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Licensing Act Sub-Committee

Supplementary Agenda

Date:	**Thursday 25th October 2018**
Time:	**10.00 am**
Venue:	**Committee Suite 1,2 & 3, Westfields, Middlewich Road, Sandbach CW11 1HZ**

3. **Application for the Review of a Premises Licence: Knutsford Masonic Club, Leicester Warren Hall, Bexton Lane, Knutsford WA16 9BQ**

Additional Information from Licensing Officers - pages 3 - 26

Additional Paper on behalf of the Knutsford Masonic Lodge – pages27 - 108

Additional Information from the Applicant – pages 109 -114

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Additional information for Members in respect of the Review application process

On the 31st July 2018 the Council (and other responsible authorities) received application for the Review of the licence for Knutsford Masonic Club (the Club). From this date certain periods are calculated, eg the date by which representations must be made (28 day consultation period) and the date by which a hearing needs to take place (20 working days from the end of the consultation period)

Also on the 31st July 2018, I emailed the solicitor acting for the applicant to confirm receipt. On that day the Licensing Team Leader also placed three Notices confirming the application and the representation period at the premises. A copy of the notices was also placed on the Council's website. These are requirements of the legislation and the requirements have been met.

On the 14th August 2018 I received a phone call from Mr Stokes, a Director and Secretary of the Club, where he confirmed that he was aware of the application by the operator, but had not received the paper work. He stated that post goes to the premises but is not always collected. There was also some suggestion that the previous operator of the premises did not always pass on post. I therefore wrote to Mr Stokes and provided a copy of the application. There was no suggestion at this time that the application has not been served on the Club.

On the 30th August 2018, Notices of hearing were issued to all parties giving a hearing date of 20th September 2018.

In response this email, Mr Stokes telephoned and emailed me on the 31st August 2018 to state that the application made in July was not delivered to the Club. It was returned to Royal Mail endorsed 'not called for'. The solicitor acting for the applicant subsequently served the application on the Club at their registered office on the 28th August 2018. Mr Stokes raised the issue as he wanted more time to deal with the case. Mr Stoked stated in his email:

> *As the timetable for the submission of documentation and the hearing were set on the basis that we had received notice of the application at the end of July 2018, we would like to request an extension of time and revision of dates for submission and the hearing.*

On the 31st I contacted the Council Legal Department to confirm how we should proceed with this matter. I also attempted to contact the applicant's solicitor and left messages without response.

In making a decision we considered the following options:

1. To deem the application invalid and require the process to restart in its entirety

2. To deem the application valid and extend time limits in the public interest at the hearing on the 20th September 2018 to a date determined by Members

3. To recalculate the date of hearing from the date the documentation was served on the premises licence holder by the applicant's solicitor. Thereby providing the additional time requested (ie 25 working days)

4. To deems the application valid and proceed with the hearing on the 20th September 2018

As well as taking into consideration the Licensing Act 2003 and the statutory guidance, we also specifically considered:

1. The Licensing Act (Premises licences and club premises certificates) Regulations 2005

2. The Licensing Act (Hearings) Regulations 2005

The Licensing Team considers that the time periods specified within the legislation are to allow time for representations to be made, for the premises licence holder to prepare their response, and to ensure the matter is dealt with in a reasonable timeframe (particularly when the issues faced by the applicant and those making representations are ongoing).

On the basis that the Council must act reasonably and without bias (ie fair to all parties) the Licensing Team considered that the fairest way to deal with the matter was option 3 (specified above). We also took into consideration that Mr Stokes' main concern was additional time to deal with the matter.

All those party to the review were informed of this decision on the 4th September 2018. On the 1st October 2018 the solicitor acting for the Club challenged this decision.

The issue over the service could be considered a procedural defect and while the legislation is silent on this specific situation, there is case law that can be looked to. This includes:

1. R. (on the application of D&D Bar Services Ltd) v Romford Magistrates' Court [2014] EWHC 344 (Admin); [2014] L.L.R. 761;

2. The Queen on the Application of Edward Clarke v Bristol City Council [2013] EWHC 4530 (Admin); 2013 WL 7090810

Both cases deal with licensing matters where the regulations have not been fully complied with. In both cases the High Court considered that such defects would not be fatal. Copies of the cases are enclosed.

Prior to the commencement of the hearing Members may wish to deal with this as a preliminary point and take information on the point from all parties.

The Licensing team has received correspondence from the other parties who have made representation (pages 131 & 133). Both parties have indicated that the hearing is necessary and that the applicant should represent them. Both parties have also stated that that they are continuing to suffer a public nuisance and provide the following dates as examples:

11th August 2018 – Music heard till 23:45

15th September 2018 – Further music heard

22nd September 2018 – music played beyond midnight and raucous shouting from departing guests until 1am

We understand that there has been some attempt at mediation between the parties. However, no agreement has been reached.

R. (on the application of D&D Bar Services Ltd) v Romford Magistrates' Court

Queen's Bench Division (Administrative Court)

04 February 2014

Case Analysis

Where Reported [2014] EWHC 344 (Admin); [2014] L.L.R. 761;

Case Digest

Subject: Licensing

Keywords: Compliance; Irregularities; Licensing authorities; Notices; Premises licences

Summary: Public notices advertising a licensing review which failed to specify the grounds for review and put the last three lines in the wrong font, in breach of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, were not defective. The errors were minor irregularities, and it had not been Parliament's intention that such minor errors would make any subsequent consideration of a licence void.

Abstract: The claimant nightclub operator (D) applied for judicial review of a district judge's decision that public notices advertising a licensing review were not defective.

The interested party local authority had applied to review D's premises licences under the Licensing Act 2003 s.51 and displayed notices asking for representations from any party. R informed the local authority that the notices had failed to comply with the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 in that they had failed to specify the grounds for the review and the last three lines were printed in size 14 font rather than size 16, in breach of reg.39(c) and reg.38(1) respectively. The licensing sub-committee determined that nobody had been misled or disadvantaged by the failures in the notices and that there was no reason to grant an adjournment. The review hearing went ahead and the licence conditions were modified. R's appeal was rejected, the district judge finding that the notices were defective but that the two errors were minor irregularities.

R submitted that the terms of the Regulations were mandatory and that where there had been a substantive

breach of the notification and advertisement requirements of the Act in relation to applications for review, the licensing authority did not have jurisdiction to waive the breach and proceed to a hearing, but had to start the whole procedure again.

Held: Application refused.

It could never have been Parliament's intention that minor errors on a notice or advertisement for a licensing review should make any subsequent consideration of a licence void. Such an approach would lead to absurd consequences. There had to be substantial compliance with reg.38(1)(a) and reg.39(c) but the process should not be frustrated by minor errors. The suggestion that there had been a total failure to comply with a significant part of a requirement did not reflect the reality of what had occurred. The judge had considered the errors in the notices to be "minor irregularities", and in the context that was an entirely reasonable conclusion and he had been right to follow the principle that the court should consider what consequences flowed from a breach (see para.19 of judgment).

Judge: Judge Blackett

Counsel: For the claimant: Philip Kolvin QC, Jeremy Phillips. For the interested party: No appearance or representation. For the Interested party: David Matthias QC, Gary Grant.

Solicitor: For the claimant: Dadds LLP. For the interested party: In-house solicitor.

All Cases Cited

R. v Soneji (Kamlesh Kumar)

[2005] UKHL 49; [2006] 1 A.C. 340; [2005] 3 W.L.R. 303; [2005] 4 All E.R. 321; [2006] 2 Cr. App. R. 20; [2006] 1 Cr. App. R. (S.) 79; Times, July 22, 2005; Independent, July 26, 2005; [2006] Crim. L.R. 167; (2005) 102(31) L.S.G. 26; (2005) 155 N.L.J. 1315; (2005) 149 S.J.L.B. 924; HL; 21 July 2005

R. v Secretary of State for the Home Department Ex p. Jeyeanthan

[2000] 1 W.L.R. 354; [1999] 3 All E.R. 231; [2000] Imm. A.R. 10; [1999] I.N.L.R. 241; (1999) 11 Admin. L.R. 824; Times, May 26, 1999; Independent, June 8, 1999; [1999] C.O.D. 349; CA (Civ Div); 21 May 1999

London & Clydeside Estates Ltd v Aberdeen DC

[1980] 1 W.L.R. 182; [1979] 3 All E.R. 876; 1980 S.C. (H.L.) 1; 1980 S.L.T. 81; (1980) 39 P. & C.R. 549; (1979) 253 E.G. 1011; (1980) 124 S.J. 100; HL; 08 November 1979

All Cases Citing

Mentioned by

R. (on the application of Akin (t/a Efe's Snooker Club)) v Stratford Magistrates' Court

[2014] EWHC 4633 (Admin); [2015] 1 W.L.R. 4829; [2015] L.L.R. 397; [2015] A.C.D. 66; DC; 28 November 2014

Significant Legislation Cited

Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42)

Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42) reg.38(1)

Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42) reg.39(c)

Licensing Act 2003 (c.17) s.51

Legislation Cited

Gambling Act 2005 (c.19)

Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42)

Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42) Pt 5

Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42) reg.38

Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42) reg.38(1)

Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42) reg.38(1)(a)(i)(cc)

Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42) reg.39

Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42) reg.39(c)

Licensing Act 2003 (c.17)

Licensing Act 2003 (c.17) Pt 3

Licensing Act 2003 (c.17) s.51

Licensing Act 2003 (c.17) s.51(3)

Licensing Act 2003 (c.17) s.51(3)(b)

Licensing Act 2003 (c.17) s.52

Licensing Act 2003 (c.17) s.52(1)

Licensing Act 2003 (c.17) s.52(1)(c)

Police Reform and Social Responsibility Act 2011 (c.13)

Journal Articles

Licence to thrill

Fees; Lap dancing clubs; Licences; Licensing authorities; Premises licences; Procedural irregularity; Reviews; Sex establishments.

S.J. 2015, 159(25), 30-31

Judicial review - Licensing Act 2003

Irregularities; Licensing authorities; Notices; Premises licences.

L.R. 2014, 97(Apr/May), 23-25

Books

Building Contract Disputes

Chapter: Chapter 5 Adjudication

Documents: Judicial Control of Adjudication

Cross on Local Government Law

Chapter: Chapter 29 - Miscellaneous Powers, Duties and Services

Documents: 29-46

Local Authority Licensing and Registration

Chapter: Licensing Act 2003

Documents: 3.152 Application for review of premises licence

Insight

Alcohol licensing: premises licences' procedure

Hostess bars


Westlaw UK

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Status: Positive or Neutral Judicial Treatment

The Queen on the Application of Edward Clarke v Bristol City Council

CO/15893/2013

High Court of Justice Queen's Bench Division the Administrative Court of Cardiff Sitting At Bristol

22 November 2013

[2013] EWHC 4530 (Admin)

2013 WL 7090810

Before: His Honour Judge Lambert (Sitting as a Judge of the High Court)

Friday, 22nd November 2013

Representation

The Claimant did not appear and was not represented.
Miss Cavender appeared on behalf of the Defendant.

Judgment

His Honour Judge Lambert:

1 This is a renewed application for permission to apply for judicial review. The claimant acts in person and now seeks permission to challenge, I believe, two decisions. Firstly, the decision of the council to revoke his premises licence and then secondly, a decision of the magistrates who refused to rule on the lawfulness of a review hearing before the council. Permission was previously refused by His Honour Judge Seys-Llewellyn, who found the claim was out of time, and as there is a right to appeal to the Magistrates' Court, there being an opportunity to put his case to the magistrates, permission should be refused as a matter of discretion, there being an effective alternative remedy.

2 Mr Clarke renews his application before me. He asked the court to consider two separate reasons why his application is to succeed in his initial letter:

> "(a) It is agreed that the review hearing was on the 18th July 2013. No decision was made on or at the time of the hearing and there could be no legal process until the official decision had been declared. I received the official notice of 15th August and that evidence was before the court. The instruction for appealing time stated 21 days from receipt of the notice, therefore it must follow that my application was within the allotted time. In any event there were two of my originating letter of appeal to Bristol Magistrates with this court. The first, in July, which was ignored, as there

could be no appeal until the official decision was with the court. As a primary part of my appeal to the court was failure of the local authority to carry out their statutory duty, the question of needing a High Court ruling did not cross my mind. Further, the two cases that I relied upon, the rulings for Magistrates' Court not judicial reviews. It does not seem possible that a responsible authority could or should be able to ignore the fact that they failed in statutory duty to comply with their own notices and even continue with the hearing once they knew that they had not complied. I told them 4 months before the hearing that their notice was defective. At this point they had a duty to stop all proceeding and reissue the notices or inform me of the legal remedy. To ignore my complaint to a week before the hearing and then arguable wrongly, I was out of time, which as I have said above is not true.

(b) There are probably two more statutory failure which I have cited before the court, one the failure to advertise and the failure to put the notice on their website. I was not aware of these breaches until recently. It seemed reasonable for the law to allow the appeal time to run and the time of breaches were discovered as this is a secondary argument which should not in any way reduce the validity of the first."

(Mr Clarke's note of 31 October 2013)

3 Mr Clarke submitted a skeleton argument to the court which he admitted had been drafted in part by lawyers whom he cannot afford to instruct to appear on the application itself. That skeleton argument contains an extensive citation of authority concentrating myopically on the case of R v Clarke and McDaid and thereafter having cut and pasted in large extracts from a book on statutory interpretation. I will not blame Mr Clarke for anything that I identify as inappropriate in the skeleton argument however.

4 The skeleton argument says that defects appear which would render the review application not in compliance with the statutory regulations. This brings the case within terms of the judgment of District Judge Staveley and the Tinseltown case. The same points must therefore be argued as the outcome of those defects and noncompliance with the regulations would render the review determination by the Licensing Sub-Committee null and void. I have not had any transcript of the judgment of the District Judge Staveley in the Tinseltown case but I detect from the way the case has been argued and from the documents that a complete failure to give notice in similar circumstances to an interested person led to the refusal of relief or a refusal of the grant of a licence or the review.

5 The skeleton argument then goes on to continue with an extensive citation of the regulations, to which I will return later. It moves to the consequences of the alleged procedural defect and states that any later determination must be invalid if there is a failure properly to advertise in accordance with statute and regulations. The skeleton argument cites in favour of the invalidity of the decision the determination of the *House of Lords (as it then was) in R v Clarke and McDaid [2008] UKHL 8* . In that case, the question of an unsigned indictment giving rise to lack of jurisdiction on the

part of the Crown Court was raised. Lord Bingham endorsed the approach which was identified by Fulford J that there is a distinction to be made between noncompliance with a procedural technicality in the course of proper proceedings and the failure of a technicality which robbed the decision-making Tribunal of its jurisdictional power. The present case, it is said, is an example of the latter not the former. It is said it does not matter the nature of the procedural technicality or what the statute comes under. It is said that it was made plain in Clarke there was one principle and one principle only. As Lord Bingham said at paragraph 4:

> "…? whenever a court is confronted by failure
>
> to take a required step, properly or at all, before a power is exercised ('a procedural failure'), the court should first ask itself whether the intention of the legislature was that any
>
> act done following that procedural failure should be
>
> invalid. If the answer to that question is no, then the court should go on to consider the interests of justice generally and most particularly whether there is a real possibility that either the prosecution or the defence may suffer
>
> prejudice on account of the procedural failure. If there is such a risk, the court must decide whether it is just to allow the proceedings to continue."

6 Mr Clarke submits that section 52 of the Licensing Act goes on thereafter to endow the licencing authority with the power to hold a hearing and to take steps in relation to a premises licence. The section he says by clear interpretation does not apply with the review application which has not been made in accordance with section 51 of the Licensing Act and the applicant does not comply with the requirements of service of the review application and the licensing authority is not complied with the requirements of advertising and inviting representations. It is said there is no other reasonable interpretation in the circumstances. The solicitors then go on to include long sections on statutory interpretation and say nothing as to how those are going to help anybody in the particular circumstances of this case. Although resort to those authorities is educational and one always needs to be better informed, it leaves me none the wiser as to how to interpret this particular statute. It is said that the statutory language within section 52 gives rise to something more fundamental than a failure to comply with the provision set out within regulations which might be regarded as a formality and which could be overlooked if no prejudice resulted.

7 The submission continues that the language of section 52 is different and that it establishes clear pre-requisites to the triggering of the section at all. It is only the triggering of section 52 , within the primary legislation, that affords the licensing authority its jurisdiction to hear the review and impose steps as a consequence. Without it, it is argued that the licensing authority has no jurisdiction act and this cannot be cured.

8 Here, it is said in section 52 there is no ambiguity, no inconsistency and no drafting error. The plain meaning of the words is clear. That meaning does not produce any absurd result. The deliberate contrast, it is argued, with other provisions could not be plainer. The reason for it is obvious and was plainly observed and set out by District Judge Staveley in her judgment, which of course I do not have.

9 Further authority is resorted to in the form of R (on the application of) Bristol Council v Bristol Magistrates' Court [2009] EWHC 625 (Admin) in the Administrative Court . There Mr John Howell QC stated:

> "16. The first question is whether any application for a premises licence has been made in accordance with section 17. If it has not been so made, then the licensing authority has no power to grant any licence (see section 17(1)(a)). To be made in accordance with section 17, an application has to be in the prescribed form and be accompanied by an operating schedule in a prescribed form, which includes, among other matters, a statement of the steps which is proposed to take to promote the licensing objectives."

The solicitors have added emphasis to the section within their skeleton argument, which I believe I have added in this judgment. Therefore, it is said that because of the absence of a notice for some 3 days there can be no jurisdiction to hear a review. The solicitors further go on to place some reliance on *Seal v Chief Constable of South Wales Police [2007] UKHL 31* . They say that this deals with very different subject matter, but considers pertinent issues. For some reason they do not trouble themselves to deal with the exact subject matter of that particular authority. If they did it would undermine their submission however.

10 To do justice to the argument I must deal with paragraph 7 where it was said in that particular authority:

> "The important question is whether, in requiring a particular condition to be satisfied before proceedings are brought, Parliament intended to confer a substantial protection on the putative defendant, such as to invalidate proceedings brought without meeting the condition, or to impose a procedural requirement giving rights to the defendant if a claimant should fail to comply with the requirement; but not nullifying the proceedings …? "

The argument continues that recognising the reassurance and protection there should lead to a strict interpretation of procedural requirements within this statute.

11 It is said that the consequence of the failure to comply with the regulations is that the review application was invalid. The hearing should not have been convened and the determination is null and void. The purported determination, it is said, should therefore be quashed. If a review application is still relevant thereafter it will need to be recommenced in accordance with statutory regulations.

12 A responsible authority (in this case it was the Chief Constable of Avon and Somerset Constabulary) or any other person may apply to the relevant licensing authority for review of a premises licence. Section 51 of the Licensing Act 2003 sets out the procedure upon the application for review of premises licence:

> "Application for review of premises licence.
>
> (1) Where a premises licence has effect, an interested party or a responsible authority may apply to the relevant licensing authority for a review of the licence.
>
> (2) Subsection (1) is subject to regulations under section 54 (form etc. of applications etc.)
>
> (3) The Secretary of State must by regulations under this section–
>
> (a) require the applicant to give a notice containing details of the application to the holder of the premises licence and each responsible authority within such period as may be prescribed;
>
> (b) require the authority to advertise the application and invite representations about it to be made to the authority by interested parties and responsible authorities;
>
> (c) prescribe the period during which representations may be made by the holder of the premises licence, any responsible authority or any interested party;
>
> (d) require any notice under paragraph (a) or advertisement under paragraph (b) to specify that period."

13 Section 52 of the Licensing Act 2003 governs the determination of the application for a review. Section 52(1) specifies it applies where (a) the relevant licensing authority receives an application made in accordance with section 51 ; (b) the applicant has complied with any requirement imposed on him under subsection (3)(a) or (3)(d) of that section and (c) the authority is complied with any requirement imposed on it under subsection(3)(b) and (d) of that section. Section 181 of the Licensing Act 2003 specifies:

> "181 Appeals against decisions of licensing authorities.
>
> (1) Schedule 5 (which makes provision for appeals against decisions of licensing authorities) has effect.
>
> (2) On an appeal in accordance with that Schedule against a decision of a licensing authority, a magistrates' court may–

(a) dismiss the appeal,

(b) substitute for the decision appealed against any other decision which could have been made by the licensing authority, or

(c) remit the case to the licensing authority to dispose of it in accordance with the direction of the court,

and may make such order as to costs as it thinks fit."

