

<b>Licensing Sub-Committee</b>	<b>Agenda Item 5</b>
<b>Coda Live</b>	<b>FOR GENERAL RELEASE</b>

<b>Purpose of the Report</b>	To determine an application for a new premises licence under the Licensing Act 2003
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## 1. Application

<b>Applicant and Premises</b>	
<b>Application Type</b>	New application Premises (ref M/ 094269)
<b>Applicants</b>	Mr T Clarke and Mr O Ward
<b>Premises</b>	Coda Live Limited
<b>Premises Address</b>	63 High Street Colchester
<b>Premises description</b>	<p>The application gives the following general description of the premises –</p> <p>Coda Live will be a live entertainment venue focusing on Jazz &amp; Blues music, and cultured entertainment. The premises will be located in the lower half of Colchester High Street. Alcohol will be supplied for consumption on the premises.</p> <p>The interior of the premises will consist of a stage toward the rear of the property, seating and table facilities for customers, and a small bar area for the supply of snacks and refreshments.</p> <p>The aim of the venue is to provide high class entertainment to Colchester in a relaxed and comfortable setting. The venue wishes to have a weekly dedicated event</p>
<b>Ward</b>	Castle

## Proposed licensable activities and hours

Provision of films							
Indoors/Outdoors or both			Indoors		Outdoors		Both
Day	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Start	19.00	19.00	19.00	19.00	19.00	19.00	19.00
End	23.00	23.00	23.00	23.00	23.00	23.00	23.00

Performance of Live Music							
Indoors/Outdoors or both			Indoors		Outdoors		Both
Day	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Start	23.00	23.00	23.00	23.00	23.00	23.00	23.00
End	00.00	00.00	00.00	00.00	01.00	01.00	00.00
Seasonal variations		Extend the hours to 01.00 on all Bank Holiday Sundays, Christmas Eve, New Year's Eve and Halloween night					

Please note – that the Live Music Act applies and a premises licence is only required for regulated entertainment after 23.00.

Performance of Recorded Music							
Indoors/Outdoors or both			Indoors		Outdoors		Both
Day	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Start	23.00	23.00	23.00	23.00	23.00	23.00	23.00
End	00.00	00.00	00.00	00.00	02.00	02.00	00.00
Seasonal variations		Extend the hours to 02.00 on all Bank Holiday Sundays, Christmas Eve, New Year's Eve and Halloween night					

Please note – regulated entertainment is deregulated between 08.00 and 23.00 for premises with an on licence for the sale of alcohol; a premises licence is only required for regulated entertainment after 23.00 and before 08.00.

Anything of a Similar description							
Indoors/Outdoors or both			Indoors		Outdoors		Both
Day	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Start	19.00	19.00	19.00	19.00	19.00	19.00	19.00
End	00.00	00.00	00.00	00.00	01.00	01.00	00.00

Provision of late night refreshment							
Indoors/Outdoors or both			Indoors		Outdoors		Both
Day	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Start	23.00	23.00	23.00	23.00	23.00	23.00	23.00
End	00.00	00.00	00.00	00.00	02.00	02.00	00.00

Supply of alcohol							
On / Off the premises or both			On sales		Off sales		Both
Day	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Start	10.00	10.00	10.00	10.00	10.00	10.00	10.00

End	00.00	00.00	00.00	00.00	02.00	02.00	00.00
Seasonal variations							
Non-standard timings	Extend the hours to 02.00 on all Bank Holiday Sundays, Christmas Eve, New Year's Eve and Halloween night						

## 2. Conditions

### Agreed with Environmental Protection

1. All windows and external doors to entertainment areas shall be kept closed between 23:00 hours and 08:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.
2. A tamper-proof noise-limiting device must be installed and must operate at all times regulated entertainment takes place. It must be fitted to the sound system within the premises and all amplified music played at the premises must pass through the device. The device type, location and the level set must be agreed/installed by a competent person. The device should be calibrated every 12 months.
3. No bottles, glasses or similar items may be disposed of in outside receptacles between 22:00 and 08:00 hours.
4. Notices must be prominently displayed at all exits requesting customers to respect the needs of local residents and leave the area quietly.

