



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Sub-Committee

Friday, 19 August 2016
3.00 pm
Montpellier Room - Municipal Offices

Membership	
Councillors:	Mike Collins, Diggory Seacome and Pat Thornton
Reserve Councillor:	John Payne
Officers:	Phil Cooper, Licensing Officer Fiona Samuda, Solicitor

Agenda

1.	ELECTION OF CHAIRMAN	
2.	APOLOGIES	
3.	DECLARATIONS OF INTEREST	
4.	DETERMINATION OF AN APPLICATION FOR A REVIEW OF A PREMISES LICENCE Soho Bar, 2 Rotunda Terrace Montpellier Street, Cheltenham	(Pages 3 - 38)

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Cheltenham Borough Council

Licensing Sub Committee

Licensing Act 2003:

Determination of an application for a review of a premises licence

**Soho Bar, 2 Rotunda Terrace Montpellier Street, Cheltenham
(ref 16/01023/PRMR)**

Report of the Licensing Officer

1. Introduction

1.1 Section 51 of the Licensing Act 2003 (the Act) allows a responsible authority or any other person to apply at any time to the licensing authority to review a premises licence or club premises certificate. Any application for a review of a premises licence or club premises certificate must relate specifically to the premises in question and to one or more of the Act's licensing objectives, which are:

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

1.2 An application was received on 29th June 2016 from Gloucestershire Constabulary to review the premises licence of Soho Bar, 2 Rotunda Terrace, Montpellier Street, Cheltenham. A copy of the application is included at **Appendix A**. The constabulary have indicated that their application for review relates to:

- the prevention of crime and disorder; and
- public safety.

1.3 Implications

1.3.1 Legal A sub committee is required to discharge its duty and determine an application with a view to promoting the licensing objectives. These objectives, which are set out in section 4(2) of the Licensing Act 2003, 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.

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2. Information relating to the premises licence

- 2.1 Licence holder: Mr Ansar Ali
- 2.2 Designated premises supervisor: Mr Ansar Ali
- 2.3 Premises address: Soho Bar, 2 Rotunda Terrace, Montpellier Street, Cheltenham
- 2.4 Permitted licensable activities under the premises licence:
 Sale / supply of alcohol Sunday 10:00 - 23:00

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Sale / supply of alcohol	Monday to Wednesday	10:00 - 00:00
Sale / supply of alcohol	Thursday to Saturday	10:00 - 01:00
Performance of live music	Sunday	10:00 - 23:00 Indoors
Performance of live music	Monday to Wednesday	10:00 - 00:00 Indoors
Performance of live music	Thursday to Saturday	10:00 - 01:00 Indoors
Performance of recorded music	Sunday	10:00 - 23:00 Indoors
Performance of recorded music	Monday to Wednesday	10:00 - 00:00 Indoors
Performance of recorded music	Thursday to Saturday	10:00 - 01:00 Indoors
Late night refreshment	Monday to Wednesday	23:00 - 00:00 Indoors
Late night refreshment	Thursday to Saturday	23:00 - 01:00 Indoors

The sale of alcohol is authorised for consumption both on and off the premises.

2.5 A copy of the premises licence is attached at **Appendix B**.

3. Consultation

3.1 When an application for review of a licence is made to the licensing authority a 28 day statutory consultation period commences. This involves a copy of the review application being served on each of the 'responsible authorities' designated in the Act. In addition there is a requirement for a public notice to be displayed at the premises for the duration of the statutory consultation period. This gives other people the opportunity to make representation.

At the end of the 28 day consultation period, a hearing must be held to determine the application.

3.2 **Responsible authorities:**

The following responsible authorities were consulted:

Environmental health authority – Representation has been made in relation to the prevention of public nuisance objective. The senior environmental health officer has reported that in July 2016 he served a noise abatement notice on the operators of the premises following complaints and an investigation into statutory noise nuisance. A copy of the representation is attached at **Appendix C**.

Gloucestershire Constabulary – The applicant

Gloucestershire fire and rescue service – No representation made

Health and safety enforcing authority – No representation made

Authority with responsibility for planning – No representation made

Body with responsibility for the protection of children from harm – No representation made

Director of public health – No representation made

Trading Standards – No representation made

Each responsible authority received a full copy of the application for review.

3.3 **Other people**

Three representations were received from other people.

Mr Ryan Powell of Flat 3, Bayshill Lodge, Montpellier Street, has submitted representation under the public nuisance objective and has cited problems caused by activities at the premises involving loud music and antisocial behaviour.

Mr Robin Bennett of Flat 1, Bayshill Lodge, Montpellier Street, has submitted representation under the public nuisance objective and has cited problems caused by activities at the premises involving loud music and antisocial behaviour.

Gosschalks Solicitors, acting for Enterprise Inns PLC have submitted representation as the freehold owner of the premises. Whilst neither Enterprise Inns nor Gosschalks have an operational involvement in the premises, or any responsibility in terms of the licence, they have commented about the evidence being used in this review, the timing of the application in relation to the progress of the investigation, and the potential negative consequences for their client's business interests.

4. Local Policy Considerations

4.1 The 2003 Act introduced a unified system of regulation through two types of licenses: personal licences and premises licences (club premises certificates for qualifying clubs). The Borough Council, as the licensing authority, is responsible for licensing all outlets in the borough that sell or supply alcohol, provide regulated entertainment or provide late night refreshment.

4.2 The system is underpinned by four objectives: i) the prevention of crime and disorder; ii) public safety; iii) the prevention of public nuisance; and, iv) the protection of children from harm. The licensing authority must promote these objectives in carrying out its functions.