14 This enables the claimant to appeal against decisions of the licensing authority. In this case it was to revoke his licence, as it has done. On an appeal, in accordance with Schedule 5 of the Act 2003, against the decision of a licensing authority the Magistrates' Court may:

"(a) dismiss the appeal;

(b) substitute for the decision appealed against any other decision which could have been made by the licencing authority or

(c) remit the case to the licensing authority to dispose of it in accordance with the direction of the court

and may make such order as to costs as it thinks fit."

15 Paragraph 8 of Schedule 5 of the Licensing Act 2003 goes on to deal with further consequent matters. This applies where an application for review of premises licence is decided under section 52 :

"Review of premises licence

(1) This paragraph applies where an application for a review of a premises licence is decided under section 52.

(2) An appeal may be made against that decision by–

(a) the applicant for the review,

(b) the holder of the premises licence, or

(c) any other person who made relevant representations in relation to the application.

(3) In sub-paragraph (2) 'relevant representations' has the meaning given in section 52(7)."

16 It in fact specifies who can appeal. Paragraph 38 of the Licensing Act (premises licences and club premises certificates) Regulations 2005 set out the requirements for advertisement of the application for review by the licensing authority:

"Advertisement of review by licensing authority

(1) Subject to the provisions of this regulation and regulation 39, the relevant licensing authority shall advertise an application for the review of a premises licence under section 51(3), of a club premises certificate under section 87(3) or of a premises licence following a closure order under section 167–

(a) by displaying prominently a notice–

(i) which is–

(aa) of a size equal or larger than A4;

(bb) of a pale blue colour; and

(cc) printed legibly in black ink or typed in black in a font of a size equal to or larger than 16;

(ii) at, on or near the site of the premises to which the application relates where it can conveniently be read from the exterior of the premises by the public and in the case of a premises covering an area of more than 50 metres square, one further notice in the same form and subject to the same requirements shall be displayed every 50 metres along the external perimeter of the premises abutting any highway; and

(iii) at the offices, or the main offices, of the licensing authority in a central and conspicuous place; and

(b) in a case where the relevant licensing authority maintains a website for the purpose of advertisement of applications given to it, by publication of a notice on that website;

(2) the requirements set out in paragraph (1) shall be fulfilled–

(i) in the case of a review of a premises licence following a closure order under section 167, for a period of no less than seven consecutive days starting on the day after the day on which the relevant licensing authority received the notice under section 165(4); and

(ii) in all other cases, for a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority."

This does not appear to require the authority to advertise a review in a newspaper, as used to be the case in respect of old licensing applications. Regulation 12 of the 2005 hearing regulations governs procedure of that Tribunal and need not be set out in full in this case.

The Facts

17 The facts here appear to be that on 20th March the first respondent advertised an application for review on its web page and affixed notices to the premises concerned on either side of the entrance doors. On 2nd April the first respondent was made aware that the notices on the premises had been removed, possibly two to three days earlier. They were immediately replaced. It appears to be common ground that the notices were only removed from the premises for a few days in the middle of the notice period.

18 On 18th April 2013 the claimant was informed of the first intended date for a review hearing. The following day the claimant drew the removal of the notices to the attention of the first respondent. It is plain to me that he was aware they had been removed and was aware they had been replaced and he does not contend otherwise at this hearing. It seems to me that that date should be a trigger for a judicial review application. Nothing in that regard was done until October 2013. If complaint was to be made about that, it should have been made considerably sooner. We will return to that topic in a moment.

19 The original application for judicial review appears to be nearly 6 months after the claimant knew that the authority had decided that section 52 applied and thus stated their intention to convene a hearing. He is clearly out of time in that regard. The question of the removal of notices was raised by the claimant before a sub-Committee on the 18th July 2003. It appears the claimant maintained that would have invalidated the hearing but he would not subsequently take the point, I am told, if the sub-Committee would agree to adjourn the case so he could bring his witnesses and prepare his case. We are told that the request for an adjournment was then refused. The application of course dates back to March.No criticism of can be railed against the Licensing Committee for refusing to adjourn. A hearing subsequently continued and the premises licence was revoked. The claimant then

entered a notice of appeal, dated 20th September 2013, against that revocation of his premises licence. An appeal, we are told, is fixed for February 2014.

20 Regulation 38 of the Licensing Regulations does not form a wholly rigid condition precedent to a valid review hearing. Its purpose I find is to inform interested persons of the review and the intention to hold a review. It seems to me to be the equivalent of a letter before action to passing citizens, denizens or nearby occupiers or is akin to a notice of an application for planning permission or other similar planning notice.

21 The purpose of the notice is to allow preparation of responses to review of the licence. The intention of Parliament here is plainly to ensure that those who have an interest in premises have a chance to make representations. A defective notice will not always thwart any review. There are circumstances in which it might do so. For instance, if an interested party or owner of premises had no notice at all of the review. But the plain purpose here is to ensure that those within an interest in a review are heard. The purpose is publicity, consultation and the extension of a right to be heard. The legislature plainly intended that if a procedural failure took place a review might be adjourned, for the power is within the regulations to do so, to give an opportunity to people to be heard, if for instance they have been taken by surprise. The licencing regulations and the review regime is not a game of happy families, with a player forfeiting a turn if they do not say "please". The review here was no surprise to Mr Clarke, who had ample notice and adequate time and facility to prepare for the hearing. The purpose of Parliament is made even plainer if we see what the whole point of this is. Paterson's Licensing Acts provides at Chapter 1, paragraph 348:

> "Where the appropriate procedural notices have been properly given and advertised in accordance with the regulations and the authority is satisfied that the application is not frivolous or vexatious or repetitious, then it must hold a hearing to consider the application for review and any relevant representations.
>
> Relevant representations can be made by the holder of the premises licence, the responsible authority or any other party and seemed to be tied to the period during which the licensing authority first receives the appropriate application.
>
> It is important also to note that relevant representations can relate only to the four licensing objectives. Any representations which do not fall within the general ambit of those objectives cannot form part of the authority's considerations."

22 I have tested my conclusion by analogy. I referred previously to similar requirements for notices being placed in accordance with planning legislation. The requirement of for the posting of notices of application is therefore not confined to the Licensing Act . Planning legislation requires publicity and consultation. For example, section 65 of the Town and Country Planning Act 1990 which provides:

> "Notice etc of applications for planning permission

(1) A development order may make provision requiring–

(a) notice to be given of any application for planning permission, and

(b) any applicant for such permission to issue a certificate as to the interests in the land to which the application relates or the purpose for which it is used …?

(5) A local planning authority shall not entertain an application for planning permission unless any requirements imposed by virtue of this section have been satisfied."

23 I was guided in my consideration of the current case by the approach taken in this somewhat analogous area. The *Court of Appeal judgment in the case of Main v Swansea City Council & Ors [1985] 49 P&CR 26* , was a decision on the equivalent requirements of section 27 of the Town and Country Planning Act 1971 . The wording of which contains the same mandatory wording: "shall not entertain an application for planning permission", as does section 65(5) of the Act of 1990.

24 There an application was made for outline planning permission, the development of land and a certificate under section 27 of the 1971 Act stated the requisite notice of the application had not been given to all other owners of the land. It identified the local planning authority as being the only "other" owner of the land but in fact a small, albeit not *de minimis* part of the land was in fact owned by another person who was not specified and whose identity was and subsequently remained unknown. The certificate however did not state, as it should have done under such circumstances, that the requisite notice had been published in a local newspaper as required by section 27 of the Act. In January 1977 the local planning authority granted outline planning permission and approval of reserved matters was subsequently granted. The scheme involved not involved development of a land owned by the unspecified person but the applicant, who made no claim to be the owner of that plot of land, nonetheless applied for judicial review, complaining about that noncompliance. His application was dismissed by Woolf J (as he then was) and by the Court of Appeal on appeal. The Court of Appeal held that a factual error in a certificate under section 27 of the 1971 Act might be no more than an irregularity which did not go to the jurisdiction of a local planning authority to entertain the application for planning permission but that a factual error, even if not so gross as to make the certificate no certificate at all, was not necessarily a mere irregularity in respect of which an applicant was not entitled to relief. It held that in that case the defects in the certificate were sufficient in principle to entitle the court to strike down the subsequent grant of outline planning permission in certain circumstances but that the grant was not a complete nullity. The decision was one for the discretion of the court. On the facts of that case the court did not exercise its discretion to quash the grant of planning permission. It is clear from that case it appears from page 31

of the report that the claimant had also argued that the applicant for planning permission and the plaining authority knew the certificate was false. But this contention was rejected on the facts both by the trial judge and the Court of Appeal.

25 It is also clear that the Court of Appeal considered the provisions of the Act in force at that time were designed to ensure that owners of land were given notice of applications affecting their land, so if the notification requirement was not complied with, even if due to honest error, then on the application of the owner of the relevant piece of land the permission might set aside. However, it is also clear that the Court of Appeal, having considered the authorities, was satisfied the court did have a discretion whether or not to quash. What they said at page 37 of the report was the court must consider the consequences of non-compliance in the light of the concrete state of facts and the continuing chain of events in a particular case. They recognise that the court must look not only at the nature of the failure but also at such matters as the identity, the application for relief, the lapse of time, the affect on other parties and the public and so on. They said that in that case they had no doubt that the defect in the certificate was sufficient to enable the court to strike down a subsequent grant in certain circumstances. But equally they had no doubt that the defects were not such as to render the grant a complete nullity. That the matter was therefore one of discretion and, as I have said, they declined on the facts of that case to exercise their discretion to strike down.

26 Any inadequacy in the posting of the notice in this case was of no material effect. Clarke and McDaid before the House of Lords deals with the entirely different provisions of the indictment rules and the Indictments Act . A prerequisite, my Lords held, to a fair trial in a criminal case, was that there should be a signed indictment. What my Lords do not say is that in every case a breach of a particular procedural defect will rob a subsequent decision of all validity. The search, as always, is one for Parliamentary intention. I have expressed myself firmly of the view that Parliament did not intend that a decision taken after a minor defect or irregularity in some advertising provisions, should affect the subsequent determination of a review of the premises licence.

27 In this case the claimant knew that a review was taking place, he had ample notice of that review and notice of the review was posted outside his premises for a significant period of time. The notice was absent for only two or three days on any arguable case on the facts. Mr Clarke prepared for his subsequent review. He went to the review and his voice was heard. Any irregularity, if it can be called an "irregularity" here was so slight as to have no effect at all on the ultimate decision or on fairness. The absence of the notice posted on the premises was for a very short period of time and has given rise to no injustice. It amounts to what I would describe as an immaterial irregularity. It did not and could not give rise to any injustice to the claimant in this case, when we see ultimately there was a full hearing at which he was able to participate and in which he did participate.

28 As an error of law there is nothing at all in the point on the notices. The claimant has no arguable case and permission is refused. The magistrates were perfectly entitled to decline to make a preliminary ruling as requested by the claimant. There is no statutory mechanism for such initial determination to be made and the

magistrates did not need to cast about to find a new procedural device to regulate their own procedure so as to permit such a preliminary determination. I refuse permission in respect of that ground. I refuse permission also because the claimant has a live, viable alternative remedy in the form of his appeal to the Magistrates' Court. Where an applicant applies to the High Court for judicial review and there is an alternative remedy available to him by way of appeal, the court should always ask itself when deciding whether or not to grant the relief sought which of the two alternative remedies is the more convenient and effective in the circumstances, not only for the applicant but in the public interest and should exercise its discretion accordingly — see the licencing case of *R v Huntingdon District Council ex parte Cowan & Or [1984] 1 All ER 58* , in particular the passage at 63G and 63H. This will be a clear case in which the claimant would be left to his untrammelled, unfettered right to a rehearing before the magistrates. Bearing in mind the public interest in the case and the interests of justice generally, the court is bound to withhold relief at least for the time that alternative available remedy was available. I further refuse permission because the claim arising from the allegedly defective notice was not made within 3 months of the defect being known to claimant, nor was it made promptly.

29 For those reasons, as given, permission to move for judicial review is refused to Mr Clarke.

30 MISS CAVENDER: My Lord, may I make application for costs by the respondent?

31 HIS HONOUR JUDGE LAMBERT: Have you a statement of those costs?

32 MISS CAVENDER: I do have. I have a statement of costs up until close of business yesterday.

33 HIS HONOUR JUDGE LAMBERT: Have you served that on Mr Clarke?

34 MISS CAVENDER: Yes, it was served on him this morning. I do not have a statement including today's costs because of course we did not know how long today's hearing would take.

35 HIS HONOUR JUDGE LAMBERT: Yes.

36 MISS CAVENDER: If I may turn my back briefly I will be able to provide it the court (Pause).

37 HIS HONOUR JUDGE LAMBERT: Okay. Thank you very much. Thank you.

38 MISS CAVENDER: Part of the reason for the level of those costs — perhaps I should explain to Mr Clarke — his service of documents was so late and the grounds upon which he sought to apply seems to vary with each further document. A great deal of additional work has been done. I am told that the costs of today hearing set at couple of hours will be about £500 in addition to the figure that my Lord already has.

39 HIS HONOUR JUDGE LAMBERT: Very well, it is my job to make a summary assessment costs. In doing that I have to first of all to decide whether or not the

costs are proportionate to the importance of the matters raised in the claim and similar and then to go on to determine whether or not they are reasonable.

40 THE CLAIMANT: Has your Honour made a judgment?

41 HIS HONOUR JUDGE LAMBERT: No, I have not made a determination. Costs normally following the event and therefore I intend to award the costs of the hearing, which I have to determine whether or not are first proportionate and then reasonable against you, because that is the normal rule.

42 THE CLAIMANT: In the event that you refuse permission?

43 HIS HONOUR JUDGE LAMBERT: Yes.

44 THE CLAIMANT: Which you have not decided yet?

45 HIS HONOUR JUDGE LAMBERT: No, I have refused permission. In my judgment I refused and said so, I refuse you permission on every ground.

46 THE CLAIMANT: What were your grounds?

47 HIS HONOUR JUDGE LAMBERT: I have just gone through them.

48 THE CLAIMANT: Okay.

49 HIS HONOUR JUDGE LAMBERT: That is what I have devoted the last half-an-hour to, as outlining the facts and telling you why you have no arguable case.

50 THE CLAIMANT: Based on the 1971 Act — yes?

51 HIS HONOUR JUDGE LAMBERT: It is not traditional to cross-examine a judge. I know you do so charmingly about that. I have said what I have said. I have been through it. I have said you have no arguable case on the grounds point. I am not going to go through a long explanation of what I have just said because it is just that.

52 MISS CAVENDER: I wonder whether I may suggest that a copy of my Lord's remarks may be provided in writing both to Mr Clarke and those responding. That may assist him in digesting what your Lordship has said.

53 HIS HONOUR JUDGE LAMBERT: I am not going to copy—

54 MISS CAVENDER: A transcript at some stage.

55 HIS HONOUR JUDGE LAMBERT: Mr Clarke will have to pay for a transcript if he wants a transcript of that.

56 What I have said is that you have not an arguable case. I have been through it at some length on the point they cannot hold a review if there is a small defect in the notice provisions. I have said that Clarke and McDaid was a case that your solicitors put before me does not govern the situation. I have looked and saw what the intention of Parliament was in relation to this section. I thought it more analogous to a planning case. I drew your attention to Main v Swansea City Council , where the Court of Appeal decided, in a planning case where they had to give notice of a particular application, defects in notice will not render it null and void. That was the

basis of that. For the reasons which I gave, I refuse you permission to apply for judicial review.

57 THE CLAIMANT: Okay your Honour. Do I have a right of appeal against this?

58 HIS HONOUR JUDGE LAMBERT: You do. It is a final decision and therefore you have a right of appeal to the Court of Appeal (Civil Division) against my decision but you need permission. Could we go back to permission when we have done costs. Would that suit you?

59 THE CLAIMANT: Yes.

60 HIS HONOUR JUDGE LAMBERT: We go back to the question of appeal. Okay. What it is traditional to do is to say if there are any arguments in principle as to why the costs should not be paid. There is probably not a great deal of argument open to you. If you lose you normally pay the costs.

61 THE CLAIMANT: Correct your Honour.

62 HIS HONOUR JUDGE LAMBERT: But you could also argue, if you wished, that their costs are unreasonable.

63 THE CLAIMANT: Yes, your Honour.

64 HIS HONOUR JUDGE LAMBERT: What would you like to say about that?

65 THE CLAIMANT: I don't know what the costs are at the moment.

66 HIS HONOUR JUDGE LAMBERT: It would come to a total of £2,252.

67 THE CLAIMANT: I would say that was unreasonable because the time to lodge appeal.

68 HIS HONOUR JUDGE LAMBERT: Yes, let us measure that against your own claim for costs. You say you should have if you had won, £2,275. All right. I will let you develop that. You may say anything else you would like to on that subject.

69 THE CLAIMANT: No, your Honour.

70 HIS HONOUR JUDGE LAMBERT: Thank you very much indeed.

71 My summary assessment of costs is that the claimant shall pay the defendant's costs assessed summarily at the total of £2,252 which I have before me. Those costs seem to me to be, firstly, proportionate to the issues which arise in the case and reasonable. The time for work on documents done was modest. Counsel's fees are modest in this case. In those circumstances they are entirely reasonable.

72 That is my judgment on the summary assessment of costs. Now the question of appeal. As I say, you may seek permission to appeal from me and thereafter you will need to seek permission to appeal from the Court of Appeal (Civil Division) and the appropriate forms.

73 THE CLAIMANT: Do I formally write to you for permission?

74 HIS HONOUR JUDGE LAMBERT: No, the conventional thing to do is at the end of the hearing is to tell the judge why you have an arguable case on appeal that he is

wrong or there is some other compelling reason why he should give permission. That other compelling reason is often if there are conflicting cases that permission should be given for that reason, so the Court of Appeal can review the authorities or maybe even thereafter the Supreme Court.

75 THE CLAIMANT: Yes, your Honour. At the end of the court I can ask you to grant permission to appeal.

76 HIS HONOUR JUDGE LAMBERT: I am inviting you to do that now.

77 THE CLAIMANT: Okay. Yes, I would do it on the grounds that the comparison of law, 71 law, compared to the comparisons and very common interpretation of the need to fulfill all the kind of mandatory conditions was brought for within the last year. They are relevant. I think the planning law is somewhat different than the construction of the 203 law. The reason I say that is because of the amount at stake. Revocation is serious and that's why the mandatory conditions are important. That is why two magistrates actually judged against counsel for not complying. I see no difference, so the compelling case would be that the comparisons that this court has made between the Planning Act of 1971 and these current Acts that are before the court, the judgment before the court is a compelling reason. I ask for permission.

78 HIS HONOUR JUDGE LAMBERT: Thank you very much.

79 Mr Clarke seeks permission to appeal my refusal of permission to move for judicial review made today. Civil Procedure Rule 52.3(6) provides:

> "(6) Permission to appeal may be given only where –
>
> (a) the court considers that the appeal would have a real prospect of success; or
>
> (b) there is some other compelling reason why the appeal should be heard."

I do not consider that an appeal would have a real prospect of success based on what Mr Clarke submits to me, nor do I consider that there is any other compelling reason why the appeal should be heard.

80 I am not of course immune from error but it seems to me the prospects of attacking my decision in these circumstances, for the reasons given by Mr Clarke, would not have any real prospects of success before the Court of Appeal. I cannot identify any other compelling reason in this particular case. There is no general public interest here to be considered, nor are there any conflicting authorities, it seems to me, which need to be considered by the Court of Appeal (Civil Division). In the circumstances permission is refused.

81 Miss Cavender, would you be kind and draw up the order of the court for me please and submit it within 7 days if you would be so kind.

82 MISS CAVENDER: Yes, my Lord.

83 HIS HONOUR JUDGE LAMBERT: All right. We are through in that regard now. You have now exhausted — I do not mean that pejoratively — you have exhausted the jurisdiction at first instance of the Administrative Court. Your remedy against my decision is of course in the hands of the Court of Appeal (Civil Division) now. That further application will be considered by a single Lord Justice of Appeal on paper should you proceed further with it. You of course have your hearing to get ready for before the Magistrates' Court. I do not know whether or not you have a further appeal to the Crown Court after that. That is not for me.

