

**LICENSING ACT 2003 HEARING TUESDAY 30 OCTOBER 2018 @1700HRS**

**APPLICATION FOR THE GRANT OF A PREMISES LICENCE**

**1. Premises:**

Smash  
Ground Floor  
Gun Street  
Reading  
RG1 2JR

**2. Applicant:**

Eclectic Bars Trading Limited  
36 Drury Lane  
London  
WC2B 5RR

**3. Premises Licence:**

This application is for a grant of a new licence for the ground floor only. There is currently a premises licence in force at the premises (licence number LP2002361 dated 24/09/2018) which covers the whole building. This licence currently permits the following:

Sale of Alcohol by Retail, Exhibition of Films, Performance of Live Music  
Playing of Recorded Music, Performance of Dance. Anything similar to Live Music, Recorded Music or Performance of Dance.

Monday to Thursday from 1000hrs until 0330hrs  
Friday to Saturday from 1000hrs until 0430hrs  
Sunday from 1200hrs until 0230hrs

Late Night Refreshment

Monday to Thursday from 2300hrs until 0330hrs  
Friday to Saturday from 2300hrs until 0430hrs  
Sunday from 2300hrs until 0230hrs

All licensable activities to extend on Bank Holiday Sunday 1200hrs to 0430hrs

The licence is attached to this report at [Appendix PN-5](#)

If this application is granted then the applicant would need to surrender the licence that is currently in force at the premises.

#### 4. Proposed licensable activities and hours:

The application is for the grant of a premises licence for the following activities on the ground floor only:

Sale of Alcohol by Retail (On and Off premises), Performance of Live Music  
Playing of Recorded Music, Performance of Dance. Anything similar to Live Music, Recorded Music or Performance of Dance.

Sunday to Wednesday from 1100hrs until 0100hrs  
Thursday to Saturday from 1100hrs until 0130hrs

##### Exhibition of Films

Sunday to Wednesday from 1100hrs until 0030hrs  
Thursday to Saturday from 1100hrs until 0100hrs

##### Late Night Refreshment (On and Off premises only)

Sunday to Wednesday from 2300hrs until 0100hrs  
Thursday to Saturday from 2300hrs until 0130hrs

##### Opening Hours

Sunday to Wednesday from 1100hrs to 0100hrs  
Thursday to Saturday from 1100hrs to 0130hrs

#### 5. Temporary Event Notices

In considering any application the Licensing Authority should be aware of the possible use of Temporary Event Notices to extend entertainment activities or hours of operation. A premises may extend the hours or scope of their operation by the use of Temporary Event Notices. Up to 15 events per year can be held under this provision at a particular premises. These events may last for up to 168 hours provided less than 500 people are accommodated and provided the total number of days used for these events does not exceed 21 per year.

#### 6. Date of receipt of application: 11 September 2018

A copy of the application form is attached at [Appendix PN-1](#)

#### 7. Date of closure of period for representations: 9 October 2018

#### 8. Representations received:

During the 28 day consultation process for the application, representations were received from:

Thames Valley Police (attached at [Appendix PN-2](#))  
Reading Borough Council Licensing team(attached at [Appendix PN-3](#))  
Reading Borough Council Environmental Protection and Nuisance team(attached at [Appendix PN-4](#))

A plan showing the premises location and surrounding area is attached at

## Appendix PN-6

### 9. Licensing Objectives and Reading Borough Council's Licensing Policy Statement

In considering representations received the Licensing Authority has a duty to carry out its functions with a view to promoting the four licensing objectives, which are as follows:

- the prevention of crime and disorder;
- public safety
- the prevention of public nuisance
- the protection of children from harm

Any conditions that are placed on a premises licence should be appropriate and proportionate with a view to promoting the licensing objectives. The Licensing Authority can amend, alter or refuse an application should it be deemed appropriate for the promotion of the licensing objectives.

The Council's licensing policy also places an onus on applicant's who wish to open past 11pm to demonstrate how they will mitigate the issues of crime and disorder and potential public nuisance.

#### The Council's Licensing Policy Statement:

##### 7.15 Crime & Disorder Act 1998

7.15.1 In applying this policy, the Authority will have regard to its obligations under Section 17 of the Crime and Disorder Act 1998 and will do all that it reasonably can to prevent crime and disorder in Reading. The Authority will also have regard to the Safer Reading Partnership, which incorporates both local and national strategies and whose mission statement is "We will continue to make Reading a safer place for those who live, work and visit, through a reduction in crime and disorder". In addition the Authority will liaise with the Reading Crime Reduction Partnership in order to reduce crime, misuse of drugs and the fear of crime.

##### 8. Cumulative Impact And Need

###### 8.1 Cumulative Impact Policy (CIP)

8.1.1 "Cumulative impact" for the purposes of this policy means the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. For example, this may include the potential impact on crime and disorder or public nuisance on an area that a large concentration of licensed premises may have.

8.1.2 The cumulative impact of licensed premises is a proper matter for the Authority to take into account in discharging its licensing functions and

in developing its licensing policy statement. This should not however be confused with 'need' which relates more to the commercial demand for a particular type of premises e.g. a pub, restaurant or hotel. The issue of 'need' does not form part of this licensing policy statement.

8.1.3 The Authority has considered in formulating this policy, in close consultation with Thames Valley Police, whether there is a particular concentration of licensed premises in a particular part of Reading, which is already causing a cumulative impact on one or more of the licensing objectives.

8.1.4 Concerns do exist about the number of licensed premises in parts of the town centre, particularly in Friar Street, and Gun Street areas, together with the impact that these premises have upon the licensing objectives. The Council recognises the concerns of residents in areas with high proportions of licensed premises and will use best endeavours and all available legislation so as to ensure these premises and the activities associated with them are properly controlled and do not result in unreasonable disturbance for residents.

8.1.6 It is recognised that pubs, nightclubs, restaurants, hotels, theatres, and other clubs all sell alcohol, serve food and provide entertainment, but with contrasting styles and characteristics. Proper regard will be had to those differences and the impact they are likely to have on the local community.

8.1.7 The Authority is keen to stress that as well as the licensing function there are a number of other mechanisms for addressing issues of unruly behaviour which occur away from licensed premises. These include:

- (a) planning controls;
- (b) ongoing measures to provide a safer and cleaner environment in partnership with local businesses and others;
- (c) the provision of CCTV surveillance in the town centre, provision of taxi ranks, provision of public toilets, street cleaning and sweeping;
- (d) powers to designate parts of the Borough as places where alcohol may not be consumed publicly;
- (e) confiscation of alcohol from adults and others in designated areas;
- (f) the prosecution of any personal licence holder or member of staff at who is selling alcohol to people who are drunk;
- (g) police enforcement of the law with regard to disorder and anti-social behaviour;
- (h) police powers to close some premises for up to 24 hours in extreme

cases of disorder or excessive noise;

8.1.8 The Authority will address a number of these issues through the Reading Community Safety Partnership in line with the strategic objectives for crime and disorder reduction within the Borough.

8.1.9 The effect of keeping the cumulative impact policy, is to create a rebuttable presumption that applications for new premises licences and club premises certificates or material variations, will be refused, if relevant representations are received. A rebuttable presumption is not a presumption that is absolute; it is a presumption that may be overturned if sufficient evidence can be provided against the presumption. Appendix C to this reports list a number of policies and conditions that could be included in an operating schedule and considered by the council.

8.1.10 Applications, which are unlikely to have a negative effect on the licensing objectives, are unlikely to illicit relevant representations. They, therefore, are unlikely to progress to a hearing, with the consequence that they are likely to be granted by officers under delegated powers.

8.1.11 Where during the application for the grant or variation of a premises licence or club premises certificate, responsible authorities or interested parties are concerned that the licensing objectives will be impacted upon, there are likely to be relevant representations, which would lead to the application proceeding to a hearing. If at that hearing, an applicant is able to rebut the presumption of refusal by demonstrating there will be no negative impact on the licensing objectives, a licence can still be granted. However, if the presumption cannot be rebutted, the application is likely to be refused.

## **8.2 Reasons for the CIP approach**

8.2.1 The cumulative impact policy is a highly significant measure, because it creates a presumption against a particular form of economic development, and therefore, as a matter of good regulation a policy should not be renewed unless there is a sound reason to do so.

8.2.2 The Council has undertaken research in respect of Reading town centre that has identified high concentrations of licensed premises and high levels of crime for offence types that are associated with the night-time economy, alcohol and licensed premises.

8.2.3 Of the high number of licensed premises in Reading town centre, the majority are well run. However, the sheer volume and concentration of premises is having a negative impact on the licensing objectives.

8.2.4 As a result, the Council, acting as the Licensing Authority for Reading, after considering evidence of crime and looking at concentrations of licensed premises in the borough, is satisfied that it is appropriate to keep a CIP in the town centre in order to promote the licensing objectives.

8.2.5 The Council and partner organisations already employ a range of mechanisms designed to prevent or limit the cumulative impact of any problems arising from premises and their customers behaving inappropriately or unlawfully once away from the premises. The measures currently employed include the provision of night bus services, the use of Taxi Marshals to supervise and control taxi ranks, the presence of Street Pastors in the town centre late at night at weekends to assist people who may be in difficulty, extensive CCTV coverage and monitoring of the town centre, regular joint operations to detect illegal taxis, active use of dispersal orders to improve the town centre environment, and the provision of 'Urilift' toilet facilities in the town centre for people visiting the town centre at night, in an attempt to cut down street urination.

### **8.3 Reading Central CIP Area**

8.3.3 The council considers it appropriate to continue with the existing CIP. However, due to the redevelopment of Reading railway station and changes to pedestrian flows, the area north of the railway station which includes Vastern Road and Caversham Road may be considered as a possible extension to the town CIP. Should evidence emerge of a rise in crime and disorder in that area, the council will apply for an extension to the CIP following the Secretary of State's guidance in such matters.

### **8.4 General Approach to applications within the CIP area**

8.4.1 The Secretary of State's Guidance under the Licensing Act 2003 suggests that Local Authorities can, within a cumulative impact area, adopt a policy of refusing all new licences subject to relevant representations and the rebuttable presumption as outlined at paragraph 8.1.9 above being made. It is not the Council's intention to adopt such a broad approach. To do so may operate disproportionately against some types of premises that are unlikely to undermine the licensing objectives and others which can operate without so doing earlier in the evening. The policy therefore takes a more targeted approach by focusing on certain types of operation and those that only operate beyond midnight. For certain types of premises which are not normally associated with undermining to the licensing objectives, the policy is neutral or even positive.

8.4.2 This policy has regard to Secretary of State's Guidance which does not support fixed terminal hours. The policy creates a presumption against some premises operating beyond a certain hour and this is an appropriate and proportionate response to the particular circumstances in the proposed Reading Central CIP area. This is considered preferable than refusing applications outright.

### **8.5 Application of this policy**

8.5.1 This policy will apply to all applications for premises licences and club premises certificates for material variations for premises within the Reading Central CIP Area. Material variations include increases of hours, capacity and all other variations that are likely to add to cumulative impact in the Reading Central CIP Area.

8.5.2 The policy will only be applied where there have been relevant representations. Where there are no relevant representations, it is the duty of the licensing authority to grant the application subject to the conditions in the operating schedule and the mandatory conditions imposed by law.

8.5.3 The policy takes a different approach to different types of premises. In the case of applications for hybrid premises that would fall into more than one type, the predominant use will be taken for the purposes of the policy.

## **8.6 The Policy**

8.6.8 Bars/Clubs/music and dancing venues: – Subject to the rebuttable presumption as outlined at paragraph 8.1.9 above, the policy is to refuse applications for such premises. Experience has shown that venues which serve alcohol, often at low prices; provide limited seating for customers; provide facilities for music and dancing; and which are alcohol rather than food-led, have the strongest potential to have a negative impact on the licensing objectives and to add to cumulative impact. Applicants seeking to operate in the CIP area will need to demonstrate that detailed measures proposed in the operating schedule will result in no increase in crime and disorder.

## **Integration with Planning**

7.1 The Authority recognises that licensing applications should not be seen as a re-run of the planning application process and that there should be a clear separation of the planning and licensing regimes to avoid duplication and inefficiency. However, the Authority will normally expect applicants to demonstrate that, *their proposed use of the premises is lawful in planning terms*, including complying with any conditions that may be imposed upon a planning consent, prior to applications under this Act being submitted.

## **Licensed premises in residential areas**

11.4.1 In general the Authority will deal with the issue of licensing hours on the individual merits of each application. However, when issuing a licence, stricter conditions are likely to be imposed with regard to noise control in the case of premises that are situated in largely residential areas. In general, public houses located in and catering for residential areas wishing to open beyond 11pm will need to demonstrate clearly that public nuisance will not result from later operation.

## **Amended Guidance issued under section 182 of the Licensing Act 2003 April 2018**

### **Licensing Objectives and Aims:**

1.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for

everyone involved in licensing work. They include:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises

**Steps to promote the licensing objectives:**

8.41 In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives. Licensing authorities and responsible authorities are expected to publish information about what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. However, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application.

8.42 Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:

- the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;
- any risk posed to the local area by the applicants' proposed licensable activities; and
- any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.

8.43 Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.

8.44 It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application.

8.45 The majority of information which applicants will require should be available in the licensing policy statement in the area. Other publicly

available sources which may be of use to applicants include:

- the Crime Mapping website;
- Neighbourhood Statistics websites;
- websites or publications by local responsible authorities;
- websites or publications by local voluntary schemes and initiatives; and
- on-line mapping tools.

8.46 While applicants are not required to seek the views of responsible authorities before formally submitting their application, they may find them to be a useful source of expert advice on local issues that should be taken into consideration when making an application. Licensing authorities may wish to encourage co-operation between applicants, responsible authorities and, where relevant, local residents and businesses before applications are submitted in order to minimise the scope for disputes to arise.

8.47 Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.

8.48 All parties are expected to work together in partnership to ensure that the licensing objectives are promoted collectively. Where there are no disputes, the steps that applicants propose to take to promote the licensing objectives, as set out in the operating schedule, will very often translate directly into conditions that will be attached to premises licences with the minimum of fuss.

8.49 For some premises, it is possible that no measures will be appropriate to promote one or more of the licensing objectives, for example, because they are adequately covered by other existing legislation. It is however important that all operating schedules should be precise and clear about the measures that are proposed to promote each of the licensing objectives.

#### **The role of responsible authorities**

9.11 Responsible authorities under the 2003 Act are automatically notified of all new applications. While all responsible authorities may make representations regarding applications for licences and club premises certificates and full variation applications, it is the responsibility of each responsible authority to determine when they have appropriate grounds to do so.

#### **Representations from the police**

9.12 Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those

operating in their local area. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

#### **Licensing authorities acting as responsible authorities**

9.13 Licensing authorities are included in the list of responsible authorities. A similar framework exists in the Gambling Act 2005. The 2003 Act does not require responsible authorities to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes. It is, therefore, for the licensing authority to determine when it considers it appropriate to act in its capacity as a responsible authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act.

#### **Integrating strategies**

14.63 It is recommended that statements of licensing policy should provide clear indications of how the licensing authority will secure the proper integration of its licensing policy with local crime prevention, planning, transport, tourism, equality schemes, cultural strategies and any other plans introduced for the management of town centres and the night-time economy. Many of these strategies are not directly related to the promotion of the licensing objectives, but, indirectly, impact upon them. Co-ordination and integration of such policies, strategies and initiatives are therefore important.

#### **Planning and building control**

14.64 The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa. However, as set out in chapter 9, licensing committees and officers should consider discussions with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.

14.65 There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under

planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.

### Licensing Act 2003

The Licensing Act 2003 under Section 18 (6) also states that any relevant representation should be considered in the context of:

(a) the likely effect of the grant of the premises licence on the promotion of the licensing objectives.

Therefore in the context of the grant of a licence, it is reasonable for the Licensing Authority to base its decision on an application on what the likely effects of granting a licence would have on the promotion of the licensing objectives.

### Case Law

East Lindsey DC v Abu Hanif (2016) case law underpins the principles widely acknowledged within the Licensing Act 2003 that the licensing objectives are prospective, and that the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.

Similarly the case law of British Beer and Pub Association v Canterbury City Council (2005) underpins the value of the Council's licensing policy. Mr Justice Richards stated: "The council is entitled to indicate in the policy its own expectations with regard to the promotion of the licensing objectives; and I do not think that an applicant can legitimately complain if a failure to take account of those expectations gives rise to representations...An applicant who does not tailor his application to the policy therefore faces an uphill struggle."

On Cumulative Impact - the case of Portsmouth City Council v 3D Entertainment Group Ltd (2011) - confirmed that it is entirely down to the applicant to rebut the Cumulative Impact policy. It was not down to the police or the Council to abduce any evidence of negative cumulative impact.

Lic/smash/pn/30.10.2018

Reading Borough Council

Application for a premises licence to be granted  
under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I/We Eclectic Bars Trading Limited

(Insert name(s) of applicant)

apply for a premises licence under section 17 of the Licensing Act 2003 for the premises described in Part 1 below (the premises) and I/we are making this application to you as the relevant licensing authority in accordance with section 12 of the Licensing Act 2003

Part 1 – Premises Details

Postal address of premises or, if none, ordnance survey map reference or description			
Smash Ground Floor 5 Gun Street			
Post town	Reading	Postcode	RG1 2JR

Telephone number at premises (if any)	
Non-domestic rateable value of premises	£110,000

Part 2 - Applicant Details

Please state whether you are applying for a premises licence as

Please tick as appropriate

- a) an individual or individuals \*  please complete section (A)
- b) a person other than an individual \*
  - i. as a limited company  please complete section (B)
  - ii. as a partnership  please complete section (B)
  - iii. as an unincorporated association or  please complete section (B)
  - iv. other (for example a statutory corporation)  please complete section (B)



- c) a recognised club  please complete section (B)
- d) a charity  please complete section (B)
- e) the proprietor of an educational establishment  please complete section (B)
- f) a health service body  please complete section (B)
- g) a person who is registered under Part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital in Wales  please complete section (B)
- 
- ga) a person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 (within the meaning of that Part) in an independent hospital in England  please complete section (B)
- 
- h) the chief officer of police of a police force in England and Wales  please complete section (B)

\* If you are applying as a person described in (a) or (b) please confirm:

Please tick yes

I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities; or

I am making the application pursuant to a statutory function or   
 a function discharged by virtue of Her Majesty's prerogative

**(A) INDIVIDUAL APPLICANTS** (fill in as applicable)

Mr <input type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title (for example, Rev)	
Surname			First names		
I am 18 years old or over				<input type="checkbox"/> Please tick yes	
Current postal address if different from premises address					
Post town				Postcode	
Daytime contact telephone number					
E-mail address (optional)					

**SECOND INDIVIDUAL APPLICANT (if applicable)**

Mr <input type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title (for example, Rev)	
Surname			First names		
I am 18 years old or over					<input type="checkbox"/> Please tick yes
Current postal address if different from premises address					
Post town		Postcode			
Daytime contact telephone number					
E-mail address (optional)					

**(B) OTHER APPLICANTS**

Please provide name and registered address of applicant in full. Where appropriate please give any registered number. In the case of a partnership or other joint venture (other than a body corporate), please give the name and address of each party concerned.

Name Eclectic Bars Trading Limited
Address 36 Drury Lane London WC2B 5RR
Registered number (where applicable) 05858842
Description of applicant (for example, partnership, company, unincorporated association etc.) Private Limited Company
Telephone number (if any)
E-mail address (optional)

**Part 3 Operating Schedule**

When do you want the premises licence to start?

DD	MM	YYYY
A	S	A P

If you wish the licence to be valid only for a limited period, when do you want it to end?

DD	MM	YYYY

Please give a general description of the premises (please read guidance note 1)

The premises operate as a bar offering amongst other things a mixture of craft ales, pizza prepared in a traditional pizza oven and table tennis tables.

If 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend.

What licensable activities do you intend to carry on from the premises?

(Please see sections 1 and 14 of the Licensing Act 2003 and Schedules 1 and 2 to the Licensing Act 2003)

Provision of regulated entertainment

Please tick any that apply

- a) plays (if ticking yes, fill in box A)
- b) films (if ticking yes, fill in box B)
- c) indoor sporting events (if ticking yes, fill in box C)
- d) boxing or wrestling entertainment (if ticking yes, fill in box D)
- e) live music (if ticking yes, fill in box E)
- f) recorded music (if ticking yes, fill in box F)
- g) performances of dance (if ticking yes, fill in box G)
- h) anything of a similar description to that falling within (e), (f) or (g) (if ticking yes, fill in box H)

**Provision of late night refreshment** (if ticking yes, fill in box I)

**Supply of alcohol** (if ticking yes, fill in box J)

In all cases complete boxes K, L and M

**A**

<b>Plays</b> Standard days and timings (please read guidance note 6)			<b>Will the performance of a play take place indoors or outdoors or both – please tick</b> (please read guidance note 2)	Indoors	<input type="checkbox"/>			
				Outdoors	<input type="checkbox"/>			
				Both	<input type="checkbox"/>			
<b>Day</b>	<b>Start</b>	<b>Finish</b>	<b>Please give further details here</b> (please read guidance note 3)					
Mon								
Tue								
Wed						<b>State any seasonal variations for performing plays</b> (please read guidance note 4)		
Thur								
Fri						<b>Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list</b> (please read guidance note 5)		
Sat								
Sun								

**B**

<b>Films</b> Standard days and timings (please read guidance note 6)			<b>Will the exhibition of films take place indoors or outdoors or both – please tick</b> (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input checked="" type="checkbox"/>
<b>Day</b>	<b>Start</b>	<b>Finish</b>	<b>Please give further details here</b> (please read guidance note 3)		
Mon	11:00	00:30			
Tue	11:00	00:30			

Wed	11:00	00:30	<b>State any seasonal variations for the exhibition of films</b> (please read guidance note 4)
Thur	11:00	01:00	
Fri	11:00	01:00	<b>Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list</b> (please read guidance note 5)
Sat	11:00	01:00	All licensable activities to extend on Christmas Eve, Boxing Day and Bank Holiday Sundays including Easter Sunday 11:00 to 01:00.
Sun	11:00	00:30	

C

<b>Indoor sporting events</b> Standard days and timings (please read guidance note 6)			<b>Please give further details</b> (please read guidance note 3)
Day	Start	Finish	
Mon			
Tue			<b>State any seasonal variations for indoor sporting events</b> (please read guidance note 4)
Wed			
Thur			<b>Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list</b> (please read guidance note 5)
Fri			
Sat			
Sun			

**D**

<b>Boxing or wrestling entertainments</b> Standard days and timings (please read guidance note 6)			<b>Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick</b> (please read guidance note 2)		Indoors	<input type="checkbox"/>
					Outdoors	<input type="checkbox"/>
					Both	<input type="checkbox"/>
Day	Start	Finish	<b>Please give further details here</b> (please read guidance note 3)			
Mon						
Tue						
Wed			<b>State any seasonal variations for boxing or wrestling entertainment</b> (please read guidance note 4)			
Thur						
Fri						
Sat			<b>Non standard timings. Where you intend to use the premises for boxing or wrestling entertainment at different times to those listed in the column on the left, please list</b> (please read guidance note 5)			
Sun						

**E**

<b>Live music</b> Standard days and timings (please read guidance note 6)			<b>Will the performance of live music take place indoors or outdoors or both – please tick</b> (please read guidance note 2)		Indoors	<input type="checkbox"/>
					Outdoors	<input type="checkbox"/>
					Both	<input checked="" type="checkbox"/>
Day	Start	Finish	<b>Please give further details here</b> (please read guidance note 3)			
Mon	11:00	00:30				
Tue	11:00	00:30				
Wed	11:00	00:30	<b>State any seasonal variations for the performance of live music</b> (please read guidance note 4)			
Thur	11:00	01:00				

Fri	11:00	01:00	<b>Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list (please read guidance note 5)</b>  All licensable activities to extend on Christmas Eve, Boxing Day and Bank Holiday Sundays including Easter Sunday 11:00 to 01:00.
Sat	11:00	01:00	
Sun	11:00	00:30	

**F**

<b>Recorded music</b> Standard days and timings (please read guidance note 6)			<b>Will the playing of recorded music take place indoors or outdoors or both – please tick (please read guidance note 2)</b>		Indoors	<input type="checkbox"/>
					Outdoors	<input type="checkbox"/>
					Both	<input checked="" type="checkbox"/>
Day	Start	Finish	<b>Please give further details here (please read guidance note 3)</b>			
Mon	11:00	00:30				
Tue	11:00	00:30				
Wed	11:00	00:30	<b>State any seasonal variations for the playing of recorded music (please read guidance note 4)</b>			
Thur	11:00	01:00				
Fri	11:00	01:00				
Sat	11:00	01:00	<b>Non standard timings. Where you intend to use the premises for the playing of recorded music at different times to those listed in the column on the left, please list (please read guidance note 5)</b>  All licensable activities to extend on Christmas Eve, Boxing Day and Bank Holiday Sundays including Easter Sunday 11:00 to 01:00.			
Sun	11:00	00:30				

**G**

<b>Performances of dance</b> Standard days and timings (please read guidance note 6)			<b>Will the performance of dance take place indoors or outdoors or both – please tick (please read guidance note 2)</b>		Indoors	<input type="checkbox"/>
					Outdoors	<input type="checkbox"/>
					Both	<input checked="" type="checkbox"/>
Day	Start	Finish	<b>Please give further details here (please read guidance note 3)</b>			
Mon	11:00	00:30				

Tue	11:00	00:30	
Wed	11:00	00:30	<b>State any seasonal variations for the performance of dance</b> (please read guidance note 4)
Thur	11:00	01:00	
Fri	11:00	01:00	<b>Non standard timings. Where you intend to use the premises for the performance of dance at different times to those listed in the column on the left, please list</b> (please read guidance note 5)
Sat	11:00	01:00	
Sun	11:00	00:30	All licensable activities to extend on Christmas Eve, Boxing Day and Bank Holiday Sundays including Easter Sunday 11:00 to 01:00.

## H

<b>Anything of a similar description to that falling within (e), (f) or (g) Standard days and timings (please read guidance note 6)</b>			Please give a description of the type of entertainment you will be providing		
<b>Day</b>	<b>Start</b>	<b>Finish</b>	<b>Will this entertainment take place indoors or outdoors or both – please tick</b> (please read guidance note 2)	Indoors	<input checked="" type="checkbox"/>
Mon	11:00	00:30		Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Tue	11:00	00:30	<b>Please give further details here</b> (please read guidance note 3)		
Wed	11:00	00:30			
Thur	11:00	01:00	<b>State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g)</b> (please read guidance note 4)		
Fri	11:00	01:00			
Sat	11:00	01:00	<b>Non standard timings. Where you intend to use the premises for the entertainment of a similar description to that falling within (e), (f) or (g)</b>		

			<b>at different times to those listed in the column on the left, please list (please read guidance note 5)</b>
Sun	11:00	00:30	All licensable activities to extend on Christmas Eve, Boxing Day and Bank Holiday Sundays including Easter Sunday 11:00 to 01:00.

**I**

<b>Late night refreshment</b> Standard days and timings (please read guidance note 6)			<b>Will the provision of late night refreshment take place indoors or outdoors or both – please tick (please read guidance note 2)</b>	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
Day	Start	Finish		Both	<input checked="" type="checkbox"/>
Mon	23:00	00:30	<b>Please give further details here (please read guidance note 3)</b>		
Tue	23:00	00:30	<b>State any seasonal variations for the provision of late night refreshment (please read guidance note 4)</b>		
Wed	23:00	00:30	<b>Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list (please read guidance note 5)</b>		
Thur	23:00	01:00	<b>All licensable activities to extend on Christmas Eve, Boxing Day and Bank Holiday Sundays including Easter Sunday 11:00 to 01:00.</b>		
Fri	23:00	01:00			
Sat	23:00	01:00			
Sun	23:00	00:30			

**J**

<b>Supply of alcohol</b> Standard days and timings (please read guidance note 6)			<b>Will the supply of alcohol be for consumption – please tick (please read guidance note 7)</b>	On the premises	<input type="checkbox"/>
				Off the premises	<input type="checkbox"/>
Day	Start	Finish		Both	<input checked="" type="checkbox"/>
Mon	11:00	00:30	<b>State any seasonal variations for the supply of alcohol (please read guidance note 4)</b>		

Tue	11:00	00:30	
Wed	11:00	00:30	
Thur	11:00	01:00	<b><u>Non standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list (please read guidance note 5)</u></b>
Fri	11:00	01:00	All licensable activities to extend on Christmas Eve, Boxing Day and Bank Holiday Sundays including Easter Sunday 11:00 to 01:00.
Sat	11:00	01:00	
Sun	11:00	00:30	

**State the name and details of the individual whom you wish to specify on the licence as designated premises supervisor:**

Name: Joseph Raymond Wynder	
Date of Birth: [REDACTED]	
Address: [REDACTED] Gimson Road Leicester	
Postcode	LE3 6DZ
Personal licence number (if known): LEIPRS3640	
Issuing licensing authority (if known): Leicester City Council	

K

Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children (please read guidance note 8).

N/A

L

Hours premises are open to the public Standard days and timings (please read guidance note 6)			State any seasonal variations (please read guidance note 4)
Day	Start	Finish	
Mon	11:00	01:00	<p><b>Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list (please read guidance note 5)</b></p> <p>Opening hours to extend on Christmas Eve, Boxing Day and Bank Holiday Sundays including Easter Sunday 11:00 to 01:30.</p>
Tue	11:00	01:00	
Wed	11:00	01:00	
Thur	11:00	01:30	
Fri	11:00	01:30	
Sat	11:00	01:30	
Sun	11:00	01:00	

**M Describe the steps you intend to take to promote the four licensing objectives:**

**a) General – all four licensing objectives (b, c, d and e) (please read guidance note 9)**

This Premises Licence is not to be effective until the licensed area applied for has been removed by way of a variation application from the existing Smash/Coalition Premises Licence to the satisfaction of the premises licence holder and written confirmation has been given to Reading Borough Council by Woods Whur that the variation application is satisfactory and this licence is to be effective.

**b) The prevention of crime and disorder**

1. The premises licence holder shall ensure the premises' digitally recorded CCTV system cameras shall continually record whilst the premises are open to the public and recordings shall be kept for a minimum of 31 days with time and date stamping.
  - a) The entire licensable area shall be covered by CCTV.
  - b) Data recordings shall be made immediately available to an authorised officer of Thames Valley Police or Reading Borough Council subject to the provisions of the Data Protection Act, together with facilities for viewing upon request.
  - c) Recorded images shall be of such quality as to be able to identify the recorded person in any light.
  - d) At least one member of staff on the premises at any time during operating hours shall be trained to access and download material from the CCTV system.
2. A minimum of two Security Industry Authority (SIA) registered door staff shall be employed at the premises on a Friday and Saturday night from 2100. Door staff shall be employed from 2100 hours until 0100 hours or until all Smash customers have dispersed from inside and outside the premises, whichever is later, and at least two door staff will remain outside the premises during this time;
  - a) At all other times, SIA registered door staff shall be employed at the premises in accordance with a written risk assessment, to be carried out by the Designated Premises Supervisor. The risk assessment shall be produced to an authorised officer of Reading Borough Council or Thames Valley Police.
  - b) When employed, door staff will wear clearly visible clothing that clearly distinguishes them from patrons. Hi visibility armbands shall be worn at all times displaying their SIA badge. The uniform worn by door staff must be suitable to ensure that they are clearly visible via both internal and external CCTV camera systems. Hi visibility fluorescent jackets/tabards must be worn by door staff at any time when stationed at the entry/exit of the premises and whenever on the public highway, and during dispersal.
  - c) When employed, door staff shall monitor customers as they queue and enter the premises.
3. When employed, a register of Door Supervisors shall be kept. The register must show the following details:
  - Full SIA registration number.
  - Date and time that the door supervisor commenced duty, countersigned by the DPS or Duty Manager.
  - Date and time that the door supervisor finished work, countersigned by the DPS or Duty

Manager.

