainment in premises also serving alcohol. As such premises already have to apply for a licence, the additional administrative burden of applying for permission for entertainment will be low but the existing benefit to enforcing authorities of the prior notification of events and the resulting increased confidence in public safety at events will be maintained.

**Q14. Do you believe that premises that would no longer have a licence, due to entertainment deregulation, would pose a significant risk to any of the four original licensing objectives? If so, please provide details of the scenario in question.**

As stated above, a benefit of the current system is that by requiring a licence for entertainment, prior notification of unusual or large scale events at premises which may not be deemed suitable would be brought to the attention of enforcement authorities such as fire, health and safety or noise enforcement and thereby permit issues to be resolved in advance. This would

normally be by the issue of advice and guidance but could require enforcement action where advice is not acted upon. It is obvious therefore that deregulation of entertainment would result in a higher incidence of noise complaints and safety related incidents arising which would affect the two licensing objectives of public safety and the prevention of public nuisance. We would suggest in particular that the licensing objective of preventing public nuisance could be seriously undermined if the vast majority of pubs which have not previously held entertainment do start to have entertainment without any licensing controls. We do not agree with the statement in paragraph 3.3 of the consultation document which states "regulated entertainment itself in general poses little risk to the licensing objectives". 100% of the representations made by environmental health on licensing applications in Dudley since implementation of the Licensing Act 2003 in November 2005 have been in relation to regulated entertainment and the need to uphold the licensing objective of preventing public nuisance.

The main advantage of the current premises licence regime is that an operator can be held directly accountable for the way he or she manages the activities conducted at the premises and the option to call a review is a powerful incentive to comply with conditions. If regulated entertainment is removed from the licensing regime, then the incentive to comply with the objective to prevent public nuisance will be removed as well.

**Q15. Do you think that outdoor events should be treated differently to those held indoors with regard to audience sizes? If so, please could you explain why and what this would mean in practice.**

Outdoor events pose an increased risk of noise complaints due to there being no physical sound attenuation barrier such as would be afforded by being contained within the structure of a building. This is a particular problem in built up areas where residential neighbours could be in close proximity to the event. In Dudley, an increase in noise complaints occurred due to the Royal Wedding event in April 2011, when several pubs held outdoor events, most of which were subject to a Temporary Event Notice (TEN). Although Environmental Health cannot object to a TEN, the requirement to obtain one results in prior notification of a potential noise problem to Environmental Health, enabling proactive noise monitoring to be arranged during the event or, in some cases, the service of an abatement notice prior to the event. As the number of TENs per year is limited, pubs can only hold occasional outdoor entertainment if it is not already permitted on the premises licence. Under the new proposals, a pub could hold an outdoor entertainment event, potentially involving amplified loud music, at any time without any restriction which would be of extreme concern to residents living near to a pub.

**Q16. Do you think that events held after a certain time should not be de-regulated? If so, please could you explain what time you think would be an appropriate cut off point and why this should apply?**

It is a great concern to us that no cut off time for de-regulated entertainment is being proposed and it will be of concern to residents living near to a pub that

their local pub will be able to have live music and other entertainment all through the sensitive night time hours without any regulation through the premises licence. As stated previously it would be preferable to de-regulate those low risk premises and activities which the consultation document acknowledges do not generally give rise to noise issues and maintain a licensing requirement for entertainment at all times for premises also serving alcohol. Failing this, a cut off time of 11pm is suggested on the basis that this is the beginning of night hours as defined by the World Health Organisation.

**Q19. Do you think that a Code of Practice would be a good way to mitigate potential risks from noise? If so, what do you think such a code should contain and how should it operate?**

We do not regard a code of practice as being an effective way of preventing noise problems from entertainment arising. Any code would be voluntary and not enforceable. Whilst well run businesses may agree to comply with a voluntary code of practice, it is most often at premises which are less effectually managed that noise problems arise and persist. The existing system, whereby effective controls can be required as a condition of a licence, either voluntarily, through a representation or at a premises licence review, is more effective than a voluntary code of practice containing similar controls which are not enforceable.

It should also be remembered that historically voluntary codes of practice for business have not been successful in achieving their aims. For example, the voluntary code of practice on smoke free premises was not widely adopted by licensed premises and was subsequently replaced by legislation requiring premises to be smoke free. There is also evidence that other voluntary initiatives with licensed premises do not deliver any meaningful outcomes, e.g. guidance on minimum pricing for alcohol.