4.3 The council's adopted licensing policy statement (December 2015) includes the following:

- i) Each of the four objectives is of equal importance and will be considered in relation to matters centred on the premises or within the control of the licensee and the effect which the operation of that business has on the vicinity. (Paragraph 1.18)
- ii) Crime and Disorder

The promotion of the licensing objective to prevent crime and disorder, places a responsibility on licence holders to become key partners in promoting this objective. (3.10)

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 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. (3.11)

When addressing the issue of crime and disorder, the applicant should demonstrate that those factors that impact on crime and disorder have been considered. These factors may include:

- a) Underage drinking;
- b) Drunkenness on premises;
- c) Public drunkenness;
- d) Drugs;
- e) Violent behaviour; and/or
- f) Anti-social behaviour. (3.12)

In making their decision, regard should be given to the levels of crime and disorder in and around the venue, the level of compliance with conditions on existing licences and any available evidence on crime and disorder issues. (3.13)

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iii) Public Safety

The council in its role as licensing authority must try to ensure the safety of people visiting and working in licensed premises. The council will need to be satisfied that measures to promote public safety including risk assessments, setting safe capacities and adequate means of escape are put in place and maintained, if not adequately provided for by other regulatory regimes. (3.16)

Consideration should be given to whether:

- a) appropriate and satisfactory general and technical risk assessments, management procedures and certificates have been made available to the relevant responsible authority and to the council, that demonstrate that the public will be safe within and in the vicinity of the premises;
- b) the premises already has a licence or a fire certificate that specifies the maximum number of people that can attend it or be present and, if not, whether a risk assessment has been undertaken to assess the maximum number of people in terms of capacity in various parts of the premises, so that they can be operated safely and can be evacuated safely in the event of an emergency;
- c) there are procedures proposed to record and limit the number of people on the premises with opportunities for going outside and readmission;
- d) patrons can arrive at and depart from the premises safely;
- e) music, dance and performance venues will use equipment or special effects that may affect public safety (i.e. moving equipment, pyrotechnics, strobe lights, smoke machines);
- f) there are defined responsibilities and procedures for medical and other emergencies and for calling the emergency services; and/or
- g) the levels of compliance with conditions on existing licences relating to public safety. (3.17)

The council seeks to encourage the use of toughened glassware and polycarbonate where appropriate in licensed premises. Where a relevant representation is received the council will consider imposing a condition prohibiting the sale of alcohol in annealed glass containers and require the use of polycarbonate or other safer alternatives in order to promote public safety in licensed venues. (3.18)

iv) Public Nuisance

The council will expect applicants to set out in their operating schedules the steps taken, or proposed to be taken, to deal with the potential for public nuisance arising from the operation of the premises. (3.20)

Applicants should identify and describe through a risk assessment how these risks will be managed. Public nuisance could include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. (3.21)

Applicants will be expected to have included measures in their operating schedules that make adequate provision to:

- a) restrict the generation of noise within the premises and from activities associated with the premises in the vicinity, or from an open air site;
- b) limit the escape of noise from the premises or open air site;
- c) restrict noise emissions to below levels that could affect people in the vicinity going about their business, at work and when at home both while relaxing and while sleeping;
- d) minimise and control noise from customers arriving at the premises, or open air site outside it and departing from it;
- e) minimise and control noise from staff, contractors and suppliers and their activities;
- f) minimise and control noise from vehicles associated with and providing services to the premises or open air site and their customers;

- g) determine whether people standing or sitting outside premises are likely to cause obstruction or other nuisance;
- h) whether the premises are under or near to residential accommodation;
- i) the hours of the sale of alcohol in open containers or food for consumption outside the premises;
- j) measures to make sure that customers move away from outside premises when such sales cease;
- k) measures to collect drinking vessels and crockery, cutlery and litter;
- l) the extent and location of areas proposed to be set aside for the consumption of food and alcoholic drink and for smoking;
- m) whether there is a need for door supervisors to prevent or to control customers congregating in outdoor areas to smoke, consume food or drink (whether supplied from the premises or not).
- n) adequate measures to prevent the following arising from the proposed licensable activity that may cause disturbance to people in the vicinity:
 - a. litter, smells, fumes, dust, smoke, or other emissions;
 - b. street fouling;
 - c. light pollution. (3.22)

The role of the council is to maintain an appropriate balance between the legitimate aspirations of the entertainment industry and the needs of residents and other users of the town including businesses, workers, shoppers and visitors. (3.23)

Playing of music can cause nuisance both through noise breakout and by its effect on patrons, who become accustomed to high sound levels and to shouting to make themselves heard, which can lead to them being noisier when leaving premises. Other major sources of noise nuisance are vehicles collecting customers, the slamming of car doors and the sounding of horns. These noises can be particularly intrusive at night when ambient noise levels are lower. (3.24)

Where relevant representations are received, the council may attach appropriate conditions to licences, necessary to support the prevention of undue noise disturbance from licensed premises. Where premises remain open after 23:00, the licence holder will be expected to provide facilities which are relevant to controlling noise and the patrons of those premises late at night. The council also expects that premises which produce noise generating licensable activities are acoustically controlled and engineered to a degree where the noise from the premises when compared to the ambient noise level will not cause undue disturbance. (3.25)

The provision of tables and chairs outside the premises, either on the highway or on private land, and the provision of beer gardens, can enhance the attractiveness of the venue. It can have the benefit of encouraging a continental style café culture and family friendly venues. However, late at night, tables and chairs and beer gardens can cause significant public nuisance to residents whose homes overlook these areas. (3.26)

The ‘smoke free public places’ legislation in July 2007 has led to an increase in the number of people outside licensed venues. Where outside facilities are provided the council expects applicants to provide details in their application of:

