

Licensing Act Sub-Committee

Agenda

Date: Tuesday, 6th December, 2022
Time: 10.00 am
Venue: Council Chamber, Municipal Buildings, Earle Street, Crewe
CW1 2BJ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and in the report.

It should be noted that Part 1 items of Cheshire East Council decision-making meetings are audio recorded and the recordings are uploaded to the Council's website.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Appointment of Chair**

To appoint a Chair for the meeting.

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda and for Members to declare if they have pre-determined any item on the agenda.

3. **Application to Review Premises Licence - Swish Lounge, 31 Mill Street, Crewe, CW2 7AJ** (Pages 5 - 88)

To consider the above application.

Membership: Councillors D Edwardes, S Pochin and L Smetham

For requests for further information

Contact: Karen Shuker

Tel: 01270 686459

E-Mail: karen.shuker@cheshireeast.gov.uk

This page is intentionally left blank

Summary of Procedure

1. Chairman appointed (if this has not been done previously).
2. Chairman to call for declarations of interest and request that all parties introduce themselves.
3. Chairman summarises the procedure for the hearing
4. The Licensing Officer summarises the application
5. Applicant to present his/her case.
6. Applicant to be questioned by all parties (to clarify points only) following which, he/she can clarify any other matters which he/she feels may have been misunderstood when the application was presented.
7. Applicant to be questioned by the Committee.
8. Responsible Authorities to make their representations following which they can be questioned by all parties by way of clarification.
9. Other Persons will be invited to present the bases of their objections, following which they can be questioned by all parties by way of clarification.
10. The applicant will be invited to sum up his/her case
11. Committee/Sub-Committee withdraws to make its decision
12. Committee/Sub-Committee returns to announce its decision to all present.

This page is intentionally left blank



Working for a brighter future together

Licensing Act Sub-Committee

Date of Meeting:	6 th December 2022
Report Title:	Application to review a Premises Licence – Swish Lounge, Crewe
Report of:	Jayne Traverse, Executive Director – Place
Report Reference No:	To be provided by Democratic Services
Ward(s) Affected:	Crewe South

1. Purpose of Report

- 1.1. To allow Members of the Sub-Committee to determine an application to review a Premises Licence made under the Licensing Act 2003 for the following premises:

Swish Lounge, 31 Mill Street, Crewe, CW2 7AJ

2. Executive Summary

- 2.1 The report provides details of an application to review a Premises Licence, under section 51 of the Licensing Act 2003 and outlines the evidence presented by the parties in relation to the review.

3. Recommendations

- 3.1. The Licensing Act Sub-Committee is requested to consider the application and any relevant representations and determine what steps, if any, it considers are appropriate to promote the Licensing Objectives.
- 3.2. Acting in the capacity of the Licensing Authority, Members must seek to promote the Licensing Objectives and where Members consider that matters have engaged one or more of the Objectives, they may exercise their discretion. The Licensing Objectives are:
- The prevention of crime and disorder

- Public Safety
- The prevention of public nuisance
- The protection of children from harm

3.3. Members of the Licensing Sub-Committee are reminded that they may not exercise discretion in any case, merely because it considers it desirable to do so. Careful consideration should be given to the application and the evidence presented by the parties in relation to the application.

3.4. Finally, Members are also reminded that in determining the application, consideration also needs to be given to:

- a) The rules of natural justice
- b) The provisions of the Human Rights Act 1998

4. Reasons for Recommendations

4.1. The Licensing Act Sub-Committee has the power to determine this application in accordance with the provisions of the Licensing Act 2003 and the Council's Constitution.

5. Other Options Considered

5.1. No other options have been considered. The Licensing Authority must determine such applications in the manner prescribed in the legislation.

6. Background

6.1. On the 12th October 2022 the Licensing Authority received an application to review the premises licence from the Council's Commercial Services Team, acting as a Responsible Authority in accordance with section 13 (4) (c) and (e) of the Licensing Act 2003. The application was sent out for consultation in the manner set out in paragraph 7.

6.2. The grounds for the review application are repeated breaches of section 8 of the Health Act 2006 (failing to prevent smoking on a smoke free premises), undermining the Licensing Objectives.

6.3. The Review Application is set out, with the supporting information provided, at appendix 1 of the report.

6.4. The Council's Environmental Protection Team have provided comments, which are set out at appendix 2.

6.5. The Council's Licensing Team has made a relevant representation, which is set out at appendix 3.

6.6. No responses were received from any other Responsible Authority.

- 6.7.** No relevant representations were received from any other parties (such as local residents). Though a local resident did contact us to state that they felt the conditions of the licence had not been supervised sufficiently.
- 6.8.** The current premises licence (number: PREM1406), which confirms the licensable activities, the hours for licensable activities, and any conditions attached to the licence is attached to the report at appendix 4. The decision notice following the Hearing for the grant of the licence is attached at appendix 5.
- 6.9.** In order to assist Members, we have included a map of the local area (appendix 6) so that the premises can be seen in context. This is for information purposes and does not form the area for licensable activities.
- 6.10. Information of Complaints made to the Licensing Team**
- 6.11.** The Licensing Team received some complaints regarding the premises. Information on these matters is sent out within the relevant representation made by the team.
- 6.12. History of the premises licence**
- 6.13.** A licence was first applied for on 19th November 2021. However, it took some time for the applicants to submit a valid application. At this time the applicant Mr Anik, was using an agent to assist him with the application process. Despite this assistance the applications were incorrectly completed and had to be resubmitted. Advice was provided by email on why the application was not valid. The application was deemed to be valid on 30th November 2021 and followed the usual process for determination. During the consultation process relevant representations were received and a Hearing of the Licensing Act 2003 Sub-Committee was convened to determine the matter.
- 6.14.** In the period between the premises opening and the licence being granted, a number of Temporary Event Notices were used to provide licensable activities.
- 6.15.** The first Hearing was adjourned because the agent dealing with the application and the applicant Mr Anik did not comply with the Notice of Hearing issued. There appears to have been a lack of communication between the two parties. With the agent not making Mr Anik aware that the Hearing had been organised. A second Hearing was arranged for the 22nd February 2022. Following this Hearing a licence was granted.
- 6.16. Explanation of Smoke Free Legislation**

- 6.17.** Smoking has been prohibited by law in enclosed and substantially enclosed workplaces and public places throughout the United Kingdom since July 2007. These laws came into effect following a number of Government White Papers, which looked at the harms caused by second-hand smoke in workplaces and public spaces.
- 6.18.** The persons in control of premises (the owners, occupiers or managers) are required to ensure compliance with the legislation by ensuring that no one smokes in an enclosed or substantially enclosed space. They must also display at least one legible no-smoking sign in smokefree at the premises.
- 6.19.** Under the Health Act 2006, 'substantially enclosed' is a premises or structure with a ceiling or roof (including temporary and retractable coverings such as awnings) and where there are permanent openings, other than windows or doors, which in total are less than half of the area of the walls.
- 6.20.** This means that premises such as the Swish Lounge are not compliant with smokefree legislation when their retractable roof and doors are closed.

7. Consultation and Engagement

- 7.1.** Once an application is received, this triggers a period of not less than 28 days when the application must be advertised. This is to allow Responsible Authorities and other persons to provide any relevant representations.
- 7.2.** In accordance with the legislation, review applications must be advertised in a number of ways.
- 7.3.** The application must be sent to all the Responsible Authorities, as set out in the legislation. The application was emailed to these parties on the 12th October 2022.
- 7.4.** The application must be given to the premises licence holder. A copy of the application and supporting information was also hand delivered to the premises on the 12th October 2022.
- 7.5.** Notices on blue paper were put up at various locations around the premises by a Licensing Enforcement Officer on the 12th October 2022.
- 7.6.** Notice of the Review was also placed on the Council's website.
- 7.7.** On the 18th October 2022, 21st October 2022, and 7th November 2022 Licensing Officers visited the premises and confirmed that the notices were still in place.

8. Implications

8.1. Legal

- 8.1.1. The Sub Committee must determine this application in accordance with section 51 of the Licensing Act 2003. To do so otherwise would render its determination unlawful and invalid.
- 8.1.2. In accordance with the provisions of section 52 (3) of the Licensing Act 2003 the Licensing Authority Sub Committee must, having regard to the representations, made in this application take such steps (if any) as it considers appropriate for the promotion of the licensing objectives.
- 8.1.3. Section 52 (4) provides that the authority may:
- a) modify the conditions of the licence
 - b) exclude a licensable activity from the scope of the licence
 - c) remove the designated premises supervisor
 - d) suspend the licence for a period not exceeding three months
 - e) 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
- 8.1.4. Members are reminded that should any conditions be added, they should be practical, enforceable and appropriate to promote the Licensing Objectives.
- 8.1.5. Members are also reminded of the statutory obligation placed on the Local Authority under section 17 of the Crime and Disorder Act 1998, through all of its various functions - and Licensing is one of those functions - to do all that it can to prevent crime and disorder, anti-social behaviour, behaviour adversely affecting the environment and reoffending.
- 8.1.6. Members must give reasons for their determination and notice of it must be communicated to the parties to this hearing. If Members depart from the Statutory Guidance or the Council's Statement of Licensing Policy, then their decision notice must set out the reasons for doing so.

8.2. Finance

- 8.2.1. There are no financial implications

8.3. Policy

- 8.3.1. The Licensing Authority has adopted a Statement of Licensing Policy in accordance with section 5 of the Licensing Act 2003.
- 8.3.2. The Licensing Authority must also have due regard to the guidance issued under section 182 of the Licensing Act 2003.

8.3.3. Both the Council's Statement of Licensing Policy and the 182 Guidance have sections dedicated to the Prevent of Public Nuisance objective and the Review process. While careful attention should be given to those sections, it is important to fully take into consideration both documents.

8.3.4. Members should provide reason(s) for any decision taken and should set out the reasoning where they determine to depart in any way from the Policy or Guidance.

8.4. Equality

8.4.1. There are no equality implications

8.5. Human Resources

8.5.1. There are no human resources implications

8.6. Risk Management

8.6.1. The Licensing Sub-Committee will hear representations made on behalf of both the applicant, the premises licence holder, and 'relevant persons' who have submitted their representation. The Sub-Committee will make a decision on the basis of the evidence presented to it. The Licensing Act 2003 makes provision for appeal to the Magistrates' Court of any decision made by the Licensing Authority

8.7. Rural Communities

8.7.1. There are no implications for rural communities

8.8. Children and Young People/Cared for Children

8.8.1. There are no implications for children and young people

8.9. Public Health

8.9.1. There are no direct implications for public health

8.10. Climate Change

8.10.1. There are no implications for climate change

Access to Information	
Contact Officer:	Jennifer Rowney, Senior Licensing Officer Licensing@Cheshireeast.gov.uk 0300 123 5015
Appendices:	Appendix 1 - Review application and supporting information (Appendices A - I are further pieces of information submitted in support of the application) Appendix 2 - Relevant Representations from the Environmental Protection Team Appendix 3 - Relevant Representations from the Licensing Team Appendix 4 - Extant Premises Licence PREM1406

	Appendix 5 – Decision Notice Appendix 6 - Location Map
Background Papers:	<u>Statutory Guidance issued under section 182 of the Licensing Act 2003</u> <u>Council's Statement of Licensing Policy published under section 5 of the Licensing Act 2003</u> <u>Licensing Act 2003</u> <u>The Licensing Act 2003 (Hearings) Regulations 2005</u> <u>Licensing Act Sub-Committee 22nd February 2022</u>

This page is intentionally left blank

**Application for the review of a premises licence or club premises certificate under the
Licensing Act 2003**

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

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

I Brioni Turner

(Insert name of applicant)

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

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Swish Lounge 31 Mill Street	
Post town Crewe	Post code (if known) CW2 7AJ
Name of premises licence holder or club holding club premises certificate (if known) Abdullah Anik	
Number of premises licence or club premises certificate (if known) <div style="height: 40px;"></div>	

Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)

☐

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

☒

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

☐

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

Please tick ✓ yes

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

Surname

First names

I am 18 years old or over

Please tick ✓ yes
☐

**Current postal
address if
different from
premises
address**

Post town

Post Code

Daytime contact telephone number

**E-mail address
(optional)**

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Brioni Turner Senior Enforcement Officer Commercial Services Regulatory Services and Health Cheshire East Council Municipal Buildings Earle Street Crewe CW1 2BJ
Telephone number (if any) 07785747849
E-mail address (optional) brioni.turner@cheshireeast.gov.uk

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

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

Please tick one or more boxes ✓

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

The prevention of crime and disorder

The premises has been breaking the following legislation; Section 8 of Health Act 2006 Offence of failing to prevent smoking in a smoke-free place. It is the duty of any person who controls or is concerned in the management of smoke-free premises to cause a person smoking there to stop smoking. A smokefree premises is classed as a structure that has a roof and has enclosed walls accounting for more than 50% of the total area. A 'room' that does not have a roof for example a courtyard, can have full walls around all sides.