- Any occurrence or incident of interest impacting on any of the four licensing objectives must be recorded giving names of the door supervisor involved.
  - a) The Door Supervisor register shall be kept at the premises and be available for inspection by an authorised officer of Thames Valley Police, or an authorised officer from Reading Borough Council and shall be retained for a period of twelve months.
- 4. An active search policy shall be put in place to prevent illegal drugs and weapons being brought on to the premises. The policy shall include, but not be limited to, methods of search, detection, confiscation and disposal and shall be actively operated. The policy shall be in written format and made available upon request to an authorised officer of Reading Borough Council and Thames Valley Police. Notices shall also be put in place informing customers that the management reserve the right to conduct an outer body search and or bag as a condition of entering the premises.
- 5. Regular checks of high risk areas for drug use (including the toilets) shall be carried out by door staff and premises staff when door staff are not available. A written record of all checks shall be maintained and made available upon request by an authorised officer of the Thames Valley Police and Reading Borough Council.
- 6. All incidents which impact on any of the four licensing objectives shall be recorded in a register kept at the premises for this purpose. The names of the person recording the incident and those members of staff who deal with any incident shall also be recorded. Where known, any offenders name shall also be recorded.
  - a) This record shall be available for inspection by a Police Officer or an authorised officer of Reading Borough Council upon request and shall be retained for one year. The record shall be signed off by the DPS or nominated representative at the end of each trading session.
  - b) A weekly review of the incident register shall also be carried out by the DPS.
- 7. The premises licence holder shall participate in the Local Town Radio Scheme when the premises are opened for licensable activities Monday to Sunday inclusive.

c) Public safety

- 8. An entry, closure and dispersal policy for controlling the opening and closing of the premises and the departure of customers from the premises at the conclusion of the licensed activities shall be put in place and shall be actively operated. The policy shall be in written format and made available upon request to an authorised officer of Reading Borough Council and Thames Valley Police.
- 9. The last permitted entry time to the premises on any given night shall be one hour prior to the venue's closing time, with the exception of the re-entry of smokers.
- 10. A written risk assessment shall be put in place to manage the queuing of patrons outside of the venue on the public highway. This risk assessment shall be reviewed on a regular basis, be provided in written form and be made available for inspection to officers of Reading Borough Council and Thames Valley Police upon request.
- 11. All cashiers involved in the sale of alcohol shall be trained to record refusals of sale of alcohol in a refusals log (whether written or electronic). The log shall contain:
  - Details of the time and date the refusal was made;
  - The identity of the staff member refusing the sale;
  - Details of the alcohol the person attempted to purchase.

- a) This book/register will be available for inspection by a Police Officer or authorised officer of Reading Borough Council upon request.

12. Staff employed to sell alcohol shall undergo training upon induction. This shall include, but not be limited to:

- The premises age verification policy.
- The law relating to underage sales.
- Dealing with refusal of sales.
- Proxy purchasing.
- Recognising valid identity documents not in the English language.
- Identifying attempts by intoxicated persons to purchase alcohol.
- Identifying signs of intoxication
- Conflict management
- How to identify and safeguard vulnerable persons who attend and leave the premises.
- Identifying signs of drug usage and prevention.
- The four licensing objectives.

- a) Such training sessions are to be documented and refreshed every six months. All training sessions are to be documented in English. Records of training shall be kept for a minimum of one year and be made available to an authorised officer of Thames Valley Police and Reading Borough Council upon request.

13. The licensee shall monitor the audience numbers and must ensure that the maximum permitted occupancy of 250, including all staff members, is not exceeded.

- a) There shall be at least a minimum number of chairs/seats available for customer use inside the premises at all times the venue is open to the public for use by 40 % of the occupancy and a space equivalent to 20% of the occupancy shall be taken up by Ping Pong Tables so as to negate the need for vertical drinking.

14. There shall be substantial food available on the premises, and orders will be taken up until midnight daily.

d) The prevention of public nuisance

15. Noise from amplified music or voices shall not such as to cause a noise nuisance to occupants of nearby premises.

16. The exterior of the building shall be cleared of litter at regular intervals.

17. Clearly legible and suitable notices shall be displayed at all exits requesting customers to respect the needs of local residents and to leave the premises and area quietly. After 00:00 staff shall be available to ensure that customers disperse quietly.

18. Doors and windows at the premises are to remain closed after 11pm save for access and egress.

19. Dispersal Policy

- a) At the end of the evening management and staff shall assist with the orderly and gradual dispersal of patrons in line with the written dispersal policy;
- b) Staff members (including door personnel when employed) shall advise patrons to leave the premises quickly and quietly out of respect for neighbours;
- c) Notices shall be displayed requesting customers to leave quietly and in an orderly manner out of consideration to neighbours and their attention shall be drawn to these notices by

members of staff;

- d) Bottle and drinking receptacles shall be removed from any patron before exiting the premises;
- e) Customers shall be actively discouraged from assembling outside the premises at the end of the permissible hours.

20. Any outside area used by the customers wishing to drink or smoke shall be clearly delineated and covered by the CCTV system which shall be installed at the premises;

- a) The outside area shall be monitored by staff or door staff (when employed);
- b) The area shall be cleaned regularly;
- c) Suitable receptacles shall be provided for smokers to dispose of cigarette butts;
- d) Signs shall be displayed in the area requesting customers to keep noise to a minimum;
- e) Patrons who disregard signage and verbal instructions regarding noise shall be asked to move inside and/or leave the premises;
- f) Open containers of alcohol shall not be permitted to be taken beyond the boundary of the outside area.

21. The emptying of bins into skips, and refuse collections shall not take place between 11pm and 8am.

22. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance;

23. The premises licence holder shall ensure that advertising or promotional material for licensable activities at the premises is not placed on any street furniture, structure or public highway not belonging to the premises licence holder. Failure by the premises licence holder to remove any promotional material illegally displayed will be a breach of this condition and any other legislation that applies in Reading in relation to unlawful advertising on street furniture.

e) The protection of children from harm

24. The premises shall at all times operate a challenge 25 policy to prevent any customers who appear to staff members to be under the age of 25 years from purchasing alcohol without having first provided identification.

25. Only a valid driver's licence showing a photograph of the person, a valid passport, national identity card, HM Forces card or proof of age card showing the "PASS" hologram are to be accepted as identification. Notices advertising the Challenge 25 and proof of age policies shall be displayed in prominent positions on the premises.

26. The premises licence holder or duly nominated representative shall be an active member of the local pub watch scheme if such a scheme is operative.

27. For the duration of the licence, the premises shall only operate as and in the style of a Smash (unless any alternative arrangement is agreed with Thames Valley Police and Reading Borough Council).

**Checklist:**

**Please tick to indicate agreement**

- I have made or enclosed payment of the fee.
- I have enclosed the plan of the premises.
- I have sent copies of this application and the plan to responsible authorities and others where applicable.
- I have enclosed the consent form completed by the individual I wish to be designated premises supervisor, if applicable.
- I understand that I must now advertise my application.
- I understand that if I do not comply with the above requirements my application will be rejected.
- [Applicable to all individual applicants, including those in a partnership which is not a limited liability partnership, but not companies or limited liability partnerships]. I have included documents demonstrating my entitlement to work in the United Kingdom (please read note 15).

**IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.**

**IT IS AN OFFENCE UNDER SECTION 24B OF THE IMMIGRATION ACT 1971 FOR A PERSON TO WORK WHEN THEY KNOW, OR HAVE REASONABLE CAUSE TO BELIEVE, THAT THEY ARE DISQUALIFIED FROM DOING SO BY REASON OF THEIR IMMIGRATION STATUS. THOSE WHO EMPLOY AN ADULT WITHOUT LEAVE OR WHO IS SUBJECT TO CONDITIONS AS TO EMPLOYMENT WILL BE LIABLE TO A CIVIL PENALTY UNDER SECTION 15 OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 AND PURSUANT TO SECTION 21 OF THE SAME ACT. WILL BE COMMITTING AN OFFENCE WHERE THEY DO SO IN THE KNOWLEDGE, OR WITH REASONABLE CAUSE TO BELIEVE, THAT THE EMPLOYEE IS DISQUALIFIED.**

**Part 4 – Signatures (please read guidance note 10)**

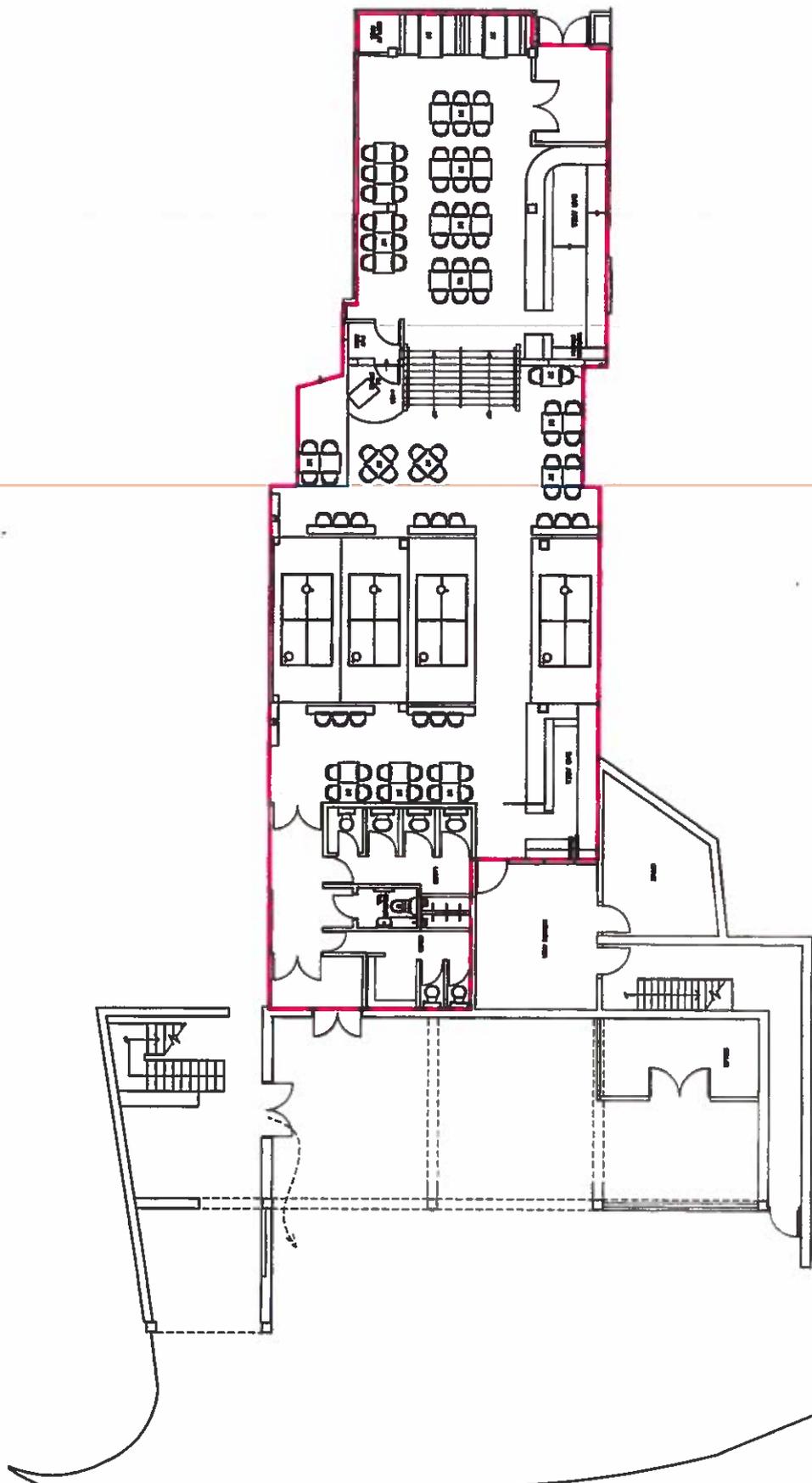
**Signature of applicant or applicant's solicitor or other duly authorised agent (see guidance note 11). If signing on behalf of the applicant, please state in what capacity.**

<b>Declaration</b>	<ul style="list-style-type: none"> <li>• [Applicable to individual applicants only, including those in a partnership which is not a limited liability partnership] I understand I am not entitled to be issued with a licence if I do not have the entitlement to live and work in the UK (or if I am subject to a condition preventing me from doing work relating to the carrying on of a licensable activity) and that my licence will become invalid if I cease to be entitled to live and work in the UK (please read guidance note 15)</li> <li>• The DPS named in this application form is entitled to work in the UK (and is not subject to conditions preventing him or her from doing work relating to a licensable activity) and I have seen a copy of his or her proof of entitlement to work, if appropriate (please see note 15)</li> </ul>
<b>Signature</b>	
<b>Date</b>	10 September 2018
<b>Capacity</b>	Woods Whur 2014 Limited Solicitors for the Applicant

**For joint applications, signature of 2<sup>nd</sup> applicant or 2<sup>nd</sup> applicant's solicitor or other authorised agent (please read guidance note 12). If signing on behalf of the applicant, please state in what capacity.**

Signature	
Date	
Capacity	

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 13) Andrew Woods Woods Whur 2014 Limited Devonshire House 38 York Place			
Post town	Leeds	Postcode	LS1 2ED
Telephone number (if any)	0113 [REDACTED]		
If you would prefer us to correspond with you by e-mail, your e-mail address (optional) [REDACTED]@woodswhur.co.uk			



**LEGEND**

— Dashed area within boundary indicates wall join places

Note:  
 Consumption of alcohol and licensable activities take place within the premises.  
 Furniture shown is for indicative purposes only.

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DATE: 29.06.18	F O R R E V I S I O N	FOR CLIENT REVIEW 21.06.18 FOR CLIENT REVIEW 25.06.18 FOR CLIENT REVIEW 26.06.18 FOR CLIENT REVIEW 27.06.18 FOR CLIENT REVIEW 28.06.18 FOR CLIENT REVIEW 29.06.18	TITLE: <b>PROPOSED FLOOR PLAN FOR LICENSING</b>	PROJECT: <b>SMASH</b> 5 GUN STREET READING RG1 2JR	<b>SMASH READING</b>	
SCALE: 1:125 @A3	REV.	DESCRIPTION	DATE	CLIENT: <b>ECLECTIC BARS</b>		

## THAMES VALLEY POLICE

Division/Station : Reading Police Station Licensing Dept

From : PC 5787 Wheeler

To : Reading Borough Council

Subject :

Ref : Smash, Ground Floor, 5 Gun Street, Reading

Date : 6<sup>th</sup> October 2018**Objection**

To whom it may concern

I PC 5787 Simon Wheeler on behalf of the Chief Officer of Thames Valley Police wish to formally object to the proposed application for a premises licence submitted in relation to Smash, Ground Floor, 5 Gun Street, Reading.

Reading Borough Council Licensing Policy Statement includes detail of its Cumulative Impact policy which exists in order to address the cumulative stress that is caused by the high concentration of late night licensed premises within the defined area of Reading Town Centre.

This cumulative impact has been determined within the policy to have a negative impact on crime and disorder within the town due to the sheer volume and concentration of licensed premises which has a negative impact on the four licensing objectives.

The Council Licensing Policy Statement paragraph 8.6.8, states:-

***8.6.8 Bars/Clubs/music and dancing venues: – Subject to the rebuttable presumption as outlined at paragraph 8.1.9 above, the policy is to refuse applications for such premises. Experience has shown that venues which serve alcohol, often at low prices; provide limited seating for customers; provide facilities for music and dancing; and which are alcohol rather than food-led, have the strongest potential to have a negative impact on the licensing objectives and to add to cumulative impact. Applicants seeking to operate in the CIP area will need to demonstrate that detailed measures proposed in the operating schedule will result in no increase in crime and disorder.***

The Council licensing policy statement clearly defines within paragraph 8.6.8 that the experience within Reading is that venues within the bars category have the strongest potential to have a negative impact on the licensing objectives. In such a cases applicants need to demonstrate the measures they have in place to ensure that “No increase in crime and disorder” will result.

The Secretary of States Guidance issued under Section 182 Licensing Act 2003 states:

***“8.43 Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.”***

In either circumstance it would be expected that the applicant in this situation will address the CIP directly within their application to deal with this presumption of rebuttle.

Thames Valley Police objection to this application is made in order that the Licensing Sub-Committee has the opportunity to sufficiently test this application and make an informed determination whether or not they believe it shall undermine the licensing objectives and negatively impact the Cumulative Impact Policy (CIP).

Thames Valley Police have been consulted regarding this application prior to its submission by the applicant and have been in a position to agree a number of conditions with them prior to this process.

However, there is one main area/ condition with which we have not reached full agreement with the applicant; this regarding the number of door supervisors to be employed at the premises and or a wording of a condition where that determination is set out within a risk assessment.

In order that the prevention of crime and disorder objective is not undermined we feel that this must be addressed within this process and the Sub-Committee provided with details of our concerns.

That being said essentially Thames Valley Police are in support of this application if our concerns over the employment of door supervisors and sufficient numbers are able to be addressed satisfactorily.

We would wish in this situation to place a number of options regarding potential conditions in front of the Sub-Committee, so that if the members were of a mind to grant the licence they are in an informed position to determine which of those options were most suitable to be included within the operating schedule if granted.

Furthermore, it is important to both understand the current licence which is held by the applicant at this premises; what the current impact is based on that licence and the details of a further variation that has been applied for which in effect creates two licences. One being the ongoing current licence and the other regarding this new application.

Firstly, the current licence Smash/Coalition allows for the sale by retail of alcohol and hours open to the public Monday till Thursday till 0330 hours and Friday and Saturday till 0430 hours, and 0230 Sunday.

This current licence covers both the ground floor and the first and second floors of the premises, and in effect creates a singular large premises within the one building that can fully accommodate late night vertical drinking, albeit the first floor area has been closed for a number of months now. The current overall fire risk assessed capacity for the singular premises is 362 persons on the ground floor and 454 in the upper parts totalling 816 occupants.

The proposed capacity for the new premises application is for maximum of 250 persons within Smash (ground floor) and the proposed variation for the upstairs premises a maximum of 350 persons (600 total).

The two current proposed applications although increasing the number of licenses in existence actually reduces the overall current foot print of the premises and ensures

that the current "Smash" brand which is not vertical drinking driven would remain entrenched within the newly created licence via a condition. The applications include both reductions in overall capacity by 218 occupants and a reduction in hours for the sale of alcohol, and hours open to the public, by an average of three hours in relation to the Smash application, and by at least one hour relating to the linked variation..

Arguably if these applications are applied in the correct manner and with suitably robust yet proportionate conditions, then it may be possible to reduce the premises current stress potential and thus reduce the premises impact within the cumulative impact area.

We note that the applicant has stated in their submission letter that they are willing to ensure that this premises licence application does not become effective until the variation has been granted subject to the satisfaction of all parties.

Thames Valley Police feel that that this would be prudent as there are also some areas within the variation application that we would like to be addressed by the applicant prior to the granting of both licenses to the satisfaction of the licensing Sub-Committee.

Unfortunately due to the complexity of this situation both are required to be dealt with in effect simultaneously in order to gain assurances that both processes promote and not undermine the licensing objectives.

It is for this reason that we shall attach our objection to the premises variation as an appendices, in order to show the areas that require further consideration and how they impact on each premises. We feel strongly that this may be of assistance to the Sub-Committee when considering this matter.

In relation to the door supervisor condition proposed by the applicant their current condition offers a minimum of two door supervisors employed from 2100 hours on Friday and Saturday night.

When determining door supervisor numbers we expect premises to look at a number of impact factors and perform a mapping process. These include, type and nature of premises, layout of premises, safety of staff, access and egress management, search processes and external factors. It is also stated that a minimum industry standard of 1:100 security staff is considered.

It is generally accepted within Reading that two door supervisors are required to safely manage entry/ exit at most premises, and this is a model that is supported locally by Thames Valley Police. This ensures the safety of the door staff and their ability to perform checks and searches if required in a protected "cover and contact" environment.

Therefore two door staff are a general basic standard requirement as an initial "set point". However, we have to then consider the management of persons within the premises and how many staff are required for them to be both safe and effective.

As the proposed licence application states the capacity that shall be applied for is 250 occupants we would argue that two door supervisors as a minimum requirement and without further caveat is not suitable or safe, even though this is a premises that purports to be and does currently trade at a lower to medium risk threshold.

This could be addressed by a condition that sets 1) a higher minimum threshold or 2) by a condition that addresses staggered employment of staff based on numbers of occupants.

**We propose the following two options for consideration of the Sub-Committee:**

1)

a) A minimum of 2 SIA licensed door supervisors shall be on duty at the premises on Thursday, Friday and Saturday from 2100hrs until the premises closes to members of the public up to a maximum capacity of 150 persons including staff.

b) This number shall be increased to a minimum of 3 Licensed SIA door supervisors whenever capacity (including staff) exceeds 150 persons.

*(This condition provides for a minimum of two door supervisors managing the entry and one within the premises. Also provides the flexibility if the queue is quiet for two door supervisors to provide cover inside the premises when required. This wording can be amended by the sub-committee and the number when the extra door supervisor is required amended to be higher or lower than 150 persons, and the number of door staff amended higher or lower also ie minimum 3 increased to 4)*

2)

A minimum of 3 Security Industry Authority (SIA) registered door staff shall be employed at the premises on a Thursday, Friday and Saturday night.

*(This can be increased to any number deemed proportionate by the Sub-Committee ie a minimum of 4)*

Each of these conditions we would recommend maintain the second part of the proposed condition provided by the applicant which we are in agreement with:

*"Door staff shall be employed from 2100 hours until 0100 hours or until all Smash customers have dispersed from inside and outside the premises, whichever is later, and at least two door staff will remain outside the premises during this time;*

*(a) At all other times, SIA registered door staff shall be employed at the premises in accordance with a written risk assessment, to be carried out by the Designated Premises Supervisor. The risk assessment shall be produced to an authorised officer of Reading Borough Council or Thames Valley Police upon request."*

Finally in relation to our proposed conditions Thames Valley Police are aware of the Licensing committees support for ensuring that door supervisors are both identifiable and visible for their own safety and the safety of the customers that they are managing. Currently within this application an initial condition which had been agreed with the Police has been proposed, however we have recently been looking at the suitability of such conditions to ensure the aims of such a condition are met, as well as ensuring they are respondent to the specifics of individual premises.

**We therefore recommend the following two conditions for agreement if the licence were to be granted:**

(i) The Premises Licence Holder (PLH) shall ensure that all door supervisors whilst employed at the premises shall wear hi visibility jackets/ tabards in bright green, yellow or orange in order that they can be clearly visible and identifiable at all times to the public and via CCTV both internally and externally. When tabards are worn, hi visibility armbands must also be worn that incorporate displaying SIA badges. If hi visibility full sleeved jackets are worn the PLH must ensure that all door supervisors badges are also displayed via an easily visible arm band of a different hi visibility colour to the jacket that is being worn.

OR

(ii) When employed, door staff will wear clearly visible clothing that easily distinguishes them from patrons. Hi visibility armbands shall be worn at all times displaying their Security Industry Authority badge. The uniform worn by door staff must be suitable to ensure that they are clearly visible via both internal and external CCTV camera systems. Hi Visibility fluorescent jackets/tabards must be worn by door staff at any time when stationed at the entry/exit of the premises and whenever on the public highway, and during dispersal;

To provide further information to the Sub-Committee Thames Valley Police are providing the following statistics:

Overall current recorded neighbourhood crime statistics covering major town centres show that within the last twelve months 1237 offences occurred within the night time economy between 1800 and 0600 hours. **(SEE APPENDIX TVP1)**

Current calls for service statistics provided by Thames Valley Police show the number of calls for service within the Cumulative Impact Area for a two year period from January 2017 to January 2018 broken down by streets and times. **(SEE APPENDIX TVP2)**

Figures have also been produced to show the current call for service statistics that have been recorded for Gun Street alone between January 2017 to July 2018 broken down by times. **(SEE APPENDIX TVP3)**

If we consider the current Smash/Coalition licensable hours and operating schedule in comparison to the proposed reductions in capacity and hours, it could be argued that they may be helpful in reducing these figures in the future.

In summary, Thames Valley Police are generally supportive of this application in conjunction with the variation of the current licence with which this application is inextricably linked. As long as the concerns that we have outlined can be addressed to the satisfaction of the licensing Sub-Committee we believe that if the recommended amendments are made that the licensing objectives are likely to be promoted and not undermined by this application when comparing the potentially newly created licenses to the current existing licence which provides far greater scope for licensable activity and regulated entertainment.

## **APPENDICES**

Appendix TVP/1 – Night Time Economy Crime Statistics 1800-0600 Apr 15 – Aug 18

Appendix TVP/2 – Urn/Calls for Service Statistics CIP area Jan 2017 – Jan 2018

Appendix TVP/3 – Calls for Service Statistics Gun Street Jan 2018 – July 2018

Appendix TVP/4 – Thames Valley Police Smash/Coalition full variation objection

**This report produces information for police recorded offences in Neighbourhoods covering major town centres occurring between 1800 and 0600. The information provided to assist in the evaluation of partnership activity to reduce crime. The information covers offences of violence, harassment, criminal damage and public order.**

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**Summary of Night Time Economy crimes in Berkshire town centres in last twelve months**

	Arson	Criminal Damage	Public Order Offences	Violence with Injury	Violence without Injury	All Listed Offences
CA CHALVEY / UPTON / TOWN	10	158	85	192	300	743
EA ABBEY / BATTLE	22	204	106	472	433	1237
EG WOKINGHAM TOWN	4	115	16	85	66	285
FA NEWBURY TOWN CENTRE	8	59	22	100	130	319
LA WINDSOR CENTRAL	1	94	58	159	153	465
LC MAIDENHEAD CENTRAL	3	89	54	100	129	375
LF BRACKNELL TOWN CENTRE	1	21	12	38	32	104

**Summary of Night Time Economy crimes in Berkshire town centres by month since 1 April**

	CA CHALVEY / UPTON	EA ABBEY / BATTLE	EG WOKINGHAM TOWN	FA NEWBURY TOWN CENTRE	LA WINDSOR CENTRAL	LC MAIDENHEAD CENTRAL	LF BRACKNELL TOWN CENTRE
2015/2016 April	85	84	19	17	30	24	7
2015/2016 May	41	109	11	24	27	33	4
2015/2016 June	53	86	17	29	39	31	4
2015/2016 July	52	96	16	17	54	22	10
2015/2016 August	31	95	22	27	42	38	7
2015/2016 September	46	93	15	21	30	38	8
2015/2016 October	40	88	18	19	27	27	6
2015/2016 November	42	104	24	35	58	35	5
2015/2016 December	41	88	19	31	39	34	4
2015/2016 January	46	70	13	20	38	32	2
2015/2016 February	37	81	22	20	32	24	11
2015/2016 March	22	74	17	17	33	43	6
2016/2017 April	49	87	17	13	40	25	7
2016/2017 May	45	80	14	22	30	18	6
2016/2017 June	38	84	23	25	31	19	5
2016/2017 July	35	87	33	32	36	27	14
2016/2017 August	54	71	25	23	38	28	13
2016/2017 September	57	89	16	25	14	23	5
2016/2017 October	35	88	19	29	29	24	13
2016/2017 November	38	85	10	28	31	20	9
2016/2017 December	31	103	17	31	47	42	8
2016/2017 January	40	78	11	19	29	19	7
2016/2017 February	32	68	15	21	36	23	18
2016/2017 March	45	85	17	18	31	35	14
2017/2018 April	35	77	20	36	35	35	13
2017/2018 May	46	101	19	19	30	33	6
2017/2018 June	30	94	22	26	20	29	11
2017/2018 July	45	108	16	23	34	26	7
2017/2018 August	64	106	14	28	36	43	4
2017/2018 September	34	84	22	27	34	16	11
2017/2018 October	45	130	14	33	52	16	12
2017/2018 November	52	98	20	24	23	25	6
2017/2018 December	47	98	28	22	32	34	10
2017/2018 January	58	103	23	17	32	21	7
2017/2018 February	51	88	22	14	29	33	4
2017/2018 March	75	93	26	28	48	36	12
2018/2019 April	64	121	18	22	37	39	8
2018/2019 May	81	109	23	23	36	31	16
2018/2019 June	73	107	21	36	41	42	6
2018/2019 July	89	111	26	42	53	44	8
2018/2019 August	78	95	22	31	48	38	4

**Crimes in Abbey and Battle in last twelve months**

Crime	Description	Highway	Central	Medical	Public Order	Vehicle	Sex	Street	Traffic	Not Recorded
Asst	Assault with a dangerous weapon			2						
Crimes Damage	Other criminal damage under £5000 dwelling					8		2		10
Crimes Damage	Other criminal damage under £5000 other							1		16
Crimes Damage	Other criminal damage under £5000 other building	7	3			11	6			25
Crimes Damage	Other criminal damage under £5000 vehicle	11	3		3	3	11			24
Crimes Damage	Other criminal damage under £5000 vehicle	1	3			47	6			23
Crimes Damage	Other criminal damage under £5000 vehicle	1								2
Public Order Offences	Disorderly conduct					2	1			13
Public Order Offences	Disorderly conduct									4
Public Order Offences	Disorderly conduct									2
Public Order Offences	Disorderly conduct	2		1						4
Public Order Offences	Disorderly conduct	1				8				13
Public Order Offences	Disorderly conduct	1			1	8	1			21
Public Order Offences	Disorderly conduct									2
Public Order Offences	Disorderly conduct									7
Public Order Offences	Disorderly conduct	1				4				8
Public Order Offences	Disorderly conduct					1				1
Violence with Injury	Assault with a dangerous weapon	67	1	1	1	67	7	1		230
Violence with Injury	Assault with a dangerous weapon	1				1				5
Violence with Injury	Assault with a dangerous weapon									1
Violence with Injury	Assault with a dangerous weapon	1				3				1
Violence with Injury	Assault with a dangerous weapon	1	1			7				8
Violence with Injury	Assault with a dangerous weapon					1				11
Violence with Injury	Assault with a dangerous weapon									3
Violence with Injury	Assault with a dangerous weapon	48	3		1	61	14	2		214
Violence with Injury	Assault with a dangerous weapon					1	3			10
Violence with Injury	Assault with a dangerous weapon					1				3
Violence with Injury	Assault with a dangerous weapon									1
Violence with Injury	Assault with a dangerous weapon	1				2	2			6
Violence with Injury	Assault with a dangerous weapon									2
Violence with Injury	Assault with a dangerous weapon					1				1
Violence with Injury	Assault with a dangerous weapon									1
Violence with Injury	Assault with a dangerous weapon									5

**Graph to show the number of URN records relating to Gun Street (calls for service) recorded between 17<sup>th</sup> January 2018 and 31<sup>st</sup> July 2018 on Police command & control between 2200-0500hrs.**



Times of records	No. of URNS
2200-2300	1
2300-0000	2
0000-0100	8
0100-0200	7
0200-0300	12
0300-0400	14
0400-0500	5
<b>Total</b>	<b>49</b>

**Station Road calls for service 15/01/16 -  
15/01/17 and 16/01/17 - 16/01/18  
between 2200 hrs - 0500 hrs**



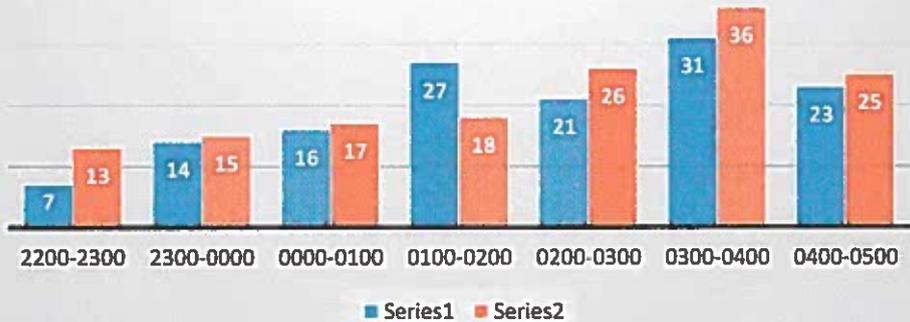
**Friar Street calls for service 15/01/16 -  
15/01/17 and 16/01/17 - 16/01/18  
between 2200 - 0500 hours**