84 THE CLAIMANT: Thank you your Honour.

85 HIS HONOUR JUDGE LAMBERT: You have back all your documents, have you not. I have not taken anything from you?

86 THE CLAIMANT: I have your Honour.

87 HIS HONOUR JUDGE LAMBERT: Thank you both very much indeed.

APPLICATION FOR REVIEW OF A PREMISES LICENCE BROUGHT BY MRS A. WRIGHT IN RESPECT OF LEICESTER WARREN HALL

PREMISES LICENCE HOLDER BUNDLE

HEARING 25TH OCTOBER 2018

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kuits solicitors

Index

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Mr Keith Stokes
10 Coppice Road
Poynton
Cheshire East
SK12 1SL

Date: 30th August 2018 Our Ref: 058913

Please Contact: Miss Kim Evans

Dear Mr Stokes

APPLICATION FOR A REVIEW OF A PREMISES LICENCE
NOTICE OF HEARING

I refer to the application in relation to:

Premises: Leicester Warren Hall

Address: Leicester Warren Hall, Bexton Lane, Knutsford

I write to advise you that representations have been received in relation to the above application. Please find enclosed herewith copies of the objections.

This application will now be determined at a hearing of the Licensing Sub-Committee on:

Date: 20th September 2018

Time: 10:00am

Location: Council Chamber - Town Hall, Macclesfield, SK10 1EA

I would be grateful if you could provide to the writer a notice no later than five working days before the date of the hearing stating (a) whether you intend to attend the hearing or be represented at the hearing; or (b) whether you consider a hearing to be unnecessary.

Please note that Cheshire East Borough Council may dispense with holding a hearing if all parties agree that such a hearing is unnecessary and have given notice to this effect to the Council.

Additional information

A party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified (subject to (i) the Licensing Authority's discretion to exclude the public from all or part of hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing taking place in public; and (ii) the Licensing Authority's discretion to require any person

attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing).

At the hearing a party shall be entitled to;

- in response to a point upon which the authority has given notice to a party that it will want clarification under regulation 7(1)(d), give further information in support of their application, representations or notice (as applicable);
- if given permission by the authority, question any other party; and
- address the authority

If a party has informed the Licensing Authority that he does not intend to attend or be represented at a hearing, the hearing may proceed in his absence.

If a party who has not given such notification to the Licensing Authority and does not attend, the Authority may:

- where it considers it to be necessary in the public interest, adjourn the hearing to a specified date, or
- hold the hearing in the party's absence.

Where the authority holds the hearing in the absence of a party, the authority shall consider at the hearing the application, representations or notice made by that party.

Where the authority adjourns the hearing to a specified date it must forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

Please find enclosed a copy of the procedure to be followed at the hearing.

Yours sincerely

Kim Evans
Licensing Team Leader

Rachael Killworth

From: Keith Stokes
Sent: 26 September 2018 14:37
To: Anthony Lyons
Subject: FW: [OFFICIAL] Review Hearing - Knutsford Masonic Hall

From: EVANS, Kim <Kim.Evans@cheshireeast.gov.uk>
Sent: 04 September 2018 15:50
To: Undisclosed recipients:
Subject: [OFFICIAL] Review Hearing - Knutsford Masonic Hall

Dear All

I write with regards to the above Hearing, which was scheduled to take place on the 20th September 2018.

Last week we were made aware that the Review application (the 'July application') was potentially not served on the premises licence holder as required by regulation 29 of The Licensing Act (Premises licences and club premises certificates) Regulations 2005.

I understand that the applicant's representative delivered a copy of the application to the Club's registered address on the 30th August 2018. This follows the return of the 'July application' by Royal Mail. Following discussion with our legal team the 'July application' is now deemed to be invalid. The Hearing scheduled for the 20th September 2018 will now NOT take place. The timescales for hearings etc will be recalculated from the 30th August 2018, when service can be deemed compliant with the regulations, and I will be issuing amended Notices of Hearing in due course. The Hearing will now take place sometime between 27/09/2018 and 25/10/2018.

I trust this clarifies the situation.

Regards

Kim Evans MIoL
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Paterson's Licensing Acts 2014, Volume 1: Alcohol, Refreshment, Taxi and Street Trading Licensing, by Simon Mehigan QC, Jeremy Phillips and The Hon Justice Saunders

practice for them to give licence holders early warning of 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.

42.13 In *R (Harpers Leisure International Limited) v Chief Constable of Surrey*,[1] the licensee claimed that the police had brought the review proceedings in bad faith and in breach of its own policies, and that therefore the licensing authority should have stayed the review as an abuse of process. The Administrative Court held that as a matter of construction of the Act, the authority did not have such unfettered power, and that if there was to be a challenge to the decision to bring the review, then it should be brought against the police in the Magistrates' Court. Charles J also pointed to the informal nature of the review proceedings, which is intended to eschew legal arguments of this nature:

> 29. Further, and to my mind of importance, is that, albeit the review process put in place has a number of formal aspects, it is, as demonstrated by the provision that the proceedings should take place by reference to a discussion promoted by the sub-committee, and as argued on behalf of the second defendant, the process is intended to be one which has significant areas of informality, an investigatory aspect and one in which the position of the licence holders is protected by the provisions relating to an appeal and a stay which would not be governed by the powers alleged in the Magistrates' Court and stay pending the appeal."

42.14 In keeping with the scheme of the legislation, and the importance ascribed to providing the opportunity for participation in the licensing process, the Act (and accompanying Regulations) set out a clear framework for advertising the application. The applicant for review must give notice of his application to each responsible authority and to the holder of the premises licence in question, which requirement is satisfied by giving them a copy of the application together with any supporting documents on the same day as the application is given to the licensing authority.[2] The licensing authority must then advertise the review by displaying prescribed form of a notice in the prescribed format on or near the site of the premises where the public can conveniently read it from the exterior of the premises.[3] Special provisions apply where the premises concerned covers an area of more than 50 metres square. A notice of the review must also be displayed at the offices of the licensing authority, and on the website of that authority (where

[1] [2010] EWHC 2410 (Admin).

[2] Detailed requirements of the prescribed form are contained in the Licensing (Premises Licences and Club Premises Certificates) Regulations 2005, reg 38.

there is a website). The notices must be displayed for at least 28 consecutive days starting on the day after the day on which the application was given to the authority. In certain magistrates' courts dealing with applications to determine the unpaid application for review strictly in accordance with the requirements are being treated as fatal, given that section 52, which provides for determination of the application, is apparently not complied where there has been full compliance.[4]

42.15 The notice must state the address of the premises, the dates between which representations may be made in respect of the application by interested parties and responsible authorities, the grounds of the application for review, the place where the review of the licensing authority is kept and where the grounds for the review may be inspected (including the website where applicable), and a warning that it is an offence knowingly to make a false statement in connection with an application, and the maximum fine liable for such an offence.

42.16 The right to make representations, which must be relevant to one or more of the licensing objectives, in response to or in relation to the application for review is extended to interested parties, responsible authorities and the holder of the premises licence. Any such representations must be made in writing (which includes by e-mail) to the licensing authority at any time during the 28-day period beginning with the day on which the application was first advertised.

42.17 Any determination by the licensing authority that any representation is frivolous, vexatious or repetitious must be notified to the maker of that representation, with reasons. There is no avenue of appeal provided in the event of such a determination, judicial review is likely to be the only practicable route.

42.18 The review is to be determined by the holding of a hearing to consider the application and any relevant representations. Unlike the provisions relating to applications for new premises licences or variations, there is no provision permitting the review to be determined without a hearing where all parties agree. The wording of section 52 is mandatory and provides clear a hearing must be held even if the parties to the review agree on the appropriate outcome.

42.19 Otherwise the procedural rules in respect of the conduct of hearings[5] and reference may be made to Chapter 21 (Best Practice in Licensing Hearings).

[3] Licensing Act 2003, s 51(4).

[4] Licensing Act 2003 (Hearings) Regulations 2005 and the Licensing Act 2003 (Hearings) (Amendment) Regulations 2004.

TINSELTOWN NW3 LTD -V- LONDON BOROUGH CAMDEN

Comment by Miss Sarah Clover

On the 30th October 2012 in the Highbury Magistrates' Court, District Judge Staveley gave a ruling in relation to the status of a review application that did not comply with the statutory Regulations regarding the application procedure.

The review application was made against Tinseltown, a burger and milkshake bar in Hampstead. Tinseltown is represented by Poppleston Allen solicitors.

The review application, made by two Councillors (both of whom were at the time Members of the Licensing Committee), was submitted to the London Borough of Camden Licensing Authority, and accepted as valid on 1st May 2012. The application form was incorrectly completed by the Applicants in several particulars. The name of the 2nd Applicant was omitted on the first page, and the address of the 2nd Applicant was omitted on the third page. Although the box on the application was ticked, asserting that copies had been sent to the responsible authorities and the premises licence holder, this had not, in fact, been done, and furthermore, the Councillors failed to tick the box on the same page confirming that they understood that if they did not comply with the requirements, the application would be rejected.

On receipt of the application, the Council sent a copy to the premises licence holder, which they were not required to do – that being the responsibility of the Applicant – a week later on the 8th May, and there is no evidence that they sent copies to anyone else – again this was the responsibility of the Applicant.

Finally, the notice required to be displayed on the premises was not displayed until the 4th May, 2012 which was 2 days late.

The Council maintained that these irregularities did not matter; no prejudice had been caused as all parties were aware, and they proceeded with the review application as if it had been validly made. The Licensee appealed the decision of the Sub-Committee, but took, as a preliminary legal point in the

Magistrates' Court, the stance that the entire review hearing was null and void because the application was invalid and did not properly trigger a hearing in the first place.

Section 51 of the Licensing Act 2003 states:

51 Application for review of premises licence

(1) Where a premises licence has effect, [a responsible authority or any other person] may apply to the relevant licensing authority for a review of the licence.

(2) Subsection (1) is subject to regulations under section 54 (form etc of applications etc).

(3) The Secretary of State must by regulations under this section—

(a) require the applicant to give a notice containing details of the application to the holder of the premises licence and each responsible authority within such period as may be prescribed;

(b) require the authority to advertise the application and invite representations about it to be made to the authority by [responsible authorities and other persons];

(c) prescribe the period during which representations may be made by the holder of the premises licence, any responsible authority or any [other person];

(d) require any notice under paragraph (a) or advertisement under paragraph (b) to specify that period.

By virtue of section 51(3), it is a mandatory requirement under the primary legislation that the applicant for the review of the licence give notice containing details of the application to the premises licence holder and to each responsible authority within the prescribed period.

By virtue of section 51(3)(b), it is a mandatory requirement under the primary legislation that the licensing authority advertise the review and invite representations about it within a prescribed period.

The regulations specified under section 51 have been implemented by the Secretary of State and comprise the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42 .

Those regulations state:

Review of premises licences

16 An application for a review of a premises licence under section 51 shall be in the form and shall contain the information set out in Schedule 8 (Now Schedule 2 of 2012 No 955 by virtue of changes made by Licensing Act 2003 (Premises licences and club premises certificates) (Amendment) Regulations 2012).

The language of the Act and the Regulations is mandatory.

The Consequence of Procedural Defects.

Section 52 of the Licensing Act 2003 (so far as is relevant) states:

52 Determination of application for review

(1) This section applies where—

(a) the relevant licensing authority receives an application made in accordance with section 51,

(b) the applicant has complied with any requirement imposed on him under subsection (3)(a) or (d) of that section, and

(c) the authority has complied with any requirement imposed on it under subsection (3)(b) or (d) of that section.

(2) Before determining the application, the authority must hold a hearing to consider it and any relevant representations.

Therefore, determination of the review application may only take place, in accordance with section 52, where those mandatory requirements have been satisfied. The clear language of section 52 is that the section only applies in those circumstances.

The Council argued before the (Deputy) District Judge that a failure to comply with a procedural requirement need not prove fatal to legal proceedings and cited: ***R v Secretary of State for the Home Department ex p Jeyeanthan [2000] 1 WLR 354***. ***Jeyeanthan*** is authority for the proposition that the distinction between "mandatory" and "discretionary" language is not the real consideration, and that the important point is whether there is any prejudice resulting from non-compliance with regulations, and whether Parliament can have intended invalidity to result from a technical non-compliance. In the Tinseltown case, there was no prejudice to any party.

Sarah Clover for the Licensee cited another case, however:
R v Clarke and Another [2008] UKHL 8

In this case, Lord Bingham found that there was a distinction to be made between non-compliance with a procedural technicality in the course of proper proceedings, and, on the other hand, non-compliance with a technicality which robbed the decision making tribunal of its jurisdictional power entirely. The Tinseltown case, it was argued, was an example of the latter, not the former.

Lord Bingham

Paragraph 4:

"whenever a court is confronted by failure to take a required step properly or at all, before a power is exercised ('a procedural failure'), the court should first ask itself whether the intention of the legislature was that any act done following that procedural failure should be invalid."

Section 52 of the Licensing Act 2003 states:

" (1) ***This section applies where*** –

(a) the relevant licensing authority receives an application made in accordance with section 51;

(b) the applicant has complied with any requirement imposed on him under sub-section (3)(a), or (d) of that section and

(c) the authority has complied with any requirement imposed on it under subsection (3)(b) or (d) of that section." [Emphasis added]

Section 52 goes on thereafter to endow the Licensing Authority with its power to hold a hearing and take steps in relation to the premises licence. The section, by clear interpretation, does ***not*** apply if the review application has not been made in accordance with s.51, and the applicant has not complied with the requirements of service of the review application, and the Licensing Authority has not complied with the requirements of advertising and inviting representations. There is no other reasonable interpretation.

The alternative interpretation would have to be:

"(1) ***This section applies where*** –

(a) the relevant licensing authority receives an application made in accordance with section 51;

(b) the applicant has complied with any requirement imposed on him under sub-section (3)(a), or (d) of that section and

(c) the authority has complied with any requirement imposed on it under subsection (3)(b) or (d) of that section."

And this section also applies where those matters at (a) to (c) have not been complied with.

[Emphasis added].

This is nonsensical, and robs the first words at (1) of all sensible meaning. It makes the words in sub-section (1) entirely otiose.

The Council argued that:
"We remain of the view that it was not Parliament's intention that breaches of the Regulations, however small, would render the proceedings invalid."

and

" This cannot have been the intention of Parliament when devising a procedure whereby members of the public could bring review applications before a Council's licensing sub-committee even if the premises licence was ultimately at stake through that process."

The Learned Deputy District Judge disagreed. Section 52, as Deputy District Judge Stavely observed, provides an important protection for licensees. She was clear that it was mandatory, and that any issue of prejudice was irrelevant.

The Council's contention that "this cannot have been the intention of Parliament" when devising a procedure to be used by members of the public did not bear scrutiny. The regulatory requirements are not onerous or difficult for a lay person to understand. Furthermore, and more importantly, it is not

necessary for a lay person to have any knowledge or understanding about the Regulations. It is the responsibility of the Licensing Authority, in receiving an application to be diligent in confirming that the regulatory requirements have been complied with. This is particularly so in relation to the regulatory requirements that the Licensing Authority themselves must comply with, as opposed to those that applicants must comply with. There is no excuse for the failure of a Licensing Authority to conform to the regulations. Any failure of procedure can be notified to a lay applicant, and any non-compliance can be rectified, and the review application submitted again. This is not prejudicial or onerous to an applicant.

The consequence of the failure to comply with the regulations is, therefore, that the review application is invalid; no hearing should be convened, and any purported determination made upon the application is null and void. This was the (Deputy) District Judge's finding, and she awarded costs against the Council.

Sarah Clover
Kings Chambers
Embassy House, 60 Church Street
Birmingham
0121 200 3570

26th June 2013

Rachael Killworth

From:	Megan Stevenson on behalf of Anthony Lyons
Sent:	01 October 2018 15:05
To:	'licensing@cheshireeast.gov.uk'
Cc:	'simonjames.taylor@shoosmiths.co.uk'
Subject:	Knutsford Masonic Club - Review Proceedings (LEI108/1)

FAO Kim Evans, Licensing team leader

Dear Sirs,

We have been instructed by the directors of Leicester-Warren Hall Company Limited to act on their behalf in connection with the Section 51 proceedings for the review of the Knutsford Masonic Club premises licence issued by your authority under the Licensing Act 2003.

Our clients have shared with us correspondence, forms and notices relating to the review proceedings.

We note the review application is dated 26th July 2018 although it appears to have been submitted with a later letter dated 30th July 2018 to the authority from Messers Shoosmiths who are instructed to act on behalf of the applicant Adele Wright.

From our examination of the sequence of dates and events relating to the review we have concluded that the current proceedings are invalid and ought not be entertained by the licensing authority.

As you will be aware there is a strict procedure to be followed in connection with reviews.

It appears the applicants have failed to comply with regulations 27; 29; 38 (1-2); and 39.

You will also be aware that by reason of Section 52 Licensing Act 2003 an application for review can only proceed to a determination where it is made in accordance with Section 51 (1) (a-c) which is clearly not the case.

We have seen the licensing authority email of the 4th September 2018 (15:50) addressed to "undisclosed recipients" which acknowledges the application (whichever date it is said to have commenced) was not made in accordance with the regulations.

The authority purports to rectify the error by "recalculating" timescales stating that a notice of hearing will be advised in due course.

Unfortunately it is simply not possible to adjust the application in this way. Legislation does not provide for any such modification of the original application no matter how expedient the licensing authority may consider this to be.

Having brought the above to your attention our clients are keen to emphasise that they (without any admission of fault) acknowledge the continuing concerns of Mr and Mrs Wright and are not seeking to avoid their responsibilities. In fact these abortive proceedings have had the positive outcome of promoting a new dialogue between the parties.

At the suggestion of Shoosmiths we understand that Mr and Mrs Wright would like to enter into renewed discussion with our clients representatives. Our clients are presently awaiting a suggested day and time for a mediation meeting at which hopefully a resolution can be found to the satisfaction of the parties. This may well obviate the need to involve the licensing authority in any renewed review proceedings.

It would be most helpful if you could acknowledge safe receipt of this email and confirm that the extant review proceedings cannot proceed.

As a matter of courtesy we are sending a copy of this email to Shoosmiths and await their suggestion for a meeting.

Yours sincerely

Anthony Lyons

Rachael Killworth

From:	Anthony Lyons
Sent:	12 October 2018 17:10
To:	'Licensing_CE@cheshireeast.gov.uk'
Cc:	Megan Stevenson
Subject:	Leicester Warren Hall - Review

Dear Kim,

Thank you for your email.

As I set out in my correspondence of 1 October, The Licensing Act 2003 does not provide a function for an application for review to be determined unless it has been made properly. Section 52 of that Act deals with the determination of applications for review, but, by virtue of Subsection 1, only applies where the Authority 'receives an application made in accordance with section 51.' Section 51 provides that an interested party may apply for a review of the licence, subject to the Regulations.

Those Regulations are found within The Licensing Act 2003 (Premises Licences and club premises certificates) Regulations 2005. As previously stated we believe that the Licensing Authority and applicant have failed to comply with those including, but not limited to, numbers 27, 29, 38 & 39.

Regulation 27 requires an applicant for review to serve a copy of the application on each of the responsible authorities. We do not believe that has been complied with. Cheshire East's own Guidance notes on the lodging of a review lists the Licensing Authority, Police, Fire Service, Environmental Health, Planning Authority, Weights & Measures, Health & Safety Authority as responsible authorities but omits that of the Home Office Immigration Enforcement who became a responsible authority in 2017.

Regulation 29 requires an applicant to serve a copy of their review on the premises licence holder, at the same time as they serve a copy of the application on the Licensing Authority and all other responsible authorities. We have had sight of the letter from Shoosmiths to our client, dated 28 August 2018 re-serving a copy of the application on them, following the return by Royal Mail of a previous attempt. However, this letter was sent a month after the application was served on the Licensing Authority when it should have been made contemporaneously.

Regulation 38 requires the applicant to display a blue notice at the premises for 28 days starting the day after the application has been served, and where a Licensing Authority maintains a website, details of the application must also be published there. We could find no evidence of such notice on the Council's website. Regulation 39 sets out what that notice should say, but by virtue of the non-compliance of 38 above, 39 has not been complied with either.