The premises in this situation has a room to the rear of the premises with a retractable roof. If the roof is open it is not classed as an enclosed premises, so does not have to have any of the sides open. Once the roof is closed it is classed as a smokefree premises and has to have 50% of the sides of the structure open. The premises has been seen to allow people to smoke shisha pipes and cigarettes in the rear of the premises.

The owner and the manager have been told on numerous occasions detailed below that these smoking activities are allowed as long as the retractable roof is open.

Public safety

Second-hand smoke (also known as passive smoke) from breathing in the smoke in the air from someone else's shisha pipe and the smoke they breathe out, will occur in this premises, particularly when the roof is closed. Second-hand smoke from shisha pipes is dangerous because it contains harmful substances like carbon monoxide, toxic chemicals, and toxic particles. The use tobacco-free shisha, the smoke still produces harmful levels of toxins which can be just as bad for your health or even more harmful than smoke from tobacco-based shisha. This area is also used for dining of customers who are not necessarily smoking shisha, who wish to be in a more relaxed area than the restaurant area to the front of the premises. As such they are being exposed to these harmful substances much more in the enclosed area.

The protection of children from harm

The issues mentioned in the previous 2 licencing objectives there is also the potential to cause harm to children as the area can also be used for families including those with young children. There is no information detailing this area as not being suitable for young children or a time at which the smoking of shisha pipes will not be allowed in the area, due to it being used for families. As such there is the possibility of families being in the area, when another customer requests a shisha pipe, which stated the objective of public safety is a risk, particularly to the young.

Due to the premises not complying with the above objectives, in particular the prevention of crime and disorder under Section 8 Health Act 2006. As this premises has broken the above legislation on numerous occasions, despite being informed on several occasions the requirements needed to comply with the legislation as detailed below. Due to the repeated lack of compliance of the above conditions I have little confidence in the management to comply with any additional conditions such as the reduction in times or licensable activities would not in my opinion achieve compliance. The management of the premises have disregarded advice and guidance on multiple occasions and it is likely that the Licensing Objectives will continue to be undermined. As a result of this I am asking for the premises licence to be revoked in this instance.

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

See please see attached document and appendices.

Please tick ✓ yes

5

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

If yes please state the date of that application

Day Month Year

--	--	--	--	--	--	--	--

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

Please tick ✓ yes

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

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

Part 3 – Signatures (please read guidance note 4)

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

Signature Brioni Turner

.....

Date 12/10/2022

.....

Capacity Senior Enforcement Officer

.....

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

Notes for Guidance

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

This page is intentionally left blank

On 29/09/21 I received a complaint of people smoking shisha pipes in an enclosed space at the newly opened Swish Lounge. On the evening of 29/09/21 I visited the premises to see what the current situation was and if this was an issue. At this visit I did discoverd that people were smoking shisha pipes in an enclosed space. At this time, I spoke to the manager Ogus Ozjaya and explained that if people were going to smoke shisha pipes this would be allowed but the roof would need to be retracted. At this time Mr Ozjaya said he understood what was required of him to comply with the law. The roof was opened at this time of the visit to comply with the legislation.

On 01/10/21 I visited the premises with Amy Chilver Environmental Protection, Tracey Billington Licencing, Kyle Dalton Planning and Kelly Warburton Police to discuss issues including the smoking of shisha pipes. Upon arrival there were 2 men smoking a shisha pipe with the roof fully closed. At this visit I spoke to the owner Abdullah Anik and the manager Ogus Ozjaya again about the requirements needed to comply with Section 8 of Health Act 2006, allowing smoking in a smokefree premises, and again both men stated they understood the requirements. Ogus Ozjaya had reiterated he knew the requirements to comply with the law when he was questioned about the 2 men smoking upon our arrival, and could offer no suitable explanation as to why this had occurred. This information was reiterated to Abdullah Anik. His understanding of English is not as good as Ogus Ozjaya, however he did appear to know from my previous visit what was required and parts of the conversation were being translated into Turkish by Ogus Ozjaya at the time. In addition to verbally agreeing their understanding, both men signed a statement in my PACE notebook reiterating their responsibilities and the consequences if they did not comply. A copy of the signed statement is included as Appendix A.

A further visit was made on 07/10/21. At this visit the roof was closed and no customers were smoking shisha pipes, however the manager Ogus Ozjaya was smoking a shisha pipe at the start of the visit. When spoken to he stated that he thought he was able to smoke the shisha pipe with the roof closed as there were no members of the public there at the time. At this point I reiterated that the premises was smokefree at all times as it was a public premises and a workplace and if any person wanted to smoke a shisha pipe the roof would have to be open. Again the requirements to comply with Section 8 of the Health Act 2006 were discussed with Ogus Ozjaya and at this time he stated that he understood completely what was required.

After this visit a warning letter was sent to Ogus Ozjaya and Abdullah Anik on 14/10/21 explaining the breaches of the Health Act 2006 and the requirements needed for the premises to be compliant with this. A copy of this letter is included as Appendix B.

On 17/02/22 a follow up visit was made to the premises to determine the current situation with smoking on the premises, at this visit the roof was closed and there were no people smoking. I spoke to the manager Ogus Ozjaya and stated that we had seen pictures on social media showing people smoking shisha pipes with the roof closed. These photos appeared to be taken by multiple visitors to the premises on dates following my visits in October 2021. All of these photos showed people smoking shisha pipes with the roof fully closed. At this point Ogus Ozjaya stated that the photos must have been taken as the roof was being retracted. I disagreed with this. I once again stated the requirements to comply with the Heath Act 2006 and Ogus Ozjaya stated he understood and would follow the requirements.

A further follow up letter was sent to Ogus Ozjaya and Abdullah Anik again describing the breaches to the Health Act 2006 and the requirements needed for the premises to comply with the legislation. A copy of this letter is included as Appendix C.

On the 09/04/22 the premises put a video on their Facebook page that clearly showed people smoking cigarettes and shisha pipes in the area to the rear of the premises with the roof closed. Screen shots of this video are included as Appendix D. As a result of the video a further visit was carried out on 27/04/22 to determine the current situation. At this visit the roof was closed and there were 2 people smoking a shisha pipe, who appeared to have been there for a period of time, as there were empty drinks on the table they were sat at. I again spoke to Oqus Ozjaya, who claimed the couple had just been given the shisha pipe and that the roof was now going to be opened. I disagreed with him over this point. I stated again the requirements for the legislation to Oqus Ozjaya and the owner Abdullah Anik and both stated they understood. I informed them that further action would be taken against them for these ongoing breaches. A copy of the photo taken of the couple smoking the shisha pipe is given in Appendix E.

As a result of this visit and the continuing images put on the Swish Lounge social media pages showing people smoking shisha pipes, Oqus Ozjaya and Abdullah Anik were invited to attend an interview under caution, conducted in accordance with the Police and Criminal Evidence Act 1984 (PACE) on 06/06/22. The interview with Abdullah Anik was conducted with his son Kadir Anik as his representative for the business, as Abdullah Anik did not feel his English was sufficient for the interview and an interpreter had not been requested prior to commencement. During the interview the video posted to the Swish Lounge Facebook page and the people smoking a shisha pipe on my visit on 27/04/22 were discussed. During this interview both individuals admitted that there were people smoking shisha pipes and cigarettes in the Facebook Live video. They claimed at the time that the video was a promotional video and that no people were paying to consume drinks and smoking of the shisha pipes at the time of recording. I once again explained that even if no one was being paid to work that night or that no one was paying to be there the premises was still open to the public and a workplace and as such is still considered a Smokefree premises in accordance with the relevant legislation. When questioned about the couple seen smoking at the visit on 27/04/22, both individuals claimed that this was an electronic shisha pipe and as such was exempt from the smokefree legislation. This was not mentioned by Oqus Ozjaya at the time of the visit on 27/04/22. Selections of the transcripts for the individual PACE interviews discussing these issues can be found in Appendix F in respect of Oqus Ozjaya and at Appendix G for Abdullah Anik.

A further visit was conducted on 21/07/22 as a spot check following the PACE interviews. At this time the issues raised in the PACE interview were discussed with Oqus Ozjaya and Abdullah Anik in particular the use of electronic shisha pipes, as these are exempt from the Smokefree premises requirements. In order to assist Members in understanding the difference between these two types of pipe, the details of the differences between a traditional shisha pipe and an electronic shisha pipe can be found in Appendix H. When checking the information provided at this visit regarding the electronic shisha pipes and the photo taken at the visit on 27/04/22 I believe that the shisha pipe being smoked at this visit was not an electronic shisha pipe. At this visit the CCTV covering the rear of the premises was also checked to see if there was any evidence of shisha smoking with the roof closed. The following dates were checked 19/07, 12/07, 15/07, 16/07 between 18:00 and closing. There appeared to be no evidence of the roof being closed while the shisha pipes being smoked. However, due to the location of the CCTV cameras there was no clear view of the roof and it was not possible to determine conclusively if the roof was open or closed.

Since this visit further photos have been put on the Swish Lounge Instagram page on 04/09/22 showing people smoking traditional shisha pipes with the roof closed. Screenshots of these images are provided in Appendix I. As a result of these new images a final visit was made on 30/09/22 as a follow up to the issues stated above. On this visit the premises roof was closed due to the heavy

rain at the time and no people were found to be smoking shisha pipes at the time in the area to the rear. However due to the relocating of the bar in the premises there was no CCTV available on the premises to allow me to check the previous days. I was told by Ogus Ozjaya at this visit that the CCTV had not been working for at least the last 2 to 3 weeks.

Given the evidence presented above regarding the multiple breaches to Section 8 of Health Act 2006, despite being told on numerous occasions the requirements to comply with the legislation I believe that the premises will not and has not complied with the law sufficiently. Due to repeated failures to comply I am asking for the premises licence to be revoked.

This page is intentionally left blank

Appendix A – Signed statement in PACE notebook

2021 gentlemen smoking
Shisha pipes - chum
they only just got
the pipes. Spoke
to manager Osoz
OZKAYA. Owner
ABOUCCAM ADACK
Off. Planning saw
that roof was closed
prior to entering
premises 2 men

7

8

Smoking Shisha
left quickly after
we arrived Manager
and owner wanted
the roof open and
smoking shisha
pipes £3.00

I understand that
if customers are
smoking shisha
pipes the roof over
the garden area
needs to be fully
opened at all times
If I do not comply

I can be prosecuted
and fined £2500.



Working for a **brighter future** together

Private and Confidential
FAO: Ogus Ozjaya and Abdullah Anik
C/O Swish Lounge
31 Mill Street
Crewe
Cheshire East
CW2 7AJ

Regulatory Services and Health
Commercial Services
Municipal Buildings
Earle Street
Crewe
CW1 2BJ
Tel: 0300 123 5015
www.cheshireeast.gov.uk
brioni.turner@cheshireeast.gov.uk

Date: 14 October 2021

Our Ref: 052768

Dear Mr Ogus Ozjaya and Mr Abdullah Anik

HEALTH ACT 2006 SMOKEFREE PREMISES

As you are aware Cheshire East Council had received a complaint regarding people smoking shisha pipes in an enclosed area, to the rear of your premises.

On the 29 September 2021 I visited the premises where I informed you that under the Smokefree Legislation it is categorised as substantially enclosed. Premises will be considered to be enclosed if they have a ceiling or roof and, except for doors, windows or passageways, are wholly enclosed, whether on a permanent or temporary basis. Premises are substantially enclosed if they have a ceiling or roof, but there are permanent openings in the walls which are less than half of the total areas of walls, including other structures which serve the purpose of walls and constitute the perimeter of premises. This is known as the 50 per cent rule. Due to the roof of this area being closed on arrival this area is classed as enclosed and **it is** an offence for anyone to smoke or for the personnel at the premises to allow anyone to smoke in this area. I informed you that if the entire retractable roof is kept open then the smoking of shisha pipes would be allowed in this area.

It is an offence to fail to prevent smoking in smoke-free place for which the person controlling or managing the premises can be prosecuted under section 8 of the Health Act 2006. Upon summary prosecution and conviction the maximum penalty for this offence is £2,500.00.