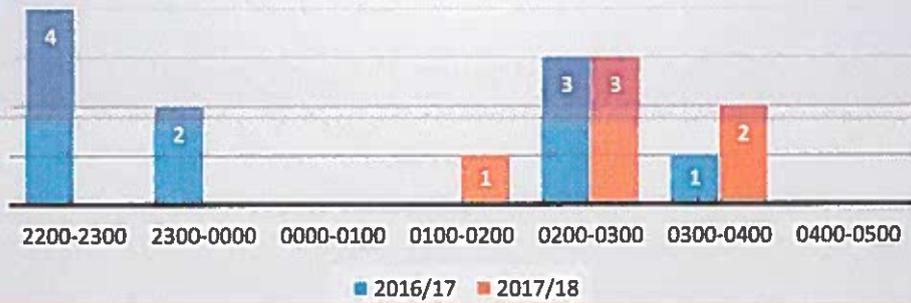
**West Street calls for service 15/01/16 -  
15/01/17 and 16/01/17 - 16/01/18  
between 2200 - 0500 hrs**



**St Marys Butts calls for service 15/01/16 -  
15/01/17 and 16/01/17 - 16/01/18  
between 2200 - 0500 hrs**



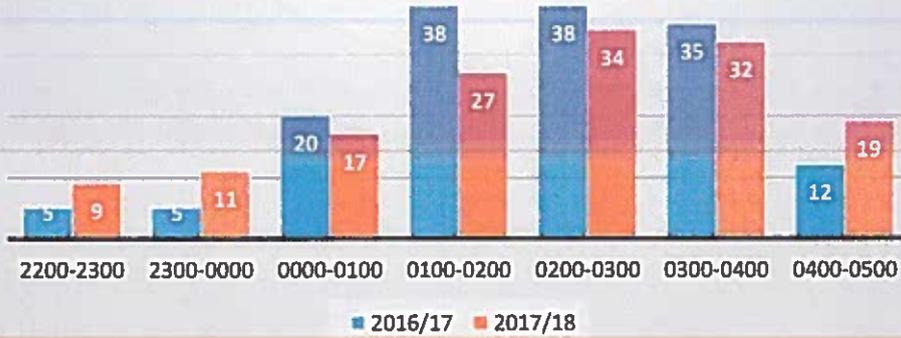
**Chain Street calls for service 15/01/16 -  
15/01/17 and 16/01/17 - 16/01/18  
between 2200 - 0500 hrs**



**Union Street calls for service 15/01/16 -  
15/01/17 and 16/01/17 - 16/01/18  
between 2200 - 0500 hrs**



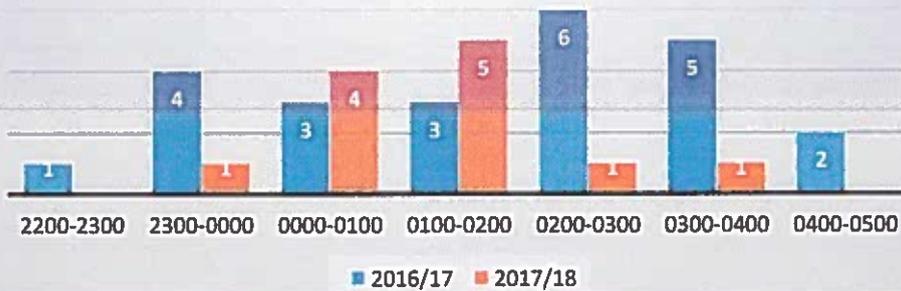
**Gun Street calls for service 15/01/16 - 15/01/17 and 16/01/17 16/01/18 between 2200 - 0500 hrs**



**Hosier Street calls for service 15/01/16 - 15/01/17 and 16/01/17 - 16/01/18 between 2200 - 0500 hrs**



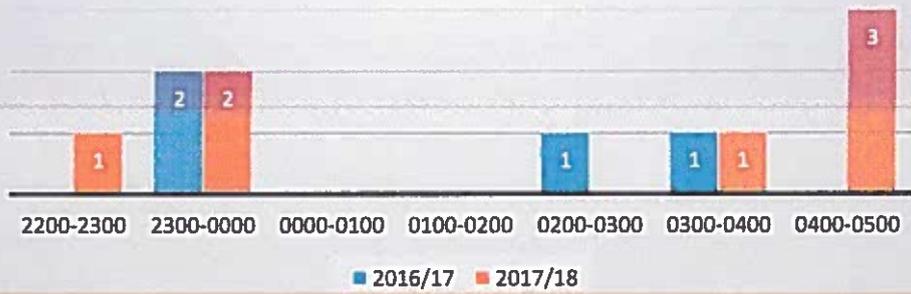
**Castle Street calls for service 15/01/16 -  
15/01/17 and 16/01/17 - 16/01/18  
between 2200 - 0500 hrs**



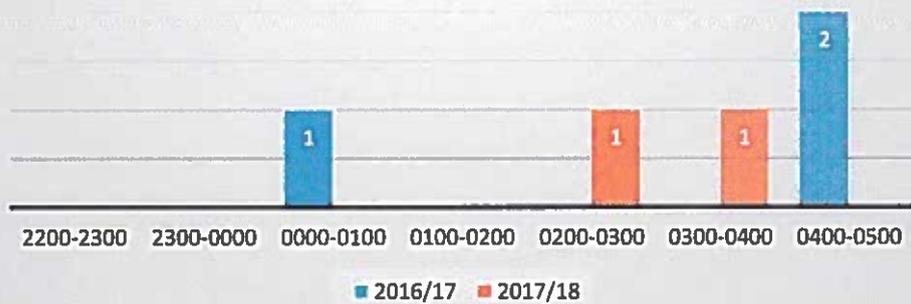
**Blagrove Street calls for service 15/01/16 -  
15/01/17 and 16/01/17 - 16/01/18  
between 2200 - 0500 hrs**



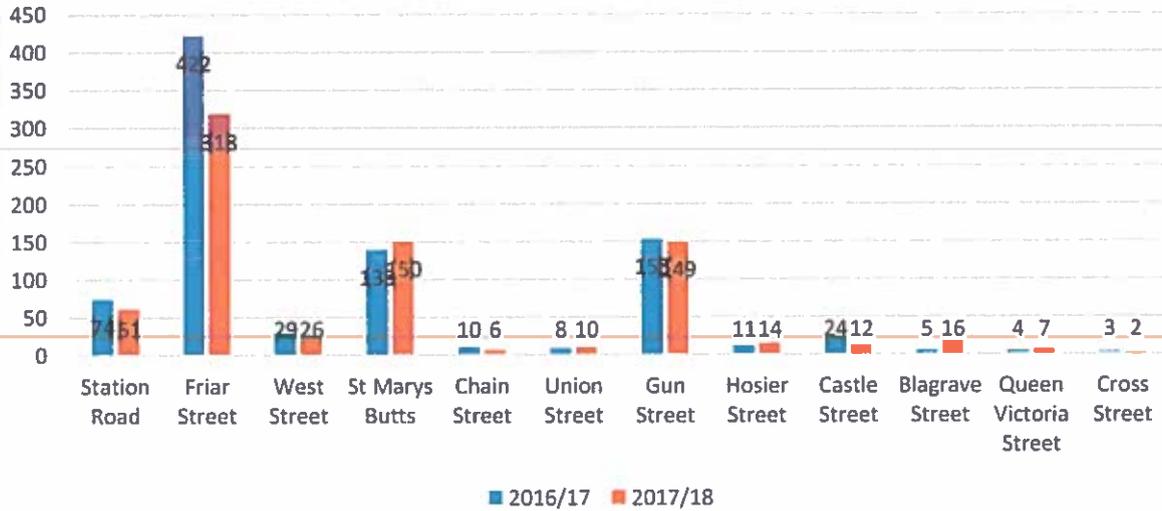
**Queen Victoria Street calls for service  
15/01/16 - 15/01/17 and 16/01/17 -  
16/01/18 between 2200 - 0500 hrs**



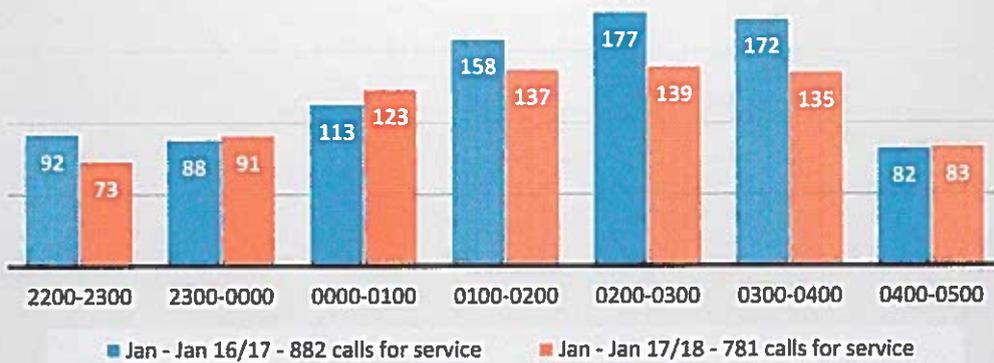
**Cross Street calls for service 15/01/16 -  
15/01/17 and 16/01/17 - 16/01/18  
between 2200 - 0500 hrs**



No.of calls for service per street within the Reading NTE/Cumulative Impact Area between 2200 - 0500 hrs between 15/01/2016 - 15/01/2017 and 16/01/2017 - 16/01/2018



Combined NTE calls for service comparing the annual periods 15/01/16-17 and 16/01/17-18 between the hours of 2200 and 0500.



<b>Name of Officer</b>	Richard French						
<b>Type of Application</b>	Grant of Premises Licence - Licensing Act 2003						
<b>Name of Premises</b>	Smash						
<b>Address</b>	Ground Floor, 5 Gun Street						
	Reading						
	RG1 2JR						
<b>Licensable Activities</b>	Films/Live Music/Recorded Music/Performance of Dance/Anything Similar to Music and Dance - 1100hrs until 0030hrs (Sunday to Wednesday) 1100hrs until 0100hrs (Thursday to Saturday)						
	All Indoor and Outdoor						
	Late Night refreshment - 2300hrs until 0030hrs (Sunday to Wednesday) 2300hrs until 0100hrs (Thursday to Saturday)						
	Indoor and Outdoor Sale of alcohol- 1100hrs until 0030hrs (Sunday to Wednesday) 1100hrs until 0100hrs (Thursday to Saturday)  On and Off the premises						
<b>Finish Times</b>	<b>Mon</b>	<b>Tue</b>	<b>Wed</b>	<b>Thu</b>	<b>Fri</b>	<b>Sat</b>	<b>Sun</b>
	0100	0100	0100	0130	0130	0130	0100
<b><u>Content of Application:</u></b> The application is for the grant of a premises licence on the Ground Floor at 5 Gun Street, Reading. The premises is within Reading Borough Council's Town Centre Cumulative Impact Area.  The application is for the hours and activities stated above and is applied for by Eclectic Bars Trading Ltd.							
<b><u>Licensing Officer's Comments:</u></b>  In order to actively <u>promote</u> the licensing objectives, namely the prevention of crime and disorder; prevention of public nuisance and public safety and in accordance with the Council's Statement of Licensing Policy, specifically Section 8 that deals with Cumulative Impact within Reading town centre, the Licensing team object to the application submitted by Eclectic Bars Trading Ltd and respectfully ask the Licensing Sub Committee to refuse it for the following reasons:							

1. The applicant has failed to rebut the presumption that applications for the grant or variation of a premises licence within the Cumulative Impact Area will be refused if relevant representations are received. Simply putting conditions in an operating schedule - conditions that have no explanation as to why the applicant believes they either rebut the Cumulative Impact Policy or how they promote the licensing objectives - is not a rebuttal of the policy stating that licence applications - particularly for late night bars and night clubs - will be refused.

2. The splitting of the current premises called Smash/Coalition - which has the benefit of one premises licence already - into two distinct premises with two separate licences and two separate, distinct operators - will add to the cumulative impact in the town and have a negative impact on the promotion of the licensing objectives.

3. Whilst the applicant has put in more conditions in the operating schedule than the previous application they withdrew, there is no evidence from the premises recent compliance history that they are an applicant who takes compliance particularly seriously. Licensing inspections carried out at the premises have shown that most of the conditions on their current licence are in breach and would seem to cast doubt on the ability of the applicant to actively promote the licensing objectives. The current licence holder is already committing criminal offences by being in breach of multiple licence conditions. As stated previously, copying conditions into an operating schedule with no explanation as to why they're appropriate is not sufficient to rebut the Cumulative Impact Policy or does not give a satisfactory explanation to the applicant's lack of compliance.

4. The premises current planning permission - attached to this representation - states that the premises does not have any permission to be a night club or operate past midnight. Failing to obtain the correct planning permission for the proposed activities - which is contrary to the Council's long standing and unchallenged licensing policy - shows a disregard to regulation - particularly as the premises is currently operating in breach of the planning consent.

5. Inspections of the premises demonstrated that it was in a poor state of repair. Concerns over staircases - which customers have access to - and blocked fire exits have been flagged to the licence holder by Thames Valley Police. This would seem to undermine the public safety licensing objective and the enforcing authorities wider duty to protect the public.

6. The activities applied for in the application include live and recorded music inside and outside which are also contrary to planning permission (as the planning permission has already determined a restriction of hours until midnight because of potential public nuisance). Such late hours for regulated entertainment are also likely to undermine the licensing objective of prevention of public nuisance.

7. It should be noted that the application states that 'the premises operates as a bar offering, amongst other things, a mixture of craft ales and pizza prepared in a traditional pizza oven'. According to the premises own website, food is only served until 10pm. Therefore, the predominant activity of the premises is a wet led alcohol and entertainment night club with upright vertical drinking. This type of venue is contrary to the Council's licensing policy and the premises' planning consent and has the largest potential to undermine the licensing objectives and

add to the cumulative impact in the town centre. The plan attached to the application also indicates that there will be upright vertical drinking as there is insufficient seating in the venue if it were operating at capacity.

I will now deal with all of the above points in turn:

#### 1. Failure to rebut the Council's Cumulative Impact Policy

1.1 Reading Borough Council, as the relevant licensing authority, has had a Cumulative Impact area in the town centre since late 2010. Section 8 of the Council's Licensing Policy outlines the policy that will apply to applications for licences in the town centre. A map of the area is attached at appendix RF-1.

1.2 The policy applies to all grants and material variations for premises licences and club premises certificates and relates to the potential impact on the promotion of the licensing objectives of a significant number of premises concentrated in one area - in this case, the town centre. There are currently 181 premises in the town centre cumulative impact area. 142 of the premises have a licence to operate past 2300hrs and 132 of those premises are licensed to sell alcohol.

1.3 Paragraph 8.1.4 of the policy states that there are particular concerns about the number of licensed premises in parts of the town centre - particularly Friar Street and Gun Street. This application deals with an application for the grant of a premises licence in Gun Street.

1.4 Paragraph 8.1.9 states that the effect of keeping the cumulative impact policy is to create a rebuttable presumption that applications for new premises licences and club premises certificates or material variations will be refused if relevant representations are received. This application is for the grant of a premises licence and relevant representations have been made in respect of its effect on Cumulative Impact.

1.5 Paragraph 8.1.11 states that if responsible authorities are concerned that the licensing objectives will be impacted by an application then relevant representations will be made and the application would proceed to a hearing. It is up to the applicant to rebut the Council's Cumulative Impact policy and demonstrate that there will be no negative impact on the promotion of the licensing objectives. Failure to rebut the presumption of refusal would likely lead to the application being refused. The applicant in this matter has not rebutted the presumption of refusal.

1.6 Paragraph 8.6.8 of the licensing policy specifically deals with bars, clubs and dancing venues. It states that subject to the rebuttable assumption mentioned in paragraph 8.1.9, the policy is to refuse applications for such premises as experience has shown that alcohol led premises that provide entertainment facilities have the strongest potential to have a negative impact on the promotion of the licensing objectives and to add to cumulative impact. We know that this application is for an alcohol led venue as the premises only serves limited food until 2200hrs.

1.7 The applicant has failed to address and therefore rebut the Council's Cumulative Impact Policy. The application form contains conditions - presumably as

the applicant believes they are sufficient to promote the licensing objectives. More than one licensing inspection - with the most recent one taking place on 23<sup>rd</sup> July 2018 - has shown that the applicant has already been found in breach of those conditions contained on it's existing licence. (These breaches are covered in section 3 of this representation). Therefore serious questions about the applicant's attitude towards compliance and the promotion of the licensing objectives need to be asked. If the applicant has been found in breach of conditions previously - conditions that are fairly easy to adhere to - then questions have to be asked as to the likelihood that they will comply with a few more as proposed.

1.8 The approach taken in the Council's long standing and unchallenged licensing policy is supported by case law. The Council has clearly stated in the Licensing Policy it's approach to applications within the Cumulative Impact Area as noted within the paragraphs above. The case of *British Beer and Pub Association (and others) v Canterbury City Council* (2005) EWHC 1318 (Admin) is clear on the importance of the licensing policy; it's importance in setting out it's expectations regarding licensing and guiding applicants in relation to those expectations. Mr Justice Richards stated:

(Para 82) A policy relating to the decision-making stage under s 18(3) not only guides the decision-maker but also serves to inform an Applicant about what he should consider in preparing his application.... An application that takes account of the matters set out in the policy, for example by including what is referred to in the policy or by giving a reasoned justification for not doing so, is less likely to give rise to relevant representations and more likely to be granted without additional conditions, whether under the administrative procedure in the absence of relevant representations or on a decision by the council under s 18(3) in the event of relevant representations.

(Para 83) The council is entitled to indicate in the policy its own expectations with regard to the promotion of the licensing objectives; and I do not think that an Applicant can legitimately complain if a failure to take account of those expectations gives rise to representations.

1.9 Applicants for grant and variation applications within the Cumulative Impact Area have to rebut the presumption that the application will be refused. It is not incumbent on the Council or police to adduce evidence to prove there will be a negative effect on the promotion of the licensing objectives. The applicant is required to provide such a rebuttal within the application. This reverse burden was confirmed in the case of *(R) on the application of Portsmouth City Council v 3D Entertainment Group* (2011) EWHC 507 (Admin) where J Supperstone found that Magistrates had erred in law by incorrectly applying Portsmouth City Council's Cumulative Impact Policy to put the onus on the Council and Police to adduce evidence of a negative cumulative impact. He stated:

(Para 18) The magistrates, in my judgment, erred in law in concluding that the Appellant (Portsmouth City Council) had to have "hard evidence" from the police and that there was duty upon it to "investigate the cumulative impact". The burden was on the Respondent (3D Entertainment) to persuade the Appellant (Portsmouth City Council) that the operating schedule was such that there would be no cumulative impact. In applying the wrong test, the magistrates fell into error in finding that the Appellant

(Portsmouth City Council) had acted unreasonably.

1.10 The onus is on the applicant to rebut the Council's policy. It is not for the Council or police to adduce any further evidence - which is already contained within the policy. Again, the applicant has failed to mention or address this matter at all within the application form. Therefore the application, having elicited relevant representations must be refused.

1.11 The Licensing Authority must consider each application on its own merits with a view to assessing the likely effect of granting such a licence on the promotion of the licensing objectives (Paragraph 18 (6) of the Licensing Act 2003). This is confirmed in (R) on the application of Hope and Glory Public House v Westminster City Council (2011) EWCA Civ31 where Lord Justice Toulson stated:

(Para 42) Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance.

Although such questions are in a sense questions of fact, they are not questions of the 'heads or tails' variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact.

1.12 The above approach to grant applications and the prospective nature of the licensing objectives was confirmed in East Lindsey DC v Abu Hanif (2016) EWHC 1265 Admin, where Mr Justice Jay stated:

(Para 18) The prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.

1.13 The applicant has also failed to take cognisance of the Secretary of States Guidance. Paragraphs 8.41 to 8.49 are particularly pertinent to grant applications. Section 8.43 is particularly pertinent to applications within a Cumulative Impact Area:

8.43 Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.

1.14 Applicants should be having regard to the Council's Licensing policy and the Secretary of State's Guidance when making an application. Section 8.43 of the

guidance clearly says that applicants are expected to demonstrate how the Cumulative Impact Policy will impact on the application and take steps to mitigate it. Given that the applicant has failed to mention the cumulative impact policy in the application, has failed to take cognisance of the Council's Licensing policy, has failed to rebut the Cumulative Impact policy and has not had regard to the guidance, then the application must be refused.

## 2. Splitting the premises

2.1 The premises at 5-6 Gun Street currently has a premises licence for the entire building - that is the ground floor where 'Smash' currently is and the first floor and mezzanine level which currently has the venue called 'Coalition'.

2.2 Both Smash and Coalition are covered under the same premises licence and the licence holder - Eclectic Bars Trading Ltd - are responsible for the whole building. They are the current applicants in this matter relating to Smash.

2.3 This grant application for Smash and a further variation application in relation to the whole building to split the building into two is therefore creating another licensed premises within the town centre. There will be two separate licence holders carrying out two distinct businesses. Both are proposed to operate to the same times as stated on page 1 of this representation. This adds further premises to the current 181 premises already in the town and adds to the cumulative impact in the town.

2.4 The relevant parts of the cumulative impact policy as mentioned above (8.1.1; 8.1.4; 8.1.9; 8.1.11; 8.6.8) all make reference to the number of licences in the cumulative impact area. This application and the associated application for the first floor and mezzanine level of the building is adding two licences to the town centre. This is clearly going to have a negative impact on the promotion of the licensing objectives and will only add to the cumulative impact in the town. There is no detail within the application about how the two separate entities will be managed; how the prevention of crime and disorder licensing objective will be actively promoted and no explanation as to why the applicant believes that replicating conditions from an existing licence - which are not currently being complied with - is sufficient for a new licence to be granted.

## 3. The Conditions proposed within the operating schedule of the application

3.1 The applicant has conditions within the application form. There is no explanation as to why the applicant believes these conditions are sufficient to promote the licensing objectives.

3.2 Licensing inspections carried out at the premises - which is under the control of Eclectic Bars Trading Ltd - have found that these conditions are currently in breach. Each breach of condition is a criminal offence; is prosecutable under Section 136 (1) of the Licensing Act 2003 and means that licensable activities are being carried out not in accordance with an authorisation.

3.3 The most recent inspection was carried out by Thames Valley Police on 23<sup>rd</sup> July 2018. The inspection noted that only three conditions out of seventeen were being complied with. A copy of the inspection letter can be found at appendix RF-2 and identified non compliance in the areas of CCTV; door supervision; staff training and many other matters that are crucial to promoting the licensing

objectives at any premises - let alone a premises in a Cumulative Impact Area. These areas are once again proposed as conditions in this application. If the applicant cannot adhere to the conditions on the current licence, then severe doubt has to be raised over their capability or willingness to adhere to the conditions proposed in the operating schedule.

3.4 The inspection on 23<sup>rd</sup> July 2018 also identified that none of the staff in attendance at the premises during the inspection had been authorised to sell alcohol. The mandatory conditions state that all sales of alcohol must be made or authorised by a personal licence holder. The only authorisation list in place was from the previous DPS who was no longer at the premises.

3.5 The letter detailing the inspection also highlighted a number of other concerning matters:

- a) Staff were not aware of the licensing objectives - including the DPS;
- b) Staff confirmed they had received no training;
- c) Staff confirmed that food was only sold until 2200hrs each day;
- d) Staff confirmed that the premises closed at approx midnight during the week;
- e) There was a general lack of compliance and due diligence being carried out at the premises - in clear breach of the premises licence conditions.
- f) The general poor state of the building in terms of compliance with fire regulations and the obstruction of staircases.

3.6 The lack of compliance and due diligence was perceived as serious enough to instigate a performance meeting process with the premises licence holder and DPS. Therefore, the licence holder - who is the applicant in this matter - has already shown that they have been breaching the conditions on the licence. These are the same conditions they now state in their new application will be sufficient to promote the licensing objectives. Therefore, the applicant is already undermining the promotion of the licensing objectives; committing criminal offences and adding to the cumulative impact in the town.

3.7 The inspection of 23<sup>rd</sup> July 2018 is not the only time that the premises has been found to be non compliant with its licence. Again, Eclectic Bars Trading Ltd, were the licence holder at the time of inspection. An inspection was carried out at the premises on 16<sup>th</sup> March 2017. A copy of that inspection letter is attached at appendix RF-3.

3.8 Issues identified at the inspection of 16<sup>th</sup> March 2017 were:

- a) Breach of condition in relation to completion of the door book;
- b) Breach of condition in relation to the use of an incident book;
- c) Breach of condition in relation to a lacking dispersal policy;
- d) Breach of condition in relation to a lacking search policy;
- e) Breach of condition in relation to lack of venue queuing policy.

3.9 All of the above breaches are a separate criminal offence; demonstrate that the premises was non compliant - some of the non compliance was similarly found in the latter inspection of 23<sup>rd</sup> July 2018 and casts into doubt, again, why the applicant believes that these conditions enclosed in their current application are suitable and robust enough to promote the licensing objectives. The applicant does not give the impression that they take their licensing responsibilities seriously or are capable of promoting the licensing objectives.

3.10 Condition 14 on the licence relates to flyposting. Flyposting is prohibited in Reading under the Town and Country Planning Act. There is also a condition on the premises licence to prohibit this which the premises licence holder has been in breach of on a number of occasions. Flyposting was reported to the licence holder on 25<sup>th</sup> August 2017; 6<sup>th</sup> February 2017; 23<sup>rd</sup> September 2009 - again showing the disregard to licensing compliance and regulatory enforcement.

3.11 A visit was also made to the premises on 22<sup>nd</sup> February 2017 to discuss issues that had occurred at the premises in September 2016 and January 2017. An email detailing this meeting can be found at appendix RF-4.

3.12 A licensing inspection was also undertaken on 18<sup>th</sup> August 2015 which also uncovered breaches of the premises licence. This can be found at appendix RF-5

#### 4. The premises current planning permission

4.1 Whilst acknowledging that planning and licensing are two separate regulatory regimes, there is inherently an overlap between them when it comes to the licensing of premises. Both planning and licensing are, in effect, trying to achieve the same goals in ensuring that the town centre is a viable, sustainable and vibrant place for the residents of Reading and elsewhere to enjoy.

4.2 The Secretary of State's Guidance to the Licensing Act says at paragraph 14.63 that:

14.63 It is recommended that statements of licensing policy should provide clear indications of how the licensing authority will secure proper integration of it's licensing policy with local crime prevention, planning, transport, tourism, equality schemes, cultural strategies and any other plans introduced for the management of town centres and the night time economy. Many of these strategies are not directly related to the promotion of the licensing objectives but, indirectly, impact upon them.

4.3 It goes on to say, at paragraph 14.65 that:

14.65 There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of the premises for commercial purposes....Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees...

4.4 The guidance is therefore clear that the Council as a whole should ensure that policies and strategies are consistent with each other. It is also clear that this should be expressed within the Council's Licensing Policy.

4.5 The Council's long standing and unchallenged licensing policy states the following:

7.1 The Authority recognises that licensing applications should not be seen as a re-run of the planning application process and that there should be a clear separation of the planning and licensing regimes to avoid duplication and inefficiency. However, the Authority will normally expect applicants to demonstrate that their proposed use of the premises is lawful in planning terms, including complying with any conditions that may be

imposed upon the planning consent.

4.6 Therefore the licensing policy and guidance is quite clear that there is an onus on the applicant to have achieved the correct planning permission for the premises and to be adhering to any relevant conditions. This isn't, as is often stated, an instance of the licensing authority trying to re-run the planning process, but is a simple, sensible and coherent approach to policy integration across the Council. As stated, the Council's Licensing policy is longstanding and unchallenged and therefore we expect all responsible operators to adhere to this.

4.7 Because the requirement to achieve planning permission is part of the Council's Licensing Policy then it is a proper matter for the Licensing Committee to consider. Helpfully, a case heard in Thames Magistrates Court called La Brea Ltd v London Borough of Hackney has shown that planning can be a material consideration relevant to the promotion of the licensing objectives - particularly when it is contained within an unchallenged licensing policy - as it shows that an applicant has a disregard to their regulatory responsibilities. A summary of this judgement is attached at appendix RF-6.

4.8 The current planning permission document for 5 Gun Street is attached at appendix RF-7. The current premises licence holder and applicant in this matter - Eclectic Bars should be aware that the planning consent - dated 4<sup>th</sup> May 2007 only permits:

- a) A3 restaurant use as the planning consent was specifically varied from D2 Night Club use to restaurant use;
- b) The premises shall not be used for the preparation or sale of food outside the hours of 0800hrs and 2400hrs - Monday to Sunday.

4.9 Therefore not only does the applicant have no planning permission to carry out the activities they have applied for in this application; they also have no permission to carry out those activities now - which we know that they have been. It should also be noted that the restriction on hours was put in place to 'protect local residents from unreasonable disturbance arising from the use'. The planning authority - who are also a responsible authority under the Licensing Act - have therefore already determined that operating past midnight will cause undue disturbance. The prevention of public nuisance is a licensing objective and the Licensing Authority is duty bound to prevent public nuisance from occurring.

4.10 The applicant has therefore been using the premises in breach of its planning permission and has shown a disregard to its regulatory obligations. This is a further and proper matter for the licensing committee to take into account when assessing whether the applicant will actively promote the licensing objectives and adhere to any permissions granted to it.

## 5. Premises in poor state of repair

5.1 The Licensing inspection of 23<sup>rd</sup> July 2018 identified a number of public safety issues. Details of these are attached at appendix RF-8.

5.2 Given the poor state of the premises and the seeming lack of compliance with fire safety, this would likely undermine the public safety licensing objective. It also demonstrates, again, that the applicant does not seem to take their regulatory obligations seriously.

## 6. Licensable activities of live music and recorded music

6.1 The Licensing authority has to consider the likely effect of granting any licence on the promotion of the licensing objectives. As mentioned previously, the licensing objectives are prospective and appropriate and proportionate steps should be taken to ensure they are not undermined.

6.2 The applicant has applied for regulated entertainment (for example, live music, films, performance of dance and recorded music) until 0030hrs on a Sunday through to Wednesday and until 0100hrs on a Thursday through to Saturday.

6.3 It has already been stated above that the premises does not have planning permission to open or carry out licensable activities past midnight. It has already been mentioned that a restriction on hours was placed on the planning consent due to potential issues of public nuisance. It has also been previously noted that the Council's unchallenged licensing policy clearly states that applicants should achieve the correct planning consent and adhere to the conditions of that permission.

6.4 As well as applying for regulated entertainment until very late hours, the applicant has also applied for those activities to take place indoors and outdoors. No rationale is given within the application as to why the applicant has done this. The likely effect of these proposals would be to undermine the licensing objective of prevention of public nuisance and cause undue disturbance to any nearby businesses and residents. No control measures seem to have identified within the application to manage this potential outbreak of noise.

## 7. Selling of food

7.1 The application states that 'the premises operate as a bar offering, amongst other things, a mixture of craft ales, pizza prepared in a traditional pizza oven and table tennis tables. It should be noted that this one line description of the premises does not point out that food, by the premises staff own admission and the company website, only sells food up to 2200hrs. (appendix RF-9) The applicant has applied for hours of operation and licensable activities until 0030hrs and 0100hrs on the weekend. It is therefore operating as an alcohol led, vertical drinking night club from 2200hrs onwards. This is clearly contrary to the cumulative impact policy (as mentioned above) as well as a breach of the premises planning permission (as mentioned above).