- a) the location of open air areas; and
- b) how the outside areas will be managed to prevent noise, smell, or obstruction and nuisance to neighbours and the public. (3.27)

Licensees and their staff are expected to have sufficient measures in place to prevent such problems arising including a suitable litter and waste management program to ensure that the area outside the premises is kept free of litter at all times. (3.28)

Where the council receives relevant representations, or where a responsible authority or an interested party seeks a review, the council may consider imposing conditions to improve

the management of the outside area or prohibiting or restricting the use of these areas in order to promote the public nuisance objective. (3.29)

Conditions may include maximum noise levels over particular time periods, the installation of acoustic lobbies, provision of signs, publicity and dispersal policies. (3.30)

v) Management of Licensed Premises

A critical element of the proper control of licensable activity and a premises where such activity is provided is good management of those activities and the premises generally. (6.17)

The council will encourage everybody involved in providing or are involved in licensable activities, to consider what skills and competencies are appropriate in the safe delivery of regulated activities and secure these. This applies to managers, musicians, door staff, bar staff, performers and contractors as well as everyone associated with the activities. (6.18)

Good management also extends to the appropriate advertising of events and premises users and licensees are expected to control advertising content as part of their role. (6.19)

The council undertakes proactive risk based inspections of all licensed premises to ensure that they are managed properly. Premises that consistently fail inspections may be subject to a licence review or other enforcement action. (6.20)

Within all licensed premises, whether or not alcohol is to be sold, the council will expect there to be proper management arrangements in place which will ensure that there is an appropriate number of responsible, trained/instructed persons at the premises to ensure the proper management of the premises and of the activities taking place, as well as adherence to all statutory duties and the terms and conditions of the premises' licence. (6.25)

vi) Where relevant representations have been made, [the council] will take the following matters into consideration when making a decision. These are not a definitive list and other matters may be considered:

- a) Operating schedules - demonstration of compliance with management standards to support each of the licensing objectives.
- b) Proximity to residential accommodation - the likelihood of the operation to have an adverse impact on the peace and quiet of local residents.
- c) Potential noise and nuisance from people leaving and entering the premises.
- d) Ability to demonstrate that systems in place to ensure timely dispersal of customers away from residential areas.
- e) Use of external areas for carrying out the licensable activities and potential noise impact on local residents.
- f) Proposed hours of the licensing activities and general opening times for the public – The use of winding down periods to enable more efficient dispersal.
- g) Type of use – alcohol led premises such as pubs, bars and nightclubs, off licenses and hot food take away premises are more likely to be associated with crime and disorder and public nuisance than other premises such as seated restaurants, theatres, cinemas and other cultural activities.
- h) Availability of public transport to assist in the timely dispersal of customers from the vicinity and to ensure safe travel home.
- i) The potential for contamination of the street environment through increased litter and other pollution of the streets by customers. (6.42)

The hours of existing licensed premises will remain unchanged unless there are good reasons, based on the licensing objectives, for restricting these hours, and then they can be changed by a licensing sub-committee following a review of the premises licence. (6.43)

Where there is evidence that the licensing objectives are being compromised or are likely to be compromised, the council will consider imposing appropriate restrictions on a licence.

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This may include, although not limited to, restricting the hours for licensable activities, restricting the sale of alcoholic beverages over a specified limit of alcohol by volume and/or of specified quantities. (6.68)

vii) Enforcement

In terms of regulation, our aim is to target those premises which are causing problems within our communities whilst supporting well managed premises and community activities, which provide worthwhile opportunities for the enjoyment of leisure time without having a negative impact. Premises associated with disorder, threaten public safety, generate public nuisance, or threaten the wellbeing of our children will be targeted for enforcement action. (9.1)

Once licensed, it is essential that premises are maintained and operated so as to ensure the continued promotion of the licensing objectives and compliance with the specific requirements of the Act. (9.2)

The council will monitor compliance with the licensing objectives through a programme of inspection visits. The proactive inspection visits are risk based so that those premises that are at a higher risk of adversely affecting the licensing objectives are more frequently inspected. (9.3)

The council will also establish enforcement protocols with the police and other enforcement agencies to ensure efficient and targeted joint enforcement is undertaken on a regular basis. (9.4)

This does not prevent action being taken by any individual authority at any time should offences become apparent. (9.5)

The council will take in to account its adopted corporate enforcement policy when deciding what appropriate action to take. (9.6)

viii) Reviews

At any stage, following the grant of a premises licence, a responsible authority, or other person, may ask the council to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives. (9.7)

In every case, the application for review must relate to particular premises for which a licence is in existence and must be relevant to the promotion of the licensing objectives. (9.8)

5. National Guidance

5.1 Guidance has been issued by the Home Office under Section 182 of The Licensing Act 2003. The guidance was last revised in March 2015. Relevant extracts from the statutory guidance are below, but the full guidance document is available for members to read at www.gov.uk.

i) Purpose

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

The police remain key enforcers of licensing law. This Guidance does not bind police officers who, within the parameters of their force orders and the law, remain operationally independent. However, this Guidance is provided to support and assist police officers in interpreting and implementing the 2003 Act in the promotion of the four licensing objectives. (1.8)

ii) Legal status

Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. This Guidance is therefore binding on all licensing authorities to that extent. However, this Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken. (1.9)

Nothing in this Guidance should be taken as indicating that any requirement of licensing law or any other law may be overridden (including the obligations placed on any public authorities under human rights legislation). This Guidance does not in any way replace the statutory provisions of the 2003 Act or add to its scope and licensing authorities should note that interpretation of the 2003 Act is a matter for the courts. Licensing authorities and others using this Guidance must take their own professional and legal advice about its implementation. (1.10)

iii) The review process

The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate. (11.1)