On 1 October 2021 I visited the premises again with several colleagues. At this time you had 2 gentlemen smoking a shisha pipe and the roof was only just being retracted as we entered the premises. I again reiterated that in order to comply with the above legislation you must have the roof at all times when shisha pipes are being smoked. At this visit I also got you both to sign a statement in my PACE notebook explaining the requirements of this legislation.

On my visit of 7 October 2021 I once again found Mr Ogus Ozjaya and another member of staff smoking a shisha pipe on arrival, something that you tried to hide from me as I

entered. At this time only half the retractable roof was open, and you claimed that only staff and yourselves were smoking the pipe. This was despite me explaining on both previous visits that the whole roof had to be retracted as it is one large room and that staff are not permitted to smoke under different requirements as the premises is still considered both a workplace and a public space. Both of these are to be smokefree at all times under the requirements of the Health Act 2006. I understand from this visit that you intend to replace a portion of the wall with opening glass doors to make the area more than 50% open with the roof closed.

In order to avoid any formal action by the Council, you must ensure that until the new doors are put in place, the whole of the roof is retracted when anyone, staff and customers are smoking a shisha pipe. When the new retractable doors are put in place you must ensure that all the openable doors are fully open, if the roof is closed and anyone is smoking a shisha pipe. This is a requirement of section 6 of the Health Act 2006. If a further visit is made and you are found not to be complying with these requirements prosecution action will be taken against you.

I trust you will take this matter seriously and put measures in place immediately to prevent any further incidents of this nature.

Yours sincerely

Brioni Turner
Senior Environmental Health Officer



Working for a brighter future  together

Private and Confidential
FAO: Ogus Ozjaya and Abdullah Anik
C/O Swish Lounge
31 Mill Street
Crewe
Cheshire East
CW2 7AJ

Regulatory Services and Health
Commercial Services
Municipal Buildings
Earle Street
Crewe
CW1 2BJ
Tel: 0300 123 5015
www.cheshireeast.gov.uk
brioni.turner@cheshireeast.gov.uk

Date: 24 February 2022

Our Ref: 052768

Dear Mr Ogus Ozjaya and Mr Abdullah Anik

HEALTH ACT 2006 SMOKEFREE PREMISES

As you are aware Cheshire East Council had received a complaint regarding people smoking shisha pipes in an enclosed area, to the rear of your premises and you have been visited on 3 separate occasions by Enforcement Officers in 2021 about this issue.

As you are aware under the Smokefree Legislation it is categorised as substantially enclosed. Premises will be considered to be enclosed if they have a ceiling or roof and, except for doors, windows or passageways, are wholly enclosed, whether on a permanent or temporary basis. Premises are substantially enclosed if they have a ceiling or roof, but there are permanent openings in the walls which are less than half of the total areas of walls, including other structures which serve the purpose of walls and constitute the perimeter of premises. This is known as the 50 per cent rule. Due to the roof of this area being closed on arrival this area is classed as enclosed and **it is** an offence for anyone to smoke or for the personnel at the premises to allow anyone to smoke in this area. I informed you that if the entire retractable roof is kept open then the smoking of shisha pipes would be allowed in this area.

It is an offence to fail to prevent smoking in smoke-free place for which the person controlling or managing the premises can be prosecuted under section 8 of the Health Act 2006. Upon summary prosecution and conviction the maximum penalty for this offence is £2,500.00.

At my visit of 7 October 2021 you informed me that in order to try and resolve the issue of having to open the roof to allow the smoking of shisha pipes you were going install additional wide opening doors to the south wall to make the area 50% open. At this time you were informed that in order to avoid any formal action by the Council, you must ensure that until the new doors are put in place, the whole of the roof is retracted when anyone, staff and customers are smoking a shisha pipe. When the new retractable doors are put in place you must ensure that all the openable doors are fully open, if the roof is closed and anyone is smoking a shisha pipe. This is a requirement of section 6

of the Health Act 2006. If a further visit is made and you are found not to be complying with these requirements prosecution action will be taken against you.

On 17 February 2022 I visited your premises again to see what progress had been made installing the new doors. Upon entering the area to the rear of the business a member of staff was found to be vaping, with the roof closed, an issue that was discussed with Mr Ozjaya at the time. I also discussed that we had seen numerous photos on social media sites of people smoking shisha pipes, with the roof partially or fully closed, after the previous warning letter had been sent to you. The arrival of the new doors was also discussed and Mr Ozjaya informed me that these would hopefully be installed at some point in March 2022. Mr Ozjaya was also informed again at this time that no smoking signs should be placed at the entrance of the premises to cover the main dining areas of the business.

In order to avoid any formal action by the Council, you must ensure that until the new doors are put in place, the whole of the roof is retracted when anyone, staff and customers are smoking a shisha pipe. When the new retractable doors are put in place you must ensure that all the openable doors are fully open, if the roof is closed and anyone is smoking a shisha pipe. This is a requirement of section 6 of the Health Act 2006. If a further visit is made and you are found not to be complying with these requirements prosecution action will be taken against you.

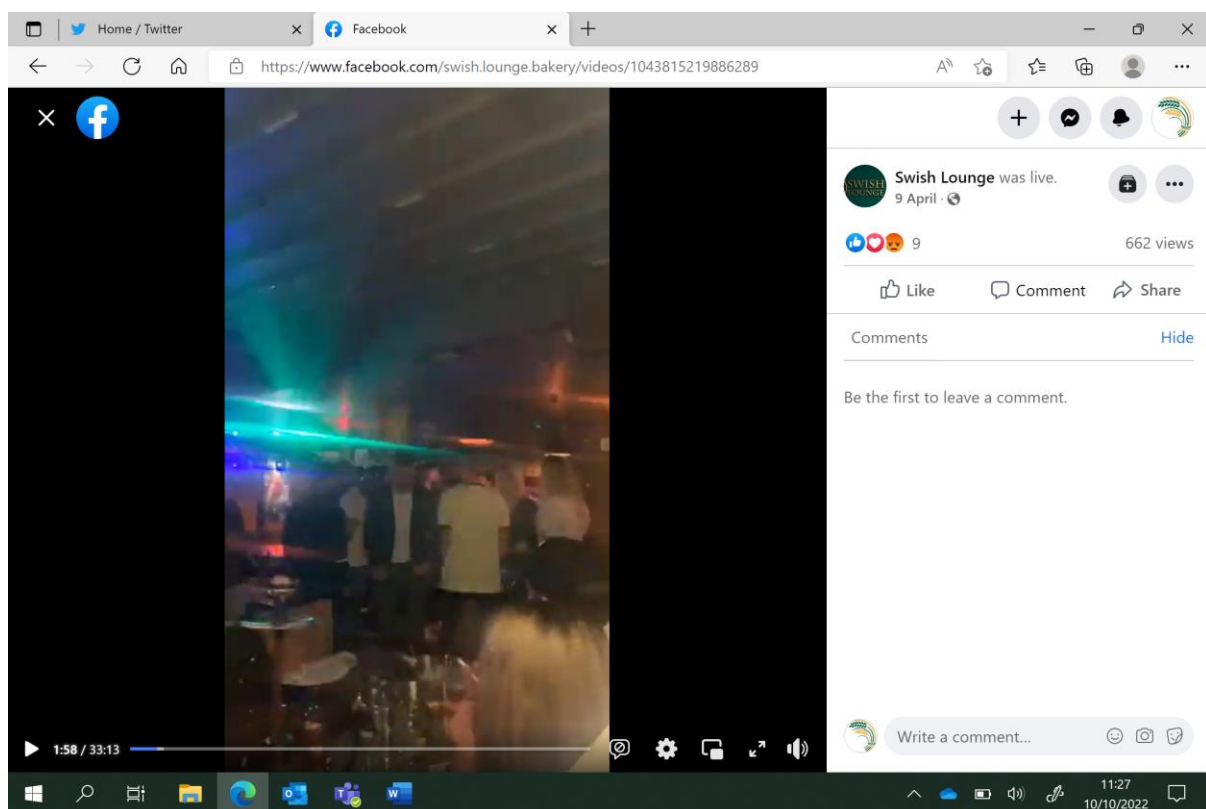
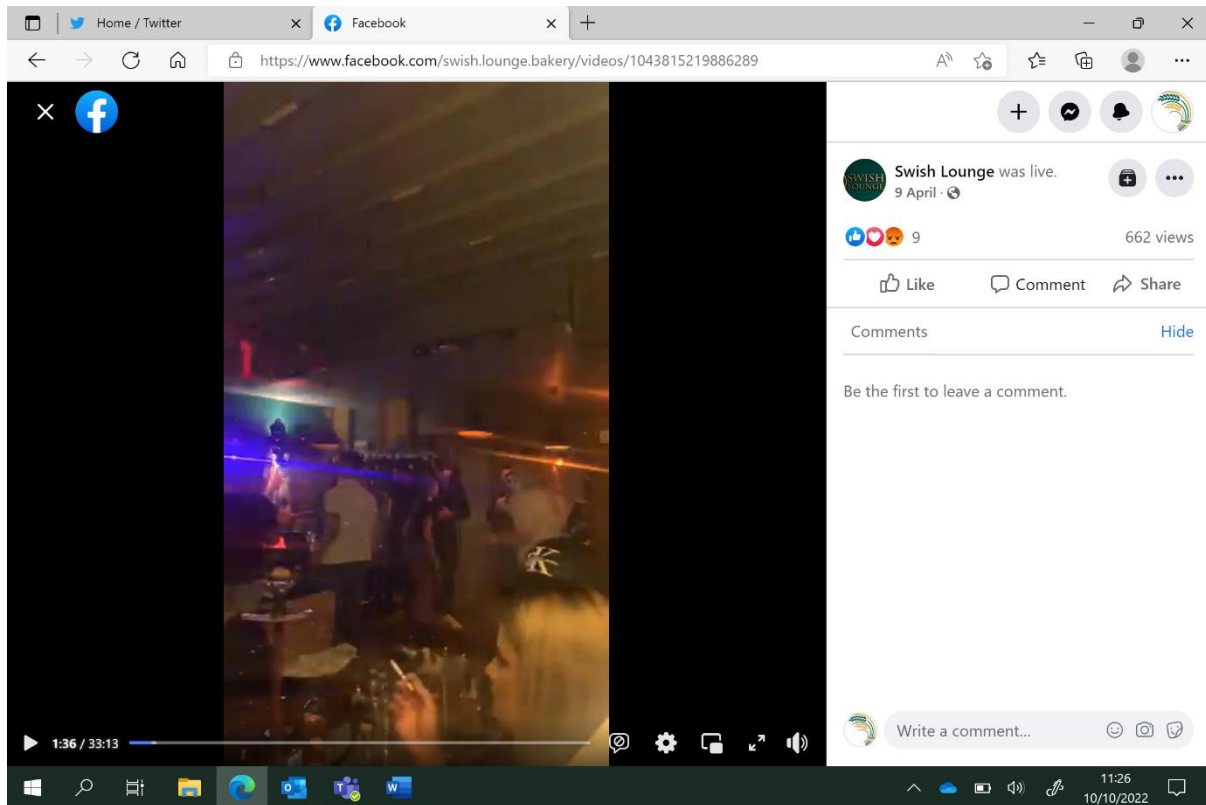
I trust you will take this matter seriously and put measures in place immediately to prevent any further incidents of this nature.

Yours sincerely



Brioni Turner
Senior Environmental Health Officer

Appendix D – Screenshots from the Facebook live video put on Swish Lounge Facebook page on 09/04/22.



Home / Twitter x Facebook x +

https://www.facebook.com/swish.lounge.bakery/videos/1043815219886289

Swish Lounge was live.
9 April · 🌐

662 views

Like Comment Share

Comments Hide

Be the first to leave a comment.

Write a comment...

3:23 / 33:13

11:28 10/10/2022

Home / Twitter x Facebook x +

https://www.facebook.com/swish.lounge.bakery/videos/1043815219886289

Swish Lounge was live.
9 April · 🌐

662 views

Like Comment Share

Comments Hide

Be the first to leave a comment.

Write a comment...

3:32 / 33:13

11:29 10/10/2022

Home / Twitter

Facebook

+


← → ↺ 🏠

https://www.facebook.com/swish.lounge.bakery/videos/1043815219886289

A 🔔 ⚙️ 📌 📄 👤 ⋮

×

f



4:32 / 33:13

🗨️ ⚙️ 📄 📌 🔊

+

🗨️

📧

🌈

SWISH LOUNGE

Swish Lounge was live.