It therefore follows that if the Regulations have not been complied with, the application has not been made in accordance with Section 51, and must fail. There is no 'slip rule' whereby an application can be deemed valid when it has not been lodged in compliance with the regulations, nor can any deficiencies in it be remedied by simply re-calculating the end of the consultation period or postponing the hearing. The application must instead be re-lodged in full, from the beginning.

As such I don't believe that the matter can be determined at the hearing you have listed for 25 October 2018 and would respectfully suggest that it be vacated.

However, I can confirm that discussions between my client and Mr and Mrs Wright continue and we are in the course of arranging a meeting between all parties to discuss matters further.

I look forward to hearing from you.

Kind regards,

Licensing Act 2003

2003 c. 17 Part 3 Review of licences Section 51

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51 Application for review of premises licence

(1) Where a premises licence has effect [F1 a responsible authority or any other person] may apply to the relevant licensing authority for a review of the licence.

(2) Subsection (1) is subject to regulations under section 54 (form etc. of applications etc.).

(3) The Secretary of State must by regulations under this section—

(a) require the applicant to give a notice containing details of the application to the holder of the premises licence and each responsible authority within such period as may be prescribed,

(b) require the authority to advertise the application and invite representations about it to be made to the authority by [F2 responsible authorities and other persons],

(c) prescribe the period during which representations may be made by the holder of the premises licence, any responsible authority or any [F3 other person],

(d) require any notice under paragraph (a) or advertisement under paragraph (b) to specify that period.

(4) The relevant licensing authority may, at any time, reject any ground for review specified in an application under this section if it is satisfied—

(a) that the ground is not relevant to one or more of the licensing objectives, or

(b) in the case of an application made by a person other than a responsible authority, that—

(i) the ground is frivolous or vexatious, or

(ii) the ground is a repetition.

(5) For the purpose a ground for review is a repetition if—

(a) it is identical or substantially similar to—

(i) a ground for review specified in an earlier application for review made in respect of the same premises licence and determined under section 52, or

(ii) representations considered by the relevant licensing authority in accordance with section 18, before it determined the application for the premises licence under that section, or

(iii) representations which would have been so considered but for the fact that they were excluded representations by virtue of section 32, and

(b) a reasonable interval has not elapsed since that earlier application for review or the grant of the licence (as the case may be).

(6) Where the authority rejects a ground for review under subsection (4)(b), it must notify the applicant of its decision and, if the ground was rejected because it was frivolous or vexatious, the authority must notify him of its reasons for making that decision.

(7) The application is to be treated as rejected to the extent that any of the grounds for review are rejected under subsection (4).

Accordingly the requirements imposed under subsection (3)(a) and (b) and by section 52 (so far as not already met) apply only to so much (if any) of the application as has not been rejected.

Annotations:

Amendments (Textual)

Words in s. 51(1) substituted (22.3.2012 for specified purposes, 25.4.2012 in so far as not already in force) by (with) S.I. 2012/1129, art. 2(d)

Words in s. 51(3)(b) substituted (22.3.2012 for specified purposes, 25.4.2012 in so far as not already in force) by (with) S.I. 2012/1129, art. 2(d)

Words in s. 51(3)(c) substituted (22.3.2012 for specified purposes, 25.4.2012 in so far as not already in force) by (with) S.I. 2012/1129, art. 2(d)

Commencement Information

I1 S. 51(3) in force at 16.12.2003 by s. 51(1)(2)(4)-(7) in force at 24.11.2005 by art. 3 (with)

Licensing Act 2003

Changes to legislation: Licensing Act 2003, Section 52 is up to date with all changes known to be in force on or before 23 October 2016. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

View outstanding changes

52 Determination of application for review

(1) This section applies where—

(a) the relevant licensing authority receives an application made in accordance with section 51,

(b) the applicant has complied with any requirement imposed on him under subsection (2)(a) or (b) of that section, and

(c) the authority has complied with any requirement imposed on it under subsection (3)(b) or (d) of that section.

(2) Before determining the application, the authority must hold a hearing to consider it and any relevant representations.

(3) The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers [F1 appropriate] for the promotion of the licensing objectives.

(4) The steps are—

(a) to modify the conditions of the licence,

(b) to exclude a licensable activity from the scope of the licence,

(c) to remove the designated premises supervisor,

(d) to suspend the licence for a period not exceeding three months,

(e) to revoke the licence,

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

(5) Subsection (3) is subject to sections [F2 19 to 21] (requirement to include certain conditions in premises licences).

(6) Where the authority takes a step mentioned in subsection (4)(a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

(7) In this section "relevant representations" means representations which—

(a) are relevant to one or more of the licensing objectives, and

(b) meet the requirements of subsection (8).

(8) The requirements are—

(a) that the representations are made—

(i) by the holder of the premises licence, a responsible authority or [F3 any other person], and

(ii) within the period prescribed under section 51(3)(c),

(b) that they have not been withdrawn, and

(c) if they are made by [F4 a person who is not a responsible authority], that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

(9) Where the relevant licensing authority determines that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for that determination.

(10) Where a licensing authority determines an application for review under this section it must notify the determination and its reasons for making it to—

(a) the holder of the licence,

(b) the applicant,

(c) any person who made relevant representations, and

(d) the chief officer of police for the police area (or each police area) in which the premises are situated.

(11) A determination under this section does not have effect—

(a) until the end of the period given for appealing against the decision, or

(b) if the decision is appealed against, until the appeal is disposed of.

Annotations:

Amendments (Textual)

F1 Words in s. 52(3) substituted (25.4.2012) by Police Reform and Social Responsibility Act 2011 (c. 13), ss. 109(11), 157(1) (with s. 108(15)); S.I. 2012/1129, art. 2(d)

F2 Words in s. 52(5) substituted (29.1.2010) by Policing and Crime Act 2009 (c. 26), ss. 112, 116, Sch. 7 Pt. 5 para. 34; S.I. 2010/125, art. 2(f)

F3 Words in s. 52(8)(a)(i) substituted (25.4.2012) by Police Reform and Social Responsibility Act 2011 (c. 13), ss. 108(3)(a), 157(1) (with s. 108(7)); S.I. 2012/1129, art. 2(d)

F4 Words in s. 52(6)(c) substituted (25.4.2012) by Police Reform and Social Responsibility Act 2011 (c. 13), ss. 108(3)(b), 157(1) (with s. 106(7)); S.I. 2012/1129, art. 2(d)

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Licensing Act 2003

2003 c. 17 Part 3 General provision Section 54

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54 **Form etc. of applications and notices under Part 3**

In relation to any application or notice under this Part, regulations may prescribe—

(a) its form,

(b) the manner in which it is to be made or given,

(c) information and documents that must accompany it.

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The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005

2005 No. 43 PART 4 Regulation 27

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Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Notice to responsible authority

27. In the case of an application for a premises licence under section 17, a provisional statement under section 29, a variation of a premises licence under section 34, a review under section 51, a club premises certificate under section 71, a review under section 87, or a variation of a club premises certificate under section 94, the person making the application shall give notice of his application to each responsible authority, by giving to each authority a copy of the application together with its accompanying documents, if any, on the same day as the day on which the application is given to the relevant licensing authority.

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The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005

2005 No. 42 PART 4 Regulation 29

Notification of review

29. In the case of an application for a review of the premises licence under section 51 or 167 or review of a club premises certificate under section 87, the person making the application shall give notice of the application to each responsible authority and to the holder of the premises licence or the club which holds the club premises certificate (as the case may be) to which the application relates by giving to the authority the relevant part of the application form together with its accompanying documents, if any, on the same day as the day on which the application for review is given to the licensing authority.

The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005

2005 No. 42 PART 5 **Regulation 38**

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Advertisement of review by licensing authority

38.—(1) Subject to the provisions of this regulation and regulation 39, the relevant licensing authority shall advertise an application for the review of a premises licence under section 51, 53A or 88 of a club premises certificate under section 97A or of a premises licence following a closure order under section 167—

(a) by displaying prominently a notice—

(i) which is—

(aa) of a size equal or larger than A4;

(bb) of a pale blue colour; and

(cc) printed legibly in black ink or typed in black in a font of a size equal to or larger than 16;

(ii) on or near the site of the premises to which the application relates, where it can conveniently be read from the exterior of the premises by the public and in the case of a premises covering an area of more than 50 metres square, one further notice in the same form and subject to the same requirements shall be displayed every 50 metres along the external perimeter of the premises abutting any highway; and

(iii) at the offices of the main offices of the licensing authority in a central and conspicuous place; and

(b) on a date where the relevant licensing authority maintains a website for the purpose of advertisement of applications given to it, by publication of a notice on that website.

(2) The requirements set out in paragraph (1) shall be fulfilled—

(a) in the case of a review of a premises licence following a closure order under section 167, for a period of no less than seven consecutive days starting on the day after the day on which the relevant licensing authority received the notice under section 165(4); and

(b) in all other cases, for a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority.

The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005

2005 No. 42 PART 5 Regulation 39

Advertisement of review by licensing authority

39 All notices referred to in regulation 38 shall be—

(a) the address of the premises about which an application for a review has been made;

(b) the dates between which interested parties and responsible authorities may make representations to the relevant licensing authority;

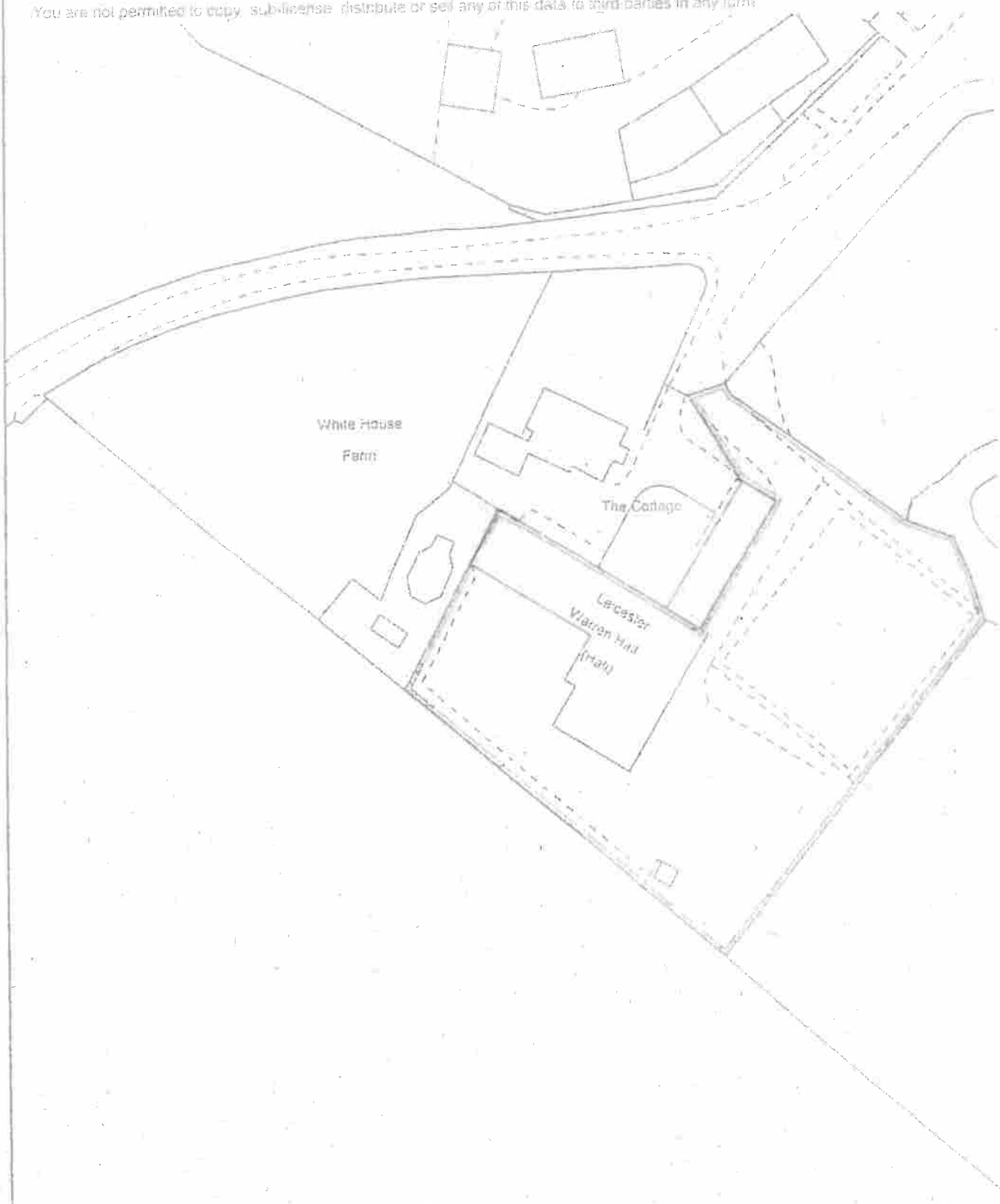
(c) the grounds of the application for review;

(d) the postal address and where available the website address where the register of the relevant licensing authority is kept and where and likewise grounds for any review may be inspected; and

(e) that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence.

HM Land Registry Official copy of title plan

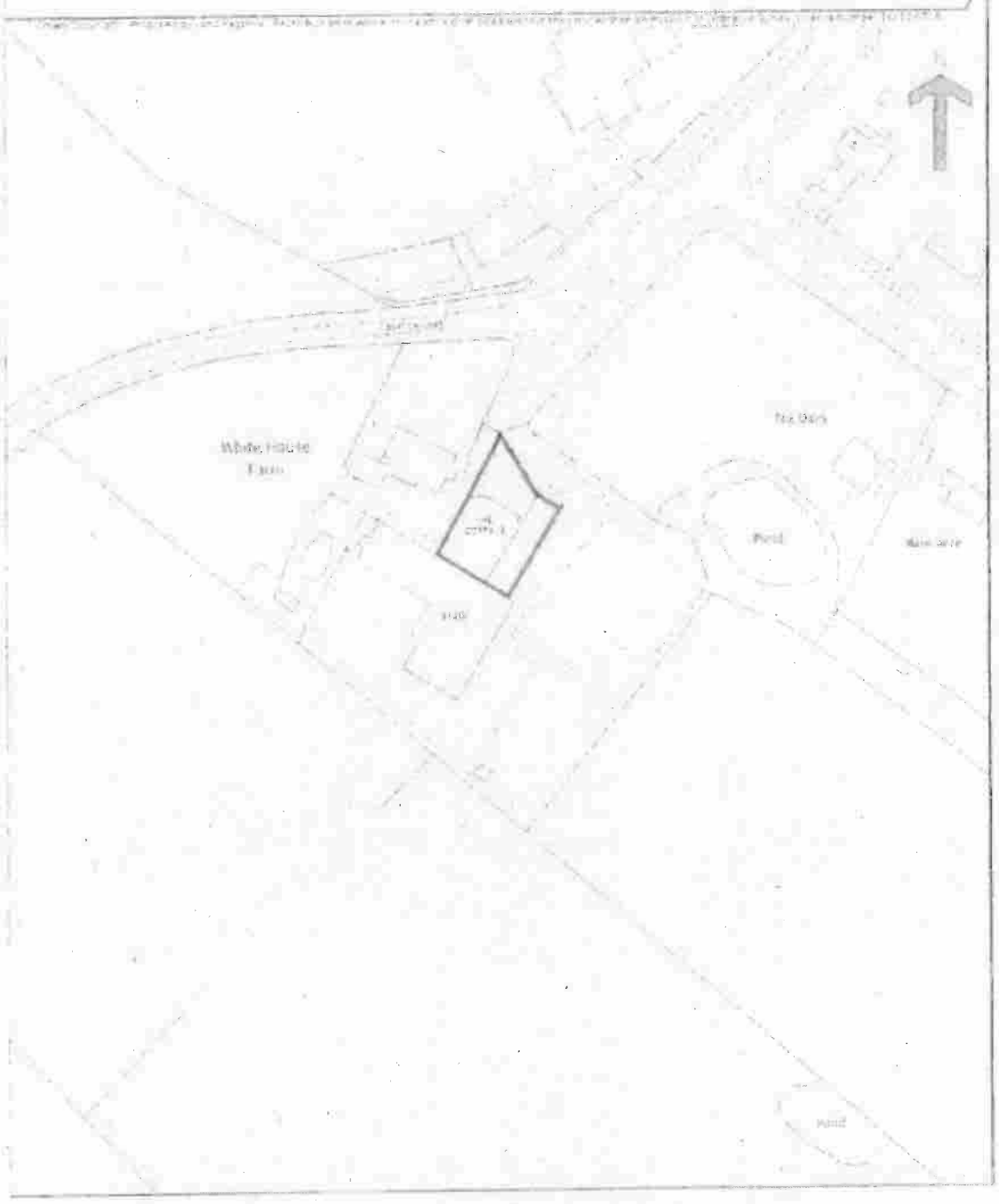
Title number **CH657696**
Ordnance Survey map reference **SJ7477S**
Scale **1:1250** enlarged from 1:2500
Administrative area **Cheshire East**

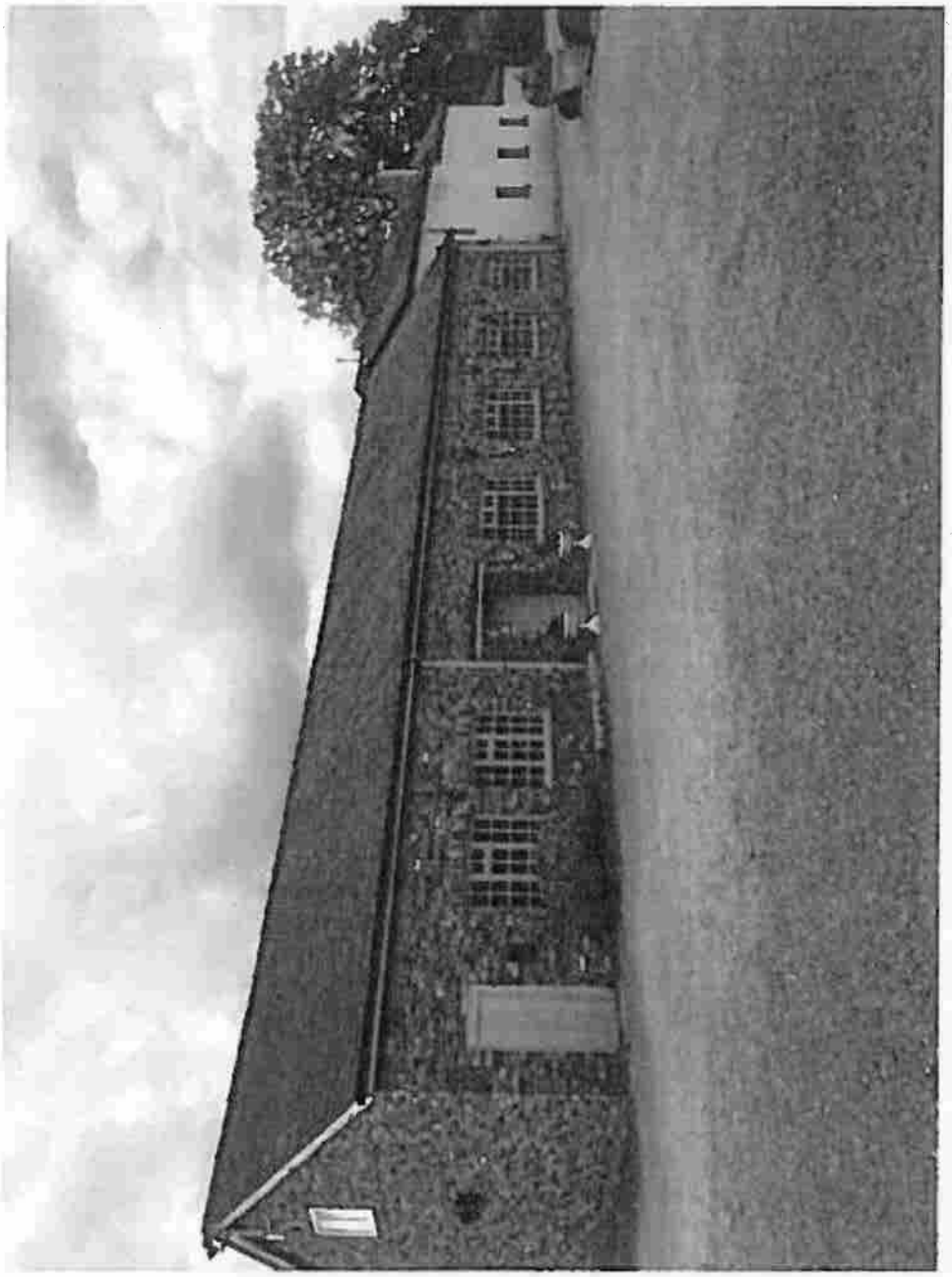


Land Registry

Current title plan

Title number CH453207
Ordnance Survey map reference SJ7477SE
Scale 1:1250 enlarged from 1:2500
Administrative area Cheshire East





Introduction

This narrative is written in response to an application for review of the Premises Licence (PR/0640) issued by Cheshire East Council (CEC) to The Leicester-Warren Hall Company Limited (LWHCo) in respect of licensable activities carried out at Leicester-Warren Hall, Bexton Lane, Knutsford (LWH).