**Q20. Do you agree that laws covering issues such as noise, public safety, fire safety and disorder can deal with potential risks at deregulated entertainment events? If not, how can those risks be managed in the absence of a licensing regime?**

We do not necessarily agree. As previously stated, in the absence of licensing controls for entertainment, no advance notice of potential issues would be available and the problems would have to be dealt with after they have arisen rather than being proactively prevented.

Dudley MBC has used the statutory nuisance provisions of the Environmental Protection Act 1990 to deal with noise nuisance from licensed premises on many occasions, of which two cases have resulted in prosecution. Taking a prosecution is time consuming and costly (estimated at £10,000 per prosecution in the consultation document). We would suggest that more cases would require noise abatement notices to be served under the deregulation proposals and that this would also result in more time consuming prosecutions for increasingly stretched local authorities. The statutory noise nuisance procedure is slow and the Courts do not always view noise as a

significant issue. Fines for breaches of a noise abatement notice are relatively small and do not act as a deterrent.

You should also be aware that obtaining evidence of a breach of a noise abatement notice will become increasingly more difficult and time consuming for local authorities if the Protection of Freedoms Bill is implemented as this will require RIPA authorisations for covert surveillance to be approved by magistrates in addition to senior council officers. It is widely thought that the outcome of this proposal is that fewer noise complaints may be investigated, particularly at night time, when the majority of entertainment noise complaints are likely to be made. This matter has not been discussed in the consultation document but raises a potential conflict which should be acknowledged and addressed in the proposals.

The consultation document cites the Noise Act 1996 as being an effective tool for dealing with noise from licensed premises after 11pm. However, these powers have not been widely adopted by local authorities. Many local authorities, including Dudley, do not operate a reactive noise complaints service out of normal working hours. In Dudley, cases can be referred to a professional witnessing team for monitoring by a professional witness out of normal hours; however this service is re-chargeable to environmental health and therefore only the most serious cases can be referred. The professional witnesses are not technical experts and therefore cannot be used to carry out the Noise Act 1996 procedure which involves the use of sound recording equipment; hence this can only be carried out by environmental health staff who are not available on a call out basis. Furthermore, there are staff health and safety concerns in implementing a night time noise procedure which requires 2 visits into the noisy licensed premises after 11pm before a Fixed Penalty Notice can be served. This would require a joint initiative with the police and have cost and resource implications for both environmental health and the police. We would suggest that as part of the consultation that further information is sought from local authorities about the use of the powers within the Noise Act 1996 as we believe that they are not well used due to resource and cost implications.

Similarly, local authority powers to close noisy premises for up to 24 hours under the Anti-Social Behaviour Act 2003 have not been widely adopted by local authorities. The power is not viewed as a meaningful or useful power as a local authority could not act alone in closing a licensed premises without the involvement of the police in dealing with any subsequent disorder on the streets outside a closed premises. The police have similar powers and would be better equipped to deal with the subsequent disorder; however we would suggest that the police would not view dealing with a single noise complaint about entertainment as a priority to them and prefer to refer complainants on to the local authority, other than in a minority of cases involving the most serious disturbances.

It must also be borne in mind that licensed premises such as pubs may fall into the low risk categories for proactive health and safety inspections by environmental health officers and as a result may not be included in the

inspection programme or may be dealt with by non- inspection interventions (such as questionnaires, telephone surveys or mail shots). Hence the current licensing requirement for entertainment serves as a useful tool for flagging health and safety concerns to the environmental health service and therefore for instigating appropriate interventions, which would be lost if entertainment is deregulated.

**Q22. Are there any other aspects that need to be taken into account when considering the deregulation of Schedule One in respect of the four licensing objectives of the Licensing Act 2003?**

Paragraph 38 of the Impact Assessment states that the continued use of the Licence Review procedure for premises with an alcohol licence would continue to act as a powerful disincentive for premises to fail to comply with good practice, as conditions may be placed on the licence which could limit activities or result in the removal of the licence. We would question this statement and seek its clarification. If entertainment is deregulated, we cannot see how noise complaints concerning entertainment could lead to a premises licence review under the licensing objective of preventing public nuisance unless the noise is shown to be connected with a licensable activity such as the sale of alcohol. Hence, whilst complaints about customers leaving noisily might result in a review as there may be an alcohol related link, complaints about loudness of music surely cannot be dealt with by a review after deregulation of entertainment?

