



Welwyn
Hatfield
Music

Welwyn Hatfield
Live Music Forum

Licensing Act 2003

Enforcement of the Act by St Albans District Council
and the impact on live music

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working for
fair music
laws

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1. Findings

This report is a study of St Albans District Council's implementation of the Licensing Act 2003 and the impact on live music.

This report examines:

- St Albans Council's policy and ethos relating to live music
- Premises licence conditions relating to live music
- The lawfulness of those conditions
- The impact on live music and culture

The findings of this report demonstrate that Liberal Democrat controlled St Albans District Council has imposed or accepted many unnecessary restrictions on live music, some of which clearly exceed their powers under the Licensing Act 2003 and, in addition to obvious cultural damage, may be unlawful.

The report identified statements made by the leader of the Liberal Democrats in Hertfordshire County Council: St Albans District and County Councillor, licensing sub-committee member and LGA Culture Spokesman Cllr Chris White. In Oct 2008, Cllr White stated to the Culture Committee: *'Live music is, like anything else which is an attraction in licensed premises, potentially a public order problem. If you start from that point of view, then it becomes clear what you must do...'*

Cllr's White's expressed views appear synonymous with those of the LibDem council leadership. Those views have allowed and even perhaps encouraged council officials:

- to impose or confirm restrictions over the number of performers and/or the frequency of live music in over half of pubs with live music authorisation. This is far in excess of the apparent national picture, where the DCMS have identified only "few instances" of such restrictions*;
- actually or purportedly to license or seek to license cultural activity such as morris dancing and busking which are exempted or stated by the government or authorities to be exempted by law;
- to impose or confirm restrictions on the genres of music allowed to be performed at some establishments;
- to associate live music with "public nuisance" or public order problems, and to impose licence restrictions relating to live music on the basis of prejudice and speculation, rather than evidence or reason;
- to place restrictions on the local economy in the arenas of the licensed trade and the live music industry;
- to reduce employment opportunities for professional musicians.

* Source: 'The Experience of Smaller Establishments in Applying for Live Music Authorisation', conducted by MORI and published by DCMS in December 2006

2. Premises licence conditions relating to live music

Source: The St Albans District Council premises licence register. A random sample of the licence conditions below has been confirmed as correct by SADC in reply to a Freedom of Information Act request.

2.1 Pubs

The Black Lion Inn, 194-198 Fishpool Street, St Albans, Hertfordshire, AL3 4SB – ***Live Music restricted to Fridays and Saturdays only.***

The Goat Inn, 37 Sopwell Lane, St Albans, Hertfordshire , AL1 1RN - ***Live Music restricted to Wednesday to Saturday only***

The Fox And Hounds Public House, Station Road, Bricket Wood, Hertfordshire, AL2 3PQ - ***No more than 2 performers***

The Green Dragon Public House, Waterside, London Colney, Hertfordshire, AL2 1RB - ***No more than 2 performers. Live music restricted to once a month***

Jolly Sailor, Stonecross, St Albans, Hertfordshire, AL1 4AA - ***No more than 2 performers***

The Marquis of Granby PH, 31 Marquis Lane, Harpenden, Hertfordshire, AL5 5AE - ***Live music restricted to occasional Fridays only***

The Peahen, 14 London Road, St Albans, Hertfordshire, AL1 1NG - ***Noise limiter***

The Oak Tree PH, 15 Leyton Green, Harpenden, Hertfordshire, AL5 2TG - ***No more than 2 performers***

The White Hart Hotel, 25 Holywell Hill, St Albans, Hertfordshire, AL1 1EZ - ***No more than 2 performers. Live music restricted to no more than 50 events in any 12 month period***

The White Swan PH, The White Swan Ph, 1 Upper Dagnall Street, St Albans, Hertfordshire, AL3 5EA - ***No more than 2 performers. No more than 50 live music events in any 12 month period. A suitable and conspicuous notice to be displayed advising the residents of forthcoming live music events. The notice to be displayed within 24 hours of the start of the event***

The Cock PH, 18 High Street, Colney Heath, St Albans, Hertfordshire, AL4 0NU - ***No more than 3 performers. Not more than 12 occasions per calendar year***

The John Bunyan, Coleman Green, Wheathampstead, Hertfordshire, AL4 8ES - **No more than 2 performers. Maximum of 30 events in any one 12-month period**

The Gate Ph, Station Road, Bricket Wood, Hertfordshire, AL2 3PW - **No more than 1 performer. Live music restricted to only occasional provision**

The King Offa PH, 27 Wallingford Walk, St Albans, Hertfordshire, AL1 2JJ - **No more than 3 performers**

The Rose and Crown PH, 91 Southdown Road, Harpenden, Hertfordshire, AL5 1PS - **No more than 2 performers. Will not be on a regular basis**

The Spotted Bull PH, The Spotted Bull Ph, 43-45 Verulam Road, St Albans, Hertfordshire, AL3 4DG - **Live music restricted to Thursday, Friday, Saturday only. Noise limiter**

The Overdraught PH, 86 Park Street, St Albans, Hertfordshire, AL2 2JR - **No more than 2 performers. No more than 40 occasions in any 12 month period of karaoke or live music**

The Carpenters Arms PH, 14 Cravells Road, Harpenden, Hertfordshire, AL5 1BD - **There will be a maximum of 12 outdoor live music events per calendar year. Performance of Dance to take place outdoors Details: To permit the performance of dance by Morris dancers**