### Offered on the Operating Schedule

1. The premises will operate and maintain a comprehensive CCTV system. The CCTV cameras must continually record while the premises are open to the public and recording must be kept available and unedited for a minimum of 30 days with the date and time stamping. CCTV must be made available upon request by a Police officer/Police Licensing Officer or an authorised officer of the Licensing Authority.
2. Minimum of 2 SIA registered door supervisors on Friday and Saturday from 20.00 until closing.
3. An incident log (which may be electronically recorded) shall be kept at the premises for at least six months, and made available on request to the Police or an authorised officer of the licensing Authority.
4. First Aid supplies will be available at all times.
5. No glasses, bottles or any open vessels to be taken off the premises.
6. The Challenge 25 scheme will be operated to ensure that any person who appears to be under the age of 25 shall provide documented proof that he/she is over 18 years of age. Proof of age shall only comprise a passport, photo card driving licence, an HM Forces warrant card, or a card bearing the PASS hologram.

7. In addition to any other training, the premises licence holder shall ensure that all staff are trained to prevent underage sales, are aware of and prevent proxy sales, maintain the refusals log and that they monitor staff to ensure their training is put into practice.

8. All staff training to be recorded.

### 3. Representations

Colchester Civic Society	<p>Dear Sir or Madam,</p> <p>Having discussed the matter earlier this week at Colchester Civic Society's Executive Committee meeting, all are in agreement that the Society make an objection to the New Premises Licence Application re. Coda Live Ltd (M094269). The grounds for this objection are that the hours proposed are at odds with guidance in Colchester Borough Council's Statement of Licensing Policy 2016 - 2021. Point 3.14 of the Policy states that in mixed commercial and residential parts of the town - as is this case of 63 High Street - licensable activities are generally acceptable until midnight. But this licence application requests the sale of alcohol/ refreshment until 2 a.m. on Fridays and Saturdays.</p> <p>Further, 63 High Street is within Colchester's Town Centre Zone, an area designated as demanding special guidance. The guidance states (9.1): 'There is evidence that within this area, the promotion of the licensing objectives is being undermined, in particular in the early hours of the morning, as a consequence of the operation of licensed premises in the area; having regard to the levels of crime and disorder and public nuisance experienced within it and the complaints received from local residents'.</p> <p>Although within the Town Centre Zone live entertainment venues are encouraged, is not Coda Live Ltd primarily a bar, thus with potential to undermine the licensing objectives? Its operation is therefore obliged to support the Policy's Key Factors (9.5b) including KF3 - Hours for licensed premises (3.21): 'The Licensing Authority will have particular regard to the hours applied for and considers that later hours will typically be more sensitive and higher risk in causing problems, especially related to drunkenness and particularly after midnight'.</p> <p>The Licensing Policy states that 'the Town centre Zone is under pressure'; that 'it is essential to ensure our residents can peacefully enjoy their homes and environment whilst also encouraging responsible and positive investment and economic growth'. As well as current residents, there is a move towards more people living in the town centre. We must also consider</p>
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	<p>the guests from the several (and one planned for opening) hotels within short distance of 63 High Street.</p> <p>Bringing detailed knowledge and experience of the Town's evening and night economy, Colchester Borough Council's Licensing Policy has carefully weighed up different elements to achieve the best balance for Colchester's evening and night economy. There are no grounds evident in the case of this new application to tip the balance in favour of sale of alcohol after midnight and into the early hours on Friday and Saturday evenings. Achieving the best balance for the town is surely in the ultimate best interest of businesses, as well as of residents and visitors.</p> <p>Yours faithfully, Georgia Tamblyn (Mrs.) Colchester Civic Society</p>
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#### 4. Policy Context

Policy references are given for guidance only, they should not be regarded as a substitute for the Policy which contains the necessary detail for all parties in making and determining applications

1.3 The aim of this Licensing Policy is to ensure desirable destinations for a wide range of age groups and uses. Premises that will extend the diversity of entertainment and attract a wider range of participants are encouraged rather than premises mainly or exclusively focused on the sale of alcohol. The Licensing Authority believes that achieving this will promote the licensing objectives as well as support other important Council strategies.