At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives. (11.2)

In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives. Following the grant or variation of a licence or certificate, a complaint regarding a general issue in the local area relating to the licensing objectives, such as a general (crime and disorder) situation in a town centre, should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time, could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house. (11.7)

Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent hard copy, unless the licensing authority waives this requirement. (11.9)

Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of

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their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation. (11.10)

iv) Powers of a licensing authority on the determination of a review

The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives. (11.16)

The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder. (11.17)

However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. (11.18)

Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence. (11.19)

In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review. (11.20)

For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual. (11.21)

Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives. (11.22)

Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence. (11.23)

v) Reviews arising in connection with crime

A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises; money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective. (11.24)

Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them. (11.25)

Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder. (11.26)

There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;

- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person’s leave to enter;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol. (11.27)

It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered. (11.28)

6. Licensing Comments

6.1 A plan of the location of the premises is attached at **Appendix E**.

6.2 A plan of the internal layout of the premises is attached at **Appendix F**.

6.3 Members will note that Home Office statutory guidance identifies certain criminal activities that should be treated particularly seriously when considering a review of a premises licence, one of which is “Knowingly employing a person who is unlawfully in the UK or who cannot be lawfully employed as a result of a condition on that person’s leave to enter”. Whilst licensing authorities must have regard to the guidance they are not bound by it and can depart from it if they can provide clear reasons for doing so.

6.4 The initial application for review was based on two of the four licensing objectives, namely:

- the prevention of crime and disorder; and
- public safety.

The statutory consultation process enables responsible authorities and other people to submit representations in respect of a review and they may do so under any of the four licensing objectives. In this case a third licensing objective – namely the prevention of public nuisance – has been introduced to the review by the representations received from the environmental health authority and other people. Statutory guidance issued by the Home Office states that each of the licensing objectives is of equal importance and so members should take into account all of the evidence they hear before making their decision.

6.5 In the constabulary’s application for review, Members will note references to the following unlawful employment practices: wages paid to illegal workers off the record without tax or national insurance deductions; wages paid below the minimum wage; and the deliberate omission of information from an employer’s end of year tax returns to HMRC. No specific evidence has been provided to demonstrate that these unlawful practices have taken place in this case, or that any action is being taken against the premises for such unlawful employment practices. These comments should therefore be taken in the context of examples of the sorts of practices that might take place in premises where people are employed illegally, rather than as evidence of practices that have specifically taken place in this case.

- 6.6 Members are advised that it is not always necessary for a criminal conviction to be secured in order for the crime and disorder licensing objective to be engaged. In a recent case (East Lindsey District Council v Abu Hanif T/A Zara's, 14th April 2016) the High Court Judge determined that a premises licence may be reviewed, and potentially revoked, where there is evidence of the commission of criminal offences but where a prosecution has not been brought. The case has been certified as appropriate for citation in future cases. Members are advised that this application should be determined on its individual merits and the facts in the cited case were not identical to this case. However the Judge's direction is relevant that where evidence exists of the commission of an offence, it is not necessary for a criminal prosecution to be brought in order to engage the crime and disorder licensing objective.
- 6.7 The question for the sub-committee is whether the operation of the premises is having an adverse impact on one or more of the licensing objectives:
- the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance; and
 - the protection of children from harm
- and if so, whether it is appropriate for the sub-committee to engage its powers to promote those objectives.
- 6.8 The Committee must have regard to the representations made and the evidence it hears, and must take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The committee may:
- modify the conditions of the premises licence;
 - exclude a licensable activity from the scope of the licence;
 - remove the designated premises supervisor;
 - suspend the licence for a period not exceeding three months;
 - revoke the licence.
- 6.9 In coming to its decision the sub committee must have regard to the statutory guidance and Cheltenham Borough Council's licensing policy statement, and must provide clear and comprehensive reasons for their decision. The decision of the sub committee carries with it the right of appeal to the Magistrates' Court.

Background Papers

Service records

Licensing Act 2003

Home Office guidance issued under s.182 of the Act (revised March 2015)

Cheltenham Borough Council Licensing Policy Statement

East Lindsey District Council v Abu Hanif T/A Zara's, 14th April 2016

Additional evidence provided by the applicant in support of the application: Immigration enforcement referral notice; Copies of officer notebook entries; Officer witness statements; Officer interview notes.

Report Author

Contact officer: Mr Philip Cooper

E-mail: licensing@cheltenham.gov.uk

Tel no: 01242 775200

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Application for the review of a premises licence or club premises certificate 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 Stephen Kiernan (Constable Gloucestershire Police)

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Soho Bar 2 Rotunda Terrace Montpellier Street	
Post town Cheltenham	Post code (if known) GL50 1SW

Name of premises licence holder or club holding club premises certificate (if known) ALI ANSAR
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Number of premises licence or club premises certificate (if known) 14/01913/PRVM
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Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible

authority (please read guidance note 1, and complete (A) or (B) below)

2) a responsible authority (please complete (C) below) **x**

3) a member of the club to which this application relates (please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick ✓ yes

Mr Mrs Miss Ms Other title (for example, Rev)

Surname

First names

I am 18 years old or over

Please tick ✓ yes

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Gloucestershire Police Force Headquarters No1 Waterwells Waterwells Drive Quedgeley Gloucester GL2 2AN
Telephone number (if any) 101
E-mail address (optional) Licensing@Gloucestershire.pnn.police.uk

This application to review relates to the following licensing objective(s)

- | | |
|---|-------------------------------------|
| | Please tick one or more boxes ✓ |
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety | <input checked="" type="checkbox"/> |
| 3) the prevention of public nuisance | <input type="checkbox"/> |
| 4) the protection of children from harm | |

Please state the ground(s) for review (please read guidance note 2)

The premise has been granted a premises licence by Cheltenham Borough Council authorising sale/supply of alcohol, provision of late night refreshment, performance of live and recorded music daily.