The Glasshouse PH, The Glass House Ph, 82 Victoria Street, St Albans, Hertfordshire, AL1 3TG - **No more than 2 performers. No more than 26 live music performances in any one year, to be only on a Friday or Saturday.**

The Cricketers Ph, East Common, Redbourn, Hertfordshire, AL3 7ND - **Live music restricted to not more than twice a week.**

The Farmers Boy PH, The Farmers Boy Ph, 134 London Road, St Albans, Hertfordshire, AL1 1PQ - **Live music restricted to Friday and Saturday only**

The Robin Hood PH, The Robin Hood Ph, 126 Victoria Street, St Albans, Hertfordshire, AL1 3TG – **Live music restricted to one Saturday in four.**

The White Hart Tap PH, The White Hart Tap Ph, 4 Keyfield Terrace, St Albans, Hertfordshire, AL1 1QJ – **Live music restricted to Saturday only between 20:30 and 23:00.**

The White Lion Ph, St Annes Road, London Colney, Hertfordshire, AL2 1NX. **No more than 2 performers. No more than six occasions of live music or karaoke in any one calendar month Live music and karaoke only to be played on Fridays, Saturdays, and the Sundays and Mondays of Bank Holiday Weekends**

The Black Boy PH, The Black Boy Ph, 79 Old Watford Road, Bricket Wood, Hertfordshire, AL2 3RU - **No more than 2 performers. Live music restricted to once a year during August between 15:00 and 19:00.**

The Bull PH, 11 High Street, Wheathampstead, Hertfordshire, AL4 8BS - **only occasional provision of live music permitted.**

The Old Bell PH, 177 Luton Road, Harpenden, Hertfordshire, AL5 3BN - **No more than 20 live music events in any 12 month period.**

The Six Bells PH, The Six Bells Ph, 16-18 St Michaels Street, St Albans, Hertfordshire, AL3 4SH - **No more than 2 performers.**

Bar 62, 62 Catherine Street, St Albans, Hertfordshire, AL3 5BU – **Only classic jazz and blues permitted.**

Blacksmiths Arms, The Blacksmiths Arms, 56 St Peters Street, St Albans, Hertfordshire, AL1 3HG - **Tue Fri Sat only**

The Malta Public House, The Malta Ph, 110 Lower Luton Road, Harpenden, Hertfordshire, AL5 5AH - **No more than 2 performers. Live music limited to 120 in any 12 month period.**

Verulam Arms P H, The Verulam Arms, 41 Lower Dagnall Street, St Albans, Hertfordshire, AL3 4QE - **No Live music during the months of June, July & August. No more than 40 live music events plus an additional 8 special occasions during the period from September to May**

Duke of Marlborough, The Duke Of Marlborough Ph, 110 Holywell Hill, St Albans, Hertfordshire, AL1 1DH - **No more than 2 performers. Limited to no more than 130 times a year**

Lloyd's No. 1, Waterend Barn, St Peters Street, St Albans, Hertfordshire, AL1 3LE – **Live music on an occasional basis only**

Mokoko PH, 26 Verulam Road, St Albans, Hertfordshire, AL3 4DE - **Live music to be offered on an occasional basis**

The Bell and Shears PH, 77 High Street, Redbourn, Hertfordshire, AL3 7LW - **No more than 2 performers. Live music limited to two to three times a month**

The Camp PH, The Camp Ph, 149 Camp Road, St Albans, Hertfordshire, AL1 5HR - **No more than 2 performers. A maximum of 26 events in any 12 month period if comfort cooling is installed or 20 events from September to May inclusive if comfort cooling is not installed**

Amble Inn, The Dolphin Ph, 182 Station Road, Harpenden, Hertfordshire, AL5 4UL – **Live music restricted to Fri Sat Sun only.**

The Bull Inn, 43 High Street, Redbourn, Hertfordshire, AL3 7LW - **No more than 2 performers.**

The Silver Cup Ph, St Albans Road, Harpenden, Hertfordshire, AL5 2JF - **No more than 2 performers.**

The Garibaldi PH, The Garibaldi Ph, 61 Albert Street, St Albans, Hertfordshire, AL1 1RT - **No more than 2 performers. No more than 2 live music events in any one week**

The Great Northern Ph, 172 London Road, St Albans, Hertfordshire, AL1 1PQ - **Live music restricted to rare occasions.**

The Mermaid PH, The Mermaid Ph, 98 Hatfield Road, St Albans, Hertfordshire, AL1 3RL - **Live music only on Sundays between the hours of 16.30hrs and 22.00hrs.**

The Breakfast Club, 62 Stanhope Road, St Albans, Hertfordshire, AL1 5BL - **No more than 4 performers. Live music restricted to occasional evening party bookings.**

The Old Fox Ph, School Lane, Bricket Wood, Hertfordshire, AL2 3XU - **No more than 2 performers. Live music restricted to maximum of 18 in any 12 month period.**

Chequers Inn, St Albans Road, Redbourn, Hertfordshire, AL3 7AD - **No more than 2 performers.**

Slug and Lettuce, 15 Victoria Street, St Albans, Hertfordshire, AL1 3JJ - **Live music restricted to Thursdays to Sunday only. On occasions of music and dancing SIA registered door supervisors will be on duty in the evenings at a ratio of 1:100 members of the public**