9 April · 🌐

👍❤️🔥 9

662 views

👍 Like

💬 Comment

➦ Share

Comments

Hide

Be the first to leave a comment.

Write a comment...

😊 📷 🗨️

⬆️ ☁️ 🔊 🔌 🔌

11:29 10/10/2022

💬

Home / Twitter

Facebook

+

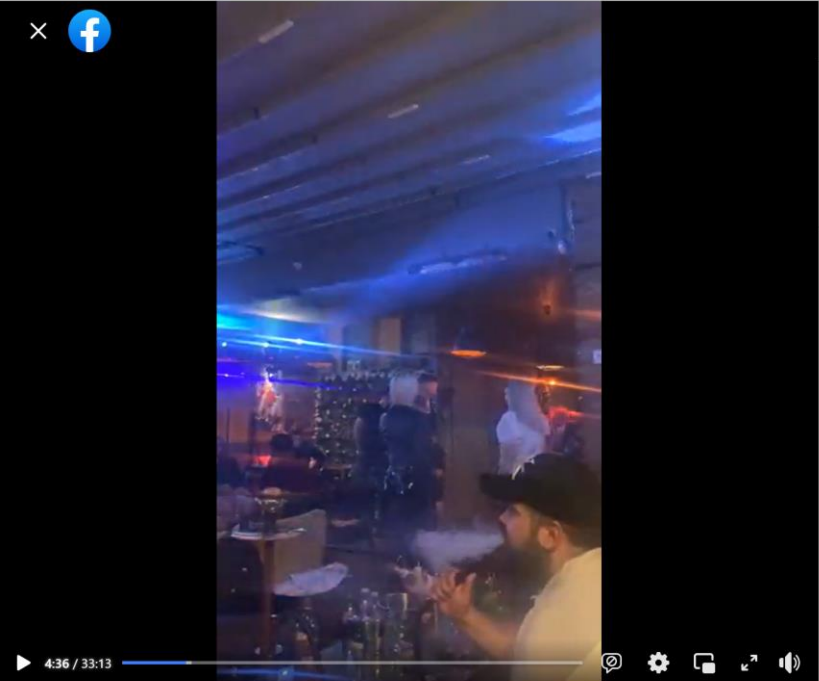
← → ↺ 🏠

https://www.facebook.com/swish.lounge.bakery/videos/1043815219886289

A 🔔 ⚙️ 📌 📄 👤 ⋮

×

f



4:36 / 33:13

🗨️ ⚙️ 📄 📌 🔊

+

🗨️

📧

🌈

SWISH LOUNGE

Swish Lounge was live.

9 April · 🌐

👍❤️🔥 9

662 views

👍 Like

💬 Comment

➦ Share

Comments

Hide

Be the first to leave a comment.

Write a comment...

😊 📷 🗨️

⬆️ ☁️ 🔊 🔌 🔌

11:30 10/10/2022

💬

Home / Twitter x Facebook x +

https://www.facebook.com/swish.lounge.bakery/videos/1043815219886289

Swish Lounge was live.
9 April · 🌐

662 views

Like Comment Share

Comments Hide

Be the first to leave a comment.

Write a comment...

4:36 / 33:13

11:30 10/10/2022

Home / Twitter x Facebook x +

https://www.facebook.com/swish.lounge.bakery/videos/1043815219886289

Swish Lounge was live.
9 April · 🌐

662 views

Like Comment Share

Comments Hide

Be the first to leave a comment.

Write a comment...

10:11 / 33:13

11:32 10/10/2022

Home / Twitter Facebook

https://www.facebook.com/swish.lounge.bakery/videos/1043815219886289

Swish Lounge was live.
9 April · 🌐

662 views

Like Comment Share

Comments Hide

Be the first to leave a comment.

Write a comment...

12:46 / 33:13

11:33 10/10/2022

Home / Twitter Facebook

https://www.facebook.com/swish.lounge.bakery/videos/1043815219886289

Swish Lounge was live.
9 April · 🌐

662 views

Like Comment Share

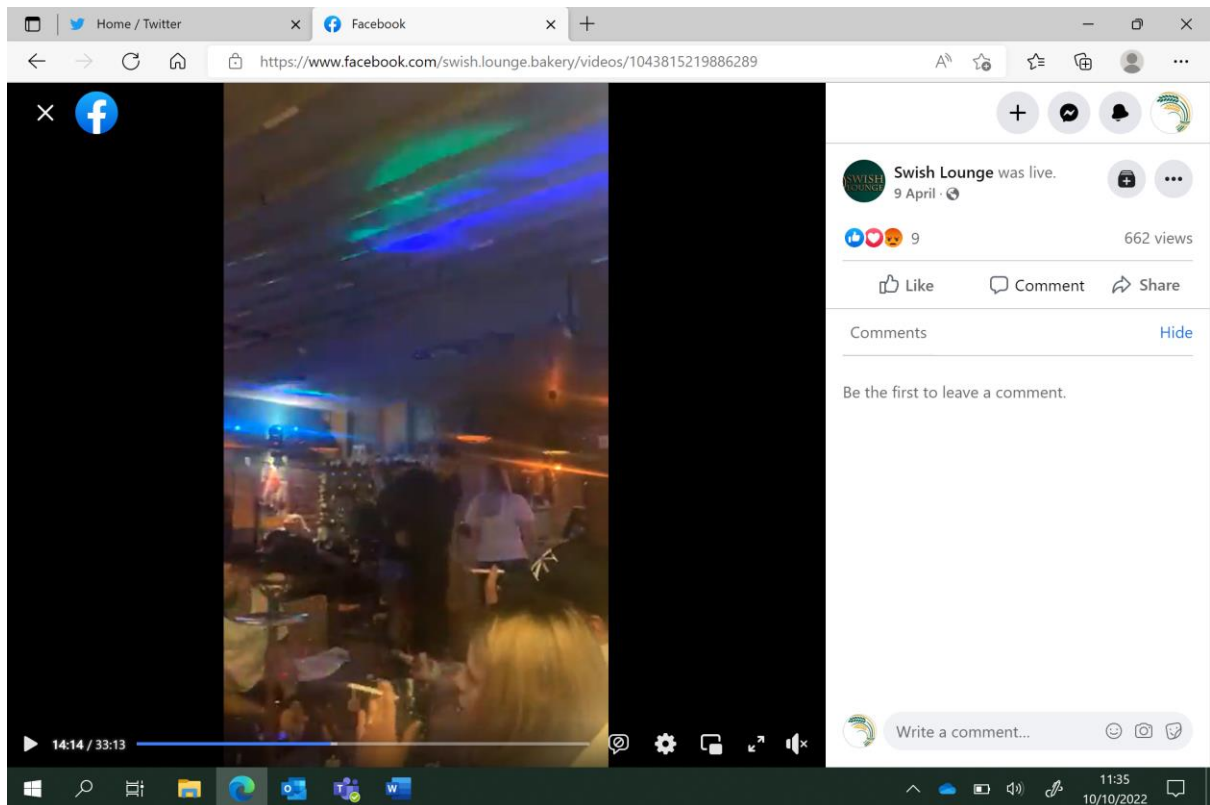
Comments Hide

Be the first to leave a comment.

Write a comment...

14:08 / 33:13

11:35 10/10/2022



Appendix E – Swish Lounge visit photo 27/04/22



This page is intentionally left blank

Appendix F – PACE interview with Ogus Ozjaya

BRT- Brioni Turner - Senior Environmental Health Officer

TB- Tracey Billington- Licensing Enforcement Officer

DA- David Allen – Environmental Health Officer

OO- Ogus Ozjaya – manager of Swish Lounge

21:44 BRT- So, On the 9th of April you posted a video to the Swish Lounge Facebook page that shows multiple people smoking shisha and cigarettes in the rear room with the roof closed. I now produce exhibit **BRT/E4**, which is a video on this laptop showing this.

TB- Okay, just for the benefit to the machine I'm just turning laptop round and starting to play the video

OO- yeah, yeah, yeah, no problem. Yeah, I know this, I did this for this one

TB- Let me just turn the volume down.

BRT- Go on

22:35 OO- Okay, this one is, is this the smoking you were talking about, right?

BRT- Yes

OO- This is the issue yeah?

BRT- This is one of the smoking

OO- These guys are all Romanians yeah and the reason we done this we got our own guy he does our media and like a, like edits you know guy, he's doing stuff and we were so quiet and we lost lots of business so we told them like you, you know you can come we show as a business to be look busy. We want to do this, this is not in business and separate by the way this cigarette I did not see, I did not realise, and I want to see there was smoking please because.

BRT- The lady in the front, if you, your thing has just come up. If you see there is several

OO- Because, because we invite them, and we paid our media guy

TB- What, what do you want me to do so sorry Brioni

OO- Yeah, I want to see where the lady, where the smoking is, is that shisha you're talking about?

BRT- No, I'm talking about the lady, the blonde lady at the front

OO- Yeah

TB- Oh right okay, sorry

BRT- Can you make it bigger

23:56 TB- So the lady with the blonde hair at the front, if you can just keep an eye on her

OO- She's smoking cigarette?

BRT- Yeah, look

OO- Ah there, nah, okay, we do definitely apologise for this one because we, we didn't know, if we know there is 100%, we have ash trays outside, every single people in business time. This is not business time by the way. Every single people go outside, and they are smoke there and I can prove this with the video cameras with the camera records which is Tracey checked the opening hours and you can come and check for the cigarette also with no problem. Because everybody going there and this is after you given warning, you said to us this is only can smoke shisha with roof open, but they cannot smoke cigarette even roof open right?

24:47 BRT- No with the roof open basically it becomes a not a substantially enclosed premises

OO- Okay

BRT- As which points you then can treat it like its outdoors so you can smoke cigarettes and you can smoke shisha, basically shisha and cigarettes for the smoke free legislation are considered the same thing, they considered smoking.

OO- Okay but they said to us, okay, that's okay. Because they said to us, they cannot smoke even the roof open.

BRT- You can decide yourself to say no we don't want people

OO- No,no,no its been told from your side its not be smoking even with roof open, that they have to smoke outside that garden.

BRT- We have said that shisha and cigarettes

OO- No,no no, shisha you said roof open, you can smoke no problem but the cigarette, I thought this problem was for that one

BRT- Okay, even if that is the case okay, in this video your roof is clearly closed also even if this is not business hours it's still

OO- No, its business hour

BRT- No, but it's a public place and you should still not be allowing people to smoke either shisha or cigarettes in that area

OO- yeah but, at the time, at the time business is no running. We edit this for the customer to be shown them we are busy this is not something we showing people you know, we not showing people smoking inside, people smoking, we just showing, these are Romanian, we call them no charge, no taking business, no money, nothing. We just invite them, do you want to do this one to be show people we busy, and your right it shouldn't be smoking cigarette and we do not confirm this and we never give anyone ash tray or we never let anyone aloud to be smoke in the garden side, even roof open because even roof open they cannot smoke cigarette, clearly they told this and then I clearly understand this one. So even roof open, we tell people roof open they go outside, it's funny for us but we still keep this rule. We do, we do our best to keep all your rules honestly and we try

help for this as well and we expect help for this one as well because we not making business. I show from the camera, Tracey she seen it like she's here and present, she seen it, I show from the 4,5,6,8,9 no customer, not only one or two table and this is not a business you know we losing business this is only reason we done this one, this is not been done for the doing business taking money, these are not customers they are my staff, you know some of them are my staff and their friends, they Romanian. We've got Romanian staff and they friends, all the family friends, we call them, no money going on, no business going on nothing there.

27:47 BRT- That doesn't matter because it's still a public place even if you're not spent, charging any money it's still a public enclosed space, it's still a workplace because the people even if they're not, they will still of had staff waiting on them so as the result it's still not allowed to have any smoking of either shisha or cigarettes enclosed with the roof closed

OO- Okay I'm not agree for the shisha because, I'm agree for cigarette, shouldn't be smoking even anywhere closed we don't let anybody smoke cigarette, I'm agree with this but for the shisha the business is not running

28:22 BRT- That does not matter, whether the business is running or not it's still a workplace and it is still enclosed

OO- It's my, it's my, it's my place so business is no running, no business going on

BRT- It does not matter, you will still have been paying staff to be

OO- No, no, no, no

BRT- You will still have had people waiting on

OO- No, no, if you look there, there is no staff, they are, they are we just called them. They are showing like a customer

BRT- It is still a workplace, it is still a public place and as a result your still not allowed to have people smoking either cigarette or shisha or any other in that area with the roof closed

OO- I agree with the cigarette, okay but this is not business hour, I'm still agree for cigarette but for the shisha is not business going on we just showing people for the you know just to show we got business busy that's all. It's just like appetising, that's all simple. But the cigarette I'm 100% I haven't seen this, even I share this first I didn't see it because if I see this I wouldn't post it because cigarette I retake it you know I remake everything, no problem or I delete this lady from the media, I didn't see, I didn't realise it honestly, this is not been done something on purpose we showing people smoke cigarette in the premises, no but for shisha no business going on, no business timing and this is only to be, just to be showing for appetisement for the people and this is my business, for example I can't come in to, I can open my business yeah no running, I can open they key and open my business any time. I can sit at my business any time, I think so is it right?