2.2 The aims of this Licensing Policy are to pursue and promote the licensing objectives by encouraging:

- Desirable destinations for a wide range of age groups
- Licensed premises suitable for the area within which they are located
- Diversity of entertainment throughout the town centre that appeals to a wider audience
- A wide range of uses of premises

2.9 Applicants are expected to consider all the policies relevant to their application; these include general policies, key factors and where appropriate special guidance in relation to the Town Centre Zone.

2.18 This Policy sets out the Licensing Authority's vision for the regulation of licensed premises throughout the Borough and outlines the minimum standards expected in order to ensure the promotion of the licensing objectives. Applicants are advised that where their application falls outside the guidance set out in the policy in relation to times and activities etc. they will be required to demonstrate that their proposals will not undermine the licensing objectives.

3.14 Subject to compliance with the other policies the types of licensed premises set out in the Matrix below will generally be considered acceptable, unless relevant representations are made and/or the Licensing Authority considers that the application will undermine the licensing objectives. The Council wishes to see wider diversity in the night time economy and in particular wishes to encourage premises whose primary purpose is not the sale of alcohol.

Primary Function	Residential	Mixed Commercial and Residential	Commercial
Pub ** Bar	Yes until 23.00, midnight Friday and Saturday	Yes until midnight	Yes until 02.00
Non-Alcohol Led – e.g.Theatres etc.	Yes until 23.00	Yes until midnight	Yes until 01.00

## KF2 - The location of licensed premises

3.15 The Licensing Authority considers the following as key issues in relation to the location of licensed premises:

The proposed operation of the premises having regard:

to the licensable activities applied for,  
the size, structure and proposed capacity,  
the type/nature of the business

- The proximity of the premises to local residents
- The proximity of the premises to other local businesses that could be affected
- The general character of the surrounding area including crime and antisocial behaviour level
- The availability of transport to and from the premises
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## KF3 - Hours for licensed premises

3.20 The Licensing Authority considers that measures must be taken to address the causes of crime and disorder and public nuisance linked to the night time economy.

3.21 The Licensing Authority will have particular regard to the hours applied for and considers that later hours will typically be more sensitive and higher risk in causing problems, especially related to drunkenness and particularly after midnight. Consequently, the Licensing Authority expects a higher level of control measures to be implemented at the premises when an application is made for later hours.

3.22 The Licensing Authority will have particular consideration to the location of premises and their likely effect on the locality when considering whether the hours requested are appropriate to the area and consistent with promoting the four licensing objectives (see the Matrix in paragraph 3.14). Opening hours will not generally be regulated but each application will be considered on its own merits

and in particularly noise sensitive locations it may be appropriate to consider the opening hours of a premises.

3.23 Where relevant representations are made, premises that are considered to meet the criteria 'What we aim to encourage' will normally be given greater freedom to operate than premises that could be considered more likely to have a detrimental impact upon the licensing objectives, such as youth-oriented, alcohol-driven premises.

3.24 It is expected that hours for licensed premises will be particularly relevant having consideration to the location of the premises. Consequently, the hours applied for licensable activities should be appropriate with regard to the nature of the location of the premises. It is recognized that in spite of the quality of the operation of the business, where patrons are out of the control of the licensee, the lateness of the terminal hour for the premises will often be a contributory factor in the potential for disturbance.

3.25 The Licensing Authority will not consider the fact that other premises in the vicinity already have later hours as a justification for granting similar or extended hours and each application will be considered on its individual merits.