Slug and Lettuce, 9 High Street, Harpenden, Hertfordshire, AL5 2RT - **No more than 2 performers. Music restricted to Jazz.**

The Cock PH, The Cock Ph, 48 St Peters Street, St Albans, Hertfordshire, AL1 3NF - **Use of proof of age schemes and/or photo ID driving licences with photographs on music nights. No children during entertainment**

The Snug At Fleur De Lys P H, The Fleur De Lys Ph, 1 French Row, St Albans, Hertfordshire, AL3 5DU - **Between 2 and 6 performers. Music played up to two nights a week. Music restricted to jazz.**

The Baton Ph, The Ridgeway, St Albans, Hertfordshire, AL4 9TU - **Fri and Sat only. In any 12 month period the number of live music events will be limited to 12**

The Nelson PH, The Nelson Ph, 135 Marford Road, Wheathampstead, Hertfordshire, AL4 8NH - **Fri, Sat, Sun only**

The Goat Inn, 37 Sopwell Lane, St Albans, Hertfordshire, AL1 1RN - **Jazz only on Sundays** (application in progress)

The Fox And Hounds Public House, Station Road, Bricket Wood, Hertfordshire, AL2 3PQ - **No more than 2 performers**

The Garibaldi PH, The Garibaldi Ph, 61 Albert Street, St Albans, Hertfordshire, AL1 1RT - **No more than 2 live music events in any one week**

The Engineer PH, The Engineer Ph, 12 St Johns Road, Harpenden, Hertfordshire, AL5 1DJ - **No more than 2 performers. No live music in June, July or August**

Three Horseshoes, 616 Hatfield Road, St Albans, Hertfordshire, AL4 0HP - **Only occasional provision**

Ryan's Bar, 13 Hatfield Road, St Albans, Hertfordshire, AL1 3RR - **Thu, Fri, Sat only. Noise Limiter**

The Swan Public House, 56 High Street, Wheathampstead, Hertfordshire, AL4 8AR - **No more than 30 live music events in any 1 calendar year on Thursday, Friday and Saturday only**

2.2 Restaurants

Kashu, 9 Hatfield Road, St Albans, Hertfordshire, AL1 3RR - **Ancillary to wedding barmitzrah (sic) celebrations**

The Bean Tree, The Bean House, 20A Leyton Road, Harpenden, Hertfordshire, AL5 2HU - **No more than 3 performers. Jazz only**

Nimatt's Bar Meze, Bar Meze, 8 Adelaide Street, St Albans, Hertfordshire, AL3 5BG - **No more than 3 performers**

2.3 Other premises

St Albans Musical Museum Society, 320 Camp Road, St Albans, Hertfordshire, AL1 5PE - **No music on Sunday**

St Peters Street, St Albans, Hertfordshire (Application in progress) - **Conditions to restrict busking**

Clarence Park, Clarence Road, St Albans, Hertfordshire, AL1 4NF, and other public parks – **Conditions too numerous to reproduce in this section.**

2.4 Summary of live music restrictions

Pubs

This survey identified 85 pubs in the St Albans District with live music authorisation, and of those:

- 30 have restrictions on the number of musicians who can perform (35% of pubs)
- 45 pubs have restriction on the regularity or frequency of musical performances (53% of pubs)
- 4 have a restriction on the genres of music which can be performed
- 1 pub has to display a suitable and conspicuous notice advising the residents of forthcoming live music events.
- 1 pub has a restriction on indoors Morris Dancing

Restaurants

This survey identified 17 restaurants in the St Albans District with live music authorisation, and of those:

- 2 have restrictions on the number of musicians
- 1 has a restriction on the genres of music which can be performed

Of the 89 restaurants identified by the survey, 81% have no authorisation for live music. While this report focuses on SADC's implementation of the LA2003 and does not address the failures of the Act itself, it should be noted that prior to the Act 100% of restaurants had an automatic entitlement to two musicians.

3. Remarks on restrictions and the impact on culture

3.1 Restricting the number of performers

35% of pubs with live music authorisation in St Albans have restrictions on the number of performers permitted. This is far more restrictive than the apparent national picture in that the Department of Culture Media and Sport have identified only “few instances” of such restrictions.

The DCMS Report into the Licensing Act 2003: The Experience of Smaller Establishments in Applying for Live Music Authorisation, issued in Dec 2006 stated P8 Para 2.1.4 stated that there were “As, in most cases, there are no restrictions on the number of performers, even those who used to operate under the 2-in-a-bar rule can now stage live music with two or more musicians, except in the few instances where restrictions have been added during the licence applications process.”

Lord Carter of Barnes confirmed as recently as 1st July, it had been one of the Government’s intentions when the Licensing Act 2003 removed the “two in a bar” restriction that it “discriminated unfairly and irrationally against the majority of musicians, who perform in larger groups.” See Hansard 1st July 2009.

It is incorrect to assume that the addition of a third musician to a duo automatically increases the volume of music. In practice, assuming the vocals are predominant, if a singer and guitarist are joined by a third musician playing complementary guitar, the third musician will have a negligible or no effect on the sound level of the event. It is clear that in the many instances where SADC licensing officials have imposed or retained existing “2-in-a-bar” restrictions they did so on irrational grounds, arguably thus rendering the restrictions initially susceptible of judicial review.