The premises operate as a cocktail bar/restaurant providing traditional cuisine. The venue is operated and the Premises Licence held by Mr Ali ANSAR, the DPS is also listed as Mr Ali ANSAR. The premises are part of the Brasserie Group of restaurants portfolio.

The premises were visited on 25th February 2016 whilst under the control of a male who identified himself as being the senior member of staff Jean-Francois Vanhassel, by officers from Home Office Immigration. On this occasion 2 Asian males MAHAYMENUR RAHMAN (Bangladeshi) and ARVIND KUMAR (Indian) were found to be present checks were conducted on these males and both were found to be working illegally, they were subsequently detained for relevant offence under the Immigration Act 1971.

On the 4th April 2016 Mr Ali ANSAR with his legal advisor was interviewed by DC Sarah Stewart from Home Office Immigration at Cheltenham Police Station, during which he confirmed that he was a director with 80% share of the company since March 2012 with a sleeping partner Mr Abdul Mannan holding the other 20%. Mr ANSAR stated that the 2 males found in his premises by Immigration officers were the husband and partner of customers of the restaurant there to learn “the tricks of the trade” they were not paid and working on a voluntary basis in anticipation of receiving documentation from the Home Office which would allow them to work. Mr ANSAR realised that he had made a mistake in giving the males a work trial before checking their right to work in the UK.

The current position with action to be taken against the premises is that the case has been forwarded to the Home Office Civil Penalty Compliance Team for consideration of proceedings.

From the findings of the visit to Soho Bar on 25th February 2016, it is apparent that ANSAR has displayed a total disregard and lack of responsibility for ensuring that his employees are legitimately available for employment. This review application is submitted as relevant to 2 of the licensing objectives, namely the prevention of crime and disorder and public safety.

The Licensing Act 2003 is clearly intended to prevent crime and disorder from occurring in relation to licensed premises but also to deter and prevent criminals from operating under the auspices of a Premise Licence granted by the local authority.

Section 11.24 of the Guidance to the Licensing Act states that reviews do not have to be directly linked or connected with the licensable activities at any premise, although in this case the offences are directly linked to the operation of the premises as a restaurant, selling alcohol and providing late night refreshment and the staff actively involved in these activities.

Section 11.26 states that it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premise and affecting the promotion of the licensing objectives.

Section 11.27 states that there is certain criminal activity which should be treated particularly seriously, one of these being knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that persons leave to enter. (It is pertinent to note that the previous guidance issued under section 182 in October 2011 did not include this offence in paragraph 11.29. This indicates the offence has now become a particular concern.)

Section 11.28 states that “where the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence, even in the first

instance, should be seriously considered.”

Home office Immigration is concerned with the apprehension, detention and management of persons illegally or unlawfully in the UK and as such their procedures and protocols are not directed towards supporting or promoting the Licensing Act and the licensing objectives, nor are they considered a responsible authority for the purpose of the legislation.

The Immigration, Asylum and Nationality Act 2006 amends immigration, asylum and nationality acts in relation to appeals; deportation and removal of persons. It also introduces legislation on employment of adults subject of immigration control; issue of employment penalty notices; associated employment offences; proving passenger; crew and freight information; a duty to share information; provide disclosure to other agencies and additional powers for searching, fingerprinting, examining and seizure of documents together with connected offences.

This particular legislation is ineffective in dealing with the specific issue of this review application and the consideration of this matter at a licensing hearing is therefore wholly inappropriate.

Where an employer pays wages to illegal workers off record with no tax or national insurance deductions which are then deliberately omitted from an employers End of Tax Year P35 returns to HMRC, the employer may be dealt with by means of the Fraud Act 2006.

Similarly, the HMRC may take action as a civil proceedings case and raise a tax debt against the business.

It should be quite apparent that there are potentially numerous criminal offences which may apply to the employment of illegal workers at this establishment.

Responsible and caring employers do not employ illegal workers and take measures to ensure this. Large and well known branded restaurants and take-away operators (McDonald's and KFC for example) are not renowned for being identified as employing illegal workers for this very reason.

It is not credible that employers do not know or suspect that the persons they are employing are not entitled to work. These are not merely cases of mistakes or lack of knowledge but deliberate ignorance or actual knowledge of the fact.

At the very least the employers should demonstrate responsibility and due diligence in determining that persons they employ are entitled to work under the auspices of a licence granted by the Licensing Authority.

There can be no doubt that the premises licence granted by the authority, offers the provision of licensable activities to be conducted at this venue and that the premises user employs illegal workers to facilitate this activity to his financial benefit and to the detriment to law abiding competitors.

It is also obvious that illegal workers are prone to exploitation by their employers in that;

Illegal workers are unable to declare themselves to the authorities to claim any sort of financial support or benefits as this would render them liable to detention.

Consequently they are more than likely poorly paid for the hours they are required to work and are not subject to the benefit of a minimum wage or restricted hours as prescribed in law, nor are they provided in most cases with anything other than the most basic of living accommodation. The illegal workers are not afforded the benefit of the protections offered by UK employment legislation.

Licence holders have a responsibility to ensure the safety of those using their premises. (Guidance to licensing Act 2003 section 2.8.)