## Summary

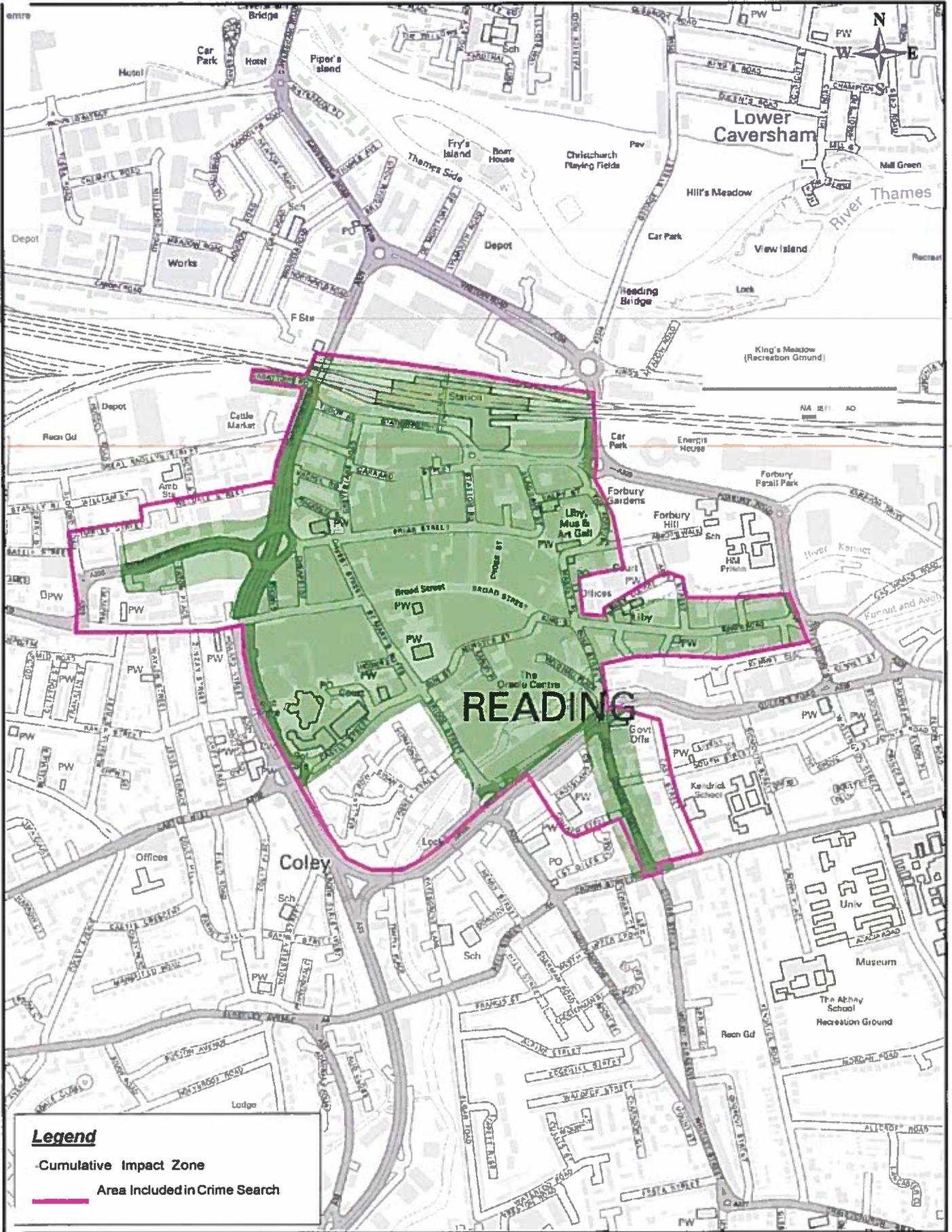
It is important to remember that this application is for the grant of a new licence. It is also important to note that it is incumbent on the applicant - not the Council - to rebut the presumption of refusal contained within the cumulative impact policy. The applicant has failed to rebut this policy. For all of the reasons above and the rationales above, in conjunction with the failings found at the premises within it's current operation, the licensing team respectfully ask the licensing committee to refuse the application in its entirety as the only way to promote the licensing objectives in the town centre cumulative impact area.

**List of appendices:**

- Appendix RF-1 - Map of Town Centre Cumulative Impact Area
- Appendix RF-2 - Licensing inspection letter of 23<sup>rd</sup> July 2018
- Appendix RF-3 - Licensing inspection letter of 16<sup>th</sup> March 2017
- Appendix RF-4 - Record of meeting with DPS on 22<sup>nd</sup> February 2017
- Appendix RF-5 - Licensing inspection letter of 18<sup>th</sup> August 2015
- Appendix RF-6 - Summary of Le Brea v Hackney judgement
- Appendix RF-7 - Current planning permission for 5 Gun Street, Reading.
- Appendix RF-8 - Photos of fire safety issues found on 23<sup>rd</sup> July 2018
- Appendix RF-9 - Photo of company website reference food service
- Appendix RF-10 - Judgement - BBPA v Canterbury (ref licensing policies)
- Appendix RF-11 - Judgement - 3D Entertainment v Portsmouth (ref CIP)
- Appendix RF-12 - Judgement - East Lindsey DC v Abu Hanif (ref licensing objectives)

<b>Date Received</b>	11/09/2018	<b>Date Due</b>	09/10/2018
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<b>Date</b>	03	10	2018
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**PC 5787 Wheeler  
Reading Licensing Dept**

**Reading Police Station  
Castle Street  
Reading  
Berkshire  
RG1 7TH**

**Barclub Trading Ltd  
36 Drury Lane  
London  
WC2B 5RR**

**Tel: 101 (07973231273)**

**Email:**

**simon.wheeler@thamesvalley.pnn.police.uk**

**Monday 6<sup>th</sup> August 2018**

---

**Licensing Act 2003**

**Premises Licence Number: LP2002187**

**Premises: Smash/ Coalition**

**Premises Address: 5 Gun Street, Reading, Berkshire, RG1 2JR**

To whom it may concern (PLH)

Dear Mr Adam Holloway (DPS)

On Monday 23<sup>rd</sup> July 2018 at 19:45 hours I visited your premises to ensure that you are complying with the above premises licence.

During this visit I was initially assisted by two staff members including Ella Cobbin (Bar staff) and Damion Voke (Kitchen staff but who confirmed on this occasion he can serve at the bar to cover smoking breaks etc). The Designated Premises Supervisor Mr Holloway arrived later to complete the inspection and confirm the information that had been provided.

An inspection was also carried out in relation to the premises licence and the conditions contained within it.

Prior to the arrival of the DPS a number of questions of the staff members were asked to establish the processes that were in place and any due diligence which could be established.

The following applies:

1. Neither member of staff knew any of the four Licensing objectives.
2. Miss Cobbin believed that the age verification policy for the premises included "Before 9pm we do not need to ask anyone for identification".
3. Mr Voke stated that it was "Challenge 25", but only thought this because that was the case when he worked previously in a different Pub.
4. Miss Cobbin stated that she had not undertaken any training relating to the sale of alcohol or drunkenness etc.

5. Mr Voke stated that he had also received no training of any sort apart from kitchen training and that he relied on "the Bouncers or the Managers".
6. Both assumed that the DPS Mr Holloway authorised them to sell alcohol but stated they did not know that for certain.
7. Mr Voke stated that he had worked at the premises for three weeks in the Kitchen and had served alcohol on one occasion.
8. Miss Cobbin stated that she had worked within the premises for approximately four months.
9. Mr Voke confirmed that food was served only till 2200 hours and stated "Not a lot of food is served".
10. Both Mr Voke and Miss Cobbin stated that the premises usually closes between 23:30 hours and 00:00 hours on weekdays as it's not very busy.
11. Mr Voke and Mr Cobbin confirmed that they had not received any training regarding the refusal of sales of alcohol, however Miss Cobbin did think there may be a till button linked to refusals.
12. Neither staff had any awareness of an incident book being operated or how to record an incident themselves.
13. Neither staff had any knowledge of a site specific dispersal policy or any potential content thereof.
14. Miss Cobbin and Mr Voke stated they had never received training on Challenge 25 or the law relating to underage sales and proxy purchasing, including either via initial training or via refresher.
15. Miss Cobbin stated that the ID scan system used to be used on occasion but that it was no longer in use, possibly since it required a software update.

On the arrival of Mr Holloway the issues that had arisen having spoken to the staff members as above were confirmed by the DPS. Mr Holloway stated that he had not received a sufficient handover having taken over at the premises and that everything was in flux since Coalition had been closed down, citing this as a reason for the concerning lack of due diligence.

An inspection of the licence conditions was then undertaken with Mr Holloway, and the following results determined a number of conditions were not complied with:

#### Condition number

- 1. A sign is required to advise customers that CCTV is in operation which shall be positioned in a prominent position. A sign was available, however it was only A4 in size and positioned hidden at waist height behind the door in the foyer area. This condition in my opinion at this time is in breach.
- 2. This condition was in breach as Challenge 25 was clearly not being operated to any consistent level and staff were not aware of the policy or its proper trained usage.
- 3. The register of door supervisor condition was in breach and sporadically completed with only elements of the required details recorded within.
- 5. No exit notices were displayed requesting patrons to leave quietly.
- 6. No staff were trained to record the refusals of sales of alcohol or to record within a book/ register.
- 7. No incident book/ register was available.
- 8. This could not be complied with as the incident book did not exist.
- 10. No active dispersal policy in written format was available or known to be in existence by either the staff or the DPS.
- 11. No signage was available asking persons not to remove glasses or bottles from the premises were displayed.

- 12. No training was provided to staff on the law relating to underage sales or refresher training provided, and no records of such training was available.
  - 13. The DPS could not provide any evidence or knowledge of an active policy regarding searching for illegal drugs and weapons.
  - 14. I am aware that there have been a number of incidents involving fly posting by this premises and therefore this has regularly been in breach.
  - 15. No written queueing risk assessment was available to be seen and all staff including the DPS had no knowledge of this or could provide verbally what their queue policy was.
  - 17. The DPS was not aware of the condition relating to last entry to the premises.
- 

Overall there are seventeen conditions on your licence not including the mandatory conditions; of which 82% were found to be in breach during this inspection.

Furthermore, the DPS knew only one of the four licensing objectives and this appeared somewhat a hazarded guess.

---

The written authorisation notice for the sale of alcohol was out of date and signed by the previous DPS. Curiously the list did not include the staff on site at the time of my inspection and was dated from the future 17<sup>th</sup> November 2018!

Also the Section 57 notice was also out of date, naming the previous DPS and dated the 26<sup>th</sup> July 2017.

Finally having inspected the fire exit routes from the premises it was discovered that the staircase and rear corridor had numerous obstacles and obstructions along the route. It also appeared that many of the fire extinguishers may also require inspection and details have been passed to the Fire Service for their attention.

In relation to this inspection and the identified issues set out above you are reminded that the people legally responsible for the premises under the Licensing Act 2003 are the premises licence holder and the designated premises supervisor.

Failure to comply with any condition on your licence is an offence, therefore can you ensure that all of the above points contained within this letter are rectified expeditiously.

You shall be contacted in due course by the Reading Borough Council Licensing Enforcement Department and Thames Valley Police in relation to the offences outlined within this letter, and for the arrangement of a performance meeting to address our serious concerns.

Yours Faithfully

PC 5787 Simon Wheeler

Reading LPA Licensing Dept



Alison Bell  
 Director of Environment and  
 Neighbourhood Services  
 Civic Offices, Bridge St, Reading, RG1 2LU  
 ☎ 0118 937 3787

Our Ref: 052877 EVU

e-mail: richard.french@reading.gov.uk

21 March 2017

Mr Dan Fudge  
 Sakura/Smash  
 5 Gun Street  
 Reading  
 Berkshire  
 RG1 2JR

Your contact is: **Mr Richard French, Licensing**

Dear Sirs

**Licensing Act 2003**

**Premises Licence Number: LP2001900 (New licence for new DPS not yet issued)**

**Premises: Sakura**

**Premises Address: 5 Gun Street, Reading**

On the 16<sup>th</sup> March 2017 I visited your premises with my colleagues Mr Anthony Chawama and PC Wheeler to ensure you are complying with the above premises licence and advise on any matters that may arise during the inspection.

During my inspection, I found a number of items that require your attention as outlined below:

- 1) The SIA door book was not being fully completed. It is advised that the capacity of the venue is put in the book every hour so as to ensure that you are complying with your capacity figure detailed in your fire risk assessment.
- 2) Condition 7 on page 9 of the licence in relation to the use of an incident book could not be demonstrated as being fully complied with. An incident book needs to be utilised to detail any incidents of crime and disorder. This should be separate to the door book so that it can be used by staff members when door staff are not employed at the premises.
- 3) Condition 10 on page 9 of the licence in relation to an active dispersal policy being devised and implemented at the premises could not be demonstrated as being fully complied with. A dispersal policy was produced but it needs to be more reflective of what goes on at the venue and what was stated verbally. Please ensure that this is updated.
- 4) Condition 13 on page 9 in relation to an active search policy could not be demonstrated as being complied with. Again, a search policy was produced but it did not reflect what we were verbally told went on at the venue. It needs to include what measures are used at the front door; what measures are used to detect drugs/weapons

within the venue and it needs to state what you are searching for. Please ensure that this is updated.

5) Condition 15 in relation to written risk assessment for the management of queuing customers could not be produced. Again, it is clear from our conversation that there are measures put in place but these need to be documented.

Please ensure that all members of the management team and staff are refreshed in their training every three months and per condition 12 and please also ensure that the four licensing objectives are refreshed.

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We also spoke of instances of flyposting which I acknowledge were dealt with promptly - please remember that flyposting is an offence under numerous bits of legislation as well as condition 14 of the premises licence. We also spoke about barriers and A-boards being placed on the public highway. Please be aware that any barriers or A-boards placed in the middle of Gun Street can cause an obstruction to members of the public - particularly those in wheelchairs. It is recommended that only 1 A-board is placed outside within the premises demise.

---

**Please complete all of the above actions within 28 days.**

Should you wish to discuss the issues, please contact me.

Yours faithfully

Mr Richard French  
Licensing Enforcement Officer

**French, Richard**

---

**From:** Wheeler Simon <Simon.Wheeler@thamesvalley.pnn.police.uk>  
**Sent:** 22 February 2017 18:08  
**To:** 'reading.manager@smashbars.co.uk'; [REDACTED]  
**Cc:** French, Richard; King Mike  
**Subject:** Sakura incidents Sept 2016 - February 2017

**Importance:** High

**This is an EXTERNAL EMAIL. STOP. THINK before you CLICK links or OPEN attachments.**

Mr Fudge

You will recall that on the 22<sup>nd</sup> February 2017 at 1400 hours I visited your venue with Richard French from Reading Borough Council to discuss a number of incidents/reports relating to the venue that had been reported to our Licensing Dept by Officers of Thames Valley Police.

Also in attendance at the meeting which took place at 1300 hours was [REDACTED] of 4D Solutions.

In summary we firstly discussed an incident on 19/09/2016 whereby staff removed an intoxicated male for ripping a door supervisors jacket. Although the male was later arrested for his behaviour on the street by attending officers the door supervisor in question did not pursue any complaint in relation to the criminal damage which occurred to their clothing.

We discussed how if any use of force is used by door supervisors due to an offence being committed then it is suitable and best practice for them to pursue this as a complaint or provide a supportive witness statement as evidence.

Door supervisors have the any person power covered in Section 3 of the Criminal law Act 1967 which states:-

"A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large"

Therefore a statement detailing the offence and why use of force was used supports the proportionality of their reasonable use of force to remove that person – I hope that makes sense.

Secondly we discussed a report in relation to [REDACTED] from 7<sup>th</sup> January 2017 where it was recorded by Officers that he did not act in a professional manner when officers attended to deal with a group of males, during which he swore at the males and in effect was winding them up whilst the officers tried to deal with them.

[REDACTED] within the report also refused to provide his badge details fully to the officers and this was a theme throughout later incidents where officers struggled to get compliance from door staff when asking for badge details.

Mitigating circumstances were put forward by [REDACTED] that [REDACTED] had felt let down by Police who had not attended in his mind swiftly enough to help and that he had admitted he had said the things that had been reported as he had been frustrated by the situation.

I myself also recalled [REDACTED] making a complaint to me about this incident and his concerns over Police responses and I had requested he produce a report for me and CCTV evidence to support his claims. Unfortunately neither were forthcoming at the time and either way goading members of the public when they were being dealt with by police is not an acceptable situation.

Thirdly we looked at an incident on the 29<sup>th</sup> January 2017 where two incidents of assault occurred on the dancefloor at the venue within a short space of time. The officers report detailed staff were generally supportive on scene but having viewed the CCTV identified an issue with the response time to the incident on the dancefloor and a failure to identify all offenders.

The officer also reported that ID scan was not being used and this has hindered the investigation.

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The conclusion of this discussion was that improvements could be made regarding door supervisor deployments and you suggested a podium in the corner of the dancefloor could be helpful. Also it was confirmed that ID scan was in usage on this occasion and that you will be able to provide further support to the investigating officer at this stage to help identify the two outstanding suspects.

---

The final incident we discussed occurred on 12<sup>th</sup> February 2017 and began inside the premise at 0411 hours and eventually escalates outside of the venue on the street.

Having viewed the CCTV an initial incident takes place directly in front of the door on the street and the persons involved are restrained, however after their release the situation escalated into a larger street brawl involving multiple persons.

Officers had reported incivility towards them in their report, failure to identify offenders and again refusal to provide SIA details.

It was discussed that this was likely to have occurred due to the Police response times and frustration by staff about this. However I pointed out that firstly the unit close by were already committed with an incident, but secondly because the incident occurred after 0400 hours at that time there is no Policing resilience in the town.

Venues should be fully aware that Police will not be available in the town beyond 0400 hours and that we recommend all venues take this into account when deciding their dispersal policies and timings as trading beyond that time must be included in your own risk assessments. We also remind venues that the responsibility for managing that risk is yours which is why it is imperative to factor in the availability of Policing thus we recommend dispersal to be undertaken and completed between 0300 - 0345 hrs.

It was accepted by all parties that there had been growing friction between door supervisors and Police which has been building since we have had to operationally change the style of Police operation due to officer reductions. And that this has been born out of a frustration surrounding response times as well as the previous historical factor that in the past the Police were so readily available that door staff became reliant on the Police. The lack of Police has therefore been somewhat of a shock to the system for door supervisors used to far greater support, hence why potentially their attitude is not sufficient when Police do arrive.

From a Policing perspective I stated that although I can understand their frustrations it is still not acceptable for door supervisors to shout or swear at officers and we expect them to support proceedings as well as help to identify offenders. On this last occasion offenders were not identified or detained by Police because the door supervisors did not communicate effectively with the officers when they arrived or provide sufficient information to identify them.

In conclusion it was mentioned that potentially training and information may be used to address these issues, however I have left that decision initially to you and look forwards to your written response as soon as possible.

Whatever decision is made some of the attitude and reactions displayed by security officers in these incidents appears neither professional or acceptable and must be rectified immediately.

Today's meeting was arranged as an informal meeting to discuss these issues and to look at the surrounding evidence relating to them and I am hopeful that our concerns can be addressed by you.

However, we reserve the right in the future to utilise a formal "Performance" process in the future if issues of this nature continue to be forthcoming.

I shall arrange an inspection with you in the near future jointly with RBC to ensure your Licence compliance so please ensure that you are aware of all of your Licence conditions and that they are being complied with and enacted.

---

Regards

Simon

**Simon Wheeler** Police Constable 5787  
Reading Licensing Dept | Reading LPA | Thames Valley Police

Switchboard (non emergency): ☎ **101**  
Mobile: **07973231273**  
✉ Castle Street, Reading, Berkshire, RG1 7TH

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Alison Bell  
 Director of Environment and  
 Neighbourhood Services  
 Civic Offices, Bridge St, Reading, RG1 2LU  
 ☎ 0118 937 3787

Our Ref:052040

Via email to  
 [REDACTED]@eclcticbars.co.uk

Direct: ☎ 01189 37 2846  
 e-mail: richard.french@reading.gov.uk

1 September 2015

Your contact is: Mr Richard French, Licensing

Dear Sir

**Licensing Act 2003**  
**Premises Licence Number: LP2001620**  
**Premises: Sakura**  
**Premises Address: 5-6 Gun Street, Reading, RG1 2JR**

On the 18<sup>th</sup> August 2015, I visited your premises with Thames Valley Police to ensure you are complying with the above premises licence and advise on any matters that may arise during the inspection.

During our inspection, we found a number of items that require your attention as outlined below/attached.

1. Condition 26.1 under the heading 'Provision of CCTV' was not being complied with. The condition states that there must be comprehensive coverage internally and externally and that the images must be high quality for use in a court of law in particular if such a recording was necessary in connection with the investigation, prevention or detection of crime. It was the view of the Licensing Authority and Thames Valley Police that the CCTV was neither comprehensive or of sufficient quality. You will be aware that Thames Valley Police are investigating an incident where a 17 year old was able to access the premises, was served alcohol and then made a complaint about being assaulted. The CCTV was not of sufficient quality to investigate this issue in relation to any potential assault. Obviously there is also the matter of permitting entry and serving alcohol to a child which is still being investigated. A Section 19 closure notice was issued to the DPS to rectify the issues with the CCTV within 28 days of our visit. Please ensure that the CCTV issues are remedied. You may also wish to conduct your own investigation on how a child was able to enter and purchase alcohol at the premises.

2. Condition 13.2 (d) under the heading 'Door Supervisor Conditions' was not being complied with. A check of the door supervisor register indicated that the DPS and/or nominated representative were not countersigning the book to verify the content. Please ensure that this is carried out on every occasion that the premises employs door staff.

3. Condition 2 under the heading 'Protection of Children from Harm' under Annex 2 was not being complied with. When asked for the staff training sheet it was revealed that all staff were being trained to challenge customers who looked 21. The condition states that

a strict Challenge 25 policy should be in operation and that all staff should receive regular training in relation to it. Please ensure that this is carried out right away and that staff are trained to the required standard.

4. Condition 16.1 under the heading 'Drugs and Other Illegal Substances' was not being complied with. When asked for this policy, no document could be produced. It is recommended that this policy be kept onsite so that it can be produced upon request.

5. Condition 15.1 under the heading 'Offensive Weapons' was not being complied with. No assessment could be produced. It is recommended that this policy is kept onsite so that it can be produced upon request.

6. Condition 25.1 under the heading 'Searching of Patrons' was not being complied with. The written policy could not be produced at the time of asking. It is recommended that this policy is kept onsite so that it can be produced upon request.

7. Condition 22.1 under the heading 'Designated Premises Supervisor training' was not being complied with. The DPS could not confirm that he has undertaken the BII Designated Premises Supervisor's National Drug Certificate training. Please ensure that this training is completed and a copy of the certification readily available for inspection if requested.

8. Condition 23.1 under the heading 'Provision of Quiet Areas' was not being complied with. The DPS was not able to inform us where the quiet area was and what steps were being taken to allow customers to relax and cool down. Please ensure that this is implemented.

### Recommendations

1. In line with the age verification policy, it was notified to us that there was no current mechanism in place to record refusals of alcohol sales. The buttons on the till were not working and there was no paper log. It is recommended that this is implemented right away. Not only will it assist staff being able to record refusals, it will also safeguard against under age persons being able to purchase alcohol therefore avoiding issues mentioned in point number 1 above. It is also recommended that this recording of refusals is incorporated into your staff training.

2. It is recommended that the premises implement a wind down period at the end of each evening. This means that the sale of alcohol and any entertainment would be 'wound down' at least 30 minutes before closing time. This will aid the gradual dispersal of customers from the premises. You will be aware that Sakura is within the Council's Cumulative Impact Area and that there is case law stating that premises licence holders should be actively dispersing their customers. A gradual dispersal and staff engagement with customers at the end of the evening is encouraged to aid dispersal and avoid any flashpoints.

3. It is recommended that a performance meeting be arranged between all parties to discuss these issues. It may also be useful to discuss amending the premises licence to incorporate more appropriate conditions on to the premises licence which are more suitable to a town centre night club. A date for this meeting will be confirmed shortly.

**Please rectify all of the above points within 7 days.**

Should you wish to discuss the issues, please telephone me on the number above or email address.

Yours faithfully

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Richard French  
Licensing Enforcement Officer

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## Pump and Boneyard loses licence

The facts of Pump and Boneyard, whose licence was finally buried by District Judge Angus Hamilton on 3rd February, read like a licensing exam paper.

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The venue was formerly a typical petrol station, with pumps covered by a canopy and a small convenience store with an off-licence to sell alcohol until 11 p.m. and late night refreshment all night. The site is off the southern edge of the Shoreditch Triangle cumulative impact area designated in Hackney's policy. To the east lies a further CIA designated by Tower Hamlets.

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An entrepreneur, Robert Newmark, of Beach Blanket Babylon renown, had twice tried and failed to secure variations to turn the venue into a bar/restaurant, utilising the existing building and covered forecourt. So he set out to do it anyway in a manner which, so claimed he and his lawyers, required no licence variation at all.

He built fourteen food stalls and installed seating and tables in the former forecourt, trading only until 11 p.m. so as to avoid the need for a premises licence for late night refreshment. Inside the convenience store, he took out all the shelving units, replacing them, shelf for shelf, and in the same position, with tables and seating. This was to consume food cooked in the former store, and with the benefit of the licence for late night refreshment. Of course alcohol sold in the former store could not be consumed there, because it was an off-licence, so customers were asked to take their drinks outside, to drink them on the forecourt. And he remove the glass front of the store and built an extension to it, strictly (as he said) off the premises, so that alcohol could be sold directly from the store to customers standing in (and consuming from) the new extension.

Hackney's Licensing Sub-Committee was not impressed. It revoked the licence, chiefly because this represented a total transformation of the premises without consent, in an area already suffering from significant stress, albeit not in the cumulative impact area.

Before the Magistrates' Court on appeal, the Appellant argued that the business was trading strictly within the existing licence, that the premises was causing no direct, demonstrable harm or at least none that could not be controlled by conditions, and that in any case section 182 guidance (paragraph 13.37) prevented revocations on review on grounds of cumulative impact. This raised a number of issues of principle, and wider interest.

**(1) Was the transformation of the premises lawful?**

As every student of licensing law knows, consumption is not a licensable activity. This means that, at least in theory, every supermarket could get a premises licence for its building and then turn its car park into a large outdoor bar every night. What is to stop that happening? This exercised the minds of DCMS officials when the Licensing Act 2003 (Premises Licences) Regulations 2005 were being formulated, with the consequence that the prescribed application form contains this note for guidance

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Describe the premises, for example the type of premises, its general situation and layout and any other information which could be relevant to the licensing objectives. Where your application includes off-supplies of alcohol and you intend to provide a place for consumption of these off-supplies, you must include a description of where the place will be and its proximity to the premises.

If the applicant refers to an adjacent drinking area, it is always open to the licensing authority to impose conditions regulating its use. If the applicant doesn't refer to the adjacent area, then nothing in licensing law prevents its subsequent use. However, in such a case, the licensee should not be surprised to receive an application for review if there is harm to the licensing objectives.

In this case, however, the Council contended that the premises was in breach of its licence. This gave rise to some further arguments about whether a licensee was entitled to alter features on the licence plan which the regulations do not require to be shown on the plan in the first place. In *Licensed Premises: Law, Practice and Policy*, it is contended that the plan is the plan and cannot be changed without a variation, whether the features being changed needed to be shown in the first place or not. The features on the plan, be they snooker tables in a club, shelving in a supermarket or seating in a restaurant, all give assurance to the licensing authority that the premises will be used in a particular way, rather than the licence attaching to a large blank space which could be used, say, for vertical drinking. As such, variations to the layout cannot be made without variation to the licence.

In this case, it was not necessary for the District Judge to resolve that argument because there were variations which quite clearly did require variations to the licence, e.g. the installation of a wholly new kitchen, removal of the perimeter glazing, installation of a new bar etc.

**(2) What relevance were criminal breaches?**

The Council argued that much of what had occurred was criminal, e.g. the breaches of licence conditions, breach of smoking legislation, playing of live music in the former court etc. It argued that, on the authority of *R (Blackpool Council) v Howitt* 2008 EWHC 3300 (Admin) criminal acts of whatever sort engaged the licensing objective of the prevention of crime and disorder, even if they were not disorderly. The District Judge accepted that the principle applied here.

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### (3) Could planning be taken into account?

It is well known that national guidance advises that the systems of planning and licensing should be kept separate that control should not be duplicated. Nevertheless, in this case, Hackney's long-standing and unchallenged licensing policy stated that normally planning consent should be obtained first. Here, it had not been. It was therefore argued that since the Court stands in the shoes of the licensing authority for the purpose of applying its policy, the absence of planning permission was a material consideration. Further, the Council argued that the failure to secure planning permission (which had been refused twice), demonstrated a cavalier approach to regulation which could be taken into account on that ground alone. In the event, the lack of planning was taken into account by the District Judge.

### (4) Could cumulative impact be taken into account?

The Council acknowledged that national guidance sets its face against the culling of licensed premises based on cumulative impact and that it is wrong to call in individual licences for review when the issue is cumulative. Nevertheless, the District Judge found "compelling" the Council's argument that it was entirely legitimate to take cumulative impact into account in the case of a misbehaving licensee. The rationale is that one should not be able to attain through unlawful action that which would never have been (and was not) granted through applications for variation, and that the consequences of such unlawful behaviour are more serious in cumulative impact areas than in areas not suffering from stress. This is an important conclusion, giving further teeth to licensing authorities where regulatory breaches take place in cumulative impact areas.

In the result, District Judge Hamilton dismissed the appeal and awarded costs of £25,416 to Hackney Council.

The judgment can be read [here](#).

Philip Kolvin QC of Cornerstone Barristers represented Hackney Council, instructed by Butta Singh

**TOWN AND COUNTRY PLANNING ACT 1990  
PLANNING AND COMPENSATION ACT 1991  
TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE ORDER  
1995)**

**APPLICATION FOR FULL PLANNING PERMISSION**

To: Simon Bridbury  
C/O Edwards Rogers Associates Ltd  
6 Chancel Street  
London  
SE1 0UX

Application No: 07/00303/FUL/JJD

**Applicant: Simon Bridbury**

READING BOROUGH COUNCIL as local planning authority GRANT FULL planning permission for the following development in accordance with the plans and supporting information submitted in connection with this application.

**Proposal: Change of use from D2 or Nightclub (Sui Generis) to A3 (Restaurant)**

**At: The Fez 5 Gun Street Reading Berkshire RG1 2JR**

Subject to such conditions and for such reasons as may be attached

**OTHER STATUTORY CONSENTS MAY BE REQUIRED  
PLEASE READ THE NOTES ISSUED WITH THIS DECISION NOTICE**

Date: 4th May 2007

 **DECNOT.**

Head of Planning & Building Control

  
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Application At: The Fez 5 Gun Street Reading Berkshire RG1 2JR

Application No: 07/00303/FUL

CONDITIONS & REASONS

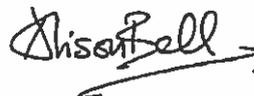
1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission was granted.  
Reason: to prevent an accumulation of unimplemented planning permissions, and in accordance with Section 91 of the Town & Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.
2. No development shall take place until details of the materials to be used in the construction of the external surfaces of the development including the raised walls, roof and roof lights, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.  
Reason: as no details have been submitted and in the interests of the visual appearance of the building and the area.