3.2 Restricting the frequency of live music

53% of pubs with live music authorisation have conditions restricting the frequency of live music. Musicians are only permitted to work in affected premises on certain days of the week, certain months of the year or are subject to a live music quota. This restricts employment opportunities for musicians.

SADC environmental health officers have been recommending reductions in the frequency (or even imposing quotas) of live music events on the ground that less music equals less public nuisance.

3.3 Licensing morris dancing

Premises Licence Conditions in force at The Carpenters Arms PH, 14 Cravells Road, Harpenden, Hertfordshire, AL5 1BD, prohibit Morris Dancing indoors: The licence states: *'Performance of Dance to take place outdoors. Details: To permit the performance of dance by Morris dancers and similar performers.'*

This is an unlawful condition. Morris and similar dancing, and unamplified accompanying music, has an outright exemption: LA2003, Sch. 1 para 11

3.4 Licensing musical genres

Four pubs and one restaurant have licence conditions that dictate the genre of music to be performed. A similar restriction is imposed by Camden Council at the Sir Richard Steele pub, and we reproduce a statement by Richard Bridge and John Morgan issued on 1st June relating to genre restrictions:

'We have considered condition 13 imposed by Camden council as part of the premises licence of the Sir Richard Steele public house. The condition appears to suffer from three serious defects. One is a matter of general law and the other two relate to the Human Rights Act 1998, giving effect to the European Convention on Human Rights. Section 6 of the Act makes it unlawful for a public authority (which plainly includes any local authority such as Camden) to act in a way which is incompatible with a Convention Right.

'First, the condition is so uncertain that it may be of no legal effect. There is no legal meaning to the expression "rock or pop". The distinction of those types of music from others appears to be entirely subjective, and inconstant over time. Katchaturian's "Sabre Dance" has for decades been considered part of the classical genre, yet a version played on the electric guitar by the band "Love Sculpture" was a popular music hit. Local authorities faced similar problems when seeking improved legal weapons with which to combat illegal "raves", and tried to compose definitions referring to repeated rhythmic structures - until it was pointed out that this would have caught Ravel's "Bolero". It is one of the characteristics of the rule of law that people must be able to be aware in advance of what types of behaviour are prohibited, but any barrier between folk and ethnic music, on the one hand, and "hit" or "pop" music has frequently proved a permeable one. Well known examples of the same song existing in both genres would include "Tom Dooley", "Strawberry Fair" and "Whisky in a Jar". Jazz hits would include "Stranger on the Shore" and "Take 5". There is much that contemporary jazz embraces that leans heavily on, say, drum'n'bass and/or electronica. In short, it is impossible to be sure what "rock or pop" is.

'Second, the condition is clearly a restriction on the freedom of expression potentially protected by article 10 ECHR (schedule 1 of the Human Rights Act

1998). That right is a qualified right, and so may be restricted where necessary and proportionate in a democratic society. Rights under this article require to be balanced with other rights, for example those under article 8 - the right to respect for private and family life, home and correspondence. So freedom of expression may require to be balanced against respect for homes. But the stylistic condition is not only vague but also unnecessary. What is really objected to (and impacts homes, for example) is the level of sound. The landlord would, if putting on opera, or hosting Japanese drummers or organising a competition for Highland pipers probably create just as much disturbance, but remain within the condition. Further, the levels of sound do not need to be controlled by use of the Licensing Act. There is a substantial body of law relating to noise abatement which could do the job as effectively as any licensing condition, and more effectively than the one imposed. The condition also is not proportionate, for pop or rock music (if one can discover what it is) would be outwith the licence condition even if remarkably quiet.

Third, the condition is also a restriction on freedom of association. Article 11 ECHR confers the right to peaceful assembly and freedom of association - including (but not only) for trade union purposes. Thus the article confers the right to associate for the purposes of enjoying music. Under the condition, people may associate at the Sir Richard Steele to enjoy music, and the landlord may permit them to associate there for that purpose - but if the music is "rock or pop" he may not so permit them and the organisers of the event may be acting unlawfully. Thus this condition is potentially in breach of article 11 ECHR. It is true that the article 11 right is also a qualified right, but for the same reasons the condition as set out may not benefit from the qualification. Under the condition all other groups of people with a musical interest could associate on these premises, no matter what their standards of behaviour or the sound levels, but not those caught by this exception (again, regardless of their standards of behaviour or the sound levels). Thus the condition is vague, arbitrary and capricious, rather than necessary in a democratic society for the protection of the rights and freedoms of others.

Richard McD. Bridge B.A. B.Sc., solicitor, amateur musician, founder of the "Performer-Lawyer Group".

John Morgan, barrister, playwright, former music teacher, amateur musician

3.5 Imposing disproportionate conditions

The premises licence conditions are reproduced here in their entirety:

Clarence Park



Clarence Park, Clarence Road, St Albans, Hertfordshire , AL1 4NF

'Annex 1 - Mandatory conditions LA03, Section 20: Mandatory condition: exhibition of films(1) Where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.(2) Where the film classification body is specified in the licence, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation made by that body.(3) Where:(a) the film classification body is not specified in the licence, or(b) the relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question,admission of children must be restricted in accordance with any recommendation made by that licensing authority.(4) In this section:"children" means persons aged under 18; and "film classification body" means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c. 39) (authority to determine suitability of video works for classification).LA03, Section 22: Prohibited condition: plays(1) In relation to a premises licence which authorises the performance of plays, no condition may be attached to the licence as to the nature of the plays which may be performed, or the manner of performing plays, under the licence. (2) But subsection (1) does not prevent a licensing authority imposing, in accordance with section 18(2)(a) or (3)(b), 35(3)(b) or 52(3), any condition which it considers necessary on the grounds of public safety. Annex 2 - Conditions consistent with the operating schedule · Clarence Park is a green space in the centre of St Albans comprising a 9 acre public park and 16 acres of sporting facilities. It is bounded to the West by the railway, to the SW by Hatfield Road, to the East by Clarence Road and to the North by York Road. All roads contain residential properties but none back directly on to the park. A restaurant opens on the park. There is a Victorian bandstand around which most licensable music events will focus. There is a public house within 50m of one of the entrances. Public toilets are available. Sporting facilities include the home of St Albans City Football Club as well as facilities for bowling, tennis,

cricket, croquet, hockey and a putting green. There is a children's playground. The park is open from dawn to dusk. There are 5 entrances from which to access the park. · No more than 5,000 persons are expected to attend at any one time. Plays:· Indoors and outdoors· Performances of plays in the open air or in a tent. May be accompanied by music either live or recorded. This may be amplified. Seating arrangements will comply with current legislation. Films:· Indoors and outdoors· Use of video screens to relay live events or show pre-recorded material as part of a play, concert, community or other event. Indoor Sporting Events:· Demonstrations of sports or a sporting competition held within a tent as part of an activity organised by one of the clubs who currently use the park or as part of a larger community event. Displays of acrobatics as part of a larger event. Live Music:· Indoors and outdoors· Open air concerts which may be amplified or acoustic. Music as part of a play. Music to accompany other performances - for example dancing, puppet shows, community events. Noise levels to be in accordance with Environmental Health requirements. Recorded Music:· Indoors and outdoors· Interval music as part of an open air concert which may be amplified. Music as part of a play. Music to accompany other performances - for example dancing, puppet shows, community events. Noise levels to be in accordance with Environmental Health requirements. Performance of dance:· Indoors and outdoors· Dance as part of a play. Dance as part of a community event, fun day or carnival. Anything of a similar description to that falling within (live music), (recorded music) or (performance of dance):· Indoors & Outdoors· Puppet shows, walkabout artists, jugglers, children's' entertainers and other street entertainers.· The above types of entertainment as part of a larger event such as a fun day or carnival or community event. Provision of facilities for making music:· Indoors and outdoors· Music workshops· Workshop/participatory activities for all ages as part of community events, fun days, carnival etc. These may be amplified but noise levels to be in accordance with environmental health requirements. Provision of facilities for dancing:· Indoors and outdoors· Dance workshops/have a go sessions· Workshop/participatory activities for all ages as part of community events, fun days, carnival etc. These may be amplified but noise levels to be in accordance with environmental health requirements. Provision of facilities for entertainment of a similar description to that falling within (making music) or (dancing):· Indoors and outdoors· Opportunities for the public to participate in an arts based workshop.· Examples might include puppetry or circus workshops. They may be for all ages but would not normally include amplified music. Hours premises open to the public:· Actual times vary according to sunrise and sunset times.· The park will remain open until the end of evening events should they continue into the hours of darkness. Any licensable activity continuing beyond the normal closing time will only be permitted in accordance with the existing protocols and liaison with the environmental health team in the case of a music event. General - all 4 licensing objectives:· We maintain an awareness of our duty of care to public and team members and a commitment to good practice. We will consult with members of the Events Safety Advisory Group when arranging events. Events are booked and managed in accordance with the existing events protocols and the event safety guide. The attached generic risk assessment will be reviewed regularly and tailored to individual events. We ensure that all team members and

events staff receive appropriate training. We ensure that all event organisers carry the appropriate PL insurance and comply with current legislation including Health and Safety and the Protection of Children and Vulnerable Adults. The prevention of crime and disorder:· All events will be adequately stewarded by licensed staff where appropriate. The Police are consulted whenever major events are organised. No glass will be permitted at these events. · The park is within an area covered by the Designated Public Place Order which controls the consumption of alcohol in public places. Those who appear to be under the influence of drugs or alcohol will not be admitted to events. A 'no alcohol' policy will be maintained unless an event organiser makes a separate application. · Adequate lighting will be provided for those leaving an event after dark to get back to the exits from the park. Public safety:· All events will comply with current Health and Safety legislation. The attached risk assessment will be tailored to individual events and hirers will be asked to supply a comprehensive risk assessment of their own as well as a copy of their Health and Safety policy and safe systems of work. Each events will have its own Emergency Action Plan and Major Incidents Plan. · The capacity of each event will be calculated and adhered to and in the case of close seating (for example a play in a marquee) the seating will be arranged and secured in accordance with current legislation and plan submitted to the Authority. · All events will have sufficient stewards/security in accordance with the Event Safety Guide who will be trained in the evacuation and major incident procedures. Suitably qualified First Aiders will also be in attendance. Staff will be in communication via radios and there will be a minimum of one mobile phone available. One person will be appointed Health and Safety manager for the event.· All temporary structures will be erected by trained staff in accordance with the manufacturers instructions. The event organisers will have copies of the specification for these structures. All temporary electrical installations will be checked by competent staff and all portable equipment must be PAT tested. · Each event will have appropriate arrangements made for access by disabled people. · When siting event and planning layouts consideration will be given to access for emergency vehicles. · For events taking place at night illuminated exit signs will be provided. Temporary electrical installations will be put in in accordance with current wiring regulations (BS7909). The prevention of public nuisance:· Events will be monitored in terms of noise level and the Environmental Health Department consulted as to what is appropriate in each case. All events will finish by 20.00 Sunday to Thursday and 21.00 on Fridays and Saturdays. · All events will be adequately stewarded by licensed staff where appropriate. The Police are consulted whenever major events are organised . No glass will be permitted at these events.· The park is within an area covered by the Designated Public Place Order which controls the consumption of alcohol in public places. Those who appear to be under the influence of drugs or alcohol will not be admitted to events. A 'no alcohol' policy will be maintained unless an event organiser makes a separate application. · All events will make adequate provision for the disposal of waste and litter collections will be organised regularly during the course of the event. · Additional toilets will be provided if necessary and they will be kept clean and emptied regularly. · We will comply with the following conditions regarding noise nuisance:1. Leisure Services will notify Environmental Health of an event a minimum of 4 weeks