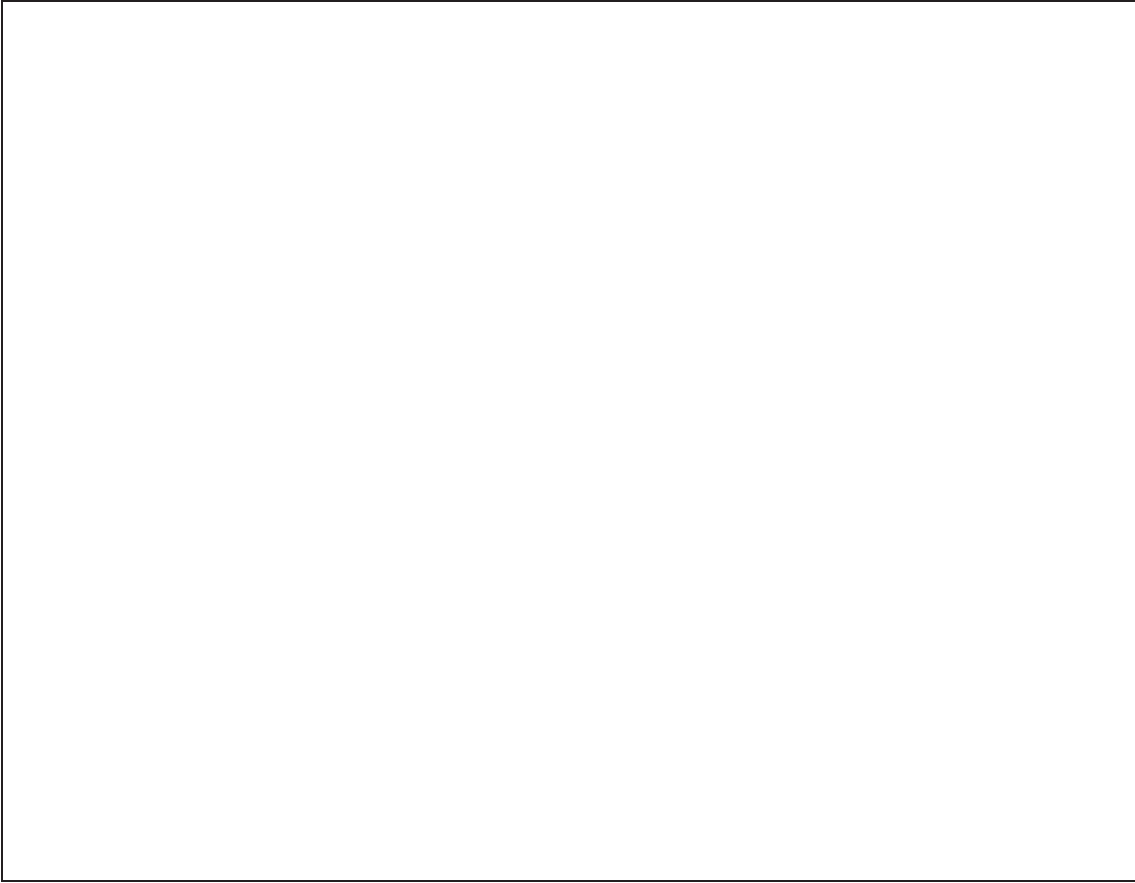
There are clear concerns in relation to public safety as to the competency and training of these

staff with respect to matters of food preparation and levels of personal hygiene even though this may be covered in other legislation.

Illegal entrants will not have been subjected to the appropriate Immigration Authority checks which would ordinarily have been conducted upon illegal entry to the UK, and it is reasonable to suggest that there is every possibility that the Licence Holder may well unwittingly be employing persons who could pose a serious risk to the UK in terms of terrorism/extreme beliefs, etc., or to UK individuals by means of historic criminal activity (i.e. serious assault/serious sexual assault, etc.) which potentially would have been a bar to their lawful entry.

Allowing this premise to continue to operate with the benefits of a premises licence will merely serve to perpetuate the criminal activity and human exploitation.

It is my respectful submission that it is an appropriate step to revoke the premises licence in order to promote the licensing objectives.



Please provide as much information as possible to support the application (please read guidance note 3)

Home Office Immigration officer statements are attached as well as pocket note book entries pertaining to the visit to the restaurant.

Interview notes conducted by DC Sarah Stewart at Cheltenham Police Station on 4th April 2016 with the licence holder and DPS of the premises Mr Ali ANSAR are also attached.

Please tick ✓ yes

Have you made an application for review relating to the premises before

If yes please state the date of that application

Day Month Year

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If you have made representations before relating to the premises please state what they were and when you made them

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Please tick ✓

yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate X
- I understand that if I do not comply with the above requirements my application will be rejected X

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant’s solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**



Date **27/06/16**

Capacity **Licensing officer**

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6) PC708 Stephen Kiernan Holland House Lansdown Road	
Post town Cheltenham	Post Code GL516QH
Telephone number (if any)	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)	

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.