RBLP Policy CUD4 - Setting of Listed Buildings  
RBLP Policy CUD7 - New Development in Conservation Areas  
RBLP Policy CUD14 - Standards of Design in Development

3. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted and approved in writing by the local planning authority to provide for;
  - a) the parking of vehicles of site operatives and visitors
  - b) loading and unloading of plant and materials
  - c) storage of plant and materials used in constructing the development
  - d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - e) wheel washing facilities
  - f) measures to control the emission of dust and dirt during construction
  - g) a scheme for recycling waste resulting from the construction programme
  - h) details of the construction hoursThe approved Construction Method Statement shall be adhered to throughout the development process unless agreed otherwise in writing by the local planning authority.  
Reason: in the interests of safety, protecting the amenity of local land uses, neighbouring residents, the character of the area and highway safety

RBLP KEY2A - Conservation of the Environment and Natural Resources  
RBLP Policy NE 8 - Environmental Pollution

Date: 4th May 2007



Head of Planning & Building Control

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4. Prior to the commencement of any works for the change of use hereby approved, details of ventilation and filtration equipment including noise data to suppress and disperse fumes and/or smell created from the cooking operations on the premises shall be submitted to and approved in writing by the local planning authority. The approved equipment shall be installed and in full working order prior to the completion of the development and/or commencement of the use and shall continue to be effectively operated and maintained in accordance with manufacturer's instructions for as long as the proposed use continues.

Reason: to ensure that the use has adequate ventilation equipment to ensure that neighbouring properties are not unreasonably polluted by odours or fumes from the use.

RBLP Policy RET5 - Retail and Catering Uses in Residential Areas

RBLP Policy NE 8 - Environmental Pollution

5. The premises shall not be used for the preparation or sale of food outside the hours of 0800 to 2400 on Mondays to Sundays.

Reason: in order to protect local residents from unreasonable disturbance arising from the use.

RBLP Policy RET5 - Retail and Catering Uses in Residential Areas

RBLP Policy NE8 - Environmental Pollution

6. No development shall take place before a scheme has been submitted to and approved in writing by the Local Planning Authority, which specifies the provisions to be made for the control of noise emanating from the site during construction/implementation of the works hereby approved. Thereafter the development shall be implemented in accordance with these approved details.

Reason: to protect the occupants of nearby residential properties from noise disturbance during the development

RBLP Policy NE8 - Environmental Pollution

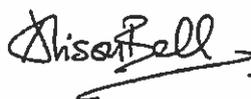
7. No development shall take place until a detailed scheme/procedure for controlling dust on and emanating from the site during the demolition and construction phases of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter only be carried out in accordance with this approved scheme/procedure.

Reason: to protect the occupants of nearby residential properties from dust during the development of the site.

RBLP Policy NE8 - Environmental Pollution

### INFORMATIVES

1. The proposed development is considered acceptable in planning terms and in reaching the above decision the Local Planning Authority has taken account of the following



Head of Planning & Building Control

  
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Date: 4th May 2007

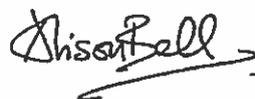
Reading Borough Council Local Plan (1998) Policies: RET5 (Retail and Catering Uses in Residential Areas), CUD4 (Setting of Listed Buildings), CUD7 (New Development in Conservation Areas), CUD14 (Standards of Design in Development), LE17 (Protection of Existing Leisure Facilities), CEN1 (Town Centre Conservation Areas), CEN4 (Town Centre Shopping Area), CEN10 (Recreation, Entertainment and Leisure Facilities) and NE8 (Environmental Pollution).

2. Your attention is drawn to the terms and conditions of this permission. Any development which is carried out but which differs materially from the approved plans and details (Drawing No.'s SB010747/011, SB010125/021 and SB010747/031 received by the Local Planning Authority on 09/03/2007) or does not comply with any condition(s) or planning obligation(s) attached to the permission may result in the Council taking action to remedy the breach of planning control. If you are in any doubt please contact the Council.

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3. The applicant's attention is drawn to the requirement for submission of a Building Regulations application for the proposed development. Please contact RBC Building Control on 0118 939 0447 for further advice.
4. This planning permission does not approve any changes to the shop front on the Gun Street elevation, and a separate planning application would be required for any subsequently proposed changes to the shop front.
5. This planning permission does not approve any changes to the rear elevation onto the Holybrook, and a separate planning application would be required for any subsequently proposed changes to this rear elevation.
6. Any subsequent planning applications for the site may be required to be accompanied by a BREEAM assessment and meet the requirements of the adopted Supplementary Planning Document (SPD) 'Sustainable Design and Construction' (March 2007). For further information please refer to the SPD, available online at the following link:  
[http://www.reading.gov.uk/Documents/servingyou/planning/local\\_development\\_framework/Adopted\\_Sustainable\\_Design&Const\\_SPD\\_0307.pdf](http://www.reading.gov.uk/Documents/servingyou/planning/local_development_framework/Adopted_Sustainable_Design&Const_SPD_0307.pdf)
7. Your attention is drawn to conditions 2, 3, 4, 6 and 7 above. These are pre-commencement conditions or conditions "precedent" and require the terms of the conditions to be satisfied before development commences. If development commences in contravention of those conditions, the development taking place will be made unauthorised in planning terms. This may result in the Council taking enforcement action against the unauthorised development. If you are in any doubt please contact the Council.

Date: 4th May 2007



Head of Planning & Building Control



## • NOTES

### APPEALS

- (1) If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with section 78 of the Town and Country Planning Act 1990 within six months of the date of this notice. Appeals must be made using an official form which is obtainable from Customer Support Unit, The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN Phone: 0117 372 8000. The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances that excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted, otherwise than subject to the conditions imposed by them, having regard to the statutory requirements (a), to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the local planning authority was based on a direction given by him.
- (2) If permission to develop land is refused or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted he may serve on the Common Council, or on the Council of the district in which the land is situated, as the case may be, a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
- (3) In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 114 of the Town and Country Planning Act 1990.
- (a) The statutory requirements are those set out in section 79(6) of the Town and Country Planning Act 1990, namely sections 70 and 72(1) of the Act.

### BERKSHIRE ACT 1986 - Section 32

- (1) Except as provided in subsection (a) below, where plans for the erection or extension of a building are deposited with a district council in accordance with building regulations, the district council shall reject the plans unless, after consultation with the fire authority, they are satisfied that the plans show -
  - (a) That there will be adequate means of access for the fire brigade to the building or, as the case may be, to the building as extended, And
  - (b) That the building or, as the case may be, the extension of the building will not render inadequate existing means of access for the fire brigade to a neighbouring building.
- (2) No requirement concerning means of access to a building or to a neighbouring building shall be made under this section in the case of a building to be erected or extended in pursuance of a planning permission granted upon an application made under the Act of 1990, unless notice of the provisions of this section is endorsed on or accompanies the planning permission.
- (3) Section 16(7) and (8) and section 36(2) to (6) of the Building Act 1984 (notice of rejection or passing of plans and enforcement of requirements) shall apply as if this section were a section of the said Act 1984.
- (4) Any person aggrieved by the action of the district council in rejecting plans under this section, may appeal to a magistrates' court.
- (5) In this section references to the adequacy or inadequacy of means of access for the fire brigade shall be construed as references to a means of access adequate or, as the case may be, inadequate for use for fire-fighting purposes by members of one or more fire brigades and their appliances.

### SECTION 76 TOWN AND COUNTRY PLANNING ACT 1990

- 76-(1) This section applies when planning permission is granted for any development that will result in the provision -
- (a) Of a building or premises to which section 4 of the Chronically Sick and Disabled Persons Act 1970 applies (buildings or premises to which the public are to be admitted whether on payment or otherwise);
  - (b) Of any of the following (being in each case, premises in which persons are employed to work) -
    - (i) Office premises, shop premises and railway premises to which the Offices, Shops and Railway Premises Act 1963 applies;
    - (ii) Premises which are deemed to be such premises for the purposes of that Act; or
    - (iii) Factories as defined by section 175 of the Factories Act 1961,
  - (c) Of a building intended for the purposes of a university college or college, or of a school or hall of a university;
  - (d) Of a building intended for the purposes of an institution within the PCFC funding sector; or
  - (e) Of a building intended for the purposes of a school or an institution which provides higher education or further education (or both) and is maintained or assisted by a local education authority.
- (2) The local planning authority granting the planning permission shall draw the attention of the person to whom the permission is granted -
- (a) In the case of such a building or premises as are mentioned in subsection (1)(a)
    - (i) To sections 4 and 7 of the Chronically Sick and Disabled Persons Act 1970; and
    - (ii) To the Code of Practice for Access of the Disabled to Buildings (British Standards Institution code of practice BS 5810: 1979) or any prescribed document replacing that code,
  - (b) In the case of such premises as are mentioned in subsection (1)(b), to sections 7 and 8A of that Act and to that code or any such prescribed document replacing it;
  - (c) In the case of such a building as is mentioned in subsection (1)(c), (d) or (e), to sections 7 and 8 of that Act and to Design Note 18 "Access for Disabled People to Educational Buildings" published in 1984 on behalf of the Secretary of State, or any prescribed document replacing that note.
- (3) Expressions used in subsection (1)(d) and (e) and in the Education Act 1944 have the same meanings as in that Act.

### HAZARDOUS WASTE AND MATERIALS

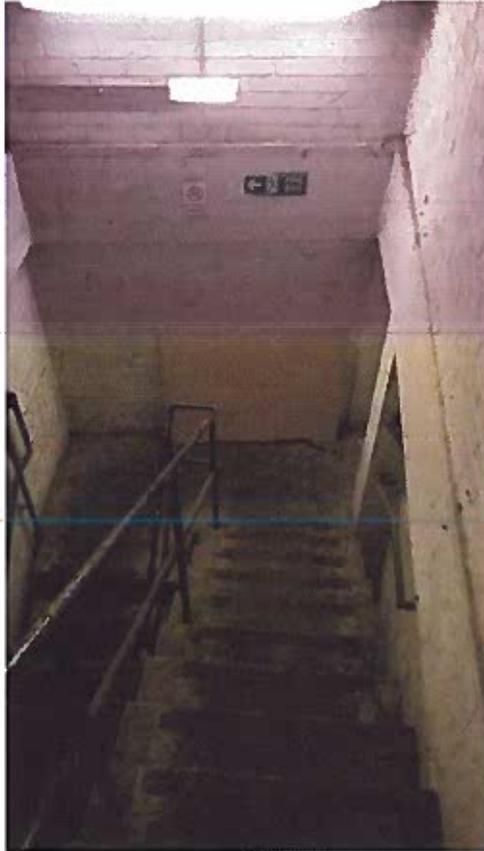
Your attention is drawn to the possibility that development of land or redevelopment of properties will give rise to hazardous material probably in the form of contaminated soil or building construction waste (e.g. asbestos lagging around pipe work) needing disposal. Under the requirements of the Control of Pollution Act 1974 and regulations made there under it is an offence if such material is not deposited in appropriate sites licensed by the County Council acting in their capacity as Waste Disposal Authorities and additional procedures may have to be followed. Details of the sites in Berkshire and advice on suitability of wastes involved and procedures necessary can be obtained from:

Environment Agency, Isis House, Howbery Park, Wallingford, Oxon, OX10 8BD Tel: 0870 8506506

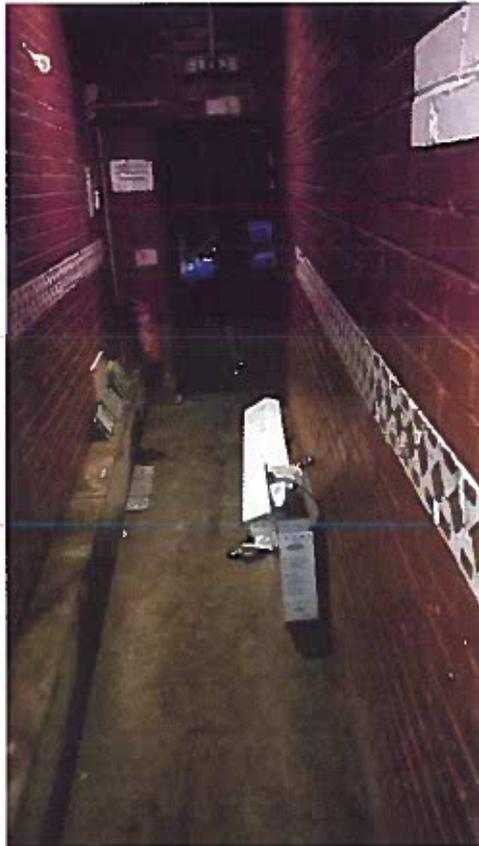
There may also be occasions when hazardous substances such as gas from former landfill sites could be a problem. The County Surveyor's Waste Management Group have agreed to list and map all such sites and copies will be available from the above address.

### BUILDING REGULATIONS

This planning permission does not give approval under the Building Regulations. Before any works are commenced you should check with the Building Control Section of the Planning Department whether any approval is required under the Building Regulations.

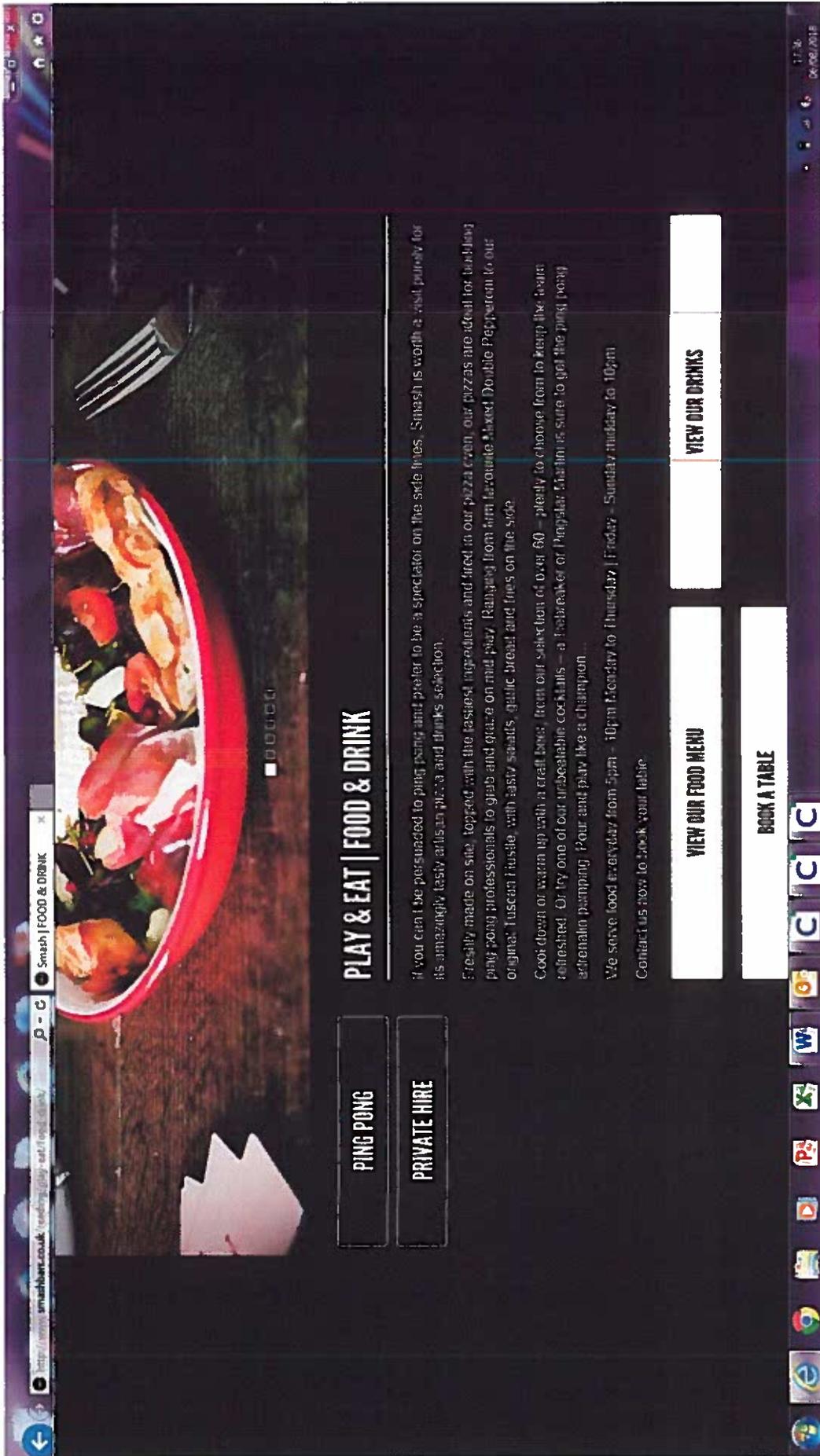












All England Official Transcripts (1997-2008)

**British Beer and Pub Association and others v Canterbury City Council**

*Licensing - Licensing policy - Applications for licences - Power to impose conditions - Policy unlawful as over-prescriptive - Policy unlawful in implying council having greater power than it did - Licensing Act 2003, s 18.*

[2005] EWHC 1318 (Admin)

CO/2121/2005, (Transcript: Smith Bernal)

QUEEN'S BENCH DIVISION (ADMINISTRATIVE COURT)

RICHARDS J

24 JUNE 2005

24 JUNE 2005

D Matthias and J Phillips for the Claimants

M Lowe QC and P Kolvin for the Defendant

Poppleston Allen Solicitors; Canterbury City Council

RICHARDS J:

[1] The Claimants between them represent the interests of the great majority of the licensed retail sector in England and Wales. They seek to challenge the statement of licensing policy published by Canterbury City Council under s 5 of the Licensing Act 2003 ("the Act"). They contend in essence that the policy (a) is over-prescriptive with regard to the contents of an application for a licence and (b) states or implies that the council has greater power than it does to assess applications and to impose conditions.

[2] All licensing authorities in England and Wales had until early January 2005 to publish their licensing policies under the Act. The Claimants carried out a review of the published policies and identified over 30 that in their view were over-prescriptive and unlawful. They picked three examples for what they regarded as test cases, lodging judicial review claims against Doncaster Metropolitan Borough Council and Gloucester City Council in addition to the present claim against Canterbury. The issues in all three cases were very similar. Doncaster and Gloucester have subsequently amended or agreed to amend their policies in ways that are acceptable to the Claimants. In consequence the claims against them have been or are expected to be withdrawn. It is only the claim against Canterbury that is actively pursued.

[3] As a result of orders made by Collins J, the remaining claim was listed before me as a hearing of the application for permission (to enable the court to consider an argument by the council on delay) with the sub-

stantive hearing to follow immediately if permission were granted. In the event I heard full argument. The Claimants plainly have an arguable case, and I have decided that permission should not be refused on grounds of delay. I therefore grant permission and proceed to deal with the matter substantively. I give my reasons on the issue of delay towards the end of my judgment.

#### *THE LEGISLATIVE FRAMEWORK*

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[4] The Act creates a new licensing regime, introducing a single integrated scheme for licensing premises which sell alcohol or provide regulated entertainment or provide late night refreshment. It replaces the previous separate regimes regulating liquor, public entertainment, cinema, theatre and late night refreshment licensing. It transfers primary responsibility to local authorities, with magistrates' courts exercising a purely appellate jurisdiction. It also introduces the concept of dual licences, one relating to the premises and authorising licensable activities on those premises (the premises licence), the other being held by the person responsible for the day-to-day operation of the premises (the personal licence).

---

[5] Section 4 of the Act provides:

"(1) A licensing authority must carry out its functions under this Act ('licensing functions') with a view to promoting the licensing objectives.

(2) The licensing objectives are -

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

(3) In carrying out its licensing functions, a licensing authority must also have regard to -

- (a) its licensing statement published under section 5; and
- (b) any guidance issued by the Secretary of State under section 182."

[6] Section 5 concerns the statement of licensing policy. It provides:

"(1) Each licensing authority must in respect of each three year period -

- (a) determine its policy with respect to the exercise of its licensing functions, and
- (b) publish a statement of that policy ('a licensing statement') before the beginning of the period.

(2) In this section 'three year period' means -

(a) the period of three years beginning with such day as the Secretary of State may by order appoint, and

(b) every subsequent period of three years . . ."

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[7] The Secretary of State appointed 7 January 2005 as the day upon which the first period of three years would begin. Accordingly, each licensing authority was obliged to publish its statement of licensing policy before that date. Before determining its policy, each authority was required by s 5(3) to consult representatives of the police, the fire authority, holders of existing licences, registered clubs, holders of personal licences, and other businesses and residents.

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[8] In July 2004 the Secretary of State issued guidance to which, pursuant to s 4(3), licensing authorities must have regard in carrying out their licensing functions, including the determination of their policy. I shall refer to this as "the Guidance". It is a very substantial document, almost 180 pages in length. It deals in s 3 with statements of licensing policy and in s 5 with premises licences.

[9] An application for a premises licence under the new regime is governed by s 17 of the Act:

"(1) An application for a premises licence must be made to the relevant licensing authority.

(2) Subsection (1) is subject to regulations under -

(a) section 54 (form etc. of applications etc.);

(b) section 55 (fees to accompany applications etc.).

(3) An application under this section must also be accompanied-

(a) by an operating schedule . . .

(4) An 'operating schedule' is a document which is in the prescribed form and includes a statement of the following matters -

(a) the relevant licensable activities,

(b) the times during which it is proposed that the relevant licensable activities are to take place,

(c) any other times during which it is proposed that the premises are to be open to the public,

(d) where the Applicant wishes the licence to have effect for a limited period, that period,

(e) where the relevant licensable activities include the supply of alcohol, prescribed information in respect of the individual whom the Applicant wishes to have specified in the premises licence as the premises supervisor,

(f) where the relevant licensable activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or off the premises, or both,

(g) the steps which it is proposed to take to promote the licensing objectives,

(h) such other matters as may be prescribed . . ."

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[10] The regulations envisaged by s 17, relating to the prescribed form of application and operating schedule and other matters, are The Licensing Act 2003 (Premises licences and club premises certificates) regs 2005, which were made on 12 January 2005, were laid before Parliament on 13 January and came into force on 7 February. I shall refer to them as "the Regulations."

[11] The prescribed form on which to apply for a premises licence is at Sch 2 to the Regulations. Part 3 of Sch 2 relates to the operating schedule. It requires the Applicant to state the number of people expected to attend the premises at one time if that number exceeds 5,000 (simply because this affects the fee payable). It asks for a general description of the premises and for details of the licensable activities that the Applicant intends to carry on there. There is a request to highlight anything that might give rise to concern in respect of children. Details of opening hours are required. Finally, the Applicant is asked to "describe the steps you intend to take to promote the four licensing objectives". Thus, the Regulations do not go significantly further than the Act itself as regards the required content of an application for a premises licence.

[12] Section 17(5) of the Act provides for the making of regulations requiring the advertisement of applications and the giving of notice to responsible authorities, and prescribing the period during which interested parties and responsible authorities may make representations to the licensing authority about the application. Those matters, too, are covered by the Regulations to which I have just referred.

[13] The determination of an application for a premises licence is governed by s 18:

"(1) This section applies where the relevant licensing authority-

(a) receives an application for a premises licence made in accordance with section 17, and

(b) is satisfied that the Applicant has complied with any requirement imposed on him under subsection (5) of that section.

(2) Subject to subsection (3), the authority must grant the licence in accordance with the application subject only to -

(a) such conditions as are consistent with the operating schedule accompanying the application, and

(b) any conditions which must under section 19, 20 or 21 be included in the licence.

(3) Where relevant representations are made, the authority must-

(a) hold a hearing to consider them, unless the authority, the Applicant and each person who has made such representations agree that a hearing is unnecessary, and

(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

(4) The steps are -

(a) to grant the licence subject to -

(i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and

(ii) any conditions which must under section 19, 20 or 21 be included in the licence;

(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application."

[14] The effect of the provisions governing the making and determining of applications is that if there are no representations from responsible authorities or interested parties, the licensing authority must grant the licence in accordance with the application, subject only to such conditions as are consistent with the operating schedule and conditions which are mandatory by virtue of ss 19 to 21. Where relevant representations are made, on the other hand, there must generally be a hearing and a discretionary decision must be made by the licensing authority. This difference between the two situations - where relevant representations are made and where they are not made - is fundamental to the concerns underlying the present challenge. The difference is spelled out in this way in the Guidance (with original emphasis):

"5.67 Where an application has been lawfully made and provided that no responsible authority (for example, the chief officer of police or an environmental health authority) makes a representation about an application and no interested party seeks to do so, then no hearing would be required and the application *must* be granted in the terms sought, subject only to conditions which are consistent with the operating schedule and the relevant mandatory conditions in the Act. This should be undertaken as a simple administrative process by the licensing authority's officials by whom the proposals contained in the operating schedule to promote the licensing objectives should be translated into clear and understandable conditions consistent with the proposals in the operating schedule. In these circumstances, it is expected and particularly important that licensing authorities do not attempt to second-guess the views of the professional and expert consultees, for example, those of the police, the fire authority and the environmental health authority. Accordingly, if operating schedules are prepared efficiently, often in consultation with responsible authorities, it is expected that the likelihood of hearings being necessary following relevant representations would be significantly reduced.

5.68 Where a representation concerning the licensing objectives is lodged by a responsible authority about a proposed operating schedule it is relevant and the licensing authority's discretion will be engaged. It will also be engaged if an interested party makes relevant representations to the licensing authority, ie those which are not frivolous or vexatious and which relate to the licensing objectives . . . . A hearing will be required for the licensing authority to consider the representations, at which the parties should be invited to comment upon the representations made and if necessary, to provide clarification of their own representations. The need for a

hearing can only be dispensed with by the agreement of the licensing authority, the Applicant and all of the parties who made relevant representations. The hearing process must meet the requirements of the regulations made by the Secretary of State . . . . As a matter of practice, licensing authorities should seek to focus the hearing on the steps needed to promote the particular licensing objective which has given rise to the specific representation and avoid straying into undisputed areas . . . . 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 representations (including supporting information) presented by all the parties;

this Guidance;

its own statement of licensing policy; and

the steps that are necessary to promote the licensing objectives."

**[15]** Similar provisions to those described above apply in relation to applications to vary licences, eg by way of a change in permitted opening hours. There is also a corresponding set of provisions in relation to club premises certificates.

**[16]** The Act makes provision, by s 200 and Sch 8, for a transitional period during which the old regime remains in force but applications can be made for licences under the new regime. The new licences will then come into force when the new regime replaces the old regime at the end of the transitional period. The transitional period begins with the "first appointed day", which was 7 February 2005, and ends with the "second appointed day", which is expected to be 24 November 2005, though the date has not yet been formally adopted.

**[17]** As part of the transitional arrangements, provision is made in Sch 8 to enable existing licences to be converted into premises licences under the new regime on the same conditions as are attached to the existing licences. An application for conversion must be made within the period of six months after the first appointed day, ie before 7 August 2005. Only the police can make representations against such a conversion, and then only on the limited ground that, because of a material change of circumstances since the existing licence was granted or renewed, conversion to a premises licence would undermine the crime prevention objective. Subject to that, conversion is effectively automatic. In June 2005 the Secretary of State published a guidance document which, in Part A, gives advice on the making of an application for conversion of an existing licence.

**[18]** An existing licensee can apply not just for the conversion of the existing licence but also for a variation, eg by way of extended opening hours. Where such an application is made, the normal procedure applies, representations can be made by responsible authorities or interested parties, and if such representations are made there will normally be a hearing. I am told that in the region of 90% of existing licensees are seeking a variation in addition to conversion. The guidance published by the Secretary of State in June 2005 includes, in Part B, advice on the making of an application to vary an existing licence.

**[19]** The Claimants' concerns with regard to the council's policy are of no significance for applications for simple conversion of an existing licence, but are relevant to applications for new licences and for variations of existing licences.

### *THE COUNCIL'S STATEMENT OF LICENSING POLICY*

[20] The council's statement of licensing policy was adopted by resolution of the full council on 20 December 2004, following a period of consultation. Although there has been some confusion in the past about dates, I accept the council's evidence to the court that the policy was published in hard copy on 21 December 2004 and was available on the council's web-site on 6 January 2005.

[21] The published document contains a short section on key principles, followed by the statement of licensing policy itself. That statement consists of an introduction (section 1), a general section on licensing objectives (section 2), and sections on each of the four specific licensing objectives, namely prevention of crime and disorder (section 3), public safety (section 4), prevention of public nuisance (section 5) and protection of children from harm (section 6). There is then an "appendices prologue", followed by appendices on individual towns and on rural areas. The final sections of the document relate to licensing enforcement policy and delegation of functions.

[22] I will look at relevant parts of the text when setting out the Claimants' detailed criticisms of the policy. It is convenient to mention here that parts of the policy are in bold type: para 1.6 of the policy explains that the bold sections indicate the matters that the council is seeking to emphasise.

[23] In reaction to the judicial review challenge, the council has moved towards the adoption of an addendum for insertion at the front of the published policy. The addendum has been the subject of consultation and is expected to be approved by the council's executive on 23 June and to go before the full council for approval on 15 July. In adopting this course, the council does not accept that there is anything wrong with the existing policy, but it contends that the addendum makes the position crystal clear. I think it better to set out the text of the addendum, and to consider the one additional issue that arises in relation to it, after considering the Claimants' case in relation to the policy in its existing form.

### *THE CLAIMANTS' CRITICISMS OF THE POLICY*

[24] The Claimants' criticisms start with the opening words of the policy, which are effectively a preface to the introduction:

"All applications will be considered on their merits, as well as against the relevant policy and statutory framework."

Those words, which would normally be welcomed in a public law context as indicating that a policy is not be treated as a rigid rule, are objected to here on the ground that they misrepresent the statutory scheme. The correct position is that applications will be considered "on their merits" only if relevant representations are made in respect of them. In the absence of representations they will be subject to a simple administrative process which will lead to their being granted in the terms sought, subject only to the imposition of conditions consistent with the operating schedule and the relevant mandatory conditions. The policy creates a false impression of the way the scheme operates.

[25] The Claimants submit that the same error affects numerous other passages in the policy which refer to the assessment of applications without indicating that such assessment will arise only if and to the extent that relevant representations are made and there is a hearing to consider them. Other examples from the introduction are in paras 1.3, 1.6 and 1.9. Similarly it is submitted that there are numerous passages where the policy refers to the power to attach conditions to a licence without making clear that the power to attach conditions beyond those consistent with the proposals in the operating schedule arises only where a decision is made following relevant representations and a hearing. Paragraphs 1.12 and 1.13 of the introduction provide examples of that. It is submitted that the only part of the policy where the scheme is correctly stated is in

paras 1.15 to 1.24, a part which deals with the narrow area of "cumulative impact of a concentration of licensed premises". In particular, para 1.19 is the only place where it is stated clearly that "[i]f no representation is received, it would remain the case that any application must be granted in terms that are consistent with the Operating Schedule submitted". The Claimants highlight the contrast between that and the impression created by the generality of passages in the policy.

[26] The first example of what is alleged to be an over-prescriptive provision is para 1.8, which states:

"In respect of each of the four licensing objectives Applicants will need to provide evidence to the council that suitable and sufficient measures, as detailed in their operating schedule, will be implemented and maintained, relevant to the individual style and characteristics of their premises and events. Reference will need to be made as to whether additional measures will be taken on a permanent basis or specific occasion such as when a special event or promotion planned, which is intended to, or likely to attract, larger audiences."

It is submitted that that paragraph gives the clear impression that Applicants are *required* to detail sufficient and suitable measures in their operating schedule (the suitability and sufficiency of which will be assessed by the council), to produce evidence to the council that such measures will be implemented and maintained, and to include reference to whether additional measures will be taken on certain occasions. None of that is required by the Act or the Regulations, yet the paragraph reads as if it must be done in all applications and fails to make clear that assessment by the council, and the need to satisfy the council in the course of such an assessment, can arise only if and in so far as the matters are in issue at a contested hearing following the making of relevant representations.

[27] The Claimants submit that similar problems run through s 2, the general section on licensing objectives. Paragraphs 2.1 and 2.2, which refer to the imposition of conditions and to the fact that the council's "intended outcome" in each section of the policy is defined in bold type, again fail to make clear that none of this can arise unless relevant representations are made in relation to the application. Each of the following paragraphs is then the subject of specific criticism.