30:20 BRT- No because it is still a business, it is still a workplace and you're not allowed to have people smoking anything in there under the Act

OO- So if I close my business, I cannot sit on my business, right?

BRT- You can sit in your business, but you cannot smoke in your business

OO- I can't, I can't call my family, I cannot sit there?

BRT- Not and smoke, no, you can sit in there, but you cannot smoke in there legally with the roof closed

OO- But it's same thing, I'm not, I'm not trying to be rude don't get me wrong, but its same thing is not business going on

BRT- That doesn't matter because it is still a public place, and it is still a workplace even if there is no business going on it is still considered a workplace

OO- Okay, okay and now we learn another thing, from the beginning we are opened we learn the things we tried to provide, we don't it, we work on it we done it so today I learned another thing I shouldn't do it and we will never do it again, it will never happen again I do apologise for this and this is our fault we posted something we didn't clearly check it this is one thing and the second thing now I learn in the business we cannot let anybody smoking shisha or no one can coming to my

business without that work hours right okay, so this is clear it will never happen again. Even you can next time you in, you can check the cameras because Tracey knows its fixed, you can check everything, and it will never happen again out of business hours.

31:52 BRT- Okay, On the 27th of April this year, I visited the premises again and on arrival we found a couple smoking a shisha pipe with the roof completely closed. I now produce exhibit **BRT/E5**, a photo taken of the couple at the premises showing one of them smoking the shisha pipe with the roof closed.

OO- Let me check please

BRT- It's just in that top corner

OO- Yeah, this shisha, this one you can know as the vapes ones we have electric shishas also, this one here you taken I can proof this one as well you can check this one when you come in next time, this one is the electric one and the roof I don't know if the electric one we have to open windows and this window by the way is open you can see, but roof has to be open I'm agree with this but this is the electric one this is not our charcoals for Arab people, Turkish people you know they smoke charcoal, but these guys you know English guys they only smoke electric ones. They don't want, because they don't want nicotine in, right, so these one is the electric one, just want to aware you for this one.

TB- Would that be like a vaping system then?

OO- **Inaudible** Yeah, because the way people they can smoke even in the premises I think and this is the, you see this one when you come next time I can show you as well, this one is the electronic we have the, some people they don't like nicotine they want electric one, even in the night clubs in Liverpool I can show, 100% I can tell you the place name as well, they are allow to smoke the electric one in the premises without nowhere open.

33:43 BRT- Okay, I would have to consult the legislation but as far as I'm aware it doesn't differentiate when it comes to shisha pipes

OO- No it does, what it does

BRT- I'm saying Shisha pipes

OO- It's the shisha pipe

BRT- No, no but I'm just saying it doesn't diffirence, it doesn't distinguish between electric shisha pipes and coal and **inaudible** but in the actual legislation it just says shisha pipes

OO- Okay, okay, can I ask one question if your finished

BRT- Yes

OO- Okay, so we anywhere we go in the shopping centres or any like any businesses for example in my business, people come with the electric vape so they cannot smoke them, in the shopping centre everybody in the shopping centres

BRT- Are you on about the electronic cigarettes?

OO- It's same, this one is the electric one

34:32 BRT- That's what I'm saying, there is, in the actual legislation it mentions the electronic cigarettes separately, what I'm saying is in the, in the

OO- So the electric cigarette

TB- Just, just let Brioni finish and explain it to you

BRT- In the legislation it says electric cigarettes and vapes like that

OO- Yeah

BRT- It says that specifically and says that they are exempt unless said by the business, what I'm saying is in the actual legislation it doesn't say whether it is a normal shisha pipe or an electronic shisha pipe it just says shisha pipe

OO- Okay

BRT- Now, I can check that but like I said it the legislation it just says shisha pipe, which is different, obviously you're saying that's an electronic shisha pipe

OO- You know the shisha pipe, sorry I wait to you finish I do apologise

BRT- If that's an electronic shisha pipe, like I said it doesn't say whether an electronic shisha pipe is allowed or not because it just says shisha pipes are not allowed full stop it doesn't say whether the electronic or not, like it does with the electronic cigarettes.

OO- Okay

BRT- So, that would be something for me to check but as it stands at the moment in my interpretation of the law any shisha pipes whether it be electronic or not is not allowed to have if the roof is closed

OO- Okay, finished?

BRT- Yes

36:09 OO- Sorry, my aim for this electric vapes you put in your mouth, right?

BRT- Yes

OO- So you suck it yeah? So, this one is the exactly same system, but where is charcoal this time you can't smoke, something I smoke is charcoal so because people who are from the you know Asian countries they smoke that one usually but when they sometime you know we have European customers they don't want nicotine so they have electronic ones. So, these are little bit expensive, but we do serve this obviously and we, not long ago and first time we opened we only had the charcoal one, but we recently got this one, so we do electric one. This is good, this is for new system all moving to electric, so we will change all of them to electric in the future, but you know we testing

so we want to do this one or all of them, we got about 35-40 shishas and we want to change all of them to electric one because this is where it goes now.

This page is intentionally left blank

Appendix G – PACE interview with Abdullah Anik

BRT- Brioni Turner - Senior Environmental Health Officer

TB- Tracey Billington- Licensing Enforcement Officer

DA- David Allen – Environmental Health Officer

KA- Kadir Anik – Abdullah Anik's representative

AA- Abdullah Anik – owner of Swish Lounge

14:30 BRT - Ok so on the 9th of April you posted a video, live video to the Swish Lounge Facebook page which shows multiple people smoking shisha and cigarettes in the rear room with the roof closed which is now going to be played for you. This is exhibit **BRT/E4**

TB- Can you see that Brioni

BRT- Fine, yeah

KA- Yeah, I can remember this video yeah

BRT- So obviously this shows several people both smoking shisha and the lady with the blonde hair at the front will also be smoking, will be showing smoking cigarettes at the front.

KA- I can see that

15:30 BRT- So can you explain why after been told verbally on 4 occasions and in 2 warning letters there are still evidence in the public domain of you allowing people to smoke shisha and cigarettes in a substantially enclosed premises?

KA- The shisha pipes or electronic, so electronic shisha pipes I believe that you can smoke you're vape at home as well so, because we've taken, because we know that windows needs to be like the doors needs to be fitted in so until then we producing, we providing like electronic shishas to customers. But the cigarettes I mean as you can see on the video, it is a busy place. I mean theirs signs on there that smoking is not permitted, cigarettes are not

permitted and we do tell that when the customers are asking us. 'Can we smoke cigarette inside here' We tell them to go outside on the garden bit and smoke there but obviously being that busy in the premises I mean sometimes is not in our hands to like, I mean it is, it is visible there but it's not always our control like sometimes you know they just do it and then you can't even notice it so and it's a two minute thing, they will smoke it and you wouldn't notice it and the smoke that comes from the cigarette is the same that comes from out of vape. is the same smoke that comes out so we can't notice it sometimes unfortunately, but we do know it's not permitted there, it's not permitted to you know smoke a cigarette inside the premises without the roof being opened, we do understand that.

TB- Can I just ask a question there

BRT- Yes

17:25 TB- Wouldn't you be able to smell the cigarette smoke

KA- Not really because it's a big premises and it's, it mixes up with the shisha smoke, if you know the shisha like its flavoured so you can have apple flavour, you can have grape flavour, you can have blueberry, frozen blueberry so when it mixes up with that there's no chance that you can smell that and when it's one, one cigarette inside, it's probably 120 meter square there. There's no chance that you can smell that if its only one cigarette coz it mixes up with the other flavours and we've got 50 flavours, 50 different shisha flavours that we sell so, it's a bit of a tricky one you know and when it's busy like that I mean there's been time where we've seen customers opening up their cigarettes and we were there and said 'no you can't sir you can't smoke cigarettes inside, you can go outside or you can use our garden space' and we've done that probably 100 times but when it's busy like that it becomes impossible to see that one cigarette if you know what I mean.

TB- Okay

BRT- Okay, I'll be honest there are, that women probably has smoked two or at least two or maybe three cigarettes in the length of the video and this gentleman who sits next to her and also smoked a cigarette, so that video is about half an hour long and at no point do people seem to, I would've assumed at some point someone would have noticed in half an hour.

19:08 KA -We try our best to train our staff.

BRT- I understand but I'm

KA- We tell our staff when you see someone smoking a cigarette, please warn them if the roof is not opened, if the roof is opened, I don't see.

BRT- No, if the roof is open it's fine

KA- It's fine and we do know that, so I mean last couple of days it's been nice weather out there, the roof has been open, we are telling like, we give them ash trays sir you can you know you can smoke your cigarettes but like I said that day on that occasion with that person smoking two or three times, it's been that busy that I mean. My dad himself is an old guy, he's got. He's not always there so he's not always present so when it's night time he just goes upstairs and sleeps and rests and when it's Oz and Oz is a chef, Oz is the chef so he can't always inspect. So when he's making food it's impossible to go inside and check every table on there, I mean it is wrong we do accept that it is wrong, it shouldn't be the case but like I say it becomes impossible for us to inspect like every single table and the staff are you know we try to train them like I said, when the smoke mixes up with other shisha smoke and tobacco like the flavours then it becomes impossible for us to track and trace every single one of them.

BRT- Okay, On the 27th of April 2022 I visited the premises again and on arrival I found a couple smoking a shisha pipe with the roof completely closed. I now produce a copy of exhibit **BRT/E5**, a photo taken of the couple at the premises smoking, showing one of the couples smoking the shisha pipe and the roof closed.

KA- Thank you

21:00 BRT- I have since learned from Oz that this was possibly an electronic shisha pipe

KA- It is, I can tell it is

BRT- However at no point did Oz tell me that that was an electronic shisha pipe prior to this interview or his interview

KA- This is an electronic shisha pipe, and another thing is this window here is opened anyway

BRT- That doesn't matter because the roof is closed, you can have all the doors open if you'd had all the additional doors and have say that is less than 50 percent enclosed but until those additional doors are put in with the roof closed is still considered substantially enclosed even if the doors are open.

KA- Okay

BRT- That's the way the wording of the legislation is

21:50 KA- To be fair I think the legislation itself is not clear on this, I have to say this because why do I say this, my cousin he also owns a shisha lounge in London. He had the same issue I think he went to court for it and in the court the judge was like if someone is smoking a shisha and, on their site, if the window or if there was fresh air coming in and this is like where the shisha is sitting there they said it's fine and the judge ordered like he dismissed the claim and he just, so even the council there and they had a discussion I can remember because I went there as well to help him out because his English was poor. Even that time you know there was a lot of discussion, and the legislation was not clear on this, but the judge accepted this, but this is electronic anyways so.

TB- What, what council was that

KA- Hmm Hackney Council in London, Hackney

TB- Hackney okay

BRT- Okay

KA- I can even provide you with decision because I've read the decision myself where the judge accepts it, and he clearly makes a comment saying the legislation is not clear but having interpreted the legislation itself to me that's compliably.

BRT- okay

KA- That's what the judge said at that time

BRT- That, that's that judge. From our point of view, we have stated that until you get the additional doors in the roof has to be retracted when anyone smoking shisha now obviously, you're saying that that's an electronic shisha pipe

KA- Yes

23:40 BRT- At the point when I visited with Oz he didn't actually mention to me that that was an electronic shisha pipe I'm not saying it isn't but I'm just saying if that was the case, he didn't mention it to me at that point and say

KA- Have you got any recordings of that or anything like that

BRT- No

KA- So is not an evidence then, it's just like what you're saying

BRT- It's what I'm saying based on my interview

KA- Oz is told me this, or Oz didn't tell me this or maybe it wasn't discussed or maybe we didn't ask if it was an electronic shisha

BRT- I'll admit I didn't ask if it was an electronic shisha pipe but if it was he didn't mention to me to say that it was specifically an electronic shisha

KA- Well if it wasn't asked then he wouldn't mentioned it to you, I mean now it's being asked and produced with photos you're just confirming that it's an electronic shisha this one

BRT- Okay that's fine, but I'm just saying. Obviously, you have been given several opportunities in order to say why you have not, you still allowed people to smoke shisha and cigarettes in particular on your premises in an enclosed area. Do you have anything to say in relation to this is to why this is still happened?