before it is due to take place. Environmental Health will respond within 5 working days of receipt of this notification stipulating whether or not Noise Consultant(s) will be required to attend.² Any noise emanating from, or in association with the site shall not cause a nuisance to residents inside their properties.³ The Organisers/Noise consultants/sound engineers/ licensee shall comply with all event, pre-event and post event requirements made by the environmental health department.⁴ During the build up and break down of the event site, any activities that might cause noise to be audible to residents outside the park will be limited to the hours of 08.00 to 20.00 Mon - Sun.⁵ All generators, refrigerators or other machines running overnight including those used for domestic purposes will be silenced, screened or sited so as not to be audible to residents outside the park.⁶ When the environment and health department is of the opinion that a noise consultant is not required but an element of music exists, the following applies:⁷ A responsible person should be appointed as the 'noise control person' and assigned the responsibility of dealing with any noise complaints. The appointed person must be present throughout the duration of the event. Any noise complaints received shall be reported to the environment and health department the following working day.⁸ When the environment and health department is of the opinion that a noise consultant is required, the following applies:⁹ A minimum of two qualified noise consultants (one person to be at the mixing desk and another to monitor the noise) should be appointed to (a) undertake pre-event planning and (b) monitor/control noise levels throughout the duration of the event.¹⁰ A complaints telephone hotline shall be operated throughout the duration of the event. The number shall be manned at all times by an appointed 'hotline person'. The hotline number should be adequately advertised prior to the event, and included with an information leaflet detailing the events start and finishing times, and sent to local residents 2 weeks prior to the event.¹¹ The following noise levels will be complied with:(a) Music noise level (MNL) should not exceed the background noise level by more than 15dB(A) when measured over any 15 minute period during both the sound checks, and the event, at 1 metre from the structure of any noise sensitive premises.(b) The noise level, at 1 metre from the structure of any noise sensitive premises, should not exceed 71dB in either of the 63Hz or 125Hz octave band frequencies.(c) The maximum peak sound pressure level in audience areas shall not exceed 140dB(A).(d) The event equivalent continuous sound level(event leq) in audience areas shall not exceed 107 dB(A).¹² Members of the audience shall not be allowed within 3 metres of any speakers. The protection of children from harm:- We will ensure that all performers and event staff who come into contact with children are CRB checked. · Entertainment provided will normally be suitable for a family audience. If it is the case that a play for example contains language that is not suitable for children this will be made clear in the advance publicity. Announcements will be made if there are lighting effects which may be physically hazardous to children and others.'

These conditions run to over 2,000 words and the associated event risk assessment form runs to another three pages. St Albans District Council Statement of Licensing Policy p10 para 4.6 states: *The policy does not provide for any standard conditions to be imposed to avoid the imposition of disproportionate and burdensome requirements.*

Most of these conditions are probably unlawful because they plainly duplicate requirements under separate health & safety legislation. See Licensing Guidance on this point, p73 para 10.15:

<http://www.culture.gov.uk/images/publications/RevisedGuidanceJune2007.pdf>

Another condition reads: “(c) *The maximum peak sound pressure level in audience areas shall not exceed 140dB(A)*”. This is the maximum dB level permitted according to the HSE Event Safety Guide. It is an extremely high dB level, which usually can only be reached by an explosion and it is wholly unnecessary for SADC to include this as a licence condition.

More importantly, this kind of confusing and over-elaborate premises licence conditions brings sensible health and safety guidance into disrepute, and in doing so is in itself a risk to the objectives of the Act.

3.6 Licensing busking

An application has been made by SADC to licence the Market Place. The following letter was published on the website of St Albans Liberal Democrat Cllr Chris White, LGA Culture Spokesman:

Note from council licensing officer

I have been asked to send you a brief summary of the market application. There are objections from the public to this application and the consultation period ends on 30th June 2009. A licensing sub committee hearing will then be convened to consider the application. Public notices were displayed in line with the correct procedure for notification of premises licences applications. Details of the application have been on our website in the on-line licensing section for the past three weeks and copies of the application sent to all members of the licensing committee in line with the notification procedures. I have also discussed the application with Councillor Pia and Councillor Willcocks.