LWH is a Masonic Hall, owned by LWHCo and is currently the home of thirteen Masonic Orders with a combined membership of around 360 drawn from Knustsford and the surrounding areas. LWH has been a regular meeting place for Freemasons since 1969. LWHCo is a non-profit making organisation with around 50 Shareholders and is managed by a Board of up to 9 Directors. The Articles of Association of LWHCo do not permit any distribution of "profits", all Shareholders and Directors are Knutsford Masons and all are unpaid volunteers.

Freemasonry is essentially a charitable organisation which raises significant amounts for local and national charities mainly from Members' contributions, donations and social functions.

Previous History of LWH

LWH was built in 1969 as a redevelopment of former farm buildings. It was built and maintained by the then Members, who included professional architects, builders, tradesmen and labourers. In the 1980's the hall was extended by the addition of the dining room and a new and much improved bar and has remained unchanged since that time. The hall is an expensive building to maintain and an average of around £25,000 pa is required for repairs and renewals.

During the 1980's and 1990's there was a significant amount of Masonic activity at LWH, with around 150 midweek meetings each involving around 40 to 50 Members and guests attending and, in addition, around 40 weekend Masonic social events with typically 120 attending.

From 1990 onwards, as the numbers of Members began to slowly decline, it became clear that the revenue raised from Members would be insufficient for the future maintenance of the hall. Around 2008, it was decided by LWHCo that, in order to secure the future of the hall, a commercial partner was required, whereby the hall would continue to be used as a venue for Masonic functions, whilst also being operated as a venue for external functions. At that time, the Premises Licence was revised and LWH was approved by CEC to be regularly used as a venue for marriages/partnerships by civil ceremony. The building is ideally suited to such events and is a popular venue in the area.

Activities of Tradcafe/Wilshaws at LWH

In July 2008, Tradcafe Limited, a member of the K8 Group of companies, took over operation of the hall under a three-year contract later assigned to Wilshaws of Bexton Limited, also a member of the K8 group (Wilshaws). Under that contract, it was envisaged that sufficient revenue would be generated to sustain commercial operations whilst providing a surplus for the maintenance and improvement of LWH.

During Wilshaws' tenure at LWH, we are aware that there have been difficulties between them and Mr & Mrs Wright, the owners of the adjoining house regarding noise and other nuisance arising

from the commercial activities of Wilshaws . Although throughout this period, the Premises Licence was in the name of LWHCo, the Designated Premises Supervisor was Ms Katrina Shenton, a Director of Wilshaws and LWHCo did not become directly involved in resolving those difficulties. We are aware that, from time to time, the relationship between the parties became extremely strained and that several formal complaints were made by Mr & Mrs Wright.

It is apparent from the diary records kept by Mr & Mrs Wright that there may have been inadequate control and management of events run by Wilshaws. There are several references in the diary to fire-doors being left open, which is somewhat of an exploitation of an omission in the Premises Licence which requires all windows to be closed after 22.00 but makes no mention of doors being closed.

Future Activities at LWH

It remains the case that significant revenue from external events is crucial to the future existence of LWH. Without that revenue the likely outcome would be the end of Freemasonry in Knutsford and sale of the land for development, there being extremely limited options for the use of such a building.

Following the departure of Wilshaws on 31st August 2018, LWHCo has entered into a new lease and quite different contractual arrangements with Belle Epoque Bespoke Limited (BEB). This lease will be effective from 1st September 2018 and for a period of 20 years. BEB has close links with La Belle Epoque Limited, a highly respected family run catering and events business operating in Knutsford for many years.

The income to LWHCo generated from this lease and obligations on BEB under the lease are essential to the maintenance of the building and its future as a Masonic Hall. We understand from BEB that the permitted hours under the Premises Licence are already somewhat limited compared to industry standards and to other local licenced premises close to residential properties. Any further restriction would render the business unviable.

BEB will continue to provide facilities and cater for Masonic events. Throughout the year, there are currently around 80 evenings when LWH is used for Masonic meetings and rehearsals. In addition, around 10 Masonic social functions are held which involve entertainment and music. These events require the full use of current licencing hours.

BEB will also operate external events at LWH, including use as a wedding venue as the main focus of their business.

Application for Review

Documents notifying LWHCo of the application for review were posted to us at LWH and not to our Registered Office, the covering letter is dated 30 July 2018. We only became aware of the application on 11th August 2018, when one of our Directors attended a function at the hall and saw the notices posted there. We subsequently contacted CEC Licencing Team for clarification and received copies of the documents from them under cover of a letter dated 14th August 2018. Shoosmiths, Solicitors acting for Mr & Mrs Wright, subsequently advised us in a letter dated 28th August 2018 that the documents posted to LWH had been returned to them by Royal Mail. The documents were eventually delivered by hand to our Registered Office on 30th August 2018. The timetable for representations, consultation and the hearing were set on the basis that the application and supporting documents had been delivered on or around 30th July 2018, which was not the case.

It should be noted that the name of the premises licence holder stated in the application is incorrect, it should read "The Leicester-Warren Hall Company Ltd" and not "The Knutsford Masonic Club". The copy Premises Licence included in the application is out of date and identifies Ms Stephanie Jane Dawson as Designated Premises Supervisor, whereas up to 31st August 2018, the DPS was Katrina Shenton, a Director of Wilshaws and from 1st September 2018 is Matthew Mooney, a Director of BEB.

Grounds for Review

The grounds for review set out by CEC are:

1. **The premises is causing a serious disturbance amounting to a public nuisance. and**
2. **Events at the premises give rise to anti-social behaviour including criminal offences.**

These allegations relate to the activities of the previous occupant Wilshaws and their apparent inadequate control and management of events and not to the building or its suitability as a venue.

The diary of events kept by Mr & Mrs Wright, although subjective is an indication of the level to which their relationship with Wilshaws had deteriorated.

As stated above, Wilshaws occupation of LWH came to an end on 31st August 2018. Through the application for review, BEB are aware of the background to the allegations made by Mr & Mrs Wright and are sympathetic to their situation. BEB intend to operate LWH in a far more professional manner. Their proposals include the installation of hedging/fencing to separate LWH from Mr & Mrs Wright's property, with a substantial gate at the boundary between the hall and the adjoining house. It is their policy to have security staff on duty at the door at all times during events in order to monitor who can enter and observe any activities taking place outdoors. BEB have a zero policy towards anti-social behaviour.

Reference to anti-social behaviour including criminal offences. We cannot comment on the substance of those allegations, except to say that we are not aware of any action being taken by the authorities or any criminal charges arising.

3. **Sleep deprivation and disturbance.**

For several years, noise has been at the heart of the problem between Mr & Mrs Wright and Wilshaws. It is apparent from correspondence and other reports that relations between the parties became strained and at times highly charged.

In 2016, a report was commissioned by Mr & Mrs Wright which was prepared by Warren King, Senior Consultant of Vanguardia Limited based on sound insulation tests carried out by Stroma Technology Ltd on 25th July 2016 and 2nd December 2016. A further report by Warren King of Vanguardia, dated June 2018, is based on the findings of the 2016 study and does not appear to include any further measurement of noise other than subjective observations. References below are to numbered paragraphs in the 2016 and 2018 reports.

In 2018 - 2.6, it is pointed out that in the 2016 report, following complaints from Mr & Mrs Wright, CEC had installed noise monitoring equipment in Mr & Mrs Wright's house.

Environmental Health Offices acknowledged that noise was audible, certain recommendations were made on a "good neighbour" basis and the case was closed. It is therefore reasonable to conclude that the noise levels monitored were not considered excessive.

In 2018 - 5.6, it is stated that the "...existing party wall does provide some level of sound insulation.....but that it is not sufficient...". This conflicts with the results of the 2016 test report, which indicated that, "2016 - 3.1....the sound insulation performance of the existing wall is high..". 2016 – 3.2 and 3.10 go on to say that the noise levels are increased when the main venue fire doors are open, when the Wrights' kitchen window is open and through the fire door on the end of the party wall. In 2016 - 4.1, it is again mentioned that, "...performance of the existing party wall was high....." and that, "it cannot be guaranteed that by only treating the party wall, sound transmission.....will be significantly reduced". This is repeated in 2016 – 5.2.

It has been LWHCo's intention for some time to remove the single fire door on the party wall and to brick-up the opening including use of appropriate insulation material. This was not previously carried out due to problems agreeing access with Wilshaws. However, this work has now been carried out.

Clearly, opening and closing of the Wrights' kitchen window is under their hands.

4. **The premises is not suitable for events to be held there.**

Setting aside the problem of audible noise, which is addressed throughout this response to the application, it is our view that the premises is suitable for events to be held there, as indeed they have been over the last 50 years or so.

Problems referred to in the application are historical and relate to the activities of Wilshaws, who have now vacated the premises. In the response to item 3 above, we have set out the measures BEB intend to adopt in order to ensure that events are properly managed and controlled.

The design and size of the premises is considered well suited for the events which take place and it provides an ideal venue for Masonic and social activities in the Knutsford area. With the exception of the adjoining property, the hall and grounds are secluded, access is good and there is a large car park which can accommodate over 70 vehicles.

5. **The following licensing objectives are not being promoted:**

i. Prevention of Public Nuisance
See the response to items 1 and 2 above.

ii. Prevention of Crime and Disorder

We are not aware of any crime being committed at the premises. In respect of disorder, see the response to items 1 and 2 above.

iii. Protection of Children from Harm
CEC's conditions relating to Protection of Children from Harm relate to entertainment of children, supervision and control of the movement of children. We do not consider that objective relevant to this application. If the intention is to link audible noise in the house to causing harm to children in the house through sleep deprivation, we consider this to be addressed under item 3 above.

6. Summary

Problems detailed in the application for review relate to events managed by Wilshaws from 2008 to date. Wilshaws have now vacated the premises and have been replaced by what is considered to be a more experienced and professional organisation, BEB.

We are confident that any disturbance, public nuisance and anti-social behaviour issues will be resolved by BEB's improved working practices.

It is accepted that noise arising from certain events at LWH is audible in the adjoining house. Action has already been taken to reduce the impact of noise and it is BEB's intention that this should continue by the introduction of improved operating practices..

LWH is a long-established venue for Masonic and social events, having operated for almost 50 years. It was originally established as a Masonic Hall, but it now relies for its continued existence on revenue raised from external functions. In that respect, the viability of BEB's business at the hall for both masonic and external functions is crucial. Any restrictions on the current premises licence conditions in terms of permitted hours or number of events would have a serious impact on viability and the future of the hall.

We believe that the measures we have outlined in this response together with LWHCo and BEB's intention to create a more constructive and effective relationship with Mr & Mrs Wright should resolve the historical problems which have led to the application.

It is our hope, for the future existence of LWH that this review of the premises licence will not result in restrictions being imposed.

Matthew Mooney of I will say:

I and my family have owned and run the Belle Époque in Knutsford for the last 45 years. We are an independent second generation family business. We are located in an historic grade 11 listed building and have gained a national reputation for fine dining and hosting wedding events.

The restaurant has been recognised by the Michelin Guide for over 35 years and has gained 2 AA Rosettes for our restaurant and a Platinum 4 Star status for our hotel. The AA Rosette rating ranks us in the top 10% of restaurants in the UK.

We have been voted by Tatler Magazine as one of the top 100 Wedding Venues in the UK.

On average we host two weddings a week in Knutsford. We have residential property adjoining the rear of our building and have always maintained an excellent and harmonious relationship with all residents.

We have employed generations of Knutsfordians and have pioneered the use of local produce, using local farmers and food producers where possible. We take our role in the Knutsford community seriously and regularly support charity events at our venue and other.

I have chaired several committees within the local business community to raise the profile of Knutsford and attract more visitors, I'm a passionate ambassador for the town and spoken on Radio Four and appeared in the Times newspaper promoting Knutsford town. I have been a Trustee of the Knutsford Heritage Centre.

Our plans for Larkspur Lodge, (formerly Leicester Warren Hall), are simple. Wwe intend to take the same standards and level of hospitality as the Belle Époque, but offer them in a much more informal setting of a vintage barn.

We operate at a high standard and staff are trained accordingly. We are currently recruiting for new members of staff to join the Belle Époque team, where once they have been trained, they will be utilised at Larkspur Lodge. We are planning to creating 12/15 new full and part-time jobs at our new venue.

By the end of January 2019, we will have invested approximately, £30,000 at Larkspur Lodge, subject to planning permission. These works include the creation of a new sound-proofed entrance porch, a new outdoor terrace area, away from neighbouring property, a gated entrance and fenced area, internal and external decoration, "bricking-up" an adjoining disused fire exit and new garden landscaping and planting.

I have now had an opportunity to meet with our adjoining neighbours and their legal representative. They have set out their concerns which, to my mind, reflect on the questionable management of our predecessors at the Hall.

I would like to assure them and the Licensing Committee that the improvement works we propose coupled with the implementation of our robust management policies should see the elimination of the historic issues. As we stated during our meeting, we are committed to being good neighbours.

Although we are agreeable to the implementation of a number of new conditions to the Licence, we need the operational flexibility to trade the hours as the Hall is currently licensed in order to be commercially viable and in turn, contribute to the sustainability of the Freemasons Hall.

From:
Sent: Thursday, February 11, 2016 5:11 PM
To:
Subject: RE: Noise control at Leicester Warren Hall

Dear Adele

Thank you for your email and the information it contains.

I haven't heard from anyone regarding this since early autumn last year when discussion were had with the clubs management over their planning permissions etc.

Previously we had deemed the entertainment noise as not proved a statutory nuisance thus the club has no need to "please environmental health" . I recall we have also provided you with information on taking your own nuisance action EPA1990 s82 (Environmental Protection Act 1990 s82).

We attempted – on a good neighbour basis- to encourage the club to carry out their construction plans that would have placed a lobby corridor between the function room and the party wall however this is not something that we or our planning Dept. can force.

The club was also considering some form of amelioration and a Sound Limiting Device was an option. We also considered being involved in the setting of the limit should the club decide on that option, that was in September 2015 and no approach has been made since.

We now consider this matter fully closed. It is apparent that, as you say, by us agreeing to a limit there is a strong possibility we would be called back on any suspicion of altering or bypassing of the equipment - rather than our statutory role of investigating statutory nuisance. Thus we believe it is best dealt with as a private matter.
I refer you to the advice above on the statutory nuisance aspect.

Should you wish to liaise with the club in the setting of the noise limit, we feel you should take any opportunity for improvement as offered as there is nothing that we could impose.

You suggest that you are willing to support financially improvements to the club or your own home, yet it is clear you have a distrust of the clubs management – ie bypassing the noise limiting device- why they would when they are spending money as a voluntary improvement I am not sure.

However, as you share a party wall and are the ones disturbed by the occasional event at the licenced premises, you may wish to consider the financial outlay you are proposing on your side of the party wall?

We advise that you consider being involved in the sound limiting device setting and see if this improves your assessment of the noise impact and if not, consider progressing your own lega

action, be this via the EPA1990 s82 or calling the premises licence in for review as an independent neighbour or physical insulation.

I fully understand that this is not the information you wished. However, we are not in a position to progress complaints that we have recently investigated and decided upon or be involved in mediation.

regards

Hamish Roscoe
BSc(HONS), MCIEH,AMIOA
Senior Enforcement Officer

postal communication to:-

Cheshire East Council
Hamish Roscoe
Regulatory Services and Health
(Macclesfield Town Hall)

C/O Municipal Buildings
Earle Street
CREWE
CW1 2BJ

Cheshire East
Best in the
North West

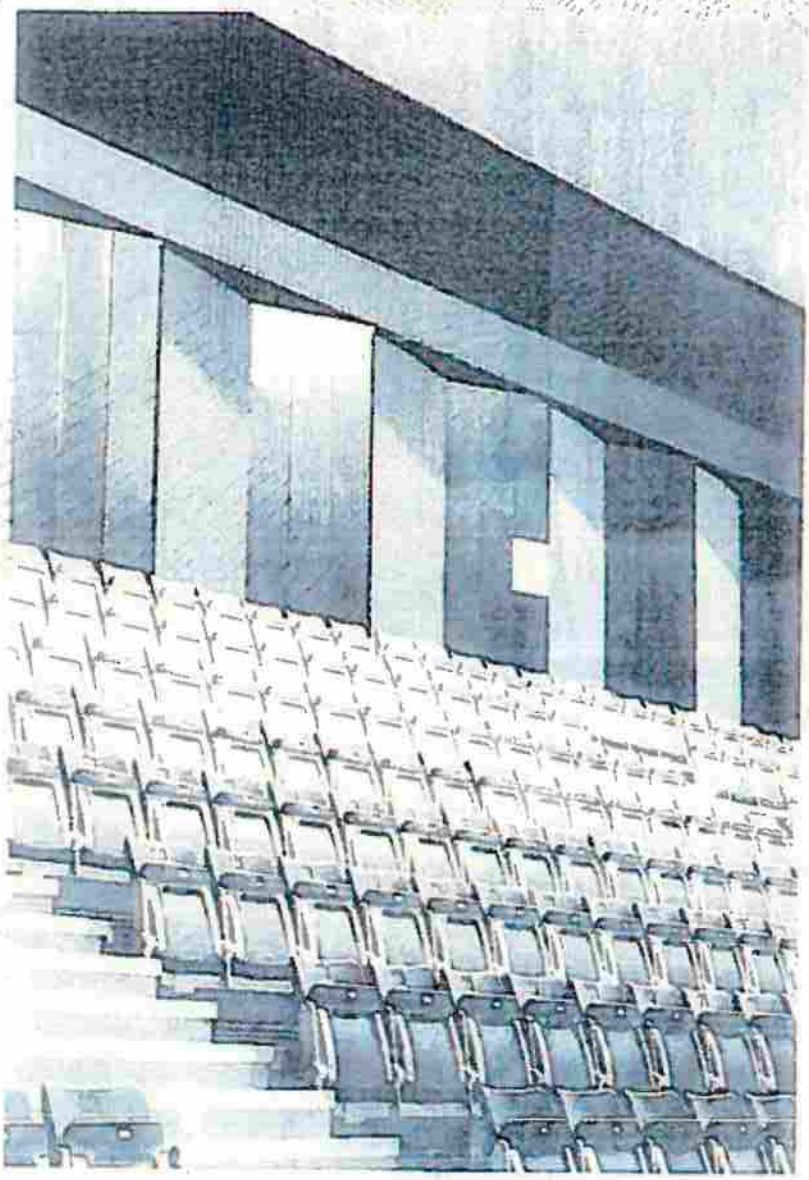
WHITE HOUSE FARM COTTAGE, BEXTON LANE KNUTSFORD

ACOUSTIC REPORT

2016 ACOUSTIC (LANDLORD)

VC-102269-AR-RP-01
R01

DECEMBER 2016



VANGUARDIA

DOCUMENT CONTROL			
DOCUMENT TITLE	WHITE HOUSE FARM COTTGE	REVISION	R01
DOCUMENT NUMBER	VC-102269-AR-RP-01	ISSUE DATE	DECEMBER 2016
PROJECT NUMBER	102269	AUTHOR	WARREN KING
STATUS	DRAFT	CHECKED	MATTHEW WHITE
ISSUED TO	CLIENT	PASSED	-

REVISION HISTORY		
REVISION	NOTES	DATE ISSUED
R01	UPDATE	DECEMBER 2016

QM
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ISO 9001
REGISTERED FIRM

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CONTENTS

1. INTRODUCTION

1.1. Vanguardia Consulting has been commissioned by the owners of White House Farm Cottage, Bexton Lane, Knutsford to provide an assessment of the sound insulation of a party wall between the cottage and the venue adjacent to the property, Leicester Warren Hall which is used for wedding receptions and other functions throughout the year.