[28] Paragraphs 2.3 to 2.6 state:

2.3 Further, in each section a list of possible control measures is provided to be of assistance to Applicants, but again is not intended to be an exhaustive list. Many control measures achieve more than one objective but have not necessarily been listed under each objective. Applicants will not be required to mention a control measure more than once in their Operating Schedule.

2.4 The council will expect the selection of control measures referred to in 2.3 above to be based upon a risk assessment of the premises, events, activities and the customers expected to attend (eg their age, number, etc.). Whilst the council may not require such risk assessments to be documented (other than where required by other legislation) it considers such documentation to be good practice and a useful tool in the instruction and training of staff. It is also a sound basis for review by the licence holder, in the event of an application for variation or a response to changing circumstances/conditions at the premises being required.

2.5 Additional measures may be necessary on a specific basis such as when a special event (eg popular live band) or promotion (eg during major sporting occasions) is planned, which is intended to, or likely to attract larger audiences or audiences of a different nature and which can have a significant impact on the achievement of the Licensing Objectives. *Reference must be made in an Applicant's Operating Schedule, where applicable, to such occasions and the additional measures that are planned in order to achieve the Licensing Objectives.*

2.6 The council considers the effective and responsible management of the premises, instruction, training and supervision of staff and the adoption of best practice to be amongst the most essential control measures for the achievement of all the Licensing Objectives. For this reason, the council will expect these elements to be specifically considered and addressed within an Applicant's Operating Schedule."

[29] As to para 2.3, the point is made by the Claimants that there can be no *requirement* to list control measures at all: it is not for the council to dictate to Applicants how to draft their applications. Yet the paragraph creates the impression that such a requirement is being laid down. Similarly, it is said that the "expectation" in para 2.4 would be understood in context as a requirement that a risk assessment be drawn up or would at least put pressure on an Applicant to draw one up. Risk assessments are commonly done, but it should be for the Applicant to decide whether to do one. So too the final sentence of para 2.5 dictates what "must" be put in an Applicant's operating schedule. What the council "will expect" in para 2.6 would likewise be read in context as a requirement that the matters be addressed in the operating schedule.

[30] Paragraphs 2.7 to 2.9 are concerned with occupancy capacity. They read:

"2.7 In addition, the occupancy capacity for premises (which includes performers and staff) and events as appropriate is also considered to be an essential factor in the achievement of the four Licensing Objectives (except in respect of premises licensed for the consumption of food and/or alcohol off the premises). Subject to the requirements of paragraph 4.2 below the council will expect the issue of occupancy capacity to be considered and addressed within an Applicant's Operating Schedule and, in most instances, will agree a maximum occupancy capacity based on the Applicant's assessment within their Operating Schedule.

2.8 The design and layout of premises are important in determining capacity, as is the availability and size of exits within recommended travel distances. Other factors should also be considered when considering the appropriate capacity for premises or events. These might include . .

..

2.9 The agreement to a capacity for premises or events should not be interpreted as a requirement to also provide permanent monitoring arrangements such as door staff, persons operating mechanical attendance clickers or maintenance of attendance records. The council recognises that a person in charge at the premises can often readily assess the capacity of premises without resort to such measures. *However, where the capacity is likely to be reached (such as on known busy evenings) and particularly where a special event or promotion is planned, the Applicant will be expected to be able to give details of the additional arrangements that will be put in place to ensure that the capacity of the premises is not exceeded.*"

[31] The Claimants point out that there is no requirement in the Act or the Regulations to give details of occupancy capacity in the operating schedule (save for information, related to the fee payable, where the expected capacity exceeds 5,000) and no power for the council to "agree" an occupancy capacity. Yet these paragraphs would be read as imposing such a requirement and would induce Applicants to address occupancy capacity in the operating schedule when they might not otherwise have done so; with the consequence that the licence will become subject to a condition that might not otherwise have been imposed. Moreover para 2.9 extends beyond the occupancy capacity itself to additional arrangements to ensure that it is not exceeded.

**[32]** In s 3, which concerns the prevention of crime and disorder, the Claimants take issue first with paras 3.3 to 3.5:

"3.3 The promotion of the Licensing Objective, to prevent crime and disorder, places a responsibility on licence holders to become key partners in achieving this objective. Applicants will be expected to demonstrate in their Operating Schedule that suitable and sufficient measures have been identified which will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events.

3.4 When addressing the issue of crime and disorder, the Applicant must demonstrate that those factors that impact on crime and disorder have been considered. These might include . . .

3.5 The following examples of control measures are given to assist Applicants and are considered to be amongst the most essential that Applicants should take account of in their Operating Schedule, having regard to their particular type or premises or activities . . .

Accordingly the council would strongly recommend to Applicants that they consider including in their Operating Schedule a commitment to ending the supply of alcohol to patrons at a fixed period of time before the end of the music and dancing, a reduction in the volume of that music and the removal of the heavy base beat . . ."

**[33]** The Claimants point to the language of "must demonstrate" in para 3.4 and submit that "will be expected to demonstrate" in para 3.3 and "should take account of" in para 3.5 are to be read in the same way. In each of these paragraphs, it is submitted, the policy suggests the existence of an obligation to which Applicants are not in fact subject, and that applications will all be subject to scrutiny by the licensing authority when in fact that will not arise unless representations are made and there is a hearing. The policy thereby draws Applicants in to including measures that they would not otherwise have included in their operating schedules.

**[34]** A similar point is made in relation to para 3.6, which concerns the "Designated Premises Supervisor" or "DPS" in premises from which alcohol will be sold. Section 17 of the Act requires the operating schedule to include certain information about the DPS. But para 3.6 goes further, in stating that the council "will normally expect the DPS to have additional training and experience commensurate with the nature and style of the operation of the premises."

**[35]** Section 4, on public safety, contains much the same kind of language as paras 3.3 to 3.5 and is subject to much the same criticism. Paragraphs 4.1 to 4.3 read:

"4.1 The council is committed to ensuring that the safety of any person visiting or working in licensed premises is not compromised. To this end, Applicants will be expected to demonstrate in their Operating Schedule that suitable and sufficient measures have been identified and will be implemented and maintained to ensure public safety, relevant to the individual style and characteristics of their premises and events.

4.2 When addressing the issue of public safety, it is expected that an Applicant will demonstrate that those factors that impact on the standards of public safety have been considered. These may include . . .

The council will set capacity limits in consultation with the Fire Authority for the following premises . . . .

4.3 The following examples of control measures are given to assist Applicants and are considered by the council to be amongst the most essential that Applicants should take account of in their operating Operating Schedule, having regard to their particular type of premises and/or activities . . . ."

[36] In addition to the general complaint about the prescriptive nature of the language, specific criticism is made of the statement in para 4.2 that the council "will set capacity limits". It is submitted that the council has no power to set capacity limits, save in those situations where it is entitled to impose conditions. The point on capacity limits links with the complaint about paras 2.7 to 2.9, considered above.

[37] As regards s 5, on the prevention of public nuisance, the Claimants complain first about paras 5.3 and 5.4, which are said to give the impression that the council has the power to impose conditions of its own volition (and not just where representations are made and a hearing takes place):

"5.3 Applicants need to clearly understand that the council will pay particular attention whether or not to impose stricter conditions, including controls on licensing hours, where licensed premises are in residential areas with a view to protecting the quality of life of residential occupiers.

5.4 In the case of shops, stores and supermarkets and garages selling alcohol, the council will normally permit the hours during which alcohol is sold to match the normal trading hours during which other sales take place, unless there are exceptional reasons relating to disturbance or disorder."

[38] Paragraphs 5.5 to 5.7 contain language mirroring that in ss 3 and 4 and are subject to the same criticisms:

"5.5 Applicants will be expected to demonstrate in their Operating Schedule that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and characteristics of their premises and events.

5.6 When addressing the issue of prevention of public nuisance, the Applicant must demonstrate that those factors that impact on the likelihood of public nuisance have been considered. These may include . . . .

5.7 The following examples of control measures are given to assist Applicants and are considered to be amongst the most essential that Applicants should take account of in their Operating Schedule, having regard to their particular type of premises and/or activities."

[39] The same pattern applies to s 6, on the protection of children from harm, where again the language is said to be over-prescriptive and also to convey a false impression as to the circumstances in which the council can assess applications:

"6.1 Applicants will be expected to demonstrate in their Operating Schedule that suitable and sufficient measures have been identified and will be implemented and maintained to protect children from harm, relevant to the individual style and characteristics of their premises and events . . . .

6.2 The protection of children from harm is an important issue. It is hoped that family friendly premises will thrive, but the risk of harm to children remains a paramount consideration when determining applications.

. . . .

6.5 . . . When addressing the issue of protecting children from harm, the Applicant must demonstrate that those factors that impact on harm to children have been considered These may include . . . .

6.6 The following examples of control measures are given to assist Applicants and are considered to be amongst the most essential that Applicants should take account of in their Operating Schedule, having regard to their particular type of premises and/or activities . . . .

. . . .

6.8 Where regulated entertainment is provided the council will require the presence of an adequate number of adult staff to control the access and egress of children and to protect them from harm whilst on the premises. Where children are present as performers, the council will require an adequate number of adult staff to be responsible for the child performers . . . .

6.9 The council will rarely impose complete bans on access to children. In exceptional circumstances conditions restricting access or excluding children completely may be considered necessary. Those conditions may restrict children from entering all or part of licensed premises . . . .

6.10 Examples of premises where these conditions may be considered include . . . ."

[40] There are a number of passages in the "appendices prologue" of which complaint is made. The first one appears under the heading "Transport" and states:

"Conditions may be imposed to meet (street) Lighting and CCTV coverage for individual premises.

The incorporation of measures for ensuring the safe and swift dispersal of patrons away from premises and events without causing nuisance or public safety concerns to local residents is vital in seeking approval for an Operating Schedule by the council."

The point made by the Claimants in relation to the first sentence is that this does not convey a proper impression of the limited circumstances in which the council has power to impose conditions. The second sentence is criticised as being over-prescriptive and as implying the existence of a power of approval of an operating schedule that the council does not possess.

[41] In relation to a passage under the heading "Pedestrian Movements", where it is stated that "particular consideration will be given" to the impact on certain proposals on residential amenity, the Claimants' point is once more that the question of giving consideration can arise only if relevant representations are received and a hearing is held.

[42] A number of concerns are expressed about a passage under the heading "Crime & Disorder and Public Nuisance and Safety":

"Door and Floor Supervisors licensed by the Security Industry Authority will be required to be employed at all late night premises (based upon the Licensee's risk assessment) to ensure compliance with the four licensing objectives. The numbers and employment of Door/Floor Supervisors will be expected to be detailed according to the specification set out in the Operating Schedule.

...

It will be expected that Operating Schedules will incorporate a commitment by businesses, owners, designated premises supervisors and others to enter into partnership with appropriate organisations to successfully reduce problems of crime and disorder on or emanating from their premises."

[43] The Claimants submit that there is no requirement in the Act or Regulations as to the employment of door and floor supervisors at late night premises and no requirement on an Applicant to set out in the operating schedule a specification detailing their proposed numbers and employment; and it is unlawful for the council to purport to impose such requirements. Similarly it is submitted that the "expectation" that operating schedules will incorporate a commitment to enter into partnerships with other organisations is to be read in context as a requirement, which again it is unlawful for the council to purport to impose.

[44] That last criticism is also raised in relation to the language of expectation in the final passage in issue, under the heading "Managing the Impact":

"Applicants for new or variations to late night licences will need to consider the dispersal of customers and possible impact on crime and disorder issues. This may include the provision of, or contribution towards affordable transport to take patrons directly away at closing times. The council will seek to encourage the controlled dispersal of customers, plans for which the council will expect to be outlined in the Operating Schedules for licences."

#### *THE CLAIMANTS' CRITICISMS OF THE PROPOSED ADDENDUM*

[45] The addendum proposed to be adopted by the council is in these terms:

"How this policy applies

All applications for new premises licences or variations need to be supported by an operating schedule. The schedule must specify (among other things) the steps which the Applicant proposes to promote each of the licensing objectives.

If no responsible authority or interested person lodges an objection (known as 'relevant representation') to the application, the licensing authority must grant the application as set out in the operating schedule, subject only to mandatory conditions under the Licensing Act 2003. The

steps proposed by the Applicant will become licence conditions. The licensing authority will have no discretion to refuse the application or to alter or add to the conditions arising from the operating schedule.

Where, however, there are relevant representations, then a hearing before a licensing sub-committee will normally follow. After the hearing, the sub-committee has full discretion to take such steps as it considers necessary to promote the licensing objectives. These may include refusing the application, or adding to or modifying the conditions proposed in the operating schedule.

In exercising its discretion, the licensing sub-committee will have regard (amongst other things) to this licensing policy. Therefore, in drawing up their operating schedule, Applicants would be well advised to read this policy carefully. Where an operating schedule complies with this policy, it is generally less likely that an interested party or responsible authority will object to it, or that any objection will succeed. Therefore, compliance with this policy is likely to assist the Applicant to avoid the delay and expense of a contested hearing, and the risk of a refusal or the addition of unwanted licence conditions.

This is not to say that an application that complies with the policy will necessarily be granted or that an application that does not comply with it will necessarily be refused. Where there have been relevant representations, the licensing authority will always consider the merits of the case, and interfere with the operating schedule only when, and to the extent, necessary to promote the licensing objectives. Nor will blanket or standard conditions be applied without regard to the merits of the individual case. So, for example, the licensing authority will not interfere with an operating schedule which does not comply with this policy where the steps proposed are sufficient to meet the licensing objectives in the individual circumstances of the case.

However, the policy represents the licensing authority's view of the best means of securing the licensing objectives in most normal cases. It has been drawn up in consultation with other expert bodies and responsible authorities, together with community stakeholders. While the contents of the operating schedule are a matter for the Applicant, where there is objection to a schedule which departs from the policy, the licensing sub-committee will normally expect to be given a good reason for the departure if it is to be asked to make an exception to the policy.

In this policy, there are a number of references to the licensing authority's requirements of Applicants. As explained above, the policy is only engaged where the licensing authority has a discretion following the receipt of objections. In such cases, the licensing authority will not apply the policy rigidly, but will always have regard to the merits of the case with a view to promoting the licensing objectives.

Further, the policy will be used when dealing with a number of other matters. For example, during the transitional period, Applicants may apply to convert their existing licences into premises licences. Only the police may object to conversion, and then only on crime prevention grounds. Where this occurs, their objection will be considered by the licensing sub-committee, who will have regard to the terms of this policy in making its decision . . ."

**[46]** Subject to an issue about the reference to "full discretion" in the third paragraph, the Claimants accept the addendum as an accurate and unobjectionable statement of the law. They contend, however, that it does not overcome the objections they have to the main text of the policy. The likelihood is that an Applicant filling in an operating schedule would look only at the parts of the policy dealing specifically with the part he was filling in. In any event, anybody reading the addendum and then reading the detail would not be left with a

clear understanding of the true position. It would not be clear, for example, that there is no obligation to provide evidence (paragraph 1.8), that the council has no power to agree a maximum occupancy capacity (paragraph 2.7), that an Applicant does not have to demonstrate certain matters (paragraph 3.4), or that the Claimant does not have power to approve an operating schedule (the appendices prologue). It would not be understood that the Applicant is free to determine the contents of the operating schedule and that the council's powers arise only in the event of relevant representations and a hearing to consider them.

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#### THE CLAIMANTS' LEGAL SUBMISSIONS

[47] I have thought it right to set out the key passages around which the case has been fought, since the detailed wording of them is necessary to a proper understanding of the Claimants' case. I must now turn, however, to a more structured exposition of that case.

[48] Mr Matthias submits that one of the aims of the legislation is to allow licensing authorities to provide a "light touch bureaucracy" (an expression used at para 5.99 of the Guidance), with greater freedom and flexibility for businesses and the avoidance of disproportionate standard conditions. That is supported by the Secretary of State's foreword to the Guidance. It is therefore left to *Applicants* to determine what to include in their applications, and in particular in the operating schedule, subject to the basic requirements laid down in the Act and the Regulations. If an application does not give rise to relevant representations, a licence must be granted on conditions consistent with the operating schedule (together with the mandatory conditions). If there are relevant representations, there is a hearing to consider those representations, but not to consider undisputed matters. So the minimum amount of bureaucracy is imposed at the application stage. There are further lines of defence, in the form of powers of review and closure orders, if problems subsequently arise in relation to premises for which licences have been granted.

[49] An overly prescriptive statement of licensing policy runs counter to the intended lighter touch. In particular, it has the effect of dictating the contents of the operating schedule, whereas that decision should be left to the Applicant; or at least it leads the Applicant into including more in the operating schedule than he would otherwise have included. Because, in the absence of relevant representations, the contents of the operating licence are translated into a set of conditions, this will result in turn in the loading of licence with more conditions than would otherwise be imposed. Indeed, the Claimants' concern is that it will lead to the imposition of conditions far in excess of those experienced by public houses under the old regime, thus resulting in a heavier touch rather than a light touch.

[50] Mr Matthias submits that, in the various passages identified above, the council's policy is repeatedly over-prescriptive in just that way and with that potential effect. He points out that the imposition of conditions places a heavy burden on those operating licensed premises. Observance of conditions means less managerial flexibility to deal with changing circumstances, and breach of conditions creates a risk of criminal sanctions, review of the licence and possibly its revocation.

[51] He further submits that the effect on Applicants is reinforced by the passages that imply that the council will assess or scrutinise all applications and will have the power to impose conditions of its own volition. Those passages again lead Applicants to think that they must comply in their applications with the prescriptive elements of the policy. Applicants are not told that, unless relevant representations are received, there will be a simple administrative process for the grant of the licence and the attachment of conditions consistent with the operating schedule; and that the council's power to scrutinise applications and impose additional conditions is limited to cases where relevant representations have been made and have been considered at a hearing.

[52] Mr Matthias contrasts the council's policy with the tone of the Secretary of State's guidance on the making of applications to vary existing licences, which emphasises the freedom of choice by the Applicant and that the content of the operating schedule is likely to be translated into a condition of the licence:

"You should consider carefully whether, because of your proposed variation, you need to take any *additional* steps to meet the licensing objectives set out in these sections [of the form]. Don't forget that you should already be abiding by relevant legislation in other areas and may have conditions already attached to your licence. Your starting point should be compliance with these requirements. If you feel there is nothing further to do, then it is probably better to say that than leave these sections blank. If you feel there is nothing more to add then you might wish to write 'N/A' or something like 'nothing beyond existing Health and Safety/Fire Safety etc requirements'. This shows you have considered the objectives and come to a decision that you have nothing additional to do and not that you have forgotten to write anything in this section. Of course, if a responsible authority for one of the licensing objectives considers that you need to do more than the existing regimes, they will be able to make representations. If you have concerns, you may find it useful to talk to the relevant responsible authority before completing the form . . . .

If you do intend to take additional measures, you should consider carefully what to include. Anything you put down here is likely to become a condition of your licence. Failure to meet those conditions would mean committing an offence under the Act. You should therefore think carefully about adding conditions to ensure that they are achievable, realistic, necessary, appropriate, proportionate and within your control. Base your response on a proper, common sense consideration of the risks and what you can realistically do to mitigate them" (original emphasis).

[53] It is submitted that the council's policy runs counter to the policy and objects of the Act (see *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, per Lord Reid at 1030B-D), in that the legislation aims for a light touch and confers on an Applicant freedom of choice on how to complete the application form and how he proposes to meet the licensing objectives.

[54] Mr Matthias submits further that it is no answer to say that the passages criticised should not be taken literally but need to be read in the context of the policy as a whole, the legislation and the Guidance. He relies on a decision of Jack Beatson QC (as he then was) sitting as a deputy judge of the High Court in *R (on the application of Chorion plc) v Westminster City Council* [2001] EWHC Admin 754. That case concerned a licensing policy which had been challenged and then amended in a way that met the Claimant's concerns, so that the remaining issue was only one of costs; but that issue called for a decision on whether the challenge had been well founded. The deputy judge held that the policy had the meaning contended for by the Claimant, even though that had not been the meaning intended by the defendant council. He further stated:

"25. I also accept Mr Hunter's [counsel for the Claimant] submission that publishing a policy that meant something other than what was intended rendered that policy susceptible to judicial review. Policies are a means of promoting consistency while not fettering the discretion of a public body (see eg *HTV v Price Commission* [1976] ICR 170, 185) and are meant to afford guidance to those affected by them as to how public authorities will exercise their powers. In *British Oxygen Co Ltd v Ministry of Technology* [1971] AC 610 Viscount Dilhorne stated . . . that it was reasonable and right for a public authority to make known to those interested the policy it was going to follow: '[b]y doing so fruitless applications involving expense and expenditure of time might be avoided'. If a policy is not to be applied in accordance with its meaning, as would have been the case on the original wording of section 6.1 of the licensing policy, there can be no such guidance."

[55] It is further submitted that the harm done by the policy in this case goes beyond its immediate effect on Applicants. The terms of the policy will prompt representations that would not otherwise have been made, so that applications that would otherwise have been granted administratively will be subject to hearings and discretionary decisions by the licensing authority. Passages in the evidence filed on behalf of the council show

that responsible authorities and interested parties will in practice look at the terms of the policy when considering whether to make representations.

[56] Further, if representations are made, the sub-committee of the council considering those representations at a hearing will have the policy before it and will be guided by its excessively prescriptive terms in determining what should have been in the operating schedule and what additional conditions ought to be imposed. So too on an appeal to the magistrates' court, the justices will stand in the shoes of the sub-committee and will be guided in the same way by the policy.

[57] Accordingly, the Claimants' case is that the unlawful policy informs and affects every stage of the procedure and that the court should order the deletion of the offending passages.

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#### *THE COUNCIL'S SUBMISSIONS*

[58] For the council, Mr Lowe QC submits that the legislative scheme is an entire scheme, which starts with a statutory duty on a licensing authority to carry out its functions with a view to promoting the licensing objectives and having regard to its statement of licensing policy. As the Secretary of State states in the foreword to the Guidance, "the legislation is fundamentally based on local decision-making informed by local knowledge and local people". The policy itself is intended to inform all licensing activity within an authority's area, including but not limited to the way in which Applicants apply for licences. For example, para 3.45 of the Guidance contains a recommendation that "statements of policy should provide clear indications of how the licensing authority will secure the proper integration of its licensing policy with local crime prevention, planning, transport, tourism, race equality schemes, and cultural strategies and any other plans introduced for the management of town centres and the night-time economy". Policy is intended to set out at a local level how the licensing objectives are best met in the area. The intention is to promote consultation and discussion, and clarity and consistency, and so to reduce the number of hearings that need to be held.

[59] Mr Lowe lays stress on para 5.47 of the Guidance, which states:

"In preparing an operating schedule, the Secretary of State recommends that Applicants should be aware of the expectations of the licensing authority and the responsible authorities about the steps that are necessary for the promotion of the licensing objectives. This does not mean that Applicants must check their operating schedule with responsible authorities before submitting them, but when uncertain, the responsible authorities can provide expert advice on matters relating to the licensing objectives. For example, the best source of advice on crime prevention is the local police. In preparing operating schedules, Applicants should have regard to statements of licensing policy published by the licensing authority for their area. All parties are expected to work together in partnership to ensure that the licensing objectives are promoted collectively. Licensing authorities and responsible authorities are therefore expected so far as possible to publish material about the promotion of the licensing objectives and to ensure that Applicants can readily access advice about these matters. To minimise the burden on licensing authorities and Applicants, it may be sensible for Applicants to seek the views of the key responsible authorities before formally submitting applications and having completed drafts of their own operating schedules (after considering the effect on the four licensing objectives). For example, on matters relating to crime and disorder, the police and local community safety officers, and local community groups, might be consulted and on matters relating to noise, local environmental health officers might be consulted. Such co-operative effort should minimise the number of disputes which arise in respect of operating schedules. Where there are no disputes, the steps that Applicants propose to take to promote the licensing objectives that they have set out in the operating schedule will very often translate directly into conditions that will be attached to premises licences with the minimum of fuss."

[60] All of this, it is submitted, shows the importance of communicating the licensing authority's expectations clearly through the licensing policy, so that Applicants know how best to avoid disputes. The policy informs the Applicant at the stage of completing his application and also indicates the approach that the council will adopt in the event of a contested hearing, as well as being relevant to the council's other licensing functions such as its enforcement powers. It is stressed that the policy informs Applicants of the council's *expectations* - the language of expectation is to be found in numerous passages - but makes clear that each case will be considered on its own merits and that the council does not have a closed mind. These characteristics, it is submitted, are the hallmarks of a lawful policy. There is nothing wrong with a policy having mandatory elements provided that the decision maker is prepared to consider each case on its merits. The council does not say that it has the power to coerce an Applicant into compliance with the policy. The policy sets out expectations, in firm language, but leaves it to the Applicant to make his own decision as to what to include in an application.

[61] Mr Lowe submits further that the policy must be read in the context of the legislative framework and must be read fairly and as a whole (see eg *R (on the application of Milne) v Rochdale Borough Council* [2001] Env LR 22, paras 50-51). It should not be impugned simply because each element does not spell out that it only applies in certain circumstances, eg in the event of a contested hearing. The proposed addendum will make clear the role of policy in the decision making process of the licensing authority and the occasions when it can be implemented by the authority in the context of licensing applications.

[62] It is pointed out that the Applicant will have the benefit not just of the policy but also of the notes on the standard form, the Guidance and the Claimants' own advice to their members. As to the last point, the first and third Claimants have produced detailed guides for licensees which include advice on how to approach the making of licence applications under the Act. One of those guides, dated May 2005, contains a specific warning to those applying for a variation together with conversion of their existing licence:

"REMEMBER don't be misled by 'requirements' contained in some local licensing policies. It is for you, the Applicant, to decide how to best address the licensing objectives and what necessary measures, if any, should be included to address those licensing objectives that are relevant to your application for particular variations to your licence . . ."

[63] Reliance is also placed on the empirical evidence of applications already received by the council, none of which, in the council's submission, supports the case that unwary Applicants are being misled into including more in their applications than is considered necessary on a premises specific assessment. Nor have the Claimants produced any witness to say that he has in fact been misled by the policy into including an unnecessary description of matters in his application.

[64] In relation to para 1.8 of the policy, Mr Lowe points to the statements in para 5.46 of the Guidance that an operating schedule "should include information which is necessary to enable any responsible authority or interested party to assess whether the steps to be taken to promote licensing objectives are satisfactory" and that certain information "is essential so that responsible authorities and interested parties can form a proper view as to what measures may be necessary to ensure public safety and prevent public nuisance". He submits that the provision of such information is what the policy means by "evidence" in para 1.8. The policy puts the Applicant on notice of the matters he must consider and deal with in the application form if he is to meet the council's expectations in the event of the council assessing the application at a hearing following the receipt of representations. A very wide variety of premises and activities is covered by the policy, and it is entirely appropriate for the council to emphasise the need to consider measures specific to and suitable for the individual premises. Moreover there could be no complaint if the text were prefaced by the words "in appropriate cases" or if the language used were that of recommendation. The difference between that and the actual language used is not a sufficient reason to impugn the policy.

[65] In relation to paras 2.1 and 2.2, Mr Lowe submits that it is clear enough, when the policy is read as a whole and in the context of the legislative framework, that it is referring to the position when relevant representations have been made. The Guidance contains passages that commit the same or a similar "sin" of referring to applications being considered on their individual merits without stating expressly that this will arise only where relevant representations are made (eg paras 3.9, 3.29); but the position is clear enough when the document is looked at as a whole and in context. The objection advanced by the Claimants is contrived.

[66] In para 2.3 Mr Lowe points to the use of the language "possible" control measures. This is simply a prompt in respect of matters that it is relevant for Applicants to consider in the context of promoting licensing objectives. The guidance does not state that an Applicant must mention any control measures in his application. It gives common sense advice, predicated on his having identified and mentioned a control measure, that he need not mention it more than once.

[67] Paragraph 2.4, in employing the language of expectation, is said to be on all fours with the Guidance (see above). There should be no objection to the reference to risk assessments, which are a basic health and safety requirement for all premises (documentation being required only when there are more than five employees). The policy speaks to employers in language they should readily understand. It places the burden on them to assess their own risks, as part of the light touch. A similar assumption about the carrying out of a risk assessment is a recurring theme in the Guidance. For example, para 7.4 of the Guidance states:

"The conditions that are necessary for the promotion of the licensing objectives should emerge initially from a prospective licensee's or certificate holder's risk assessment which should be undertaken by Applicants or clubs before making their application for a premises licence or club premises certificate."

The policy does not suggest that the council has power to direct the carrying out of a risk assessment. But it is perfectly permissible, and consistent with national policy, to say that Applicants are expected to carry one out.

[68] As to para 2.5, the language used is that additional measures "may" be necessary and that reference must be made to them "where applicable". So reference need only be made where the scale or type of event makes it sensible. The Applicant is again directed, as a lawful requirement of policy, to the need to make a premises-specific judgment.

[69] Matters such as staff training, which are dealt with in para 2.6 of the policy, are included among the core issues in the Guidance (see eg para 2.25 and Annex J), and it must be lawful for the council to set out in its policy an expectation that they will be considered and addressed.

[70] Occupancy capacity, which is dealt with in paras 2.7 to 2.9 and para 4.2, is another important issue, as again is clear from the Guidance (see eg what is said in paras 7.27 and 7.34 and Annexes D and E about the need for capacity conditions in certain circumstances). The ability to evacuate a building at speed and in conditions of relative safety is always relevant where people congregate in numbers. It is within the council's lawful discretion to accord it this degree of priority. The statement in para 2.7 that the council "will agree" a maximum capacity based on the Applicant's assessment in the operating schedule refers to the possibility of prior consultation: the council is indicating that it will be prepared to agree if invited to do so. In any event all this applies only to cases where capacity is considered to be an issue. It is always open to an Applicant to judge that it is unnecessary to deal with it in relation to particular premises.

[71] As regards para 3.3, Mr Lowe submits that it is an entirely legitimate policy aspiration. The plain objective is to ensure that the Applicant demonstrates that he will adopt effective means of addressing this important licensing objective. The Guidance supports the view that Applicants should consider this matter, and

that it is not just something that may arise in response to relevant representations (see eg paras 3.46 and 7.20 to 7.30). As to the statement in the policy that Applicants will be expected to "demonstrate" that suitable and sufficient measures have been identified, Mr Lowe refers again to what is said in para 5.46 of the Guidance (quoted above) to the effect that the operating schedule should include information necessary to enable responsible authorities and interested parties to assess whether the steps taken are satisfactory.

[72] It is submitted that para 3.4 does no more than identify to the Applicant the factors that the council expects him to consider. The requirement to "demonstrate" emphasises the weight that the council attaches to this issue; and weight is a matter for the council. Paragraph 3.5 does no more than helpfully list examples to guide Applicants. It also contains the language of strong recommendation, to which no objection is taken; but there is no real difference between this and the language about which the Claimants complain.

[73] Paragraph 3.6, concerning the training and experience of the Designated Premises Supervisor, is another legitimate consideration which accords with the Guidance; and it is obvious that such training and experience should be "commensurate" with the nature and style of operation of the premises. If the council can have regard to this matter when relevant representations are made and a hearing is held, it must also be permissible for the policy to address it at the outset, since it will inform the completion of the operating schedule.

[74] The points made by Mr Lowe on s 4 of the policy are very much the same as those on the corresponding language in s 3. He submits that they are concerned with the elementary promotion of the objective of public safety. An operating schedule is of no value if an Applicant has not undertaken an analysis of factors impacting on public safety, and it must be lawful for the council to entertain the expectations referred to. The statement in para 4.2 that the council "will set" capacity limits is a reference to the imposition of a condition where the power to impose such a condition arises.