An application for a premises licence for the market area has been made by the markets manager for St Albans City and District Council. There are a number of reasons for the application which would, if granted, make the markets manager the licence holder for the market area. Currently, temporary event notices are required for events that are held in the market area if they involve the selling of alcohol or some form of entertainment. Only 12 temporary event notices can be granted each year. We are close to that limit

as requests are sometimes made to sell alcohol at the monthly farmers' market, the three Italian markets and the three continental markets. In addition, the city also hosts one-off entertainment events such as the St Albans Festival, at which alcohol is sold and the Christmas Lights Switch On, at which alcohol is not offered for sale. If granted, the application would mean that there will no longer be a need to obtain individual temporary licences for these type of events.

This arrangement would also give the council greater control over temporary events. Under the current system only the police can object to the granting of a temporary event notice, whereas, if the licence, is granted then it will be up to the markets manager to grant permission for the event after having obtained the prior agreement of the council's Licensing Section, the police and the Environmental Health Department. In addition, the licence, if granted, would mean that buskers would have to apply to the markets manager for permission to perform in the market place. Currently, buskers can perform when and where they want. The aim is to control and encourage street entertainment on market days, during day-time hours only.

The licence application originally included some residential streets, however, the markets manager has agreed to remove these.

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Principal Licensing Officer and (Home Counties Regional Chair of The
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Reproduced here is an email sent 3rd July 2009 from Hamish Birchall, who worked for the Musician's Union during the passage of the Licensing Act 2003

Should it be a potential criminal offence merely to sing in public, even if no-one complains? Despite government advice, some councils still believe the answer is 'yes'.

Uncharitable souls might agree, but the government is quite sensitive on this issue. Over the years it has gone to some lengths to deny that this is one effect of the Licensing Act 2003.

As early as 18 February 2003, at the height of public controversy about entertainment licensing reform, it published 'The answer to 20 myths about public entertainment and the Licensing Bill'. Assurances included 'Spontaneous pub sing-alongs will NOT be licensable' and 'Busking will NOT be licensable':

http://www.culture.gov.uk/reference_library/media_releases/2621.aspx

But when the Act came into force in 2005 many councils ignored the busking advice. Their websites warned that busking required a Temporary Event Notice or Premises Licence. Manchester City Council, for example, included this statement by Councillor Richard Cowell:

'...under the Licensing Act 2003, which came into force on 24 November 2005, busking is classed as regulated entertainment. To undertake regulated entertainment, the premises concerned (which can include a street or other open space) must be licensed. This applies to all areas so includes both the city centre and Chorlton.'

http://www.manchester.gov.uk/info/200033/councillors_democracy_and_elections/2778/executive_member_for_the_environment_councillor_richard_cowell/5

Alarmed by council rebellion, on 11 November 2006 DCMS announced that it would '...make clear in legislation that the policy intention is to exclude e.g. carol singers, buskers, puppet shows for children and poetry readings from requiring a licence. This measure would most likely be delivered via regulation / and or Guidance.'

'Lifting the burden - Improving and realising community capacity', DCMS December 2006, 'Areas to be explored to achieve further reductions in administrative burdens', p23, para H.

<http://www.culture.gov.uk/images/publications/LiftingtheBurden.pdf>

On 28 June 2007 this intention was partially implemented with the publication of revised Licensing Guidance, secondary legislation that accompanies the Act. Busking was not explicitly cited, but the redraft strongly implied that buskers should qualify for the 'incidental music' exemption:

<http://www.culture.gov.uk/images/publications/RevisedGuidanceJune2007.pdf>
(p31, para 3.20 and following)

As a result, some councils revised their busking advice, making clear that they do not licence busking and that noise problems, if they occur, can be regulated under the Environmental Protection Act. Bath, for example:

<http://www.bathnes.gov.uk/BathNES/business/LicencesStreetTrading/busking.htm>

and Torridge: <http://www.torridge.gov.uk/index.cfm?articleid=9296>

St Albans, however, seems to think that the Licensing Act can be applied to buskers. In a statement published yesterday, 2nd July 2009, Lesley Cameron, Principal Licensing Officer for St Albans, announced the council's intention to licence the central market. The idea, at least in part, is to control buskers in that area:

'...the licence, if granted, would mean that buskers would have to apply to the markets manager for permission to perform in the market place. Currently, buskers can perform when and where they want. The aim is to control and encourage street entertainment on market days, during day-time hours only.'

Interestingly, this announcement was published on the website of Chris White, Lib Dem councillor for St Albans, member of the Local Government Association Executive, and chair of the LGA Culture, Tourism and Sport Board: <http://chriswhite.mycouncillor.org.uk/archive/2009/07/02>

Mr White gave evidence last year on behalf of the LGA at the public inquiry into the Licensing Act by the Parliamentary Culture, Media and Sport Committee. He opened with this response about live music:

'Live music is, like anything else which is an attraction in licensed premises, potentially a public order problem,' he began. 'If you start from that point of view, then it becomes clear what you must do...'

4. Working with licensees

As reported in the St Albans Review 28th Oct 2008:

THE owner of a bar, left with a £30,000 bill following the district council's failed legal bid, claims the council was trying to force him out of business.

St Albans District Council took its fight to London's High Court after St Albans Magistrates acquitted Jass Patel, landlord of Mokokos bar in Verulam Road, St Albans, of three allegations of breaching a noise abatement notice, in July. That ruling was condemned by the council as 'irrational and perverse' but its appeal hit the buffers last week when Appeal Court judge Justice Forbes ruled Mr Patel had done everything "reasonably practicable" to curb the noise of customers.