1.2. The purpose of this document is to provide an assessment of the existing party wall between the cottage and the venue and to provide recommendations to reduce the level of entertainment noise within the cottage.

1.3. A glossary of acoustic terms is shown in Appendix A.

CONSULTANTS EXPERIENCE

1.4. Vanguardia Consulting is an independent acoustic consultancy specialising in the field of sound, noise and acoustics related to entertainment venues. The team of consultants have many years' experience dealing with some of the largest and most innovative sound and acoustic projects in the UK, including Wembley Stadium, the Millennium Dome, The Millennium Stadium, Wembley Arena and Earls Court.

1.5. The consultants have successfully provided sound management advice, including noise control, at over 1000 concerts during the past 25 years. These concerts have ranged from relatively small scale events at green field sites to major events staged at national stadia providing entertainment for tens of thousands of people.

1.6. The company director also sat on the UK Noise Council Working Party which prepared the Code of Practice on Environmental Noise Control at Concerts (1995). They have also managed Government research projects related to sound and noise aspects of the entertainment business.

1.7. As well as the provision of sound and acoustic design management for entertainment venues, the company deals with the whole range of acoustic, noise and vibration issues and our staff have presented expert testimony at planning and licensing hearings, magistrates and high courts, Judicial Reviews and House of Commons and House of Lords Select Committees.

LEICESTER WARREN HALL

1.8. Leicester Warren Hall is used for private functions such as weddings and birthday parties and shares a party wall with the adjacent cottage. It is understood that for the majority of events, the venue uses a preferred supplier to provide entertainment in the form of a DJ who supplies the sound system. However,

the venue also allows for their clients to supply their own entertainment which can include DJ's, bands and other tribute type acts. The venue operates under a premise licence which permits the following:

Live and Recorded Music (to take place indoors)

Monday to Thursday 11.00 to 23.00

Friday and Saturday 11.00 to 24.00

Sunday 12.00 to 23.00

New Years Eve extend hours to 01.00

In addition, to the above, the premises licence is also subject to the following conditions:

Prevention of Public Nuisance

3. Speakers shall point away from the adjoining wall and there shall be no amplified music on the party wall.

4. Windows shall be closed after 22.00 hours when regulated entertainment is taking place.

2. ACOUSTIC SURVEY

INITIAL TESTS

2.1. An initial sound test was carried out at the venue using the same sound system setup and similar genre of music as for the majority of events at the venue. Although the sound system supplier and DJ were the venue's preferred supplier, parties that hire the venue are entitled to bring their own sound system and entertainers. Music was played in the venue at a level considered to be normal by the DJ. It was then requested that the levels were increased to replicate what happens on some nights at the venue.

SOUND INSULATION TEST

2.2. A sound insulation test was carried out by Stroma Technology Ltd on 25th July 2016 to establish the performance of the existing party wall. The sound insulation tests were carried out in accordance with the guidance provided in British Standard *BS EN ISO 16283-1:2014 Acoustics. Field measurement of sound insulation in buildings and of building elements. Airborne sound insulation.*

2.3. Noise measurements were taken in both the source room (venue) and receiving rooms (living room / kitchen area and first floor bedroom) which share the party wall of the adjacent cottage using a broadband noise signal capable of producing noise in third octaves with centre frequencies within the range of 50Hz and 10KHz. Sound insulation tests were carried out with the venue doors open and closed in order to assess the effect on the noise levels in both receiving rooms. In addition, a background noise measurement was also taken in the receiving room without the noise source in operation.

2.4. The following table 1 shows a summary of the noise measurements in the source and receiving rooms during the test as well as the background noise level in the receiving rooms in the cottage.

2.5. All results are based on an overall level in the venue of approximately 107dBA. Whilst the overall A weighted level is higher than would be expected in the venue noise levels in the 50Hz – 125Hz third octave bands are comparable to those generated with typical music noise.

Table 1 Summary noise measurements

1/3 Octave Centre Frequency (Hz)	Living Room (Venue doors closed)			Living Room (Venue doors open)			Bedroom (Venue doors open)			Bedroom (Venue doors closed)			Background
	Source Room	Receiver Room	Diff	Source Room	Receiver Room	Diff	Source Room	Receiver Room	Diff	Source Room	Receiver Room	Diff	Receiving Room
50Hz	84	47	37	84	54	30	84	49	35	84	45	40	36
63Hz	95	56	40	95	59	36	95	46	49	95	51	45	31
80Hz	100	57	44	100	64	36	100	53	47	100	60	40	27
100Hz	105	54	51	105	56	49	105	55	50	105	56	49	24
125Hz	103	49	54	103	49	54	103	47	56	103	49	55	22
160Hz	101	45	56	101	49	52	101	44	57	101	47	54	24
200Hz	104	46	58	104	57	47	104	41	63	104	45	59	27
250Hz	102	45	57	102	57	45	102	35	67	102	40	62	23
315Hz	102	38	64	102	42	60	102	36	66	102	39	63	12
400Hz	105	34	71	105	35	70	105	35	71	105	35	71	14
500Hz	99	30	69	99	32	66	99	25	74	99	27	72	13
630Hz	100	30	71	100	32	69	100	22	79	100	21	79	9
800Hz	99	28	71	99	30	69	99	16	82	99	15	83	12
1kHz	95	26	69	95	28	67	95	14	82	95	11	85	15
1.25kHz	93	25	69	93	26	67	93	16	77	93	9	84	17
1.6kHz	91	24	66	91	25	65	91	14	76	91	9	81	16
2kHz	86	21	65	86	22	64	86	12	74	86	8	78	14
2.5kHz	84	22	62	84	22	62	84	11	73	84	7	77	12
3.15kHz	82	20	63	82	19	64	82	10	73	82	7	75	10
4kHz	67	20	48	67	17	50	67	11	57	67	9	59	10
5kHz	57	17	39	57	15	41	57	10	47	57	9	47	9
6.3kHz	54	16	38	54	15	39	54	10	44	54	10	44	9
8kHz	50	14	36	50	13	37	50	11	39	50	10	39	10
10kHz	47	13	34	47	12	35	47	11	36	47	11	36	11

ADDITIONAL NOISE TESTS

2.6. Further noise tests were carried out on 2 December 2016 in order establish the possible sound transmission paths between the venue and the cottage. The tests were carried out in the same way as the initial tests with a DJ playing similar music to that as at events.

2.7. The following tests were carried out to identify sound transmission paths through various building elements:

- Between the venue and cottage kitchen and bedroom party walls
- Through the adjacent kitchen and bedroom walls perpendicular to the party wall

- Through the kitchen floor
- With the kitchen window open and closed
- With the venue doors open and closed
- Through the small fire escape on the party wall
- With the sound system mounted on the resilient mats and directly on the floor
- The attenuation through the cottage further away from the venue

3. SOUND INSULATION ASSESSMENT

3.1. The results indicate that the sound insulation performance of the existing wall is high. In summary, the following level differences between the venue and cottage were measured:

- From the venue to the ground floor living room, a weighted level difference of D_w 66 dB was measured with the venue doors closed and D_w 63dB with the venue doors open.
- From the venue to the first floor bedroom, a weighted level difference of D_w 73 dB was measured with the venue doors closed and D_w 73dB with the venue doors open.

3.2. The results indicate that the opening of the main venue fire doors degrades the sound insulation to the kitchen / living room and is most notable at 160-315Hz. There is a window in the kitchen that faces the rear of the venue on the same side as the venue doors and a smaller window on the same façade of the cottage on the first floor landing facing out to the rear of the venue. Therefore, it can be assumed that there is some noise break-in from the kitchen window when the main venue fire doors are open. This was confirmed during the additional noise tests when noise levels were subjectively louder in the kitchen when the window was open.

3.3. Using the sound insulation test data and measurements made in the venue with music operating, it is expected that noise levels in the cottage from amplified music are likely to be in the region of 30-35 dBA L_{eq}. Background noise levels recorded in the cottage were around 25 dBA L_{eq}.

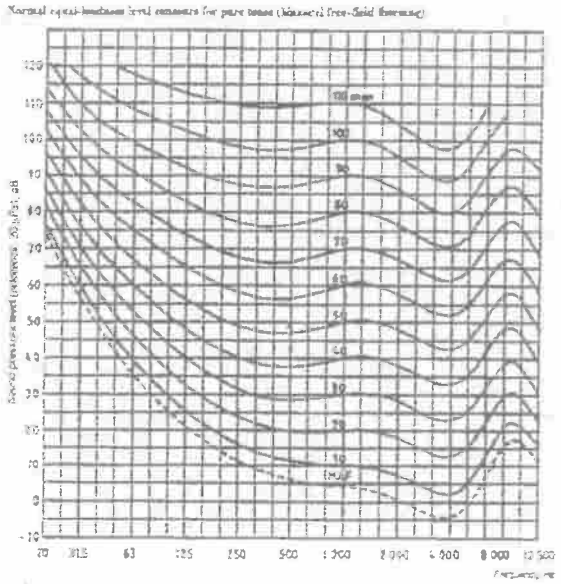
3.4. The results indicate that amplified music is approximately 5-10dB above the background noise level in the cottage, with noise levels at low frequencies (63Hz, 80Hz and 100Hz) approximately 10-30dB above the background noise level. Music noise at these levels will be audible in the cottage due to the low background noise level in the cottage.

3.5. Details of the exact party wall construction are currently unknown, although the sound insulation tests of the wall are commensurate with a high performance thick masonry wall, potentially with some discontinuity. Due to the high sound insulation measured, transmission from the venue to the cottage may not only be via airborne paths through the wall, but also via flanking via indirect paths such as via the floor, walls or via windows/doors.

THRESHOLD OF HEARING

3.6. The following chart shows the threshold of hearing for pure tones across the audible frequency range.

Figure 1



3.7. Research carried out by Defra on low frequency noise disturbance (contract no NANR45) proposes criterion for the assessment of low frequency noise. Although it does not specifically relate to entertainment noise the maximum third octave values given below are an appropriate judgment of the low frequency disturbance.

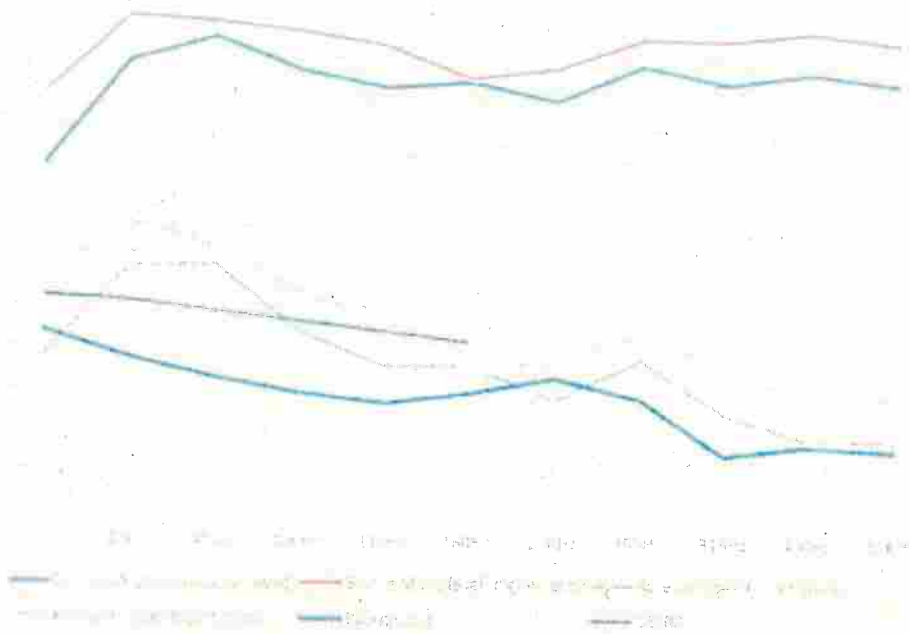
Table 2

Frequency (Hz)	40	50	63	80	100	125	160
dB	49	43	42	40	38	36	34

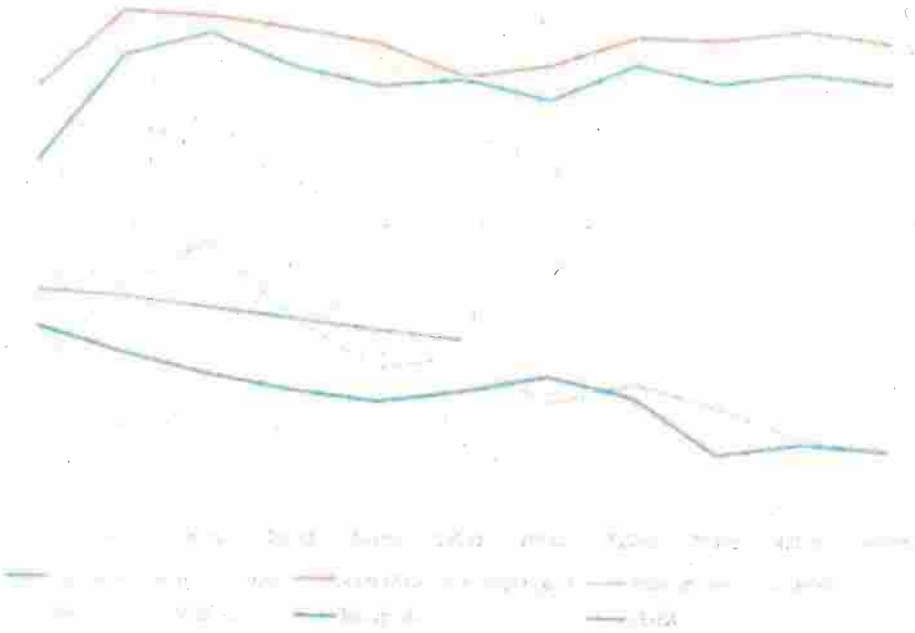
3.8. The following figures compare an assessment of the low frequency transmission into the cottage from amplified music against the Defra low frequency noise criterion. Results above 500Hz have not been shown as they were background affected.

3.9. The graphs show that the low frequency amplified music noise exceeds the DEFRA criterion at 63Hz, 80Hz and 100Hz by up to 15 dB. Although this criterion is not relevant for amplified music, in the absent of any other clear guidance, this forms a useful indication.

Music level - Living Room



Music level - Bedroom



3.10. The additional tests carried out on 2nd December suggested the following subjective assessment of noise levels:

- Broadband music noise was audible through the party wall between the venue and the kitchen and bedroom
- Music was not audible through the adjacent walls or through the floor
- Noise levels were subjectively louder with the kitchen window open and with the main venue doors open
- There was significant noise breakout through the fire door on the external element of the party wall.
- There was no subjective difference in noise levels in the cottage when the sound system was mounted on the resilient mats and directly on the floor.
- There was a noticeable reduction in noise levels between the rooms in the cottage close to the party wall and the rooms further away. This provides evidence that the sound transmission path is predominantly through the party wall.

4. MITIGATION

4.1. The initial sound insulation tests indicate that the performance of the existing party wall was high. Although it is likely that there is a degree of airborne sound transmission through the party wall there is not conclusive evidence to confirm it is the dominant transmission path across the whole frequency range. Therefore, it cannot be guaranteed that by only treating the party wall, sound transmission between the venue and the cottage will be significantly reduced.

4.2. However, the additional sound tests that were carried out on 2nd December out provided further evidence that the dominant sound transmission path is through the party wall and the fire exit door on the external element of the party wall. The tests also indicated that there was an additional sound transmission path through the main venue doors when open.

RECOMMENDATIONS

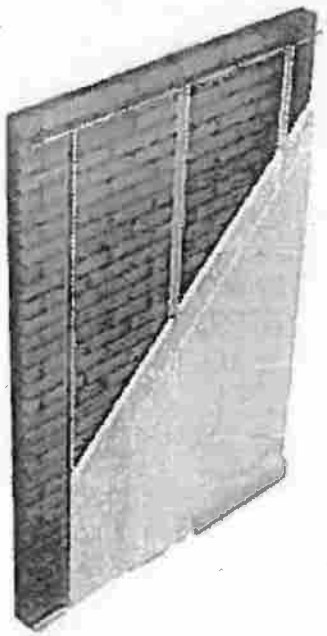
4.3. It is recommended that the following noise mitigation measures are carried out to reduce the noise transmission paths between the venue and cottage.

Install an independent wall lining system

4.4. It is recommended that an independent wall lining comprising of 3 layers of 15mm Soundbloc on independent studs with 300-400mm cavity from the existing wall filled with 200mm Acoustic Rockwool (48kg/m³) is constructed to reduce the sound transmission through the party wall. The construction is a non-load bearing wall erected independently of the existing wall and would most likely be applied on the venue side, resulting in adding a minimum 345mm to the depth of the wall. The wall lining would need to extend the full height of the wall (including within the roof void). It is important that a cavity of less that 300mm is not specified and there is no bridging between the lining and the wall as this could lead to a worsening of the sound insulation. An independent wall lining solution would only reduce noise transmission through the wall element only and further mitigation is likely to be required to reduce the additional noise transmission paths between the venue and the cottage.

4.5. All construction details should be in accordance with the manufacturer's instructions and recommendations and be well sealed. In addition, a structural or roofing expert should be consulted to confirm that the integrity of the existing roof is not affected and that the existing structure can take the weight loading of the independent wall lining system. A typical independent wall lining system is shown in the following figure (indicative only):

Figure 2 Typical Independent Wall Lining System



Block the fire exit on the party wall

4.6. There is significant noise breakout from the venue through the fire escape doors on the external element of the party wall. It is understood that the fire exit is not required by the venue and that it is planned for it to be filled. This should be done with high density blockwork to provide at least the same reduction as the existing external wall. This would then be encapsulated by any proposed independent wall lining as above.

Limiting entertainment noise from the venue

4.7. It is understood that the venue manager is considering the installation of a permanent in-house sound system and preventing any parties from bringing their own sound system and being restricted only to the use of the venue system. The sound system should include a compressor limiting device which prevents anyone from increasing music noise levels from a pre-set level. This would also be applicable to performers and for speeches using microphones which should be connected to the same sound system. A small monitor loudspeaker should also be included as part of the sound system in order for those using microphones to be able to hear themselves clearly and would also be connected to the limiting device. All loudspeakers should still be mounted on resilient mats to isolate them from the building and minimise transmission paths through the building structure and not include sub bass units.

Minimise breakout through the venue doors

4.8. The existing venue doors should be replaced with acoustic doors which should include door closures and acoustic seals and kept closed during events. A lobby/porch may be constructed on either side of the existing doors to minimise noise breakout from the venue. The lobby should be constructed of as high mass and density material as possible and be of great enough depth so that both sets of doors cannot be opened by one guest.

5. SUMMARY

5.1. The sound insulation tests carried out indicate the following:

- The existing party wall provides a high level of sound insulation. It is considered that generally, the higher the sound insulation of the building element, the more significant sound transmission through flanking paths become.
- The sound insulation test results indicate that noise levels from the venue are lower than in the bedroom than in the kitchen. This provides some indication that there are additional sound transmission paths into the kitchen. However, the residents commented that subjectively, music noise levels are higher in the bedroom. This is most likely because of higher background noise levels in the kitchen.
- Noise levels in the kitchen are higher when the venue doors are open. This is less apparent in the bedroom which suggests that there is some transmission through the venue doors.

5.2. The sound insulation tests did not provide conclusive evidence that the dominant sound transmission path across the frequency range is through the existing party wall and that additional sound transmission paths may exist.

5.3. The additional tests carried out after the sound insulation tests indicate the following:

- Music noise is audible through the party wall between the venue and the cottage kitchen and bedroom.
- Music noise was not audible through the adjacent walls or through the floor indicating that these are not significant sound transmission paths.
- Noise levels were subjectively louder with the kitchen window open and with the venue doors open. This was most likely as a result of the noise breakout through the fire door on the external element of the party wall, next to the kitchen window and through the main venue doors.
- There was no subjective difference in noise levels in the cottage when the sound system was mounted on the resilient mats and directly on the floor.
- There was a noticeable reduction in noise levels between the rooms in the cottage close to the party wall and the rooms further away.