[75] Mr Lowe also makes similar points in relation to ss 5 and 6 which, as already stated, repeat the pattern of the earlier sections. He submits again that the council is entitled to set these matters out as policy expectations. He points to various relevant passages in the Guidance, including passages which focus on what Applicants should consider and include in their applications in relation to the protection of children from harm. For example, it is stated in Annex H:

"Applicants wishing to allow access for children to premises where these [potentially harmful] associations may be relevant, when preparing operating schedules or club operating schedules or variations of those schedules for the purposes of obtaining or varying a premises licence or club premises certificate should . . . explain their reasons; and . . . outline in detail the steps that they intend to take to protect children from harm on such premises."

[76] It is submitted that the relevant passages of the appendices prologue, eg about lighting and CCTV and about door supervisors, also accord with the importance attached to such matters in the Guidance.

[77] As to the proposed addendum, Mr Lowe submits that it is not required as a matter of law since the policy can be seen to be lawful in any event when read as a whole and within the legislative framework. The addendum should, however, remove the Claimants' concerns as to what are alleged to be misleading features of the policy.

[78] In relation to Mr Matthias's submission that even the addendum is unlawful in one respect, in saying that the council has "full discretion" at a hearing, Mr Lowe accepts that the hearing will normally, as a matter of practice, focus on matters raised by the representations, but submits that as a matter of law the council has power to go wider. He cites *Quietlynn v Plymouth City Council* [1988] 1 QB 114, in which the Divisional Court agreed with observations of Woolf J in an earlier *Quietlynn* case that a licensing authority had a discre-

tion, subject to the requirements of procedural fairness, to take account of information which came into its possession even though it was not from a statutory objector or was included in a late objection (see 132-133C).

#### CONCLUSIONS ON THE SUBSTANTIVE ISSUES

[79] I take as my starting point the uncontroversial proposition that the council is not just entitled to have a licensing policy but is required by s 5(1) of the Act to have one. The policy has to be "with respect to the exercise of its licensing functions". A key part of those licensing functions is the making of decisions under s 18(3) where relevant representations have been made in respect of applications for premises licences. In such cases the council must take such of the steps mentioned in s 18(4), if any, as it considers necessary for the promotion of the licensing objectives. Those steps are the grant of the licence subject to conditions; exclusion of licensable activities; refusal to specify a person as the premises supervisor; and rejection of the application. Decisions under s 18(3) therefore involve the exercise of a wide discretionary judgment.

[80] It is plainly permissible, if not essential, for the policy to set out how the council will approach the making of such decisions, indicating what the council considers to be important, what control measures it will be looking for, and so forth. For a policy to indicate a decision-maker's general expectations is acceptable in principle and, in this particular context, is also in accordance with the Guidance. It is of course vital that the policy does not turn into a rule that is applied inflexibly and fetters the exercise of discretion. There must be a willingness to consider individual applications on their particular merits.

[81] In so far as the council's policy applies to the decision-making stage under s 18(3), there is little to object to in it. All the matters dealt with are relevant and legitimate considerations, as is supported by the passages in the Guidance to which Mr Lowe took me. The council's decision-making can properly be guided by the policy, provided that there is a willingness to consider individual applications on their merits, which the policy emphasises will be done. (I deal below with the issue raised concerning the statement in the proposed addendum that the council has "full discretion" in decisions under s 18(3).)

[82] A policy relating to the decision-making stage under s 18(3) not only guides the decision-maker but also serves to inform an Applicant about what he should consider in preparing his application. Far from being objectionable, that is one of the purposes of having such a policy. As the Secretary of State recommends at para 5.47 of the Guidance, in preparing an operating schedule "Applicants should be aware of the expectations of the licensing authority . . . about the steps that are necessary for the promotion of the licensing objectives". An application that takes account of the matters set out in the policy, for example by including what is referred to in the policy or by giving a reasoned justification for not doing so, is less likely to give rise to relevant representations and more likely to be granted without additional conditions, whether under the administrative procedure in the absence of relevant representations or on a decision by the council under s 18(3) in the event of relevant representations.

[83] It is true that the very fact that an application does not take account of matters referred to in the policy may give rise to relevant representations. I do not see that, however, as a ground for objection. In practice the policy is the product of an extensive consultation process and reflects the concerns of responsible authorities as well as of the council itself, so it would be unsurprising if an Applicant's failure to take account of matters referred to in the policy were to prompt representations. But in any event the council is entitled to indicate in the policy its own expectations with regard to the promotion of the licensing objectives; and I do not think that an Applicant can legitimately complain if a failure to take account of those expectations gives rise to representations.

[84] All of that relates to the policy in so far as it applies to the decision-making stage under s 18(3). The Claimants' complaint, however, is that the policy does not limit itself in that way but purports to prescribe or dictate the contents of an application and gives the impression that the council will assess, and exercise

substantive discretionary powers in relation to, *all* applications and not just those that come through for a decision under s 18(3).

[85] I accept the Claimants' contention that a statement of licensing policy is unlawful if and in so far as it has those features. The scheme of the legislation is to leave it to Applicants to determine what to include in their applications, subject to the requirements of s 17 and the Regulations as to the prescribed form and the inclusion of a statement of specified matters in the operating schedule. An Applicant who makes the right judgment, so that the application gives rise to no relevant representations, is entitled to the grant of a licence without the imposition of conditions beyond those consistent with the content of the operating schedule and any mandatory conditions. The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or to exercise substantive discretionary powers in relation to it, unless there are relevant representations and the decision-making function under s 18(3) is engaged. If a policy creates a different impression, and in particular if it misleads an Applicant into believing that he must meet certain requirements in relation to his application and that he lacks the freedom accorded to him by the Act and Regulations, the policy is contrary to the legislative scheme and is unlawful on *Padfield* grounds (*Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997).

[86] I also accept that a policy with that effect may be detrimental to the interests of Applicants, in that it may cause them to include more in their applications than they would otherwise have done, which is liable to lead in turn to the imposition of conditions that would not otherwise have been imposed. I take the view, however, that the Claimants' concerns on this issue are substantially overstated. It seems to me that, if the substance of the policy remains the same in each case, a policy that is lawfully expressed is likely in practice to have a very similar effect to one that is unlawfully over-prescriptive in its expression. That is because an Applicant with freedom to determine for himself the contents of his application will realise that an application that fails to take account of the expectations lawfully expressed in the policy is likely to give rise in practice to relevant representations and thereby to engage the decision-making function of the licensing authority under s 18(3); and the authority, whilst assessing the application on its individual merits, will be guided by the matters set out in the policy in reaching its decision. An Applicant who does not tailor his application to the policy therefore faces an uphill struggle.

[87] I turn to consider the council's policy itself. I accept Mr Lowe's submission that it should be read as a whole, against the background of the legislation and Guidance. At the same time I bear in mind that Applicants reading it are going to vary in sophistication and there is a limit to how far they can reasonably be expected to read in qualifications expressed elsewhere in the document or to be derived from an understanding of the statutory scheme. The meaning and effect of individual passages must be judged in a common sense way. I also see much force in what was said in *R (on the application of Chorion plc) v Westminster City Council* [2001] EWHC Admin 754 to the effect that a policy cannot fulfil its purpose of providing guidance if its intended meaning is different from the actual meaning of the words used.

[88] I accept the thrust of the Claimants' criticisms of the council's policy in its unamended form. The policy does seem to me to be over-prescriptive in a number of places, suggesting the existence of requirements that cannot lawfully be imposed on Applicants. That applies not just to passages where the language of obligation is expressly used, such as paras 1.8, 2.3, 2.5 and 3.4, but to the overall impression conveyed in the passages to which objection is taken. That impression is reinforced by the failure of the policy to observe the distinction between the different stages in the procedure. It fails in particular to make clear that it is for Applicants to determine the contents of their applications, subject to compliance with the Act and Regulations, and that what is said about requirements and expectations and about powers of assessment, approval, etc., applies only if and in so far as relevant representations are made and the council's decision-making powers under s 18(3) are engaged. I should add that Mr Lowe's valiant attempts to explain and justify individual passages served in my view to highlight rather than to resolve some of the difficulties inherent in the policy. Accordingly, I accept the Claimants' case that the policy in its unamended form is unlawful.

[89] The proposed addendum, on the other hand, represents a substantial improvement in the policy. It sets out clearly the different stages in the procedure and explains at what point the matters covered in the policy can bite on applications. If the rest of the document is read in the light of the addendum, a careful reader may understand that the prescriptive language of, or impression conveyed by, later passages is not to be taken at face value. But even with the addendum the policy is far from ideal. The objectionable passages remain in place, and there is at the very least a marked tension between them and the addendum. There is a risk that Applicants will focus on particular parts of the policy without taking the time to read the document as a whole and without understanding how the objectionable passages are to be read subject to the addendum.

[90] As to the particular point made by the Claimants concerning the reference in the addendum to a "full discretion" at the s 18(3) stage, I accept that s 18(3) puts the focus on consideration of the relevant representations duly received, but I think it better to leave open the question whether the licensing authority's discretion extends beyond the issues raised in the representations and whether it can take account of information received otherwise than through relevant representations duly received (the *Queitlynn* point). It may well be that the reference to "full discretion" overstates the extent of the council's discretion, but even if that were right I would not regard it as a particularly important issue in the context of this case as a whole.

[91] I come back to my observation that even with the addendum the policy is far from ideal. It would obviously be better if the rest of the policy were recast so as to reflect the correct approach set out in the addendum. I am prepared to go so far as to state that without such recasting the unlawfulness that I have previously identified will not be wholly cured.

[92] Nevertheless I have come to the view that I should not grant the Claimants the relief they seek. My reasons for that decision are best set out after considering the issue of delay.

#### DELAY

[93] The council contends that the claim form was not filed "promptly and in any event not later than 3 months after the grounds to make the claim first arose", as required by CPR 54.5, and that the court should decline to exercise its discretion time because (i) the Claimants did not move as quickly as they could and should have done, and (ii) the delay has caused serious prejudice to the council. The Claimants, for their part, contend that the claim was lodged in time, alternatively that the court should extend time.

[94] The first question is when the grounds for the claim first arose. The council's case is that they arose when the policy was adopted by the council at a public meeting on 20 December 2004 or when it was published on 21 December by sending hard copies to the local district offices, police and fire safety services, and local libraries, and having hard copies available for members of the public on request. The Claimants suggest three different dates, which in reverse chronological order are as follows:

i) 7 February 2005, when the first transitional period commenced and applications for licences could be made for licences under the new regime. It is said that only then did the policy take effect, and indeed that para 1.29 of the policy itself states in bold that it took effect on that date. The Claimants seek to rely by analogy on the reasoning in *R (on the application of Burkett) v Hammersmith and Fulham LBC* [2002] 1 WLR 1593, in which the House of Lords held that in the case of a planning permission time runs only from the actual grant of permission and not from the time of the earlier (revocable) decision to grant it.

ii) 13 January 2005, when the Regulations were laid before Parliament. The Regulations prescribe the form of an application, including the operating schedule, and the Claimants contend that it was only on publication of the Regulations by laying them before Parliament that they were able to compare the council's policy with what was lawfully required under the legislation.

iii) 6 January 2005, which was both the day when the council's policy was placed on its web-site and the last day on which the policy was required to be published by s 5(1)(b) of the Act.

[95] I cannot accept any of the dates suggested by the Claimants. The policy was determined and published pursuant to s 5(1) of the Act. Its publication constituted a discharge of the council's statutory duty under that section, and the policy was then "in force" even though no applications for licences could be made until the commencement of the first transitional period on 7 February 2005. Having published the policy, the council was not then free simply to withdraw it. There was power under s 5(4) to revise the policy, but for that purpose the council had to act in accordance with the statute and comply with the procedural obligations laid down by s 5(5)-(6). The situation was therefore very different from that in *Burkett*. If anything, publication of the policy was analogous to the actual grant of planning permission rather than to the decision to grant it. So I reject the date of 7 February 2005.

[96] As to the argument based on the laying of the Regulations before Parliament, I have difficulty with the proposition that the validity of a policy that was published as required before 7 January 2005 could be affected by the content of Regulations that were published only at a later date. In any event, the Claimants felt able to make representations concerning the draft policy during the consultation period in the absence of the Regulations, and they could in my view have challenged the policy without waiting for the Regulations. I do not accept that time began to run only when the Regulations were first put into the public domain by being laid before Parliament.

[97] In my judgment time began to run from the date of publication of the policy itself. I consider that date to have been 21 December 2004, when hard copies were sent out and were available to the public, rather than 6 January 2005, when the policy became available on the council's web-site. The Claimants are not in my view assisted by the fact that they were unaware that hard copies were available at an earlier date or by the fact that they were in practice monitoring the web-sites of those councils that had them. The fact that 6 January was the last date for compliance with the time-limit laid down by s 5(2)(a) of the Act is also in my view irrelevant.

[98] The claim form was not lodged until 6 April 2005. That was more than three months after the date of 21 December 2004 when in my judgment time began to run. It follows that the claim was out of time.

[99] The next question is whether the court should exercise its discretion to extend time. There are three principal matters relevant to that question: the reasons for the delay, the importance of the matters raised by the Claimants, and the prejudice caused to the council by the delay.

[100] The reason for the delay was the massive burden undertaken by the Claimants in seeking during this period to obtain copies of, and to scrutinise for lawfulness, the policies of 376 different licensing authorities, all of which were published at much the same time in late December 2004 or early January 2005. It was a self-imposed burden, but a perfectly reasonable one to undertake on behalf of their members. The Claimants had responded to all or most of the draft policies at the consultation stage, but it was still necessary to review the final versions in order to see to what extent the representations had been accepted. Having identified over 30 final versions that still caused concern, they had to decide which ones to select as test cases. It is not in the least bit surprising that this took a lot of time. It seems to me that the Claimants are to be commended for having completed the task sufficiently quickly to be able to serve their claim form in draft on the council, as they did, on 21 March 2005, though it is unfortunate that they did not intimate in broad terms at an earlier date that they were minded to bring a claim. I bear in mind that had the Claimants actually issued proceedings on 21 March instead of serving a draft, there would no doubt have been a complaint from the council about the lack of warning but the claim would have been within the three month time limit.

[101] As to the importance of the issues raised, I have held that there is substance to the Claimants' case; and since the issues are said to affect the lawfulness of the policies of 30 or more other licensing authorities there does seem to me to be a real public interest in securing a ruling on them sooner rather than later. It is not easy to see how else they can be raised, at least in the short term, if the present claim is rejected on grounds of delay.

[102] On the other hand, a factor militating against the grant of an extension of time is that a successful challenge leading to the quashing of parts of the policy at this stage would cause real prejudice to the council. Applications for existing licensees to be converted into new premises licences under the new regime have to be made by 7 August 2005. As yet only about 10% of existing licensees have applied for conversion. Although the matter is not free from doubt, since the trade has not responded as expected, it seems likely that a very large number will apply before the closing date. Once an application for variation is made, it must be determined within two months or there is a deemed refusal with a right of appeal to the magistrates' court. The next few months are therefore a very important time for the council. It would be most unfortunate if the council did not have a complete statement of policy in place during that period. If, however, parts of the existing policy were quashed, it would take a substantial length of time to put in place a substitute policy through the review process in s 5(4)-(6). It would be necessary to redraft the policy, to put it out for consultation, and then to have the final version approved by the executive, adopted by the full council and published. It has taken, or will have taken, over 2 months to put in place the addendum; and although Mr Matthias submits that the consultation could be completed within 2 weeks in circumstances where the revisions were being made to give effect to a judgment of the court, a more realistic period would in my view be one at least as long as, and possibly longer than, that required for the addendum. The experience of Doncaster and Gloucester gives some additional support for that view.

[103] Were it not for that issue of prejudice, there would be a strong case for an extension of time. In my judgment the issue of prejudice weakens the case but does not tilt the balance against an extension, in particular because the council's concerns can be met sufficiently by the court's discretion with regard to remedies. Section 31(6) of the Supreme Court Act 1981 provides that where there has been undue delay in making an application for judicial review, the court may refuse to grant (a) leave for the making of an application or (b) any relief sought on the application, if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration. The fact that, as I have held, the Claimants' application was outside the three month time limit means that there has been undue delay in this case. Even if time is extended, the statutory discretion with regard to relief will remain and will serve to reinforce the broad discretion that the court enjoys in any event in the matter of remedies.

[104] In all the circumstances I have reached the view that the application should not be defeated by the argument as to delay. The application was made out of time, but I consider on balance that a proper case for an extension of time has been made out.

#### *RELIEF*

[105] I have already indicated that, although I have found that the council's policy is unlawful, I do not propose to grant any relief in this case. My reasons are as follows.

[106] There is a sufficiently strong assurance that the proposed addendum will be adopted as to make it unnecessary and inappropriate to grant any relief in respect of the policy in its present form.

[107] The addendum will mitigate the problems but will not remedy them completely. Nevertheless the policy as amended by inclusion of the addendum is in my view unlikely seriously to mislead Applicants. There is no evidence that any have been misled to date even by the policy in its unamended form. The Claimants' own guidance to licensees helps to ensure that Applicants understand the true position.

**[108]** If those considerations stood alone, they might not be a sufficient reason for withholding relief. I also take the view, however, that to quash parts of the policy at this stage would do more harm than good. The problems that such a course would cause to the council are discussed above in the context of the issue of delay. I have also referred in that context to the court's power under s 31(6) of the Supreme Court Act 1981 to refuse relief where there has been undue delay. The difficulties faced by the council if parts of the policy were now quashed can perhaps be described more appropriately as detriment to good administration than as prejudice to the council. But whichever way they are categorised, they amount in my judgment to a strong reason for declining to exercise my discretion to make a quashing order.

**[109]** The possibility of granting a declaration was raised at the hearing. In my view a declaration is unnecessary. It is sufficient that my judgment speaks for itself, not just to the council but also to the other licensing authorities whose policies are under examination.

**[110]** The withholding of relief does not mean that the council can rest on its laurels after the adoption of the addendum. It will be obliged to carry out a further review of the policy with a view to putting in place a version that carries the sentiments in the addendum through to the rest of the text. Pending the completion of that review, however, the policy as amended by the addendum will remain in force.

*Judgment accordingly.*

## Judgments

**R (on the application of Portsmouth City Council) v 3D Entertainment Group (CRC) Ltd**

*Magistrates - Review of justices' decision - Appeal to Administrative Court - Appeal by way of case stated - Justices allowing appeal by respondent against decision of appellant licensing authority - Authority appealing by way of case stated - Whether justices erring*

[2011] EWHC 507 (Admin), CO/2938/2010, (Transcript: Wordwave International Ltd (A Merrill Communications Company))

QBD, ADMINISTRATIVE COURT

SUPPERSTONE J

18 FEBRUARY 2011

18 FEBRUARY 2011

G Lucie for the Appellant

The Respondent did not appear and was not represented

The Interested Party did not appear and was not represented

Legal Department, Portsmouth City Council

SUPPERSTONE J:

[1] This is an appeal by way of case stated from the decision made on 17 December 2009 of a Magistrates' Court sitting in Portsmouth to allow an appeal brought by 3D Entertainment Group (CRC) Ltd, the Respondent, against a decision of Portsmouth City Council's Licensing Committee made on 4 August 2009 refusing an application by the Respondent to amend its premises licence in respect of a night club called Route 66, to extend its opening hours from 2am to 3am Monday to Saturday and from 12.30am to 3am on Sunday.

[2] Mr Lucie appears for the Appellant. The Respondent is currently in administration although the receivers have consented to these proceedings continuing. No one attends on behalf of the Respondent. Atmosphere Bars & Clubs Ltd, the interested party, is the current holder of the premises' licence. No one attends on behalf of the interested party, but by letters dated 11 February and 16 February 2011, their solicitors have set out their position.

[3] The questions posed by the magistrates for the opinion of the court and the statement of case are as follows:

"(i) Were we entitled in law to refuse to follow the approach set out by the Court of Appeal (Civil Division) in *Sagnata Investments v Norwich Corporation* [1971] 2 All ER 1441 when dealing with appeals of this nature?

(ii) Did we properly interpret and apply the 'special policy' concerning the cumulative impact of a concentration of licensed premises as set out at paragraph 10.5 of the council's Statement of Licensing Policy?

(iii) In particular considering (ii) were we entitled in law to (a) require the Licensing Committee to only rely on police representations that were based on 'hard evidence' and/or (b) require the local authority to 'investigate the cumulative impact'?

(iv) Given the evidence, were we entitled in law to find as a fact, '... that the Appellant has demonstrated their responsibility within their operating schedule that there will be no negative cumulative impact on the licensing objectives'?

(v) In particular, when considering (iv) were we entitled to conclude there would be no negative cumulative impact on the licensing objectives, in particular that relating to crime and disorder, despite the police taking a different view?

(vi) Were we entitled, in the circumstances of the case, to award costs against the Respondent for the reasons given or at all?"

[4] Mr Lucie, for the Appellant, advances four grounds of appeal:

- (1) the magistrates failed to adopt the correct legal approach to the appeal;
- (2) the magistrates failed properly to interpret and apply the special policy;
- (3) the magistrates made a perverse finding that the Appellant had demonstrated their responsibility within their operating schedule, that there would be no negative cumulative impact on the licensing objectives;
- (4) the decision to award costs was perverse.

[5] Ground (1) relates to question (i) in the statement of case. Ground (2) covers questions (ii) and (iii). Ground 3 covers questions (iv) and (v). Ground (4) relates to question (vi).

#### *GROUND (1), QUESTION (I)*

[6] The magistrates in their written reasons said as follows "Our view is that as an independent and impartial tribunal in the context of licensing applications, we should not be following the approach of *Sagnata*." They go on to say that they are entitled to "look" at the decision-making process and "reasoning" adopted by the council but did not consider themselves in "any way" bound by it. In the final statement of the case the magistrates stated "Our view was that to be truly independent at re-hearing, which is *de novo*, we should not be influenced by decisions at an earlier hearing. Given those circumstances, the doctrine of precedent we felt should be abrogated."

[7] In my judgment, this was an error of law on the magistrates' part. The approach set out in *Sagnata* is still good law. The Human Rights Act 1998 has not changed the position. The Court of Appeal in *R (Hope & Glory Public House Ltd) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31, at para 46, [2011] 3 All ER 579, 175 JP 77, agreed with the way in which Burton J dealt with the matter in paras 43 to 45 of his judgment at first instance. The judge said:

"43 I conclude that the words of Lord Goddard [in *Stepney Borough Council v Joffe* [1949] 1 KB 599] approved by Edmund Davies LJ [in *Sagnata*] are very carefully chosen. What the appellate court will have to do is to be satisfied that the judgment below 'is wrong', that is to reach its conclusion on the basis of the evidence put before it and then to conclude that the judgment below is wrong, even if it was not wrong at the time. That is what this District Judge was prepared to do by allowing fresh evidence in, on both sides.

44 The onus still remains on the Claimant, hence the correct decision that the Claimant should start, one that cannot be challenged as I have indicated.

45 At the end of the day, the decision before the District Judge is whether the decision of the Licensing Committee is wrong. Mr Glenn has submitted that the word 'wrong' is difficult to understand or, at any rate, insufficiently clarified. What does it mean? It is plainly not 'Wednesbury unreasonable' because this is not a question of judicial review. It means that the task for the District Judge - having heard the evidence which is now before him, and specifically addressing the decision of the court below - is to give a decision whether, because he disagrees with the decision below in the light of the evidence before him, it is therefore wrong . . . ."

[8] Accordingly, in my judgment, the answer to the first question is "No".

#### GROUND (2), QUESTIONS (II) AND (III)

[9] The council adopted a special policy dealing with the cumulative impact of a concentration of licensed premises. The effect of the policy is to create a rebuttable presumption that applications for new premises licences or club premises certificates or variations that are likely to add to the existing cumulative impact will normally be refused following relevant representations unless the Applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives (see para 10.5 of the policy). This follows the guidance to licensing authorities issued by the Secretary of State on the discharge of their functions under the Licensing Act 2003 (see para 13.29).

[10] In their written reasons the magistrates refer to the policy as being their "starting point" and accept that there are "cogent reasons for the policy". They refer to the Applicants being in a "catch-22" position. In the final statement of case the magistrates accept that the burden was on the Applicants when they state "It is in the Applicants' obligation to produce evidence given the special policy." However they qualify this by stating "But that evidence must be effectively challenged and objectively assessed." They do not explain what this qualification means in terms of how they applied the policy and, in particular, the reverse burden.

[11] Mr Lucie submits, by reference to the matters he refers to in para 34 of his skeleton argument, that the magistrates adopted an approach that was not consistent with the policy and, in particular, the reverse burden. In my judgment, the magistrates failed properly to apply the special policy in particular by requiring the police and the council to adduce evidence that there would be a negative cumulative impact. This amounted to an error of law.

[12] Accordingly, the answers to questions (ii) and (iii) are "No".

*GROUND 3, QUESTIONS (IV) AND (V)*

[13] The magistrates found that the conditions put forward by the Respondent on the appeal were sufficient to demonstrate that there would be no cumulative impact on any of licensing objectives. The three conditions were as follows: (1) no re-admission after 1 am; (2) an ID scanner would be used; (3) all drinks to be sold in polycarbonate glasses or PET bottles, and, when not available, they would be decanted into polycarbonate bottles.

[14] Mr Lucie submits, and I agree, that conditions (2) and (3) relate only to the premises themselves and will have no impact outside those premises. Condition (1) was said to be "a significant condition which will prevent any migrating customers". The magistrates do not state what this means. It may stop persons migrating to Route 66 after 1am but it cannot mean that it will prevent people migrating away from Route 66 after that time. Those migrating away from the premises will add to the cumulative impact.

[15] At paras 39 to 47 of his skeleton argument Mr Lucie considers the evidence of the police. In my view, it was unequivocal. To arrive at the decision that they did the magistrates must have rejected the police evidence, and yet they gave no reasons for doing so. In *R (Daniel Thwaites plc) v Wirral Borough Magistrates' Court* [2008] EWHC 838 (Admin), [2009] 1 All ER 239, 172 JP 301, this court made it very clear that the views of the police concerning issues of crime and disorder should "weigh heavily" with magistrates.

[16] In my judgment, the magistrates made an error of law in accepting the proposed conditions as sufficient to discharge the burden placed upon the Respondent and in rejecting the police evidence. Accordingly, the answers to questions (iv) and (v) are "No".

*GROUND (4), QUESTION (VI)*

[17] In their written reasons the magistrates state that the Appellant did not act reasonably and properly when considering the application. They say the Appellant based its decision on representations from the police that were not backed by hard evidence and "failed to consider the cumulative impact".

[18] For the reasons I have already given, the magistrates, in my judgment, erred in law in concluding that the Appellant had to have "hard evidence" from the police and that there was duty upon it to "investigate the cumulative impact". The burden was on the Respondent to persuade the Appellant that the operating schedule was such that there would be no cumulative impact. In applying the wrong test, the magistrates fell into error in finding that the Appellant had acted unreasonably. Further, having found the conditions put forward by the Respondent on the appeal (one of which they described as "significant") were sufficient to demonstrate that there would be no negative cumulative impact on any of the licensing objectives, the magistrates were dealing with an application that was different to the one presented at the Committee. For this reason, when allowing the appeal, they should not have awarded the Respondent their costs of the hearing before the Committee.

[19] In my judgment, in making an award of costs, the magistrates committed an error of law. Accordingly, the answer to question (vi) is "No". In any event, the costs award falls away for the reasons I have given in relation to the first three grounds and the first five questions in this appeal.

[20] In summary, for the reasons I have given the answer to each question in the statement of case is "No".

[21] The interested party's solicitors in their letter dated 16 February 2011 say that if interference with the magistrates' decision is necessary the case should be remitted to the Magistrates' Court for redetermination. In my judgment the decisions of the Magistrates' Court must be reversed.

*Judgment accordingly.*

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Judgments

**QBD, ADMINISTRATIVE COURT**

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Neutral Citation Number: [2016] EWHC 1265 (Admin)

CO/345/2016

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**IN THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

**THE ADMINISTRATIVE COURT**

Royal Courts of Justice

Strand

London WC2A 2LL

Thursday, 14 April 2016

**Before:**

**MR JUSTICE JAY**

**Between:**

**EAST LINDSEY DISTRICT COUNCIL**

**Appellant**

**v**

**ABU HANIF**

**(TRADING AS ZARA'S RESTAURANT AND TAKEAWAY)**

**Respondent**

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Tel No: 020 7404 1400 Fax No: 020 7404 1424

(Official Shorthand Writers to the Court)

**Mr P Kolvin QC & Mr D Dadds (instructed by David Dadds LLP) appeared on behalf of the Appellant**

**The Respondent did not appear and was not represented**

**J U D G M E N T**

(Approved)

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1. MR JUSTICE JAY: This is an appeal by way of case stated from the decision of the Lincoln Magistrates' Court, District Judge Veits, given on 23 June 2015, whereby he allowed an appeal from the revocation of a premises licence by the licensing authority.
2. The appellant, the East Lindsey District Council, is the licensing authority. The Magistrates' Court in the usual way is not a party to these proceedings. The respondent, Mr Abu Hanif, trading as Zara's Restaurant and Takeaway, is the licence holder. He through a licensing consultant has submitted correspondence making various limited points, but indicating that he would not be taking any part in these proceedings.
3. The premises in question are Zara's Restaurant and Takeaway situated in North Summercoates on the Lincolnshire coast. They are licensed to sell alcohol ancillary to the supply of food. The restaurant is

owned and managed by the licensee, Mr Hanif. On 29 April 2014, the premises were the subject of a joint visit by the police and immigration officers, and it was discovered that Mr Miah was working in the kitchen as a chef. It was common ground that Mr Miah had no current entitlement to remain in the UK, let alone to work. I was told that he arrived here illegally some years ago. Furthermore, it was also accepted by the respondent that he (i) employed Mr Miah without paperwork showing a right to work in the United Kingdom; (ii) paid Mr Miah cash in hand; (iii) paid Mr Miah less than the minimum wage; (iv) did not keep or maintain PAYE records; (v) purported to deduct tax from Mr Miah's salary; and (vi) did not account to HMRC for the tax deducted.

4. The police then applied for a review of the respondent's licence under section 51 of the Licensing Act 2003 and the matter came before the appellant's subcommittee on 30 June 2014. The subcommittee decided to revoke the respondent's licence. Its reasons were as follows:

5. "The subcommittee were satisfied that Mr Hanif did not take the appropriate checks of staff members having knowledge that there were problems previously at the other premises with overstayers, and that he continued to allow staff to work at Zara's restaurant without making appropriate checks.

6. The subcommittee were satisfied that Mr Hanif had not undertaken the relevant checks to ensure the employee concerned was eligible to work in the United Kingdom. Instead of not allowing employees to work if they had not provided the correct documentation he allowed them to work and paid cash in hand. With all this in mind the subcommittee were satisfied that Mr Hanif had knowingly employed person/s unlawfully in the United Kingdom.

7. The subcommittee considered the evidence by Mr Kheng on behalf of Mr Hanif and the Home Office section 182 Guidance to Licensing Authorities. The subcommittee were of the view that the premises licence should be revoked and that revocation was an appropriate step with a view to promoting the crime prevention licensing objective."

8. The respondent then appealed to the Magistrates' Court. There was a hearing on 27 March 2015, and on 23 June the district judge decided to allow the respondent's appeal. On 1 September 2015, the district judge determined the issue of costs and on 7 January 2016 he stated the case. The appeal to the district judge was de novo, but he accepted that he could only allow the appeal if the subcommittee's decision was "wrong", the burden being on the appellant before him to establish that.

9. Looking now at the stated case, the district judge noted that the respondent had received a civil penalty for employing an illegal worker under section 15 of the Immigration, Asylum and Nationality Act 2006. An immigration officer gave evidence to the effect that although by virtue of section 21 a criminal offence was committed, such proceedings were rarely brought. The district judge also noted that the police and the Council's licensing officer were no longer saying that the respondent was a serial offender, but a redacted report which was placed before the subcommittee still gave the impression that he "was in a much worse position than he actually was". As for the failure to pay the minimum wage, the district judge said this:

A. "In his evidence before me Mr Hanif accepted that he had not paid the minimum wage and this in itself can be a criminal offence. I found that this was not the main basis of the subcommittee's decision however and again there was no evidence that he had been reported for that alleged offence. It would appear from their reasons that the subcommittee used the evidence of paying cash in hand as justification for the finding that he knowingly employed Mr Miah. The prosecuting authority however appear to have taken a different view in offering the civil penalty."