24:55 KA- For allowing shisha and

BRT- And the cigarettes to be smoked

KA- Like I said we have two options of shisha, one electronic we have about 10 pipes there electronic and then sometimes when the weather is nice we use charcoal operated shisha pipes which most people prefer but like I said because of the surroundings and the things that we need to do and comply with so we tell our customers that unfortunately if the weather is not good we can only provide them with electronic shisha so, but in the last couple of days when the roof been open we happy to give them like charcoal operated one, so I don't think there is an issue on that regard but with cigarettes like I said umm I think you got that video there

TB- Yeah, I do apologize is just not loading again there

KA- Okay, I'm aware of that video and like you said its visible there, I'm not gonna deny that or anything it is there. But like I said the place was so busy that sometimes it becomes

impossible to track and trace everyone and every table and at that time I think my dad was not there himself and Oz was cooking he's the manager you know it's impossible for someone to, is just that our the difference is that it was impossible to track them, like when you ask me can you not smell the smoke, it's impossible

TB- Okay, is quiet a distinctive odour though isn't it cigarette smoke

KA- Yeah, I mean it is impossible though with the shisha flavours, I don't know if you've ever come across or have you ever tried a shisha vape or something like that, the smell is just similar and you can even have nicotine flavour on shishas and it just mixes up with the air, is impossible like coz theirs so much smoke in the room, it's impossible for us to see that small thing and on that occasion is been unfortunate. I mean we do try our best and like I said for hundred and hundred fifty time we warned people saying that you can't smoke cigarettes inside, you can go outside, or you can just use our garden space so that's all I can say on that.

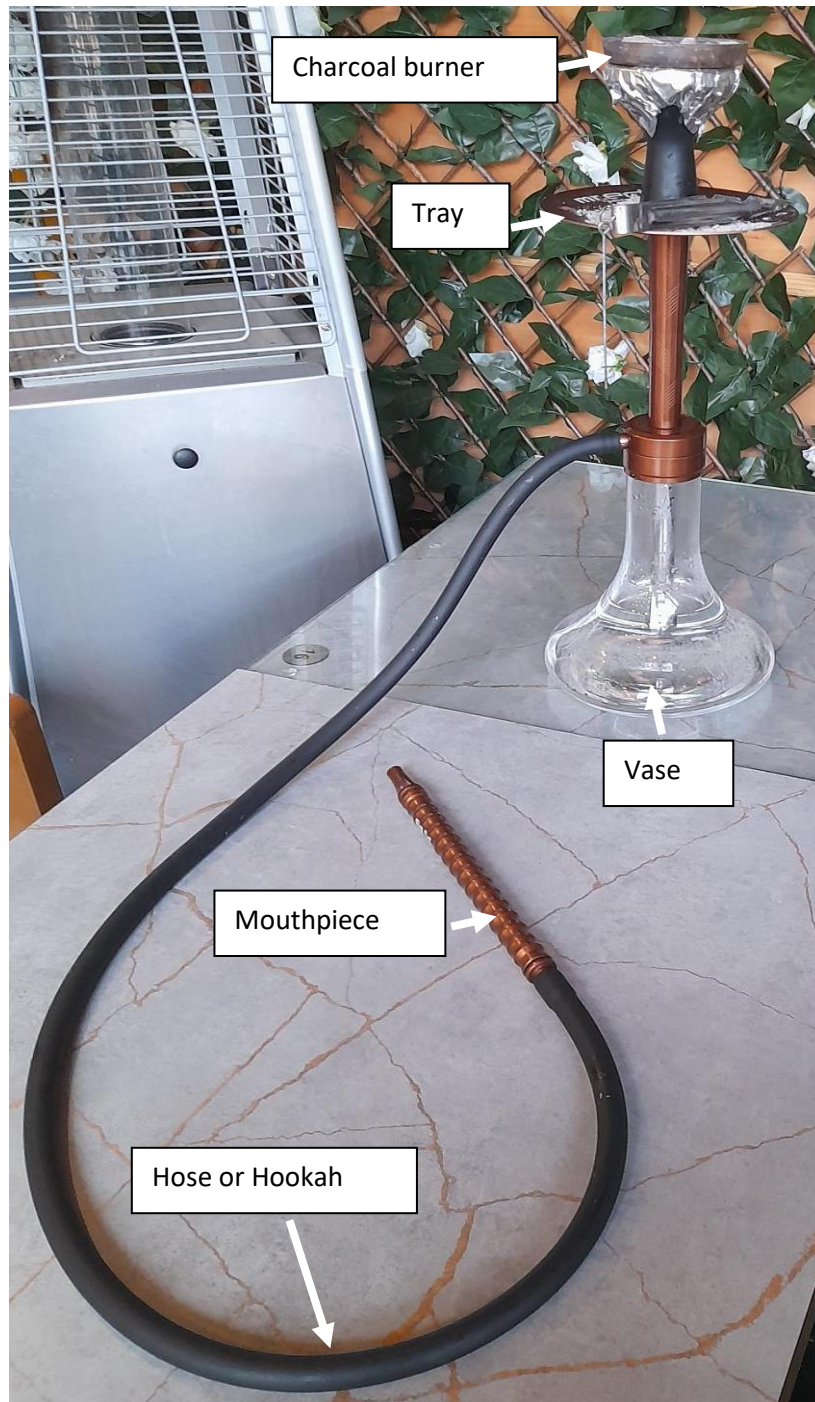
This page is intentionally left blank

Appendix H – Swish Lounge Visit 21/07/22

Discussion regarding electronic shisha pipes

In order to understand the differences between traditional shisha pipes and electronic shisha pipes I spoke to the manager Ogus Ozjaya and owner Abullah Anik to explain the differences in the 2 types.

A picture of a traditional shisha pipe is below, listing the different sections relevant in this case.



When a customer wants to have an electronic shisha rather than a traditional shisha the main pipe remains the same. The only piece of the shisha pipe that is changed is the mouthpiece section. Instead of the traditional mouthpiece being placed in the end of the hose an electronic mouthpiece

replaces the traditional mouthpiece at the end of the hose. Examples of the 2 different types of mouthpiece are shown below. The photo on the left is an example of the traditional mouthpieces available at Swish Lounge. The photo on the right is an example of the mouthpiece used when the shisha pipe is electronic. This is approximately 10-15cm in length, the traditional mouthpieces are much longer than this, and at least twice as long as the electronic version. When an electronic mouthpiece is put into the shisha hose, it is analogous to a person vaping.



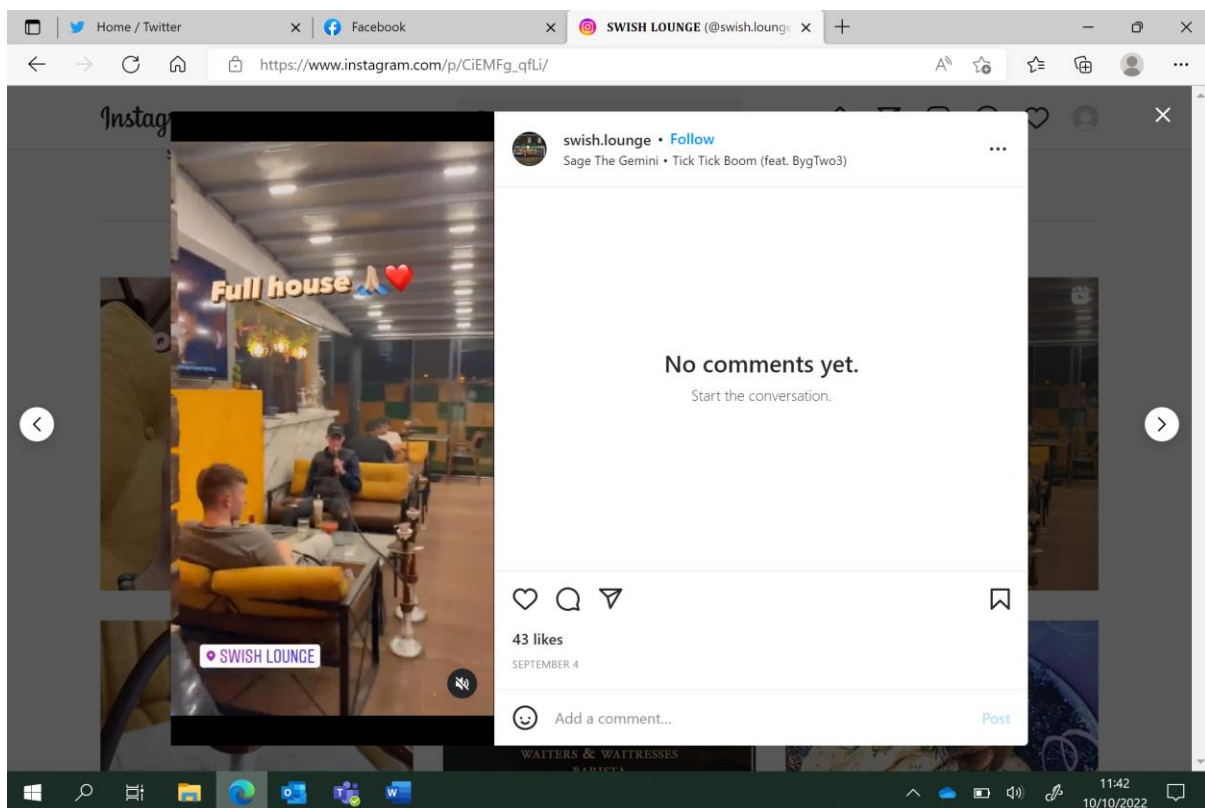
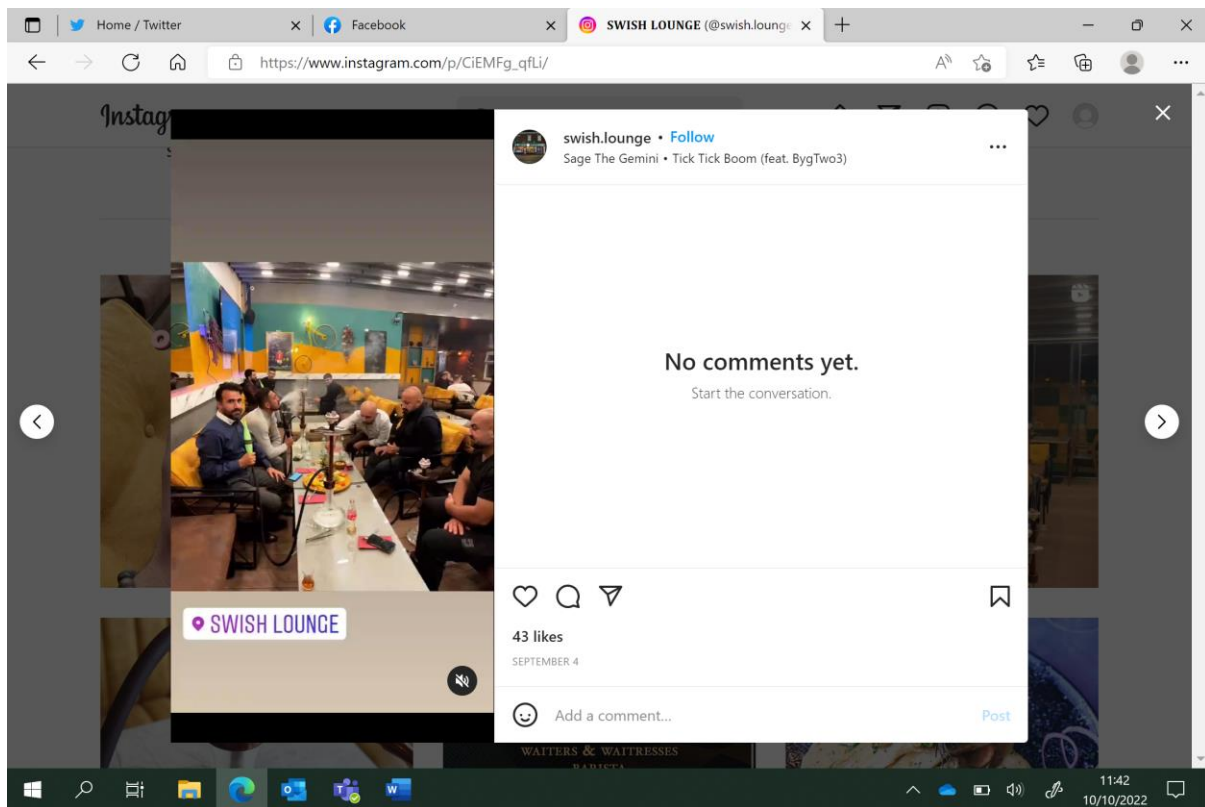
During the PACE interviews of both Ogus Ozjaya and Abdullah Anik they were shown the photo taken of the couple using a shisha pipe from the visit on 27/04/22, this photo is shown below. In both interviews they claimed that this was an electronic shisha and could determine this from looking at it. At the time of the PACE interview I was not aware of Swish Lounge providing electronic shisha pipes and as such was unaware of what these looked like when used.