### **Town Centre Zone**

9.1 In the town centre restaurants and takeaways account for over half of the premises in the night time economy and pubs, bars and inns account over a third of all premises. There is evidence that within this area the promotion of the licensing objectives is being undermined, in particular in the early hours of the morning, as a consequence of the operation of licensed premises in the area; having regard to the levels of crime and disorder and public nuisance experienced within it and the complaints received from local residents.

9.2 The Licensing Authority considers that whilst the levels of problems do not currently justify the implementation of a cumulative impact policy for the area and therefore a reversal in the presumption of granting applications; the area is of concern and will be kept under review.

9.3 There is evidence of problems associated with operation of licensed premises in the Town Centre Zone and the Licensing Authority wishes to see a decrease in the levels of crime and disorder and public nuisance already being experienced in the area. However, the authority does wish to diversify the evening and night time economy in in this area.

9.5 With this in mind, and subject to compliance with the other requirements of the policy (in particular paragraph 3.14), the following guidance for new licences and material variations, where relevant representations have been made, is offered:-

- a. The following venue types are strongly encouraged provided they do not undermine the licensing objectives and therefore the licensing policy:
  - Restaurant
  - Non-alcohol led premises
  - Live entertainment venue
  - Coffee shops

- b. There is a strong presumption against the following venue types because of their potential to undermine the licensing objectives and therefore the licensing policy.
- Late night takeaway
  - Nightclub
  - High Volume Vertical Drinking establishment
  - Pub/Bar
  - Off licences

**Please note**

In the case of premises which encompass two or more uses it is incumbent on the applicant to state the primary use of the premises; this use must be supported by the management plan/operating schedule.

- Any applicant who wishes to operate a premises for which there is a strong presumption against within the Policy must demonstrate in its application that there will be no derogation in the licensing objectives, including from departing customers, and that its operation actively supports the Key Factors. Reliance on continuing good practice is unlikely to be sufficient where such applications for new or material variations are sought. Neither should reliance be placed on the size of the venue.

9.10 Each application will be considered on its individual merits.

9.11 Applicants will be expected to have particular regard to all key factors of this Policy.

## 5. Statutory Guidance

Extracts from the Section 182 Guidance are given for guidance only, they should not be regarded as a substitute for reading the Guidance

### Purpose

1.7 This Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provided information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premise, their legal advisors and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and promoting fairness, equal treatment and proportionality.

### Legal Status

1.9 Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. This Guidance is therefore binding on a licensing authorities to that extent.

### Licence Conditions

1.16 Licence Conditions:

- Must be appropriate for the promotion of the licensing objectives

- Must be precise and enforceable
- Must be unambiguous and clear in what they intend to achieve
- Should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation
- Must be tailored to the individual type, location and characteristics of the premises and events concerned
- Should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case
- Should not replicate offences set out in the 2003 Act or other legislation
- Should be proportionate, justifiable and be capable of being met
- Cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave
- Should be written in a prescriptive format.

Each application on its own merits

1.17 Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy.....Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions.

#### Hearings

9.37 ....Licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.

9.38 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to :

- The steps that are appropriate to promote the licensing objectives
- The representations (including supporting information) presented by all the parties
- This Guidance
- Its own statement of licensing policy.

Determining actions that are appropriate for the promotion of the licensing objectives

9.42 Licensing Authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case by case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

9.43 The authorities determination should be evidence based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

9.44 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose of the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefits in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to the consideration of the promotion of the objectives and nothing outside these parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business.....The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

## 6. Options available to the Sub-Committee

The Sub-Committee must take such of the following steps as it considers appropriate to ensure the promotion of the licensing objectives –

- Grant the application as requested
- Grant the application whilst imposing additional conditions
- Exclude or reduce the hours of operation of any licensable activities included within the application
- Reject the whole or part of the application

## Appendices

Appendix 1	Application
Appendix 2	Premises plans and location plan

## Report Author

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