10. The district judge's core reasoning was that no crime had been committed. As he put it:

A. "It appeared to me that no crime had been committed as a result of the visit to the premises in April of last year. A civil penalty had been imposed rather than prosecution for the section 21 offence and no other crime had been reported in relation to not paying the minimum wage."

11. In the district judge's view, the crime prevention objective was not engaged.

12. The district judge also criticised the subcommittee for adopting an inconsistent approach because in other similar cases only warnings were issued. Finally, he considered that the subcommittee may have been influenced by comments in the police report, leading them to believe that they were dealing with a serial offender.

13. At the conclusion of the stated case, the district judge posed two questions for my determination. I will address these at the end of my judgment.

14. I was taken by Mr Philip Kolvin QC to various provisions of the Licensing Act 2003 as amended. Under section 4(1) and (2) a licensing authority must carry out its licensing functions with a view to promoting the licensing objectives, which include "the prevention of crime and disorder". The provisions dealing with the review application brought by the police are contained in sections 51 and 52. Under section 52(3), the licensing authority (and on appeal the Magistrates' Court):

A. "... must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives."

15. The epithet "appropriate" was introduced by amendment in 2011. Previously the test had been stricter. In my judgment, it imports by necessary implication the concepts of proportionality and relevance.

16. Mr Kolvin submitted that the district judge erred in a number of respects. First, he wrongly held that, given that criminal proceedings were never brought, the crime prevention objective (see section 4(2)) was not engaged. The statute is concerned with the prevention rather than the fact of crime. Secondly, and in any event, the interested party had committed criminal offences in relation to tax evasion, the employment of an illegal worker, and employing an individual at remuneration below the minimum wage. As for the employment of an illegal worker, Mr Kolvin accepted that this requires knowledge on the part of the employer, and he also accepted that it is not altogether clear whether the district judge found as a fact that the respondent possessed the requisite knowledge. However, the core question is the promotion of the licensing objectives, not the fact of anterior criminal activity, and in this regard a deterrence approach is appropriate.

17. Thirdly, Mr Kolvin submitted that there was no evidence of an inconsistent approach by the subcommittee in giving warnings in some cases because all cases turn on their own facts. Finally, Mr Kolvin submitted that there was no basis for the district judge's conclusion that the subcommittee may have been influenced by a suggestion that the respondent was a serial offender.

18. I accept Mr Kolvin's submissions. In my view the district judge clearly erred. The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder. This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence. The district judge's erroneous analysis of the law precluded any proper consideration of that issue. In any event, I agree with Mr Kolvin that criminal convictions are not required.

19. To the extent that the analysis must be retrospective, the issue is whether, in the opinion of the relevant court seized of the appeal, criminal offences have been committed. In the instant case they clearly had been: in relation to tax evasion (see the common law offence of cheating the Revenue and the offence of fraudulent evasion of tax contrary to section 106A of the Taxes and Management Act 1970); and the employment of Mr Miah at remuneration below the minimum wage (see section 31 of the National Minimum Wage Act 1998). Moreover, given the evidence that Mr Miah never provided the relevant paperwork, notwithstanding apparent requests, the obvious inference to be drawn is that the respondent well knew that he could not, and that no tax code and National Insurance number had been issued. The corollary inference in my judgment is that the respondent well knew that Mr Miah could not provide the relevant paperwork because he was here illegally.

20. I also accept Mr Kolvin's submission that each case must turn on its own facts. As a matter of law, unless it could be said that some sort of estoppel or related abuse of process arose in the light of warnings given in other cases, the alleged inconsistent approach led nowhere. In my judgment, it could not be so said.

21. Finally, I agree with Mr Kolvin that there is nothing in the point that the subcommittee could have been misled about the interested party being a serial offender. The point that the subcommittee was making was the fact that the respondent had worked at premises where illegal workers were also employed meant that he should have been vigilant to the issue.

22. Thus the answer to the district judge's two questions are as follows:

A. Q. "Was I correct to conclude that the crime prevention objective was not engaged as no crimes had been proceeded with, the appellant only receiving a civil penalty?"

B. No.

C. Q. "Was I correct in concluding that the respondent had been inconsistent in similar decisions in not revoking the licence [sic]?"

D. No.

23. Having identified errors of law in the district judge's decision, the next issue which arises is whether I should remit this case for determination in the light of my ruling or whether I have sufficient material to decide the issue for myself. I should only adopt the latter course if satisfied that the issue is so obvious that no useful purpose would be served by remission. I am so satisfied. Having regard in particular to the twin requirements of prevention and deterrence, there was in my judgment only one answer to this case. The respondent exploited a vulnerable individual from his community by acting in plain, albeit covert, breach of the criminal law. In my view his licence should be revoked. Another way of putting the matter is that the district judge had no proper basis for overturning the subcommittee's assessment of the merits.

24. It follows in my judgment that the only conclusion open to the district judge in the present case was to uphold the revocation of the respondent's licence. This appeal must be allowed and the respondent's licence must be revoked.

25. MR KOLVIN: My Lord, I'm very grateful. Can I deal with the question of costs, both here and below.

26. MR JUSTICE JAY: Yes.

27. MR KOLVIN: Should I start with here.

28. MR JUSTICE JAY: Yes.

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29. MR KOLVIN: My Lord, we would ask for the costs before this court. I just want to pray in aid four very brief points. The first is the result. The second is that the district judge's approach was expressly urged on him by the respondent's legal team. Thirdly, that the respondent was expressly urged to concede this appeal to stop costs running, he was given that opportunity at pages 42 and 43 of the bundle. Fourthly, perhaps a little bit tugging at the heart strings, but there's no reason why the Council Tax payers of East Lindsey should bear the cost of establishing what has been established in this court. So we would ask for the costs up here.

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30. There is a schedule and the schedule has been served upon Mr Hanif by letter dated 16 March of 2016. I don't know whether the schedule has found its way to my Lord, if not I can hand up a copy.

31. MR JUSTICE JAY: It has.

32. MR KOLVIN: It has. My Lord, I can see that VAT has been added on. It doesn't need to be because of course the Council can retrieve the VAT, so my application is for £16,185. I know there's not a lot of explanation around my fee, but it was taken on a single fee for all work involved in relation to the case stated; advice, the skeleton argument and attendance today, so it's one single - -

33. MR JUSTICE JAY: What about your junior's fees?

34. MR KOLVIN: My learned junior is also my instructing solicitor, he wears two hats.

35. MR JUSTICE JAY: I see.

36. MR KOLVIN: He has his own firm which is Dadds LLP, and he is also a member of the bar, so although he has appeared as my junior, his fee is wrapped up in the solicitors' fees set out in the schedule.

37. MR JUSTICE JAY: Okay. What about the costs below?

38. MR KOLVIN: My Lord, I'm just trying to ascertain what the position is.

39. MR JUSTICE JAY: I thought there was no order for costs below.

40. MR KOLVIN: There was no order for costs below, that was on the basis that the appeal had been allowed. The situation in relation to costs of licensing appeals are set out in section 181 of the Act, which enables the court to make such order as it thinks fit. Normally when appeals are dismissed there is no real question about it, costs follow the event. When appeals are allowed, some further considerations come into play, which are expressed by the Master of the Rolls in a case which you may have come across called City of Bradford v Booth, which is the case where the Master of the Rolls said that local authorities shouldn't be put off from trying to make honest and reasonable decisions in the public interest. And so one has to take account additionally of the means of the parties and their conduct in relation to the dispute, but in this case of course the appeal has now been dismissed, and so we would say that the ordinary rule is that the costs

should follow the event, the appeal having failed. I'm just trying to ascertain whether schedules were ever served below, in the light of the way the case came out. (Pause)

41. My Lord, I'm really sorry that we don't actually have the schedule here, apparently it was £15,000. If you were minded to order costs below the options are either I suppose to wait and we will have the thing emailed up, or to say, "Look, it was below, it's a little bit more complex, they should be assessed if not agreed."

42. MR JUSTICE JAY: This is going to wipe him out, isn't it?

43. MR KOLVIN: Well he has already said, I have to say, I'm just telling you frankly what I've been told this morning, that when the bundles and the schedules were served on him, he had clearly read them, but he said, "If you win in the High Court and get costs against me, then I'm just going to declare myself bankrupt." So there may well be a bit of football(?) about this, but nonetheless it was his appeal, his team raised a point which in retrospect was very surprising, and caused an awful lot of costs to be incurred.

44. MR JUSTICE JAY: Yes. Well I am going to assess the costs here in the round figure of £15,000.

45. MR KOLVIN: Thank you.

46. MR JUSTICE JAY: If there was a schedule, which you tell me there was, below, it is proportionate that I assess those costs rather than put you to the trouble of a detailed assessment, so if you could have that emailed to my clerk in due course, I will assess the costs below.

47. MR KOLVIN: Thank you, my Lord.

48. MR JUSTICE JAY: On the basis of that schedule.

49. MR KOLVIN: We're not trying to be too ambitious, but we would like to see what we can - -

50. MR JUSTICE JAY: I'll take a broad brush approach to that.

51. MR KOLVIN: Thank you.

52. My Lord, the only other thing to mention is that this isn't the only case which is kicking around the east of England where licensing subcommittees are being urged to take no action because there has been no prosecution in these immigration cases. Although I appreciate that this is hardly stellar law making, it's an application of pretty well established legal principles to the facts, I'm asking whether my Lord would be minded to certify this so that we can adduce the authority in other cases, because it's a clear statement of the law that there doesn't need to have been a prosecution. So with the practice direction in mind, would my Lord be minded to - -

53. MR JUSTICE JAY: Just remind me of the practice direction.

54. MR KOLVIN: Yes, can I hand it up?

55. MR JUSTICE JAY: Yes. (Handed)

56. MR KOLVIN: If Mr Hanif had come I wouldn't need to make the application. It's paragraph 6.1. The judgment has to clearly indicate that it purports to establish a new principle or extends the present law and that has to take the form of an express statement to that effect, and then 6.2 says what categories of judgment we're dealing with, which include applications attended by one party only.

57. So that's the situation we're in. In reality these judgments get around anyway, because we're dealing with administrative tribunals and not courts, but sometimes the point is taken, "Ah yes, but the court didn't certify".

58. MR JUSTICE JAY: But where's the new principle I've established?

59. MR KOLVIN: My Lord, what you have said clearly, which hasn't been said before, by dint of the fact that not many licensing cases reach the lofty heights of this building, is that there does not need to have been a prosecution in order for the crime to have - -

60. MR JUSTICE JAY: Oh, I see. Well that's so obvious it almost goes without saying, that's why it hasn't been said before.

61. MR KOLVIN: My Lord, it was obvious to everyone except the district judge, the appellant and other licensees in the east of England.

62. MR JUSTICE JAY: Okay.

63. In terms of the logistics, if you want a copy of the judgment, don't you have to pay for it?

64. MR KOLVIN: We may have to, and we would be obviously very pleased to do so.

65. MR JUSTICE JAY: Because I'm not sure that all judgments are, in the Administrative Court, they're not all transcribed and published.

66. MR KOLVIN: That is correct, and I have no doubt that my client would be - - this isn't a matter about the costs of the judgment.

67. MR JUSTICE JAY: No, fortunately it doesn't cost that much. But I will give the certification. I have never been asked to do so before, I must confess.

68. MR KOLVIN: Yes.

69. MR JUSTICE JAY: Because these cases are referred to almost willy nilly, if they're available on Lawtel or wherever.

70. MR KOLVIN: Yes, they are.

71. MR JUSTICE JAY: Then they're just provided.

72. MR KOLVIN: They get into the textbooks and they - -

73. MR JUSTICE JAY: No- one objects.

74. MR KOLVIN: Yes. It has happened once before, in relation to the meaning of the Court of Appeal judgment in Hope and Glory, and Lindblom J, as he then was, was asked repeatedly would he certify in relation to the meaning of Hope and Glory, which is an important test, and he was pretty engaged in the practice direction. But since then that judgment, there's always an argument in court about whether it can be cited or not. The difference between licensing and some other fields of law is that very few cases reach here, so when they do, the judgments of High Court judges are gold dust.

75. MR JUSTICE JAY: Yes, well I'm happy to make the certification.

76. MR KOLVIN: Thank you very much indeed.

77. MR JUSTICE JAY: We wouldn't want this point to be taken again successfully.

78. MR KOLVIN: No.

79. MR JUSTICE JAY: Now as a matter of courtesy, is the judgment, once available, sent to the district judge, or is it something that I should do informally?

80. MR KOLVIN: I don't know, my Lord, what the normal practice is. I don't think that I have previously been on a legal team which has sent judgments, but we're very happy to undertake to do so.

81. MR JUSTICE JAY: Yes, I think if you're going to get a copy, obviously you're going to send it to the respondent - -

82. MR KOLVIN: Indeed.

83. MR JUSTICE JAY: - - so he can ingest it. I think you should send it to the district judge, just saying that the judge directed that out of courtesy he should see it.

84. MR KOLVIN: We're very happy to do that. Thank you very much indeed.

85. MR JUSTICE JAY: Thank you very much.

**INTERNAL MEMORANDUM**

To: Licensing

From: Rebecca Moon

Dept: Licensing

Dept: Environmental Protection & Nuisance

Cc:

Date: 4 October 2018

Urgent

Response required

Further action (see below)

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Subject: Application for Premises Licence: ref - 631054  
Premises: Smash, 5 Gun Street, RG1 2JR

---

I refer to the above application.

I have reviewed the application and consulted our records and would like to make representation against the application. I am concerned that due to the presence of residential properties in the near vicinity of the premises, the measures outlined in section P(d) of the application are not sufficient to prevent a public nuisance from occurring.

The main areas of concern are:

- Noise from the outdoor area
- Noise from people leaving the venue at the end of the night
- General break out noise from the premises

The application includes the provision of outdoor live and recorded music and films. This is likely to cause a public nuisance due to noise affecting residential properties in the near vicinity.

The application involves operation of the premises as a bar. The current planning permission is for use as a restaurant (not as a bar) with the following planning condition in place:

*The premises shall not be used for the preparation or sale of food outside of the hours of 0800 to 2400 hours on Monday to Sunday.  
Reason: In order to protect local residents from unreasonable disturbance arising from the use.*

This suggests that later operation is likely to result in a public nuisance due to noise. The current application is for licensable activities to continue until 00:30 Sunday - Wednesday and 01:00 Thursday-Saturday and for the premises to be open to the public until 01:00 Sunday - Wednesday and 01:30 Thursday-

Saturday which are significantly outside of the hours permitted by the planning permission. This is contrary to the Licensing Policy.

Additional measures I would like to see proposed by the applicant are:

- **Opening hours in line with the planning condition**
  - **Restricting the hours of use of the outdoor area of the premises for drinking should the premises be open beyond the hours permitted by the planning condition**
- 
- **No outdoor live or recorded music or outdoor films on the licence**

Please contact me if you require any further information.

---

Kind regards  
Rebecca Moon  
Senior Environmental Health Officer

**LICENSING ACT 2003 PREMISES LICENCE - PART A**

Reading Borough Council being the Licensing Authority under the above Act,  
**HEREBY GRANT** a PREMISES LICENCE as detailed in this licence.

<b>Premises Licence Number</b>	<b>LP2002361</b>
--------------------------------	------------------

**Premises Details**

<b>Trading name of Premises and Address</b>	
Smash/Coalition 5 Gun Street Reading Berkshire RG1 2JR	
<b>Telephone Number</b>	<b>0118 958 6839</b>

<b>Where the Licence is time limited the dates the Licence is valid</b>
N/A

**Licensable Activities**

<b>Licensable Activities authorised by the Licence</b>	
Exhibition of Films	- Indoor & or Outdoor
Performance of Live Music	- Indoor & or Outdoor
Playing of Recorded Music	- Indoor & or Outdoor
Performance of Dance	- Indoor & or Outdoor
Anything similar to Live Music, Recorded Music or Performance of Dance	- Indoor
Late Night Refreshment	- Indoor & or Outdoor
Sale of Alcohol by Retail	- On & or Off the Premises

**Authorised Hours for Licensable Activities**

<b>The times the licence authorises the carrying out of licensable activities</b>	
<b>Hours for the Exhibition of Films</b>	
Monday	from 1000hrs until 0330hrs
Tuesday	from 1000hrs until 0330hrs
Wednesday	from 1000hrs until 0330hrs
Thursday	from 1000hrs until 0330hrs
Friday	from 1000hrs until 0430hrs
Saturday	from 1000hrs until 0430hrs
Sunday	from 1200hrs until 0230hrs
<b>Hours for the Performance of Live Music</b>	
Monday	from 1000hrs until 0330hrs
Tuesday	from 1000hrs until 0330hrs

Wednesday from 1000hrs until 0330hrs  
Thursday from 1000hrs until 0330hrs  
Friday from 1000hrs until 0430hrs  
Saturday from 1000hrs until 0430hrs  
Sunday from 1200hrs until 0230hrs

**Hours for the Playing of Recorded Music**

Monday from 1000hrs until 0330hrs  
Tuesday from 1000hrs until 0330hrs  
Wednesday from 1000hrs until 0330hrs  
Thursday from 1000hrs until 0330hrs  
Friday from 1000hrs until 0430hrs  
Saturday from 1000hrs until 0430hrs  
Sunday from 1200hrs until 0230hrs

**Hours for the Performance of Dance**

Monday from 1000hrs until 0330hrs  
Tuesday from 1000hrs until 0330hrs  
Wednesday from 1000hrs until 0330hrs  
Thursday from 1000hrs until 0330hrs  
Friday from 1000hrs until 0430hrs  
Saturday from 1000hrs until 0430hrs  
Sunday from 1200hrs until 0230hrs

**Hours for anything similar to Live Music, Recorded Music or Performance of Dance**

Monday from 1000hrs until 0330hrs  
Tuesday from 1000hrs until 0330hrs  
Wednesday from 1000hrs until 0330hrs  
Thursday from 1000hrs until 0330hrs  
Friday from 1000hrs until 0430hrs  
Saturday from 1000hrs until 0430hrs  
Sunday from 1200hrs until 0230hrs

**Hours for the Provision of Late Night Refreshment**

Monday from 2300hrs until 0330hrs  
Tuesday from 2300hrs until 0330hrs  
Wednesday from 2300hrs until 0330hrs  
Thursday from 2300hrs until 0330hrs  
Friday from 2300hrs until 0430hrs  
Saturday from 2300hrs until 0430hrs  
Sunday from 2300hrs until 0230hrs

**Hours for the Sale by Retail of Alcohol**

Monday from 1000hrs until 0330hrs  
Tuesday from 1000hrs until 0330hrs  
Wednesday from 1000hrs until 0330hrs  
Thursday from 1000hrs until 0330hrs  
Friday from 1000hrs until 0430hrs  
Saturday from 1000hrs until 0430hrs

Sunday from 1200hrs until 0230hrs

All licensable activities to extend on Bank Holiday Sunday 1200hrs to 0430hrs

### Opening Hours

#### Hours the Premises is Open to the Public

Monday from 1000hrs until 0330hrs

Tuesday from 1000hrs until 0330hrs

Wednesday from 1000hrs until 0330hrs

Thursday from 1000hrs until 0330hrs

Friday from 1000hrs until 0430hrs

Saturday from 1000hrs until 0430hrs

Sunday from 1200hrs until 0230hrs

### Alcohol

Where the licence authorises supplies of alcohol whether these are on and/or off supplies

Sale of Alcohol by Retail - On & Off the Premises

### Premises Licence Holder

Name, (registered) address of holder of premises licence

Name: Eclectic Bars Trading Limited

Address: 36 Drury Lane, London, WC2B 5RR

### Additional Details

Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol

Name: Mr Joseph Raymond Wynder

Address: [REDACTED] Gimson Road, Leicester, LE3 6DZ

### Designated Premises Supervisor

Personal Licence number and issuing authority of personal licence held by the designated premises supervisor where the premises licence authorises the supply of alcohol

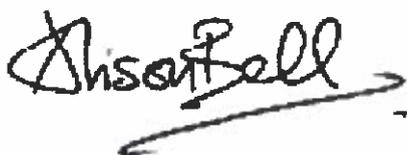
Personal Licence Number: LEIPRS3640

Issuing Authority: Leicester City Council

This Licence shall continue in force from 28/08/2018 unless previously suspended or revoked.

Dated: 24 September 2018

Head of Environment & Neighbourhood Services



## **Mandatory Conditions**

### **Supply of Alcohol**

#### **To be applied where a premises licence authorises the supply of alcohol**

- 1 No supply of alcohol may be made under the premises licence:-
  - a) at a time when there is no designated premises supervisor in respect of the premises licence, or
  - b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended
- 2 Every supply of alcohol made under the premises licence must be made or authorised by a person who holds a personal licence.

### **Film Exhibitions**

#### **To be applied only where a premises licence or club premises certificate authorises the exhibitions of films**

- 1 The admission of children to any exhibition of any film must be restricted in accordance with section 20 of Part 3 of the Licensing Act 2003.
- 2 In the case of films which have been classified by the British Board of Film Classification admission of children to films must be restricted in accordance with that classification.
- 3 In the case of films which have not been classified by the British Board of Film Classification, admission of children must be restricted in accordance with any recommendation made by the Licensing Authority.

### **Door Supervisors**

**To be applied where a premises licence or club premises certificate includes a condition that any person must be at the premises to carry out a security activity. [Except premises with a premises licence authorising only plays or films or premises used exclusively by a club].**

- 1 Each individual present at the licensed premises to carry out a security activity must be licensed by the Security Industry Authority.

**Responsible Drink Promotions (commencement date 01/10/2014)**

1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

(d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;

(e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

**Supply of Tap Water (commencement date 01/10/2014)**

1. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

**Age Verification Policy (commencement 01/10/2014)**

1. The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

2. The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

3. The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—

(a) a holographic mark, or

(b) an ultraviolet feature.

**Drink Measurements (commencement date 01/10/2014)**

1. The responsible person must ensure that—

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—

(i) beer or cider: ½ pint;

(ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and

(iii) still wine in a glass: 125 ml;

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.”

**Minimum Permitted Pricing (commencement 28th May 2014)**

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

2. For the purposes of the condition set out in paragraph 1—

(a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;

(b) “permitted price” is the price found by applying the formula—

$$P = D + (D \times V)$$

where—

(i) P is the permitted price,

(ii) D is the rate of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence—

(i) the holder of the premises licence,

(ii) the designated premises supervisor (if any) in respect of such a licence, or

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994

3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from the paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.

4. (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

## Annex 2

### Conditions Consistent with the Operating Schedule

#### General

#### Conditions agreed with the Licensing Authority and Thames Valley Police - November 2015

1. A CCTV system shall be installed, in accordance with current or amended Home Office Guidelines relating to UK Police Requirements for Digital CCTV Systems. The system shall be maintained and operated correctly to the satisfaction of Thames Valley Police, ensuring ALL licensed areas of the premises (except toilet facilities) are monitored, including all entry and exit points enabling frontal identification of every person entering and in any light condition.

All cameras shall continually record whilst the premises are open to the public and the recordings shall be kept and available for a minimum of 31 days with time and date stamping and except for mechanical breakdown beyond the control of the proprietor shall be made available upon request to the police and authorised officers of the council. Any breakdown or system failure will be notified to the police immediately and remedied as soon as practicable.

Any request from an authorised officer of Thames Valley Police or an authorised officer of Reading Borough Council to view a recording for evidential purposes must be carried out immediately whilst the premises is open to the public. Further to this any request for a recording to be made for evidential purposes must also be carried out immediately whilst the premises is open to the public. To enable both viewings and recordings there must be a person qualified to operate the CCTV system available at all times on the premises. Requests for recordings made outside of the times the premises is open to the public shall be made available upon 24 hours notice.

A sign advising customers that CCTV is in use shall be positioned in a prominent position. A fully trained person who can operate the system shall be available at all times when the premises is open to the public.

2. The premises shall at all times operate a Challenge 25 policy to prevent any customers who attempt to purchase alcohol and who appear to the staff member to be under the age of 25 years from making such a purchase without having first provided identification. Only a valid British driver's licence showing a photograph of the person, a valid passport or a nationally approved proof of age card showing the 'Pass' hologram (or any other similarly nationally recognised scheme) are to be accepted as identification.

3. The Premises Licence holder shall keep and maintain a register of Door Supervisors. The register shall show the following details:

- (i) The name, home address and registration number of all door supervisors working at the premises;
- (ii) SIA registration number;

- (iii) Date and time that the door supervisor commenced duty, countersigned by the Designated Premises Supervisors;
- (iv) Any occurrence or incident of interest must be recorded giving names of the doorsafe supervisors involved;
- (v) Date and time that the doorsafe supervisor finished work, countersigned by the Designated Premises Supervisor.

4. The premises and area immediately outside the premises shall be kept clear of all forms of litter whilst the premises is open for licensable activities.

5. Clearly legible and suitable notices shall be displayed at all exits, requesting customers to respect the needs of local residents and to leave the premises and area quietly. Staff shall be available to ensure that customers disperse quietly.

6. All cashiers shall be trained to record refusals of sales of alcohol in a refusals book /register. The book/ register shall contain:

- Details of the time and date the refusal was made;
- The identity of the staff member refusing the sale;
- Details of the alcohol the person attempted to purchase.

This book /register will be available for inspection when requested by a Police Officer or authorised officer of Reading Borough Council and shall be retained for six months.

7. An incident book/register shall be maintained to record all incidents of crime and disorder occurring at the premises. Details of occasions when the police are called to the premises shall be recorded. This book /register will be made available for inspection when requested by a Police Officer or authorised officer of Reading Borough Council and shall be retained for six months.

8. All incidents that are recorded in the incident register shall be signed off by the Designated Premises Supervisor or nominated representative. A weekly review of the incident register shall also be carried out by the Designated Premises Supervisor.

9. The placing of refuse - such as bottles - into receptacles shall not cause a noise nuisance at any time.

10. An active dispersal policy shall be devised and implemented on the premises. This dispersal policy shall include, but not be limited to, staff members being available to disperse customers from the premises and immediate vicinity and to advise customers to respect the needs of local residents and leave quietly. This dispersal policy shall be in written form and be made available for inspection to authorised officers of Reading Borough Council and Thames Valley Police.

11. The licensee shall take all reasonable precautions and exercise all due diligence to ensure that no patron removes glasses or open bottles from the premises. The licensee shall display notices advising that glasses and bottles must not be removed from the premises at all exit points normally used by patrons.

12. All staff shall be refresher trained on the law relating to underage sales every three months on how to question and refuse sales if necessary, utilising the Challenge 25 policy. Records of the training and reminders given shall be retained.

13. An active policy shall be put in place at the premises in relation to the searching and detection of illegal drugs and weapons. This shall include detection on the way into the premises and active monitoring of all areas of the premises for illegal drug use when the premises is open to members of the public. Any incidents or findings are to be documented in writing.

14. The premises licence holder shall ensure that advertising or promotional material for licensable activities at the premises is not placed on any street furniture, structure or public highway not belonging to the premises licence holder. Failure by the premises licence holder to remove any promotional material illegally displayed will be a breach of this condition and any other legislation that applies in Reading in relation to unlawful advertising on street furniture.

15. A written risk assessment shall be put in place to manage the queuing of patrons outside of the venue on the public highway. This risk assessment shall be reviewed on a regular basis, be provided in written form and be made available for inspection to officers of Reading Borough Council and Thames Valley Police upon request.

16. Children shall only be permitted on the premises when accompanied by a responsible adult. No children shall be permitted on the premises after 2100hrs.

17. The last permitted entry time to the premises on any given night shall be one hour prior to the venue's closing time.

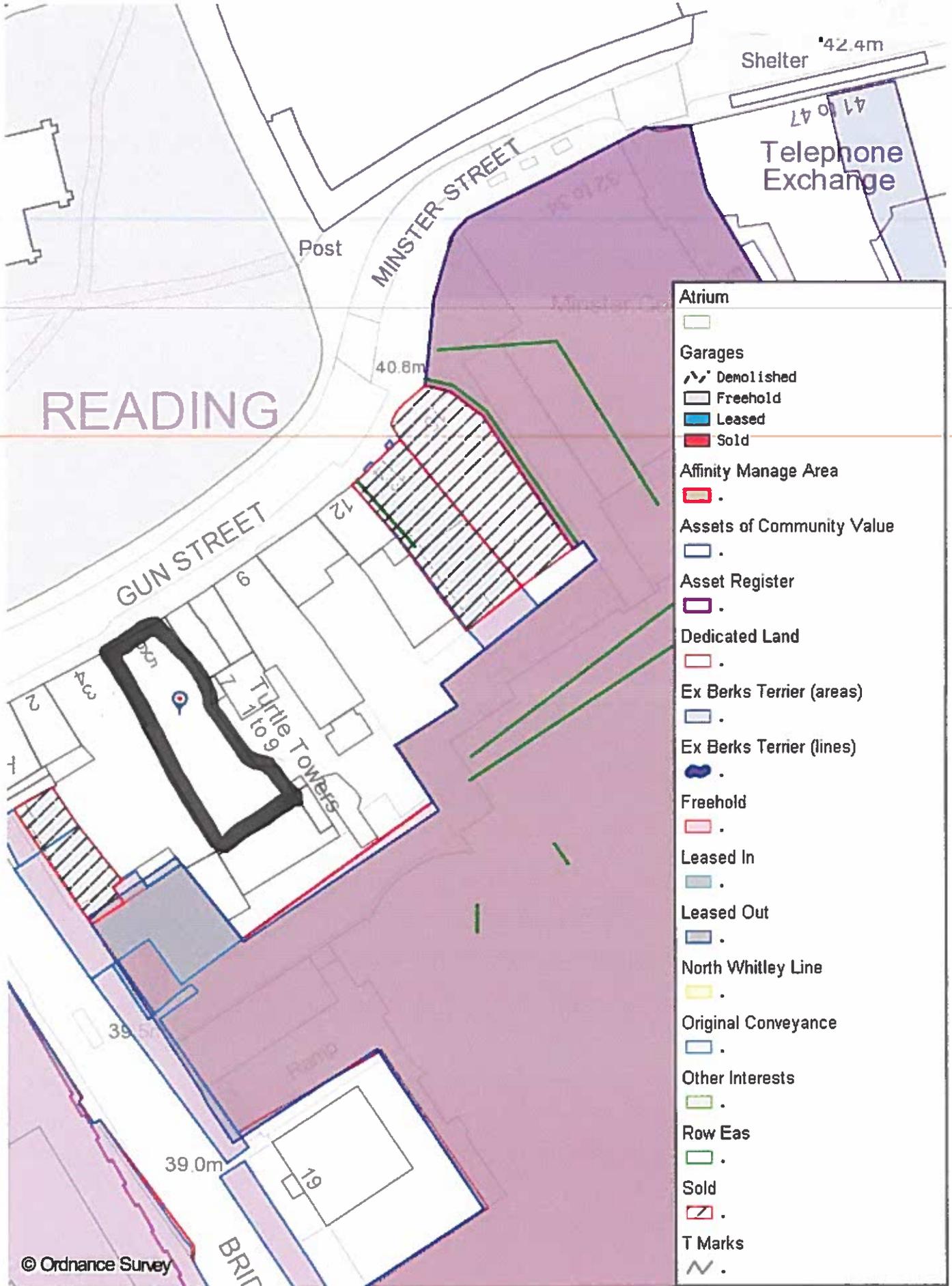
### **Annex 3**

#### **Conditions attached after a hearing by the Licensing Authority**

### **Annex 4**

#### **Plans**

As attached plan dated 04/04/2016 apart from 1<sup>st</sup> Floor which is on the following plan L01 B Dated 31/05/2017



READING

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