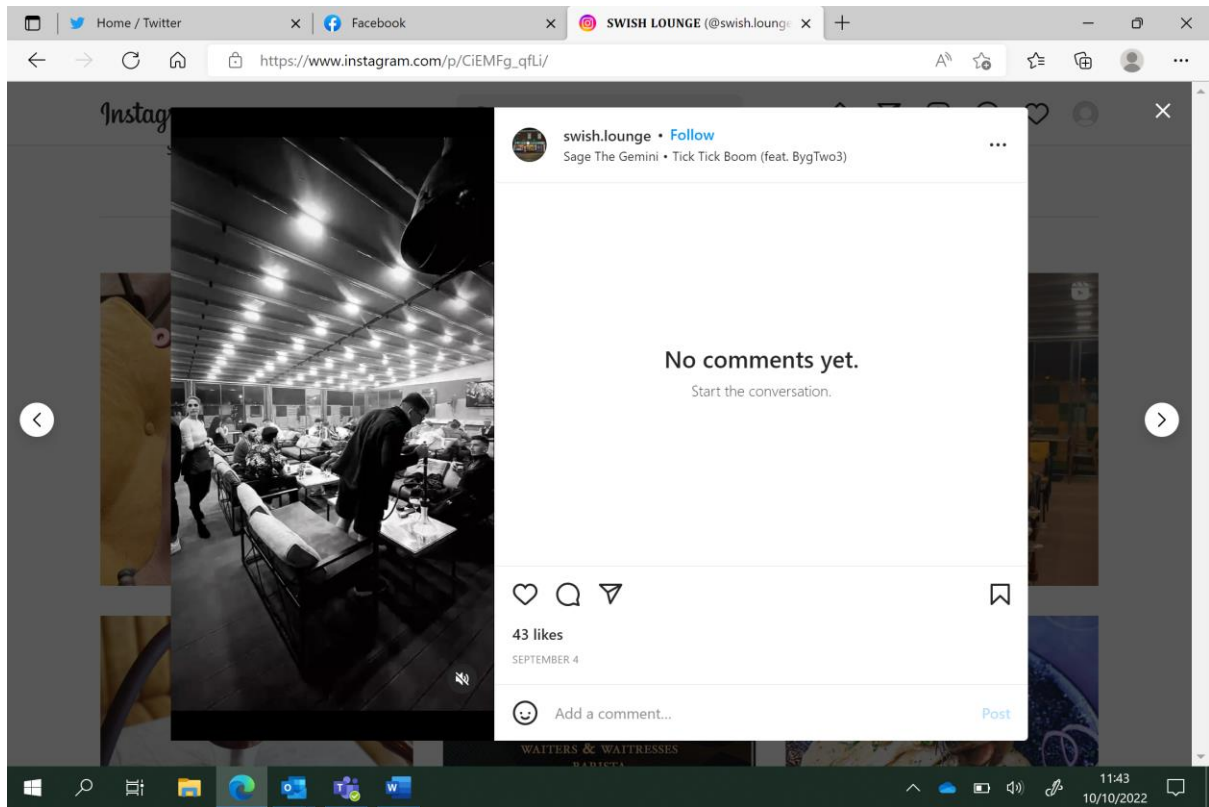


After undertaking an investigation on 21/07/22 to determine the differences between an electronic shisha pipe and a traditional shisha pipe, I believe that the image taken on 27/04/22 shows the couple using a traditional shisha pipe and not an electronic. This is not allowed under the requirements of Section 8 Heath Act 2006. As a result this may call into question the veracity of the statements made in the PACE interviews of Ogus Ozjaya and Abdullah Anik.

This page is intentionally left blank

Appendix I – Screenshots from Swish Lounge Instagram page





Appendix 2

Environmental Protection Team
Relevant Representation

From: XXXXX XXXX@cheshireeast.gov.uk
Sent: 14 October 2022 09:29
To: LICENSING (Cheshire East) <Licensing_CE@cheshireeast.gov.uk>
Subject: [OFFICIAL] Ref. 077307 - Application to Review a Premises Licence - Swish Lounge, Crewe

Good morning Licensing,

Please see Environmental Protection's response for The Swish Lounge, 31 Mill Street, Crewe.

"Environmental Protection has received one complaint of noise from amplified music since The Swish Lounge, 31 Mill Street, Crewe was granted its premises licence in March 2022. On following this services procedure, a licensed premises noise letter was sent to the Designated Premises Supervisor on 20th May 2022. On receipt of this letter Mr Oguz Ozkaya telephoned Amy Chilver, Enforcement Officer on 23rd May 2022, where Mr Ozkaya explained the premises would be reconsidering holding further events with a DJ instead only playing background music. Since this complaint was logged no action has been taken and no further complaints received."

If you require any further information please do not hesitate to contact me.

Kind regards
XXXX BSc, MSc, PIEMA | Cheshire East Council
Enforcement Officer – Environmental Protection
Westfields c/o Municipal Buildings, Earle Street, Crewe, CW1 2BJ

This page is intentionally left blank

The Swish Lounge Review

In response to the review of the premises and acting in the capacity as a responsible authority the Licensing Team has the following comments to make regarding issues identified with the premises.

The premises had been the subject of two complaints in September 2021 from music to serving alcohol to underage and serving alcohol without a licence. This prompted a joint visit from Licensing, Environmental Health, Planning, Commercial Services and Police Licensing and several follow up visits from Cheshire East and Police Licensing. Advice was given to the premises in a letter (Appendix A), and the premises operated under Temporary Event notices until they secured a Premises Licence. No further contact was able to be made with the complainant, therefore no further action was able to be taken regarding the underage sales and alcohol sales as there was no evidence to show the premises had been trading unlawfully.

The premises then became the subject of further noise complaints over the Christmas Period namely

- 22nd December 2021 until 01.30 hours on 23rd December 2021
- 25th December 2021 until 05.30 hours on 26th December 2021
- 31st December 2021 until 02.00 hours on 1st January 2022

Cheshire East CCTV were approached to secure footage showing the frontage of the premises. The footage showed the premises had closed at 23.00 hours on 22nd December. On 25th Dec Cheshire East CCTV footage showed the premises lights were switched off at 04.22 hours on 26th Dec. When questioned, Mr Anik, the Business Owner, said he had family visiting and the premises hadn't been open to the public on Christmas night. Regarding New Year's Eve, the premises had applied for a Temporary Event Notice until 23.00 hours. Mr Anik admitted the premises stayed open past 23.00 hours for 2 hours, but he was adamant no alcohol was served past 23.00 hours and the only noise was background noise from the Televisions in the premises. I asked to verify this on the premises own CCTV, but they were unable to access the footage back to the date in question. The Planning Enforcement Team were advised of a breach of the Planning Conditions for the premises which requires the premises to be closed by 23.00 hours. Mr Anik was advised of the closure of the complaint investigation on 14th February 2022 (Appendix B).

On 29th April 2022, Licensing was advised of a breach of the Smoking Legislation by an Officer in the Commercial Team. The Officer also advised a video had been placed on Social Media showing a time of 23.23 hours on 9th April 2022.

Members should be made aware of the times the premises are allowed to undertake Licensable activities namely:

Recorded Music (Indoors) and Anything of similar desc to live music, recorded music and dance (Indoors)

Monday to Sunday 11:00 to 23:00

Sale and supply of alcohol

Monday to Sunday 11:00 to 22:45

A visit was made to the Premises with Planning Enforcement to look at the premises CCTV footage, we were advised the CCTV was not currently operational.

Members should be made aware of the following conditions on the Premises Licence for Swish Lounge relating to the CCTV system:

- A CCTV system shall be used and shall be designed and installed in accordance with the Cheshire Constabulary's CCTV guidance document called 'CCTV in Licensed Premises - An Operational Requirement'. This system shall be in operation at all times when licensable activities are taking place.
- Recorded CCTV images will be maintained and stored for a period of twenty-eight days.

The Manager, Mr Oguz Ozkaya said an engineer was looking at the problem, but so far had been unable to repair the system.

The premises were advised of the conditions on their licence relating to the CCTV.

Mr Ozkaya also said the video was a promotional video that had been filmed much earlier with actors and placed on social media once it had been edited. Mr Ozkaya supplied the name of the videographer, but no contact was able to be made with the person to verify Mr Ozkaya's explanation.

On 16th May 2022, Environmental Health and Licensing received a complaint regarding loud music being played from Swish Lounge after midnight. Environmental Health were unable to contact the complainants to validate the complaint. The Manager from the Swish Lounge was able to show CCTV footage from the weekend after the complaints, which showed the bar closed at 22.00 hours but was unable to show the footage from the weekend the complaints originated from as the system had been repaired.

On 6th June 2022, I attended an Interview under Caution with Brioni Turner, the Officer from Commercial Services who was dealing with the smoking complaint at the premises. During the interview Ms Turner showed the interviewees a picture of a Shisha pipe, all interviewees said the Shisha pipe in the picture was an electronic Shisha.

On 21st July 2022 I attended the premises with Ms Turner and the Manager Mr Ozkaya showed us the difference between the Shisha pipes. The electronic Shisha had a very short mouthpiece whilst the normal Shisha used a very long mouthpiece before it connected to the pipe.

On 30th September 2022, I attended a visit to the Swish Lounge with Ms Turner. The bar had been moved and we asked to review the CCTV footage. Mr Ozkaya said the system was not working as the bar had been moved to the room in which the CCTV screens was originally housed.

On 12th October 2022, Mr Abdullah Anik was issued with a formal written warning regarding breaches of the Premises Licence relating to the CCTV and he was notified a Premises Licence variation needed to be submitted to reflect the change in the layout of the premises (Appendix C). All applications for a premises licence must be accompanied by a plan that shows the area where licensable activities will take place. In accordance with the relevant regulations, a plan must also show, amongst other things, the location of a fixed structure such as a bar area. Mr Anik responded to the letter by advising a Customer Contact Officer the system was working and recording despite the screen being off. The formal written warning has not been withdrawn and, to date, a variation for the premises has not been received.

A further visit was made to the premises to inspect the CCTV system on 7th November 2022. I was unable to verify if the CCTV was working and storing recordings for twenty-eight days in accordance with the Licensing Conditions as Mr Ozkaya was not available and Mr Abdul was unable to access the system.

This page is intentionally left blank



Appendix A

Private and Confidential
FAO: Mr Abdullah Anik
C/o Swish Lounge
31 Mill Street
Crewe
Cheshire
CW2 7AJ

Municipal Buildings
Earle Street
Crewe
Cheshire
CW1 2BJ

0300 123 5015
www.cheshireeast.gov.uk
licensing@cheshireeast.gov.uk
Direct Dial: 01270 686722

Date: 18 November 2021

Our Ref: 073618

Dear Mr Anik

**SWISH LOUNGE, 31 MILL STREET, CREWE
LICENSING ACT 2003**

I write to you in your capacity as the Director of The Swish Lounge.

Further to a number of visits conducted by myself and Kelly Warburton from the Police Licensing Department. I regret to inform you we have received a complaint of alcohol allegedly being served on the premises when a Premises Licence or Temporary Event Notice was not in place.

During the visits, you were advised as a Premises Licence was not in place you were unable to undertake licensable activities and you were also advised you had the option of applying for Temporary Event Notice's until a licence had been granted.

During the visits you were also advised that undertaking Licensable Activities without a current Premises Licence in place, you were committing offences under the Licensing Act 2003 for which upon successful prosecution you may be liable for an unlimited fine or subject to imprisonment for six months, or both.