Speaking after his victory, Mr Patel said: "I'm very happy. The whole thing went on for two-and-a-half-years and finally it has ended. I wouldn't have survived if we had lost, our business would have had to close because of it - maybe that's what the council wanted. It was totally unnecessary to go that far in a case that had no merit - a waste of taxpayers' money and a total waste of time."

The clash was prompted by complaints from neighbour Jane Lockley of Upper Dagnell Street, St Albans, whose garden adjoins the pub. She complained of late-night noise from conversation and 'occasional laughter'.

However, at the hearing on Thursday Mr Justice Forbes said the magistrates had been 'clearly impressed' by Mr Patel's evidence that the bar has to make profits in the summer to tide it over the winter and that closing off more of the garden to customers could ruin his new business. He added that in March 2006 - less than three months before serving Mr Patel with a noise abatement notice - the council issued him with a licence which allowed 100 customers to use the garden.

The judges said Mr Patel had shown his willingness to co-operate with the council and neighbours by paying for double glazing to be fitted in one resident's bedroom window and offering to fit a noise 'attenuator' to Miss Lockley's home. The landlord had also experimented with closing the garden at 9pm for a fortnight, before having to revert to 10pm because of the impact on his business.

Dismissing the council's appeal Mr Justice Forbes said: "None of the points raised by the council have called into doubt the correctness of the magistrates' decision."

Mr Patel says the £30,000 spent in disputing the case has caused him considerable financial pressure. He hopes he will be awarded his legal costs but it is unclear whether he will receive all the money. However St Albans District Council will have to pay its own legal bills, which the landlord's solicitors say add up to £20,000 just for the High Court case.

The district council failed to respond to the Review's request for its exact costs, but insisted it would not be taking any further action against Mr Patel.

<http://www.stalbansreview.co.uk/news/3797965.print/>

The Welwyn Hatfield Live Music Forum made a Freedom of Information Act request to SADC to confirm the amount of money SADC spent prosecuting Mr Patel. The total was £20,730 (ex VAT). In addition, defence costs were approximately £30,000 and an application was made to pay these out of public funds.

£50,000 is a lot of public money to spend prosecuting a licensee because of "conversation and occasional laughter" emanating from a beer garden during licensed hours. The bringing of the case and the actual and possible effects for Mr Patel (and any licensee in a similar position) are likely to have a chilling effect on the exercise of liberties in ways that have now been found by the courts not to be unlawful. The likelihood that licensees will risk standing up against council excesses of zeal is reduced. The community is impoverished when councils rule without effective regulation..

5. Responsibility for promotion of culture

5.1 Procedures

SADC LA2003 Statement of Licensing Policy S1.15 states: "The Council recognises that proper account must be taken of need to encourage and promote live music... for the wider cultural benefits of communities generally".

The Licensing Committee Protocol also refers to a model pool of conditions relevant to licence applications taken from the Statement of Licensing Policy, which include S1.15. We were unable to find evidence in SADC licensing sub-committee minutes that the need to promote live music and the wider cultural benefits has ever been debated, and it is at these sub-committees where licence conditions are imposed.

5.2 Policy and ethos

This report identified statements made by the leader of the Liberal Democrats in Hertfordshire County Council: St Albans Ward and County Councillor, licensing sub-committee member and LGA Culture Spokesman Cllr Chris White regarding what he describes as "*the live music problem*" on his public Facebook page.

It is hard to reconcile the evidence in this report, particularly with regards to Mokoko (see section 4 of this report) with this statement from Cllr White when commenting on his own testimony to the Commons Committee on Crime, Jan 2009; "*I was able to emphasise that good licensing authorities like St Albans work closely with the licensees because it is in the interest of the community and of the trade to work together*".

The evidence appears to suggest that SADC has become over-committed to practices, even perhaps policies, associating live music, whether amplified or not (but apparently not recorded music), with public nuisance and public disorder, and does not have sufficient regard to "the need to encourage and promote live music... for the wider cultural benefits of communities generally". There must be concern that the licensing practices and policies of SADC identified have, in the wake of Cllr White's public expressions of his views, come to govern cultural considerations. This seems to have resulted in a reduction of cultural opportunity in the St Albans area.

Far from being merely "a problem", live music not only is a major part of our cultural heritage but also should be a major part of our cultural future. The unamplified heritage of tradition appears to receive no recognition as being of merit. The more recent heritage that made the UK a world leader in modern amplified music from the 1960s to date is not treated as meritorious, but as a nuisance. The cultural innovations of modern music, where cross-fertilisation

of music forms between otherwise less integrated communities is bringing a new vibrancy and indeed increased hope for beneficial social integration, are gainsaid. If these are seeds, the risk must be that they will not grow in St. Albans.

It would be a matter of grave concern if similar effects were to flow nationally.

6. About the Welwyn Hatfield Live Music Forum

The Welwyn Hatfield Live Music Forum was formed in January 2009 to represent the views of musicians and music-lovers, and to consult with Welwyn Hatfield Borough Council in matters concerning live music and, in particular, the Licensing Act 2003.

The Forum became alarmed by many reports from musicians in the neighbouring district of St Albans. This case study is a result of research into St Albans District Council licence register, interviews with musicians, music promoters and business owners in St Albans.

Email: welwynhatfieldlivemusicforum@yahoo.co.uk