5.4 The following mitigation measures should be considered to minimise sound transmission from the venue to the adjacent cottage.

- Install an independent wall lining system.
- Fill the fire exit on the external element of the party wall.
- Limit the noise levels within the venue.
- Reduce the noise breakout through the main venue doors.

6. APPENDIX A

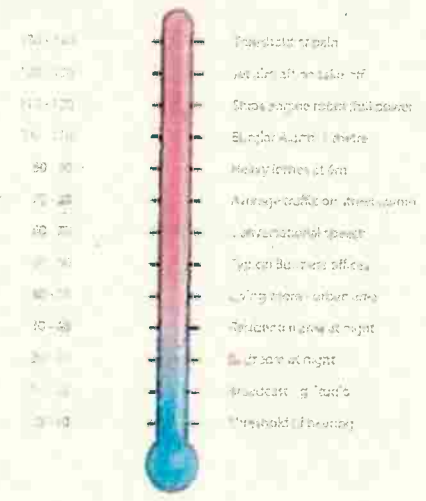
GLOSSARY OF TERMS

6.1. Noise is defined as unwanted sound. The range of audible sound is from 0dB to 140dB, which is taken to be the threshold of pain. The sound pressure detected by the human ear covers an extremely wide range. The decibel (dB) is used to condense this range into a manageable scale by taking the logarithm of the ratio of the sound pressure and a reference sound pressure.

6.2. The frequency response of the ear is usually taken to be about 18Hz (number of oscillations per second) to 18,000Hz. The ear does not respond equally to different frequencies at the same level. It is more sensitive in the mid-frequency range than at the lower and higher frequencies, and because of this, the low and high frequency component of a sound are reduced in importance by applying a weighting (filtering) circuit to the noise measuring instrument. The weighting which is most used and which correlates best with the subjective response to noise is the dB(A) weighting. This is an internationally accepted standard for noise measurements.

6.3. The ear can just distinguish a difference in loudness between two noise sources when there is a 3dB(A) difference between them. Also when two sound sources of the same noise level are combined the resultant level is 3dB(A) higher than the single source. When two sounds differ by 10dB(A) one is said to be twice as loud as the other.

6.4. The subjective response to a noise is dependent not only upon the sound pressure level and its frequency, but also its intermittency. Various indices have been developed to try and correlate annoyances with the noise level and its fluctuations. The parameter used for this measure is Equivalent Continuous Sound Pressure Level (L_{Aeq}). The A-weighted sound pressure level of a steady sound that has, over a given period, the same energy as the fluctuating sound under investigation. It is in effect the energy average level over the specified measurement period (T) and is the most widely used indicator for environmental noise. A few examples of noise of various levels are given right:



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Suzanne Francis

From:	Suzanne Francis on behalf of Anthony Lyons
Sent:	24 October 2018 10:48
To:	'Simon Taylor'
Subject:	Knutsford Masonic Club - Premises Licence MBC/PR/0640- Review Proceedings (LEI108/1)
Attachments:	Proposed Conditions.doc

Dear Mr Taylor,

On behalf of Keith Stokes (representing the Premises Licence Holders) and Matthew Mooney (Belle Epoque Bespoke Limited – the new commercial occupants) I write in advance of tomorrow's hearing to confirm our proposals to address your client's concerns.

You will note that considerable thought has been given to this matter, and, notwithstanding our serious concerns in respect of the procedural propriety of these proceedings, we are keen to work with your clients to reach a solution.

As such, I attach a list conditions which directly relate to the points of concern raised by your clients in their review application.

As well as the offending fire escape door already having been bricked up, within the conditions you will note additional significant concessions which include:

- A cut off time for live music at 11pm.
- The closing of doors as well as windows from 10pm.
- The reduction in opening hours.

You will appreciate these are significant concessions, and we would hope that these proposals, coupled with my client's intention to develop a new picket fence (with planted screening) and farm gate would be welcomed by Mr & Mrs Wright.

I will be sending a copy of this email and the proposed conditions to the licensing committee in advance of the hearing, and in the event that they do not agree that the matter should not proceed to a full hearing tomorrow due to the procedural irregularities, will be offering these conditions as a proposal to the Committee for their consideration.

Should you wish to discuss any further, please do not hesitate to contact me.

Kind regards,

Anthony

Knutsford Masonic Club – Premises Licence MBC/PR/0640

Proposed conditions to be added to the Premises Licence to be effective on those occasions when Leicester Warren Hall is used for licensable purposes other than Masonic activities.

1. After 22:00 when regulated entertainment takes place all external doors will be maintained in a closed position, save for access and egress.
2. External doors will be self-closing.
3. The DPS or Manager will be responsible for the orderly management of events, such as to avoid nuisance to residents who live in the vicinity.
4. Any complaints (including noise complaints) will be recorded by the DPS or Manager in a complaints book kept for the purpose and will promptly be dealt with.
5. Notices will be prominently displayed at the exit requesting patrons and staff to leave the Premises quickly and quietly out of respect for our residential neighbours.
6. A smoking area away from the adjoining resident will be identified for such use.
7. Use of the external area (save for smokers) will cease at 23:00.
8. A taxi pick-up area will be agreed with a nominated taxi supplier with a view to minimising any noise nuisance to our neighbours.
9. A sound lobby will be constructed to the main entrance and the DSP/Manager will use best endeavors to ensure that after 22:00 the doors are managed in such a way to avoid the escape of sound.
10. Staff will be trained to understand the importance of reminding patrons to exit and depart from the Premises quickly and quietly out of respect for our neighbours. Such training will be documented.
11. SIA registered door staff shall be employed at the premises. in accordance with a risk assessment. to be carried out by the DPS.
12. A new CCTV system will be provided with internal and external cameras.
13. Wedding and event bookings at Leicester Warren Hall will be available to residents at least 2 weeks in advance.
14. There will be no emptying of bottles into external bins or receptacles after 11pm or before 7am.
15. There will be no live music permitted after 11pm.

16. The premises licence terminal hour for opening will be reduced by 30 mins as follows:

Monday – Thursday	11:00-23:30
Friday and Saturday	11:00-00:30
Sunday	12:00-23:00
New Years Eve	02:00

CHAMBERS

CASES

R (May) v Rother District Council [2016] EWCA Civ 810

DATE 22 Jun 2016

In this case, the Court of Appeal (Lord Dyson MR, Lewison & Sales LJJ) considered a challenge to a planning permission granted by Rother District Council in which the claimant/appellant alleged that, in considering the potential noise impact by reference to Policy GD1 of the Rother Local Plan, which required that development *"is in keeping with and does not unreasonably harm the amenities of adjoining properties"*, the Council had failed to take into account para. 123 of the NPPF (to which its decision documentation had not referred) which provides that planning decisions should *"avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development [and] mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new developments, including through the use of conditions."*

The Court held that, having regard to the Noise Policy Statement for England, which was incorporated by reference in a footnote to NPPF para. 123, it was clear that NPPF para. 123 *"is to be interpreted as minimising noise as far as reasonably possible"*, which required *"that all reasonable steps should be taken to minimise noise"* and "does not mean that adverse effects from noise cannot occur" see para. 17 of the judgment of Lewison LJ (with whom Lord Dyson MR and Sales LJ agreed). At para. 18 Lewison LJ continued:

> "Whether the imposition of a condition is a "reasonable step" is, in my judgment, one of planning judgment for the planning authority. As the history of this case shows this is a judgment on which reasonable people can disagree. I also consider that whether a step is a reasonable step is a judgment which may take into account both the position of the would-be developer and also the position of those who would be affected by the development. I do not, therefore, consider that NPPF [123] prohibits the decision maker from balancing conflicting considerations."

The Court accordingly concluded that para. 123 did not impose a different test to that posed and applied by the Council in Policy GD1 of the Local Plan, and therefore dismissed the appeal.

appeared for the successful respondent, Rother District Council.

said "Inspector Finn has clearly gone to ... solved everyone will say 'of course'."

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Couple lose fight to outlaw noisy playground next door

A couple's decade-long legal fight with the owners of a playground near their home in East Sussex has ended in defeat and with a judge calling them obsessive and over-sensitive to noise.

Susan May, 58, and James May, 60, kept detailed diaries since 2005 recording the sound of "thumping balls, foul language and screaming" from a paved area owned by the Beatrice Drewe Trust 50 metres from their £1.5 million cottage in Ticehurst.

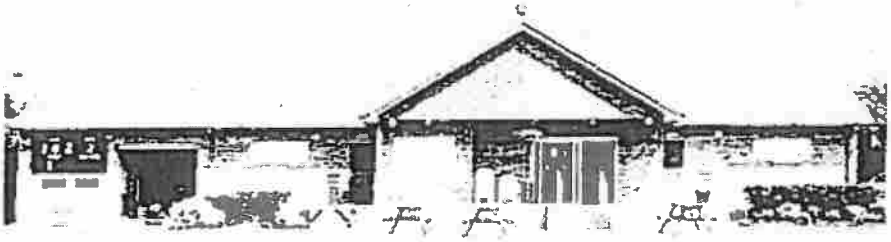
They said at an earlier court hearing that they had been living on tenterhooks for the past decade and had not once felt able to sit out in their garden. However, Simon Coltart, the judge on that occasion, dismissed their concerns. "In an organised society everyone must put up with a certain amount of discomfort and annoyance caused by the legitimate activities of his neighbours," he said. "It is quite clear from their logs that every single time there is the use of the games area, that is logged as being unacceptable noise."

The Mays took their case to the Court of Appeal, insisting that they had been denied a fair hearing — but Lord Justice Vos ruled against them. Noise from the games area could be heard in their garden, he agreed — but the judge had rightly focused "on what was reasonable to put up with in this neighbourhood".

The Telegraph

Legal defeat for neighbours who complain of pub and church bell noise

People who buy homes near church bells or cricket pitches then complain about the noise should just tolerate it, the High Court has ruled.



By Graham Tibbetts

8:31PM BST 23 Oct 2008

A judge said that incomers who knew about the potential disturbance before they moved in had few grounds for challenging the nuisance

The ruling meant defeat for St Albans Council, Herts, which had supported a complaint from a woman that she could hear drinkers chatting in a pub beer garden after moving in next door.

The court was told that Jane Lockley's garden adjoined the grounds of Mokoko on Verulam Road.

The case originally went before magistrates who were satisfied that there was a noise nuisance

However, taking into account that Mrs Lockley had known about the pub when she moved in, and following efforts by the publican to reduce that nuisance, they dismissed the case against Jass Patel.

proprietor of Mokoko.

That decision was upheld by Mr Justice Forbes, who dismissed an appeal from the local authority.

"I am satisfied that none of the matters raised by the council has called into question the correctness of the decision reached by the magistrates in this case," he said.

Although he said it would be going too far to say that Mrs Lockley had "brought the nuisance upon herself", the judge added that the courts were entitled to take into consideration the fact she knew that the pub was there before she moved.

He backed the magistrates who had said earlier that while the pub had become more lively since Mrs Lockley's arrival, it was "the nature of things" that the business at licensed premises changed.

Mr Justice Forbes also noted that Mr Patel had done his best to help neighbours and had installed secondary glazing in one person's property.

In addition, Mr Patel had closed part of the pub garden and had restricted the number of people entitled to be in the garden to less than half the legal limit.

After the ruling lawyers said they believed it could offer protection against complaints for other long-standing establishments such as airfields, sports grounds, farms and churches.

In May the Daily Telegraph reported that a 135-year-old cricket club, Rushden Town in Northants, had been blocked from putting up practice nets because the local council feared the sound of leather on willow would annoy neighbours.

It was ordered to pay £2,000 for a noise survey before the planning application could proceed.

Baroness Billingham, the Labour peer, took up the club's case in the House of Lords.

Two years ago the eight bells of St Mary's Church, Redenhall, Norfolk, which were to have been rung in aid of church funds, were silenced because residents said it could disturb villagers' barbecues.

Dr Arthur Dinn, chairman of St Mary's Friends Society, said: "A minority of people do not like the sound of the bells. I say to them, 'If you don't like church bells, why did you move to a village?'"

Imposed conditions

10.8 The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises. This provision also applies to minor variations.

10.9 It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.

Proportionality

10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

Naming, packing and promotion in retail premises

10.11 The Government acknowledges that the irresponsible naming, packing or promotion of alcoholic drinks may contribute to alcohol related harms. Where there is direct evidence of specific incidents or irresponsible naming, packing or promotion of alcoholic drinks linked to the undermining of one of the licensing objectives, licensing authorities should, in the exercise of their discretion in relation to an application for the grant, variation or review of a premises licence, consider whether it is appropriate to impose conditions on licences that require the licence holder to comply with the Portman Group's Retailer Alert Scheme. This condition should be considered on a case by case basis and only where it is appropriate for the promotion of the licensing objectives.

10.12 The Portman Group, on behalf of the alcohol industry, a Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. The Code seeks to ensure that drinks are packaged and marketed in a socially responsible manner and only to those who are 18 years old or older. Complaints about products under the Code are considered by an independent Complaints Panel and the Panel's decisions are published on the Portman Group's website, in the trade press and in an annual report. If a product is found to be in breach of the Code

Cheshire East Licencing Department

To whom it may concern,

I live on Valley Way, Knutsford which neighbours Leicester Warren Hall. I believe the current premises licence is under review.

I also understand that The Belle Epoque will be the new licence holders from the 1st September 2018.

I would like to record that I have no objection to this and that I trust Belle Epoque to run the venue in a highly responsible manner.

For the record I currently have no issue with the current noise levels generated from the venue.

Kind Regards

Name L. BOOTH

Signature

Date 1-9-18

Cheshire East Licencing Department

To whom it may concern,

I live on Beggermans Lane, Knutsford which neighbours Leicester Warren Hall. I believe the current premises licence is under review.

I also understand that The Belle Epoque will be the new licence holders from the 1st September 2018.

I would like to record that I have no objection to this and that I trust Belle Epoque to run the venue in a highly responsible manner.

For the record I currently have no issue with the current noise levels generated from the venue.

Kind Regards

Name P. Woodhouse

Signature.

Date 1/9/18

Cheshire East Licencing Department

To whom it may concern,

I live on Beggermans Lane, Knutsford which neighbours Leicester Warren Hall. I believe the current premises licence is under review.

I also understand that The Belle Epoque will be the new licence holders from the 1st September 2018.

I would like to record that I have no objection to this and that I trust Belle Epoque to run the venue in a highly responsible manner.

For the record I currently have no issue with the current noise levels generated from the venue.

Kind Regards.

Name..: Mark Hinson

Signature

Date..: 03/09/18

5th June 2008

Applying to Review Premises Licences

LACORS and CIEH have provided the following guidance on the relevant provisions of the Licensing Act 2003.

A local authority charged with minimising or preventing the risk of pollution of the environment or of harm to human health is in addition to any licensing function designated a responsible authority under the Licensing Act 2003. As such, the authority is empowered under section 52 of the Licensing Act to apply to review the premises licence of any licensed premises. This function is normally delegated to its Environmental Health Department.

The grounds for any review must relate to at least one of the four statutory licensing objectives namely:

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

Following a 28-day consultation period where other interested parties may add their representations to the review, the application will be determined by the Licensing Sub-Committee who may take any of the following steps against the premises licence:

- modify the conditions of the 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;
- take no action.

The Licensing Act 2003 does not define "public nuisance" and the Statutory Guidance states at 2.20:

"Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning."

Perhaps the most often quoted common law definition comes from the case of AG v PYA Quarries [1957] 2 QB 169 in which Romer LJ described a public nuisance as:

"an act not warranted by law or an omission to discharge a legal duty which act or omission obstructs or causes inconvenience or damage to the public in the exercise of rights common to all Her Majesty's subjects."

to which Denning LJ added that it was:

"a nuisance which is so widespread in its range or so indiscriminate in its effect that it would not be reasonable to expect one person, as distinct from the community at large, to take proceedings to end it."

Paterson's Licensing Acts 2014, Volume 1: Alcohol, Refreshment, Taxi and Street Trading Licensing, by Simon Mehigan QC, Jeremy Phillips and The Hon Justice Saunders

1.345 *Alcohol, Refreshment and Entertainment: Commentary*

premises, or a body representing such persons, or a person involved in a business in that vicinity, or a body representing such businesses, has been repealed by the PRSRA 2011 in respect of applications lodged after 25 April 2012. A 'responsible authority' includes most of the statutory authorities such as the police, fire authority, the planning authority and the enforcing authority for the purposes of health and safety at work. This latter authority would usually be taken to mean the local Environmental Health Department, but could also include the Health and Safety Executive. It also includes a body interested in protecting children from harm and recognised by the licensing authority as being competent to give advice on children, as well (now) as the Primary Care Trust or Local Health Board for any area in which the premises are situated.

For the avoidance of any doubt, the Act makes it quite clear that a responsible authority which is applying for a review can be part of the same local authority as the relevant licensing authority. This provision was specifically included, as at one stage during the passage of the Bill, it was suggested that a licensing authority could not sit in judgment on an application to review a premises licence which had been brought effectively by part of its own internal machinery. Although the licensing authority in those circumstances would not be an independent and impartial tribunal as required by Article 6, that requirement is met by the right of appeal to a magistrates' court and therefore the procedure as a whole is compliant with the European Convention on Human Rights.

A review will automatically be triggered after a closure order has been made and considered by the magistrates.

[1] Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, SI 2005/42.

1.346 Procedure [1] Regulations[2] require the applicant for review of a premises licence to give notice to the holder of the licence and also requiring the relevant licensing authority to advertise the application and invite representations about the application to be made to it by interested parties and responsible authorities. Effectively this means that an application which has been commenced by one individual can initiate a process whereby the relevant licensing authority itself invites representations from those who might previously not have expressed sufficient concerns about the subject premises to justify taking action.

[1] LA 2003, s 51(1).
[2] Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, SI 2005/42.

1.347 Condition precedent to a review of a premises licence The application for the review of a premises licence[1] must relate to one or more of the licensing objectives[2]. If the licensing authority is not so satisfied, it may reject the application for review forthwith even without a hearing.

It may also reject an application (other than one submitted by a 'responsible authority') at any time if it takes the view that the ground is 'frivolous or vexatious' or that the ground is repetitious (identical or substantially similar to an earlier review following which a 'reasonable interval' has not lapsed since the earlier application, or alternatively since the initial grant of the premises

licence.) Once again, we can expect some litigation on the question of what would be a 'reasonable interval' for the purposes of this part of the Act.

Because this section provides that the application can be rejected on these grounds at any time, it seems that it can be rejected without a hearing (it has been held[3] that the licensing authority has no power to stay such proceedings where it is suggested that there has been an abuse of process). There is no appeal to the magistrates against this decision and the only remedy would be judicial review.

If the relevant licensing authority decides that an application is to be rejected because it is frivolous or vexatious or repetitious, then it must notify the applicant of its decision.

This section also allows the relevant licensing authority to determine that any part of an application for review is frivolous or vexatious, and strike out that part of the application, leaving it with power to continue to determine any other parts of the application which it feels are responsibly brought.

[1] LA 2003, s 51(4).
[2] LA 2003, s 4(2).
[3] *R (on the application of TC Projects Ltd) v Newcastle Justices* [2006] EWHC 1018 (Admin), [2006] All ER (D) 116 (May), [2006] LLR 499.

1.348 Determination of the application for review Where the appropriate procedural notices have been properly given and advertised in accordance with the regulations, and the authority is satisfied that the application is not frivolous or vexatious or repetitious, then it must hold a hearing to consider the application for review[1] and any relevant representations.

'Relevant representations' can be made by the holder of the premises licence, the responsible authority or any other party, and seem to be tied to the period during which the licensing authority first receives the appropriate application. This seems to preclude parties raising new issues at the hearing which were not disclosed in the original notice (but see *R (on the application of Khan) v Coventry Magistrates' Court*[2]).

It is important also to note that relevant representations can only relate to the four licensing objectives. Any representations which do not fall within the general ambit of those objectives cannot form part of the authority's considerations.