CHELTENHAM

BOROUGH COUNCIL

Licensing Act 2003

Cheltenham Borough Council

Premises Licence Number

14/01913/PRVM

Part 1 – Premises Details

Postal address of premises, or if none, ordnance survey map reference or description, including Post Town, Post Code

Soho Bar
2 Rotunda Terrace
Montpellier Street
Cheltenham
GL50 1SW

Telephone number 01242 510999

Where the licence is time limited the dates

Not applicable

Licensable activities authorised by the licence and the times the licence authorises the carrying out of licensable activities

Sale/Supply of Alcohol	Sunday	10:00 - 23:00	
Sale/Supply of Alcohol	Monday to Wednesday	10:00 - 00:00	
Sale/Supply of Alcohol	Thursday to Saturday	10:00 - 01:00	
Performance of Live Music	Sunday	10:00 - 23:00	Indoors
Performance of Live Music	Monday to Wednesday	10:00 - 00:00	Indoors
Performance of Live Music	Thursday to Saturday	10:00 - 01:00	Indoors
Performance of Recorded Music	Sunday	10:00 - 23:00	Indoors
Performance of Recorded Music	Monday to Wednesday	10:00 - 00:00	Indoors
Performance of Recorded Music	Thursday to Saturday	10:00 - 01:00	Indoors
Late Night Refreshment	Monday to Wednesday	23:00 - 00:00	Indoors
Late Night Refreshment	Thursday to Saturday	23:00 - 01:00	Indoors

The opening hours of the premises

Opening Hours	Sunday	07:00 - 23:30
Opening Hours	Monday to Wednesday	07:00 - 00:30
Opening Hours	Thursday to Saturday	07:00 - 01:30

Non Standard Timings

The approved non-standard hours for licensable activities are extended by 30 minutes on Bank Holiday weekends and for the Cheltenham Gold Cup Festival week and the November meeting. An additional 30 minutes drinking time will apply in all cases.

Where the licence authorises supplies of alcohol whether these are on and / or off supplies

Both

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

Mr Ansar Ali
Soho Bar
2 Rotunda Terrace
Montpellier Street
Cheltenham
GL50 1SW

Registered number of holder, for example company number, charity number (where applicable)

Not applicable

Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol

Mr Ansar Ali
Soho Bar
2 Rotunda Terrace
Montpellier Street
Cheltenham
GL50 1SW

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

Party Reference: 12/00105/PERL

Licensing Authority: Cheltenham Borough Council

Signature of Issuing Officer



Director – Environmental & Regulatory Services

Date of issue

23 October 2014

Annex 1 – Mandatory conditions

- 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(6);
 - (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) "valued added tax" means value added tax charged in accordance with the Value Added Tax Act 1994(7).
- 3 Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this 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.
 - (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.
- 5 No retail sale 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.
 - (c) Every retail sale of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
 - (d) The other conditions are any conditions specified in an order under section 19A and applicable to the premises licence.
- 6 All individuals at the premises carrying out a security activity must be licensed by the Security Industry Authority. (Security activity is defined in Schedule 2 of the Private Security Industry Act 2001).

Annex 2 – Conditions consistent with the Operating Schedule

- 1 In accordance with Schedule 8 paragraph 6(6) and (8) the embedded conditions and restrictions which apply to the existing licence(s) are preserved in this licence including:
 - (a) The extended permitted hours for the sale and consumption of alcohol and provision of regulated entertainment on New Years Eve/New Years Day continue in force.
 - (b) On commencement of British Summertime, the benefit of the clock going forward at 0200, instead of 0100 GMT is preserved.

2 Conditions Consistent with operating schedule

A. General

(a) In relation to licensable activity taking place at non standard times in conjunction with the transmission of any recognised international sporting event 21 days notice shall be given in writing to the Licensing Authority (attn the Licensing Team) and to Cheltenham Police (attn the Divisional Licensing Officer) detailing: the event and the intended operating times. In all such cases the non standard hours associated with such events shall be subject to: a maximum of 12 such events per year; and, the additional hours shall be limited to one hour either side of the official start and finish times of the event.

B. Others

(a) A 30 minute 'drinking up' time shall be provided to allow appropriate dispersal, use of lavatories etc.

(b) The Designated Premises Supervisor (DPS) shall maintain an active membership of the Nightsafe / Cheltenham Innkeepers Association (or successor 'pubwatch' body).

(c) No discounting of alcoholic drinks (below the tariff in place for a minimum of one week) shall take place on Fridays and Saturdays after 18.00hrs.

(d) Non alcoholic and low alcohol drinks shall be promoted especially to 'designated drivers' of groups.

(e) A closed door policy will be operated with no admission or re-admission after 23.00hrs nightly and on New Years Eve from 23.30 to 04.00hrs on New Years Day.

(f) On any evening when the premises are open after midnight that between the end of the supply of alcohol and closing time (or until all customers have dispersed from the immediate vicinity), the DPS or a member of staff or a door supervisor will be positioned outside the premises to monitor the dispersal of Customers.

(g) Functions bookings shall be limited to a maximum occupancy of 100 persons.

(h) Suitable notices shall be posted to request patrons to: i) leave the premises quietly and behave in ways that respect the interests of residential neighbours; and, ii) to respect the interests of neighbours and not cause a nuisance when using the outside area of the premises.

(i) Use of the external drinking area(s) shall cease at 00:30 on the evenings of Fri-Sat, 00:00 on the evenings of Mon-Thurs and 23:00 on Sun.

(j) Two door supervisors shall be employed on Thursdays, Fridays and Saturdays and on any other occasions that the premises are open to the public beyond 01.00hrs.

(k) Whenever indoor regulated musical entertainment takes place the following shall apply: (i) All external windows and doors in areas where any live or recorded entertainment (other than incidental background music) occurs shall be kept shut during these activities (except for emergency evacuation of the premises). (ii) All external doors in areas where any live or recorded entertainment occurs shall have an acoustic lobby installed with secondary doors. All such doors to be fitted with functioning automatic door closers and kept shut during these activities except momentarily for access and egress. (iii) A noise-limiting device shall be installed and used between any amplifier and loudspeaker whenever any live or recorded music, or any other regulated entertainment with amplification, occurs to ensure that noise from such activities is effectively inaudible inside neighbouring premises after 23.00hrs.