Paragraph 62 of the Impact Assessment states that “noise problems from venues are fairly infrequent” and quotes the National Noise Survey 2008 stating that only 3% of those interviewed specifically identified pubs, clubs or other entertainment venues as a source of noise that was bothering them. This data has been used to arrive at the conclusion that “it is unlikely that deregulation will give rise to greatly increased complaints or disturbance”. We would suggest that 3% is not an insignificant proportion of people depending on the sample size. For example, the population of the Dudley borough is approximately 305,000 people. 3% is 9,150 which is a significant number of people if the whole of Dudley had been surveyed. In extrapolating from the survey, what is more important is the number of respondents who live near to pubs and clubs as clearly if you don't live near to a pub/club you are not likely to be concerned about noise from them. It should also be borne in mind that it is not known how many pubs and clubs which currently don't have entertainment will decide to have entertainment once the licensing controls have been lifted. We would suggest that this is likely to be a substantial number of pubs as they strive to diversify and bring in more custom by trialling entertainment which would then be free of all licensing control. A member of the public currently living near to a pub which doesn't have any entertainment is not likely to report being bothered by it in a survey. Should that pub in the future hold entertainment after the licensing controls have been removed, we would suggest that the member of the public may have a very different view then.

The impact assessment suggests that the majority of the increased noise complaints would be dealt with by the Licensing Authority by informal means. We think that this makes the assumption that the licensing function sits alongside, or is part of, the environmental health service as it is in many local authorities. In Dudley, the licensing function is a separate service area within a different Directorate of the Council than the environmental health service. Should the proposed deregulation go ahead, then noise complaints about entertainment would not be able to be dealt with by licensing enforcement officers but would have to be fully referred to environmental health officers, placing an extra burden on the environmental health service. However, it is likely that members of the public may still contact the Licensing Authority in the first instance in relation to noise complaints from licensed premises such as pubs and clubs, until such time as wider public awareness of the changes is achieved and this will place an additional administrative burden on the licensing service in responding to complainants and making referrals to the environmental health service.

We would also raise the policy conflict between the new proposals and the forthcoming additional powers under the Police Reform and Social Responsibility Bill which, amongst other matters, seeks to increase the involvement of environmental health authorities in licensing decisions. We welcome the new powers in the Police Reform and Social Responsibility Bill as it would enable the environmental health service to object to a Temporary Event Notice (TEN) for regulated entertainment if, for example, a previous similar event had resulted in justifiable complaints from local residents about noise. However, under the new proposals for deregulation of entertainment, pubs and clubs would no longer have to apply for a TEN for any entertainment, hence the new powers are diluted before they even become available.

A final and important aspect which has not been adequately addressed in the consultation document is the need to retain the balance for local communities. This consultation has not been widely publicised and we believe that the general public are largely unaware of it. Residents living near to pubs and clubs will inevitably be concerned about the proposals and the impact should their local pub be freely able to hold any entertainment without the need for a licence. The current system enables a member of the public to make a representation or request a review if a licensed premises causes a problem in relation to entertainment noise and this public power will be removed if entertainment is deregulated. Local residents will also lose the benefit of prior notification of entertainment activities through the current licensing system as licensing and variation applications are published. The impact assessment does not adequately deal with the cost to the general public through wellbeing lost due to noise nuisance and it assumes that the number of incidents is expected to be small. However the wellbeing benefit to a member of the public attending an entertainment event has been evaluated in the impact assessment. If wellbeing can be evaluated it should be evaluated for both the positive and negative impacts.



Paragraph 87 of the impact assessment mentions the health impacts of noise but then disregards the research as not applying to noise from entertainment as it is “occasional and intermittent “ and “seen as having far less risk to health and less annoyance value” than noise from transport. As the impact is difficult to evaluate, the health effects on persons affected by noise from entertainment venues has not been considered in the consultation document. Log sheets made by complainants in relation to noise from entertainment at pubs and clubs regularly mention lack of sleep and its effect on relationships, productivity and ability to work, a feeling of lack of control over their home life, depression, anger and, for intermittent problems, a dread of what will happen next weekend etc. A wider public consultation may have drawn views of this from current complainants who live near to entertainment venues.