In *R (Bassetlaw District Council) v Worksop Magistrates' Court*[3], Slade J considered the extent to which the powers created by s 52 could be said to be punitive, or (as had been argued on behalf of the licensee) entirely remedial. The case concerned unlawful sales of alcohol to two 14-year-old girls, who had been sent in by the local Trading Standards Office to make test purchases. The girls were duly served by young cashiers. Upon an application to review the premises licence the licensing authority had determined that the licence should be suspended for four weeks. The district judge had overturned that decision and had substituted the addition of six more conditions to the licence. The licensing authority challenged the district judge's decision on several grounds, including the construction of Act and the guidance issued by the Secretary of State. It contended that the district judge had failed to bear in mind that, where premises had been used for criminal purposes, the licensing authority had a duty to take steps in the interests of the wider community. It further argued that the court had wrongly held that the function of the licensing authority (and on appeal the magistrates' court) was not punitive but entirely

practice for them to give licence holders early warning of 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.'

42.13 In *R (Harpers Leisure International Limited) v Chief Constable of Surrey*,[6] the licensee claimed that the police had brought the review precipitately and in breach of its own policies, and that therefore the licensing authority should have stayed the review as an abuse of process. The High Court held that as a matter of construction of the Act, the authority had no such implied power, and that if there was to be a challenge to the decision to bring the review, then it should be brought against the police in the High Court. Charles J also pointed to the informal nature of the review proceedings, which is intended to eschew legal arguments of this nature:

> '28. Further, and to my mind of importance, is that, albeit that the process put in place has a number of formal aspects, at heart, as demonstrated by the provision that the proceedings should take place by reference to a discussion promoted by the sub-committee, and as argued on behalf of the second defendant, the process is intended to be one which has significant areas of informality, an investigatory aspect, and one in which the position of the licence holders is protected by the provisions relating to an appeal and a stay which would fall to be governed by the process adopted in the Magistrates' Court and a stay pending the appeal.'

42.14 In keeping with the scheme of the legislation, and the central importance ascribed to providing the opportunity for participation in the licensing process, the Act (and accompanying Regulations) set out a detailed framework for advertising the application. The applicant for review must give notice of his application to each responsible authority and to the holder of the premises licence in question, which requirement is satisfied by giving them a copy of the application together with any supporting documentation on the same day as the application is given to the licensing authority. The licensing authority must then advertise the review by displaying prominently a notice in the prescribed format[7] or near the site of the premises where the public can conveniently read it from the exterior of the premises. Further provisions apply where the premises concerned covers an area of more than 50 metres square. A notice of the review must also be displayed at the offices of the licensing authority, and on the website of that authority (if the

[6] EWHC 2160 (Admin).

[7] The detailed requirements of the prescribed form are contained the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, reg 38.

authority has a website). The notices must be displayed for at least 28 consecutive days starting on the day after the day on which the application was given to the authority. In certain magistrates' courts dealing with appeals, failures to advertise the original application for review strictly in accordance with the requirements are being treated as fatal, given that section 52, which provides for determination of the application, is apparently only triggered where there has been full compliance.[8]

42.15 The notice must state the address of the premises, the dates between which representations may be made in respect of the application by interested parties and responsible authorities, the grounds of the application for review, the place where the register of the licensing authority is kept and where the grounds for the review may be inspected (including the website address if applicable), and a warning that it is an offence knowingly to make a false statement in connection with an application, and the maximum fine applicable for such an offence.

42.16 The right to make representations (which must be relevant to one or more of the licensing objectives) in response to or in relation to the application for review is extended to interested parties, responsible authorities and the holder of the premises licence. Any such representations must be made in writing (which includes by e-mail) to the licensing authority at any point during the 28-day period beginning with the day on which the application was first advertised.

42.17 Any determination by the licensing authority that any representation is frivolous, vexatious or repetitious must be notified to the maker of that representation, with reasons. There is no avenue of appeal provided in the Act against such a determination; judicial review is likely to be the only available route.

42.18 The review is to be determined by the holding of a hearing to consider the application and any relevant representations. Unlike the provisions relating to applications for new premises licences or variations, there is no provision permitting the review to be determined without a hearing where all parties agree. The wording of section 52 is mandatory and apparently clear: a hearing must be held even if the parties to the review agree on the appropriate outcome.

42.19 Otherwise the procedural rules in respect of the conduct of hearings[9] apply. Reference may be made to Chapter 21 (Best Practice in Licensing Hearings).

[8] See Licensing Act 2003, s 52(1).

[9] The Licensing Act 2003 (Hearings) Regulations 2005 and the Licensing Act 2003 (Hearings) (Amendment) Regulations 2005.

The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005

2005 No. 42 PART 4 **Regulation 27**

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Notice to responsible authority

27. In the case of an application for a premises licence under section 17, a provisional statement under section 29, a variation of a premises licence under section 34, a review under section 51, a club premises certificate under section 71, a review under section 87 or a variation of a club premises certificate under section 84, the person making the application shall give notice of his application to each responsible authority by giving to each authority a copy of the application together with its accompanying documents, if any, on the same day as the day on which the application is given to the relevant licensing authority.

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The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005

2005 No. 42 PART 4 **Regulation 29**

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Notification of review

29. In the case of an application for a review of a premises licence under section 51 or a review of a club premises certificate under section 87, the person making the application shall give notice of his application to each responsible authority and to the holder of the premises licence or the club in whose name the club premises certificate is held and to which the application relates by giving to the authority, the holder or the club a copy of the application for review together with its accompanying documents, if any, on the same day as the day on which the application for review is given to the licensing authority.

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The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005

2005 No. 42 PART 5 **Regulation 38**

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Advertisement of review by licensing authority

38.—(1) Subject to the provisions of this regulation and regulation 39, the relevant licensing authority shall advertise an application for the review of a premises licence under section 51(3), of a club premises certificate under section 87(3) or of a premises licence following a closure order under section 167—

(a) by displaying prominently a notice—

(i) which is—

(aa) of a size equal or larger than A4;

(bb) of a pale blue colour; and

(cc) printed legibly in black ink or typed in black in a font of a size equal to or larger than 16;

(ii) at, on or near the site of the premises to which the application relates where it can conveniently be read from the exterior of the premises by the public and in the case of a premises covering an area of more than 50 metres square, one further notice in the same form and subject to the same requirements shall be displayed every 50 metres along the external perimeter of the premises abutting any highway; and

(iii) at the offices, or the main offices, of the licensing authority in a central and conspicuous place; and

(b) in a case where the relevant licensing authority maintains a website for the purpose of advertisement of applications given to it, by publication of a notice on that website;

(2) the requirements set out in paragraph (1) shall be fulfilled—

(i) in the case of a review of a premises licence following a closure order under section 167, for a period of no less than seven consecutive days starting on the day after the day on which the relevant licensing authority received the notice under section 165(4); and

(ii) in all other cases, for a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority.

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The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005

2005 No. 42 PART 5 Regulation 39

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Advertisement of review by licensing authority

39. All notices referred to in regulation 38 shall state—

(a) the address of the premises about which an application for a review has been made,

(b) the dates between which interested parties and responsible authorities may make representations to the relevant licensing authority,

(c) the grounds of the application for review,

(d) the postal address and, where relevant, the worldwide web address where the register of the relevant licensing authority is kept and where and when the grounds for the review may be inspected; and

(e) that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence.

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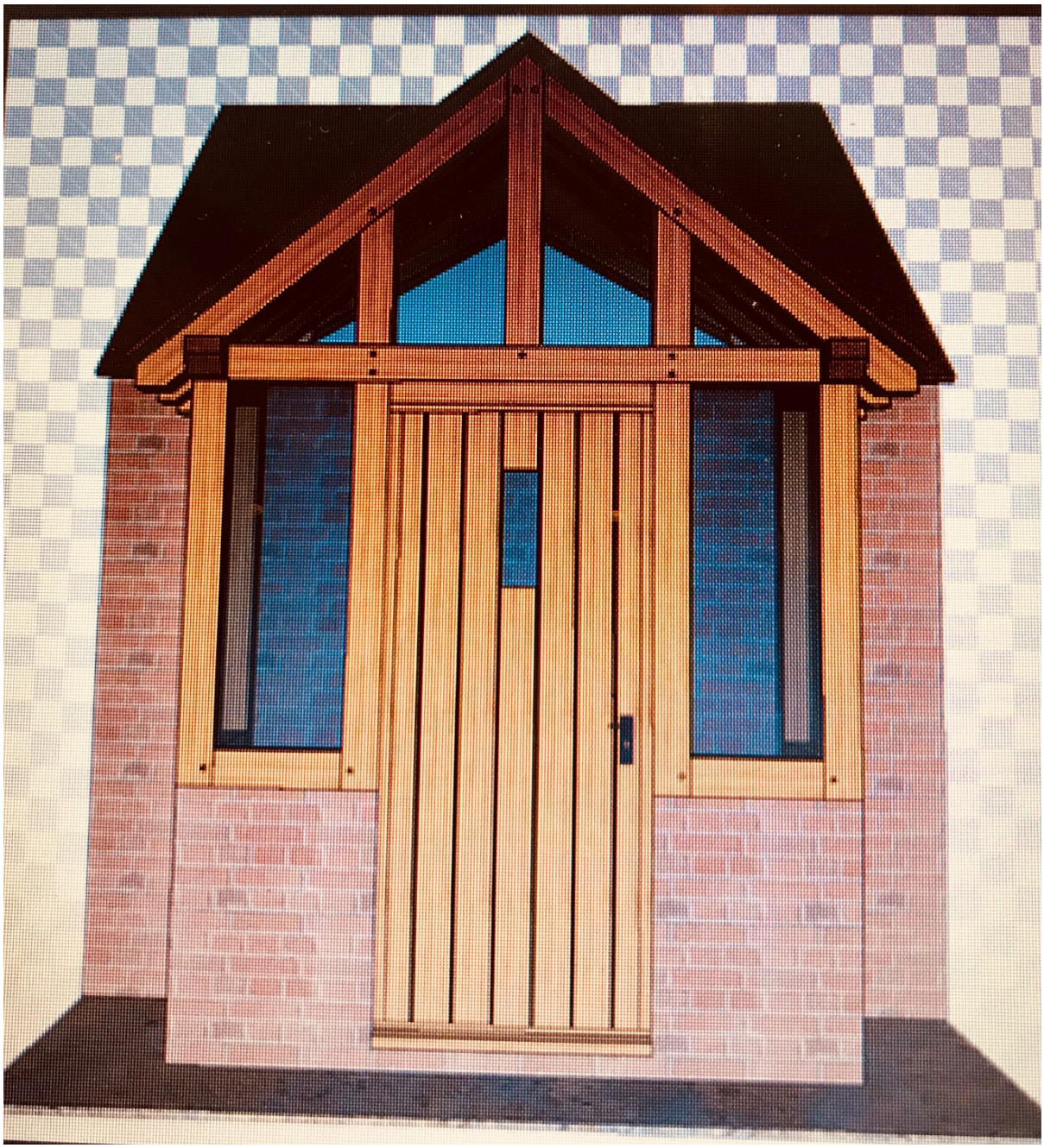
Additional Evidence 1



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08.09.2018			**07.40 - Woken up by builders at Leicester Warren drilling and hammering.**
15.09.2018	Wedding party arrives 13.00 – 13.30.	23.59	14.55 – Oriental female stood in front of the lounge window peering in until David asked her not to. 19.38 – Guitar music starts. Loud bass and female singer. Several large hay bales with large groups of guests sat outside, directly in view of the kitchen window, approx. 5 metres away. Talking and shouting. 20.13 – DJ on PA making announcements, which music is coming on next, Jess Glynne. 20.25 – 'Sex is on Fire' Kings of Leon. Heard clearly whilst reading a bedtime story to my young daughter in her bedroom. 20.31 – 'Can't stop the feeling' Justin Timberlake. 20.39 – 'Moves like Jagger' Maroon 5. 20.42 – Electric guitar and singer, with heavy bass. A live singer. 21.21 – Singer 'Working 9 to 5' 21.26 – 7 – 8 young children playing on the hay bales, jumping from bale to bale. Approx. 8 adults stood nearby. Lots of loud shouting. 21.29 – Singer 'Aint Nobody'. 21.35 – 'I'm a Believer' 21.40 – 'I'm in the mood for dancing' Nolans. 21.45 – 'Take a chance on me' ABBA. 21.46 – 'Money, money, money' ABBA. 21.51 – 'Young Hearts' Candy Staton. Several children Still running around the hay bales. Loud shouting. For approximately the last 2 hours, disco flashing

			lights constantly moving around the rear of the house. 21.58 – 'Shake your tail feathers' Blues Brothers. 22.28 – 'Never going to give you up' Rick Astley. Group of 10 adults and several children sat on the hay bales drinking. Children still running about shouting and screaming. Loud voices from adults taking and shouting. 22.53 – 'Sweet child of mine' Guns and Roses. 22.58 – 'Mr Brightside' The Killers. Voices can be heard singing along with the words from within Leicester Warren Hall. Several adults in group outside, shouting along to the song. 23.15 – DJ on PA announcing how much music time until the end. 23.17 – 'She's electric' Oasis. Disco lights still flashing outside. 23.20 – 'Park life' Blur. 23.31 – 'Up Town Funk' Bruno Mars 23.34 –'Good Girl' Robin Thicke. 23.34 – Unable to sleep in the furthest bedroom away from the adjoining wall due to the loud bass and vibration. **23.37 – Call to the Police due to noise nuisance and anti-social behaviour. Requested a Police visit as wanting to go to bed but music heard clearly in all bedrooms and shouting outside. Police log number, CRN242614.** 23.38 – 'Shut up and dance' Walk the moon. 23.40 – 'Despacito' Justin Bieber. 23.44 – 'I don't feel like dancing' Scissor Sisters. 23.49 – 'I gotta feeling' The Black Eyed Peas. 23.53 – 'I'm Gonna be' The Proclaimers. Voices of the guests can be heard singing along to the song. 23.56 – DJ on microphone 'New York New York' Frank Sinatra. Guest heard singing along to the song. 00.02 – 3 X males sat on the hay bales, talking loudly, swearing. Minibus arrives. 00.06 – Cars, taxies arriving and leaving, slamming car / taxi doors.
22/09/2018	13.10 – Wedding party arrives.	**00.08 music finished** but anti-social behaviour ceased at 01.02	Hay bales are still outside the kitchen window from the previous wedding. 18.18 – All the wedding party stood directly outside the kitchen window. The photographers male / female were taking the photographs within 2 – 3 metres of the kitchen window. Guests not in the photographs were stood against our house's building line. 20.15 – Our young children put to bed.

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			20.20 – Large group including the bride directly outside the kitchen window on roadway with camera lady and man with a tripod just 3 feet from the window. Loud shouting and laughing. 20.23 – camera lady asking the guests to cheer. The guests all cheered. 20.24 – Significant amount of shouting, noise and cheering continues. David walked around to the back of our house (it was dark). Approximately 60 people were stood next to the back of our house all with lighted sparklers. David approached the male cameraman (white male around 35 years, light coloured hair and beard wearing a waistcoat). David asked him to move everyone away from the back of the house towards the hall. David told him that he had just put our children to bed. He ignored David. They continued to set up 2 lines of people with the bride and groom at the head, being filmed moving down the 'human chain' of guests. The cheering from the guests was very loud. David walked back to our house to get his mobile phone and returned to film what was happening. (20.29PM)David saw male wearing waiters uniform stood back from the crowd not intervening. 20.39 – David returned to the house and our 6 year old daughter had got up and was looking out of the stairs, landing window, which overlooked the crowd. She told David that she had come to see what the noise was and mentioned the sparklers. David took further video footage of what was happening out side, from the stairs landing window. 20.58 – Loud cheering heard from inside the hall, then music, a 1950's type of love song. 21.01 – The DJ is heard commenting about the first dance. 21.03 – Loud music, pop song, unknown title. 21.07 – 'Hold my hand', Jess Glynn. 21.13 – very loud dance music with thudding bass and female singer. 21.14 – Deep bass dance music, female singer. (Subjectively, this is the loudest that the music has been in 10 years). 21.16 – Muffled voice of the DJ heard over the music. 21.20 – more dance music. No vocals but deep bass. 21.22 – male singer, pop record. Song unknown. 21.27 – 'All I am is you' Jess Glynn. 21.30 – dance music with a male singer.

			21.33 – Dane music with a female singer. 21.36 – Thumping bass, unknown dance song. 21.39 – Muffled voice of the DJ. 21.40 – 'Proud Mary' Tina Turner. 21.43 – 'Sweet Soul Music' Arthur Conley. 21.49 – 'Tail feather twisting' Blues Brothers. 21.53 – 'I love you, yes I do, this old heart of mine' Isley Brothers. 21.57 – 'Can't help myself' 4 Tops. 21.58 – 'Can't hurry love.' Diana Ross / Supremes. 22.00 – 'Higher and higher' Jackie Wilson 22.04 – 'Baby love really hurts' Billy Ocean. 22.06 – 'Wake me up before you go go' Wham. 22.10 – 'Never going to give you up' Rick Astley. 22.13 – 'Somebody to love' Whitney Houston. 22.18 – 'Girls just want to have fun' Cyndi Lauper. 22.20 – Loud cheers from the hall, clearly heard in the bedroom the far side of the adjoining wall. 22.44 – 'She's electric' Oasis. Screaming heard from a female in the hall. 22.46 – 'Sally Cinnamon' Stones Roses. 22.49 – 2 X indie music songs, artist unknown. 22.52 – 'It must be love' Madness. Voices heard singing along to the song from within the hall. 22.55 – 'A town called malice' The Jam 22.58 – 'Should I stay or should I go' The Clash. 23.01 – 'Let's dance' David Bowie. 23.05 – 'Come on Eileen' Dexys midnight runners. Guests singing along to the song from within the hall. 23.09 – DJ can be heard introducing the song 'Unforgettable', Nat King Cole. Song played significantly loudly. 23.12 – 'I bet you look good on the dance floor' Artic Monkeys. People heard cheering when the song finished. 23.15 – 'Sex is on Fire' Kings of Leon. 23.18 – 'Mr Brightside' Killers. Music turned down and people heard singing along to the song, shouting 'I never'. 23.22 – 'When the sun goes down' Artic Monkeys. 23.25 – 'Dancing on the ceiling' Lionel Richie. 23.29 – Muffled voice of the DJ. **23.30 – call to the Police to log a complaint of the excessive noise. Officer said that they would not attend the hall. Log number IML192090** 23.33 – Loud rock music playing, heavy electric guitars. 23.35 – 'Easy Lover' Phil Collins. 23.40 – 2 X rock songs, loud bass guitars, artist not known.

			23.50 – Song with loud bass guitar. 23.51 – 'In love with an English man' Ed Sheeran. 23.53 – 'The time of my life' Bill Medley and Jennifer Warnes. 23.56 – The DJ is heard to say 'I hope that you have had a good time'. Then the next song, 'Dancing Queen' ABBA. **00.03 – Music back on 'One day like this' Elbow.** 00.08 song finished, but chanting heard from the hall, crowed 'booing' then singing 'we will rock you' also shouting 'more, more, more etc.' 00.11 – Banging heard from the hall as though people were hitting their feet on the floor. Flashing disco lights at the rear all evening. 00.27 – horn sounded twice from the carpark. 00.45 - A group of approximately 12 males and females stood around the minibus in the carpark talking and shouting loudly. Female heard to say 'where's your coat?' Another female is heard to say 'I can't find my bag'. 2 X males seen with beer glasses in their hands still drinking. 00.49 – **Whilst David is looking out of the stairs landing window at a group of guests a male (White, around 25 years, dark coloured suit, no tie, very short hair) walked up to the outside of our kitchen window and urinated against our back wall. Whilst there a taxi arrived. He was shouting 'Hey Meg, hey Meg ask how much for the taxi'. He walked off still fumbling with the front of his trousers. He appeared as drunk.** 01.02 – last taxi leaves, male shouting 'There should be another in 10 minutes.'
23/09/2018			07.26 – David woke up at 06.33 feeling anxious and annoyed about the events last night. He has a tight knot in his stomach and unable to get back to sleep. 07.40 – Several photographs taken at rear of our house of debris left from previous evening.
16/10.2018			From 14.30 cars arriving for a funeral wake. 20.55 – Horns beeping, children outside the kitchen window shouting. 22.52 – Cars continue to leave Leicester Warren.