(l) The designated premises supervisor to ensure effective overall management of live or recorded entertainment, or any other regulated entertainment with amplification, such as by monitoring noise levels outside the premises, to ensure that noise from such activities is effectively inaudible inside neighbouring premises.

(m) An eight camera CCTV system to the satisfaction of the Police Crime Reduction Officer shall be installed within three months of the second appointed day i.e. no later than 24 February 2006. Note: i) If the Police Crime Reduction Officer's report is not to hand by the second appointed day the period for compliance shall be 3 months from receipt of the Police Crime Reduction Officer's report. ii) 'real-time' CCTV coverage is required of areas where door staff may operate and of immediate outside areas.

(n) The CCTV system shall be maintained in good working order, shall record at all times that the premises are open, and recordings shall be kept for 28 days (14 days for digital systems) and be provided to officers of the council and the police on request.

Annex 3 – Conditions attached after a hearing by the licensing authority

1 Not Applicable

Annex 4 – Plans

1 See 1:100 scale plan on file dated 18/05/05

Gareth Jones, Senior Environmental Health Officer, Cheltenham Borough Council

Phil,

I understand that Soho Bar is currently subject to a licence review, as requested by the Police. Please accept this e-mail as updated comments from the Environmental Health Team in respect of noise nuisance from the premises.

On 1st June 2016 I received a complaint from nearby residents of noise nuisance from Soho Bar. The complainants alleged that noise was affecting them from a number of sources, including:

- Amplified music.
- Customers using outdoor drinking area, and arriving and leaving.
- Tables and chairs being moved / stacked after use.
- Air handling plant.
- Staff using upstairs store rooms to move heavy items after hours.

All these sources were alleged to occur throughout opening hours and beyond licensed opening hours (including “drinking up” time).

These issues were raised in a letter to the premises manager, dated 1st June 2016.

In the light of continued complaints I installed noise monitoring kit at the complainants property on 5th July. The equipment was set up in the complainants bedroom, as per normal practice when the complaint involves noise which is alleged to keep someone awake. I retrieved the equipment from the complainants’ property on 11th July.

On listening to the recordings made by the complainants I found that they had recorded a large number of incidents of noise that had affected them. Most of these were of noise from amplified music, but there were other recordings that included noise that sounded like a fan running for a prolonged period and some noise from voices of people in the street. The noise from the fan was at a very low level and in my opinion was unlikely to disturb sleep of a resident or otherwise affect their ability to use the property in a normal way. The noise from people outside was recorded on one occasion only and controlled to an acceptable level by the complainant shutting the window in the bedroom. If this issue occurred on a frequent basis it may constitute a statutory nuisance as it would prevent the resident from ventilating their property in a normal manner as they would reasonably want to do on a warm evening.

Of most concern was the noise from amplified music. On the recordings I found evidence of noise from amplified music which was likely to disturb the sleep of residents in the complainants’ property. This occurred at the following times and dates:

- Friday 8th July from 00:12 until at least 01:58.
- Saturday 9th July from 00:32 until at least 01:21 and 23:27 until Sunday 10th July 01:29.

All these recordings were characterised by prominent levels of low-frequency noise with the rest of the music inaudible. The bass beats were continuous and were sufficient to cause disruption to sleep of residents. This intrusion is a statutory nuisance and as a result I have served an abatement notice in respect of noise from amplified music on Mr Ansar Ali, the Licence holder of the

premises. In licensing terms, this level of intrusion into nearby residential property constitutes a Public Nuisance.

Licence breaches

In the recordings described above there were occasions when it appeared that Soho Bar were still playing amplified recorded music beyond the hours allowed by their premises licence, and that music was audible in neighbouring premises after 23:00. Noise from amplified music could be heard at the complainants' residential property at the following times:

- Thursday 7th July 00:27, 00:30
- Friday 8th July 00:04, 00:12, 00:30, 00:39, 01:58
- Saturday 9th July 00:32, 01:16, 23:27,
- Sunday 10th July 00:04, 01:04, 01:18, 01:24

The evidence gathered during this monitoring operation demonstrates that operation of the premises is currently in breach of the premises licence conditions and causes a public nuisance. I would therefore recommend that should a premises licence continue to be granted for these premises a closing time of 23:00 is applied on all days.

If you have further queries, let me know.

Gareth

Location map – Soho Bar ●



Internal plan – Soho Bar



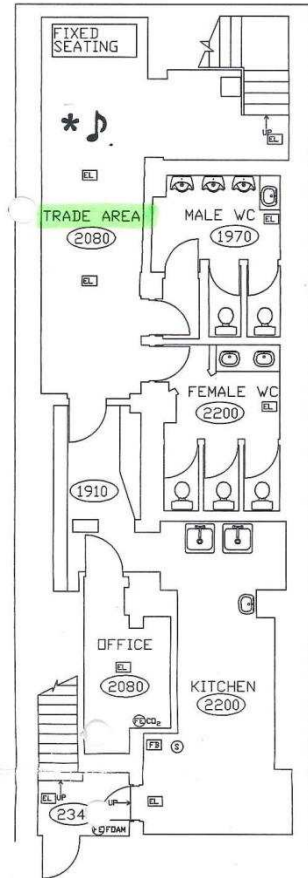
OUTSIDE DRINKING AREA



BUILDING SURVEYED AREA = 203.6 SQ. M

- ▣ LOCATED ON FIRST FLOOR
- ▣ LOCATED IN CELLAR

SCALE 1:100
GROUND FLOOR



CELLAR
UNABLE TO
SURVEY

SCALE 1:100
BASEMENT