For your information Licensable Activities include:

The sale of alcohol
Serving hot food or beverages between the hours of 23.00 and 05.00
Theatrical performance
The showing of films
Indoor sporting events
Boxing or wrestling (indoor or outdoor)
Live music
Recorded music
Dance
Facilities for making music
Dancing facilities

You have applied for four Temporary Event Notice's, three of which were deemed to be invalid.

The complaint arises from 23rd October 2021, I can see from our records you had applied for a Temporary Event Notice for this date, but it was rejected, and you were advised accordingly both by email and letter (copy attached).

I am seeking to obtain a witness statement from the complainant, should they state they were served alcohol on this date on your premises, I will be taking formal action against yourself and other responsible persons.

If you wish to discuss or need any clarification on the above, please do not hesitate to contact me directly.

Yours sincerely

Tracey Billington
Licensing Enforcement Officer



Working for a brighter future together

Appendix B

Private and Confidential
FAO: Mr Anik Abdul
C/o Swish Lounge
31 Mill Street
Crewe
Cheshire
CW2 7AJ

Regulatory Services and Health
Licensing Team
Municipal Buildings
Earle Street
Crewe
CW1 2BJ
Tel: 0300 123 5015
www.cheshireeast.gov.uk
licensing@cheshireeast.gov.uk

DATE: 14th February 2022

OUR REF: 074162

Dear Mr Abdul

LICENSING ACT 2003
SWISH LOUNGE, MILL STREET, CREWE

You may recall me discussing some complaints that Cheshire East Council have received of loud music allegedly emanating from your premises over the Christmas and New Year period.

I have now finished my investigation into the complaint which involved contacting the complainant, speaking with yourselves and reviewing CCTV footage from Cheshire East Council. I am satisfied that no breaches of Licensing Legislation have taken place, therefore I am now closing the complaint with **NO FURTHER ACTION**.

However, by your own admission, you have allowed customers to stay on the premises past 23.00 hours on 31st December 2021. I have therefore passed this information over to the Planning Enforcement Department for their information.

If you have any questions, please do not hesitate to contact me.

Yours Sincerely

Tracey Billington

Tracey Billington
Licensing Enforcement Officer

This page is intentionally left blank

Appendix C



Private and Confidential
FAO: Mr Abdullah Anik
C/o Swish Lounge
31 Mill Street
Crewe
Cheshire
CW2 7AJ

Municipal Buildings
Earle Street
Crewe
Cheshire
CW1 2BJ

0300 123 5015
www.cheshireeast.gov.uk
licensing@cheshireeast.gov.uk
Direct Dial: 01270 686722

Date: 12th October 2022

Our Ref: 073618

Dear Mr Anik

**SWISH LOUNGE, 31 MILL STREET, CREWE
LICENSING ACT 2003**

I write to you in your capacity as the Premises Licence Holder of the above premises regarding a visit conducted on Friday 30th September 2022 with Ms Turner from Commercial Services at Cheshire East Council.

During the visit, we requested to view CCTV footage and we were informed the CCTV system was not working due to the bar being moved and the CCTV having not been connected back up.

I would like to take this opportunity to remind you, there are conditions on the premises licence for the Swish Lounge related to CCTV namely:

- A CCTV system shall be in operation at all times licensable activities are taking place at the Premises.
- Recorded CCTV images will be maintained and stored for a period of twenty-eight days.

Therefore, by undertaking Licensable Activities in breach of the conditions detailed on the Premises Licence, you have been committing offences under the Licensing Act 2003 for which upon successful prosecution you may be liable for an unlimited fine or subject to imprisonment for six months, or both.

This is the second time in less than 12 months, the CCTV system at the premises has been found **NOT** to be compliant with the conditions on the premises licence and you are therefore being issued with a **FORMAL WARNING** regarding breaches of the licence.

In addition, an application to vary the Premises Licence is required to be submitted as a matter of urgency to reflect the change in the layout of the premises.

If you wish to discuss or need any clarification on the above, please do not hesitate to contact me directly.

Yours sincerely

Tracey Billington
Licensing Enforcement Officer



Premises Licence

Premises Licence Number:

PREM1406

Part 1 - Premises Details

Postal address of Premises or, if none, ordnance survey map reference or description:

Swish Lounge
31 Mill Street
Crewe
Cheshire East

Post Town: Crewe

Post Code: CW2 7AJ

Telephone Number: 01270213939

Where the Licence is time limited, the dates:

Not applicable

Licensable activities authorised by the Licence:

Recorded Music
Sale and supply of alcohol
Anything of similar desc to live music, recorded music and dance

The times the Licence authorises the carrying out of licensable activities:

Recorded Music (Indoors) and Anything of similar desc to live music, recorded music and dance (Indoors)

Monday to Sunday 11:00 to 23:00

Sale and supply of alcohol

Monday to Sunday 11:00 to 22:45

The opening hours of the Premises:

Monday to Sunday 11:00 to 23:00

From the end of permitted hours on Christmas Eve to 04.00 on Christmas Day. From the end of permitted hours on Christmas Day to 04.00 on Boxing Day. From the end of permitted hours on New Years Eve to 04.00 on New Years Day.

Where the Licence authorises supplies of alcohol, whether these are on and/or off supplies:

On sales only

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of Premises Licence:

Mr Abdullah Anik
29 Mill Street
Crewe
Cheshire East
CW2 7AJ

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

Not applicable

Name, address and telephone number of designated Premises Supervisor where the Premises Licence authorises for the supply of alcohol:

Mr Abdullah Anik
xxxx

Personal Licence number and issuing authority of Personal Licence held by designated Premises Supervisor where the Premises Licence authorises for the supply of alcohol:

Personal Licence Number: PERS2512

Issuing Authority: Cheshire East

Issued on: 2nd March 2022

Signed By Mr Nathan Murphy
On Behalf Of Cheshire East Council

Annex 2 - Conditions consistent with the Operating Schedule**Prevention of Crime and Disorder**

1. A CCTV system shall be used and shall be designed and installed in accordance with the Cheshire Constabulary's CCTV guidance document called 'CCTV in Licensed Premises - An Operational Requirement'. This system shall be in operation at all times when licensable activities are taking place.

Prevention of Public Nuisance

2. Thirty minutes before the end of the time permitted for the provision of entertainment the, music levels shall be gradually reduced to a lower volume and temp.

Annex 3 - Conditions attached after a hearing by the Licensing Authority

1. Noise emanating from the Premises shall not be clearly audible at the boundary of the nearest residential property.
2. Noise emanating from the Premises shall not be clearly audible at the boundary of noise sensitive properties.
3. All external windows and doors at the Premises shall be closed whilst live and recorded music or anything of a similar description to live or recorded music or dance is taking place inside the Premises except for normal access and egress purposes.
4. Regular noise assessments shall be undertaken by a competent person (either the Licensee or Manager) around the boundary of the Premises when live and recorded music or anything of a similar description to live or recorded music or dance is taking place inside the Premises and steps shall be taken to reduce the level of noise where it is likely to cause a disturbance to local residents.
5. The noise assessments shall be undertaken during the operating hours of the Premises.
6. A written record shall be made of those assessments in a log book, kept for that purpose and shall include; the time and date of the checks, the person making them, and in what location and the outcome - including any remedial action in order to reduce the level of noise where it is likely to cause a disturbance to local residents.
7. There shall be no disposal of bottles outside the premises between the hours of 21:00 and 09:00.
8. No disposal of refuse outside the premises or deliveries made to the premises between 21:00 and 07:00.
9. A CCTV system shall be in operation at all times licensable activities are taking place at the Premises.
10. Recorded CCTV images will be maintained and stored for a period of twenty-eight days.
11. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public. This staff member shall be able to provide a Police officer or an authorised officer of the licensing authority data or footage upon request.
12. Designated supervisors will need to be able to demonstrate the following:

- a. Recordings are fit for their intended purpose.
 - b. Good quality images are presented to the officer in a format that can be replayed on a standard computer.
 - c. The supervisor has an understanding of the equipment/training.
 - d. Management records are kept,
 - e. Maintenance agreements and records are maintained,
 - f. Data Protection principles and signage are in place.
13. A Challenge 25 policy shall be operated at the Premises at all times.
14. The only forms of ID that shall be accepted (at the discretion of the Management) as proof of age are:
- a. A valid passport.
 - b. A valid photographic driving licence.
 - c. A PASS approved proof of age card.
 - d. A HM Services Warrant Card or other reliable photo ID (that has been approved for acceptance by the Police or an Officer of the Local Authority).
15. Publicity materials notifying customers of the operation of the Challenge 25 scheme shall be displayed at the premises.
16. The Designated Premises Supervisor or Premises Licence Holder shall operate and maintain an up-to-date Register of Refusals of Sale of Alcohol, indicating the date, time and reason for refusal which shall be made available for inspection by Local Authority Officers and the Police.
17. The DPS or other responsible person shall check and sign the register once a week. Alternatively, an electronic point of sale refusals log shall be kept.
18. A documented training programme shall be introduced for all staff in a position to sell, serve or deliver alcohol. A written record for each member of staff shall be kept of the content of such training and shall be made available for inspection at the request of Local Authority Officers and Police.
19. The DPS or Premises Licence Holder shall conduct regular training reviews with all members of staff authorised to sell, serve or deliver alcohol in order to reinforce the training and to promote best practice. A written record for each member of staff shall be kept of the content of such reviews and shall be made available for inspection at the request of Local Authority Officers and Police.



DECISION NOTICE

LICENSING ACT 2003

Applicant:	Mr Abdullah Anik 29 Mill Street Crewe CW2 7AJ
Application:	Premises Licence
Premises:	31 Mill Street Crewe CW2 7AJ
Application Hearing:	22 nd February 2022
Committee:	Licensing Act Sub Committee of Cheshire East Council

Committee Decision

The application for a Premises Licence at 31 Mill Street, Crewe, is granted with Additional Conditions.

Additional Conditions

The following conditions shall apply to the Premises Licence:

- Noise emanating from the Premises shall not be clearly audible at the boundary of the nearest residential property.
- Noise emanating from the Premises shall not be clearly audible at the boundary of noise sensitive properties.
- All external windows and doors at the Premises shall be closed whilst live and recorded music or anything of a similar description to live or recorded music or dance is taking place inside the Premises except for normal access and egress purposes.
- Regular noise assessments shall be undertaken by a competent person (either the Licensee or Manager) around the boundary of the Premises when live and recorded music or anything of a similar description to live or recorded music or dance is taking place inside the Premises and steps shall be taken to reduce the level of noise where it is likely to cause a disturbance to local residents.
- The noise assessments shall be undertaken during the operating hours of the Premises.

- A written record shall be made of those assessments in a log book, kept for that purpose and shall include; the time and date of the checks, the person making them, and in what location and the outcome - including any remedial action in order to reduce the level of noise where it is likely to cause a disturbance to local residents.
- There shall be no disposal of bottles outside the premises between the hours of 21.00 and 09.00.
- No disposal of refuse outside the premises or deliveries made to the premises between 21.00 and 0700.
- A CCTV system shall be in operation at all times licensable activities are taking place at the Premises.
- Recorded CCTV images will be maintained and stored for a period of twenty-eight days.
- A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public. This staff member shall be able to provide a Police officer or an authorised officer of the licensing authority data or footage upon request.
- Designated supervisors will need to be able to demonstrate the following:
 - Recordings are fit for their intended purpose.
 - Good quality images are presented to the officer in a format that can be replayed on a standard computer.
 - The supervisor has an understanding of the equipment/training.
 - Management records are kept,
 - Maintenance agreements and records are maintained,
 - Data Protection principles and signage are in place.
- A Challenge 25 policy shall be operated at the Premises at all times.
- The only forms of ID that shall be accepted (at the discretion of the Management) as proof of age are:
 - A valid passport.
 - A valid photographic driving licence.
 - A PASS approved proof of age card.
 - A HM Services Warrant Card or other reliable photo ID (that has been approved for acceptance by the Police or an Officer of the Local Authority).
- Publicity materials notifying customers of the operation of the Challenge 25 scheme shall be displayed at the premises.
- The Designated Premises Supervisor or Premises Licence Holder shall operate and maintain an up-to-date Register of Refusals of Sale of Alcohol, indicating the date, time and reason for refusal which shall be made available for inspection by Local Authority Officers and the Police.
- The DPS or other responsible person shall check and sign the register once a week. Alternatively, an electronic point of sale refusals log shall be kept.

- A documented training programme shall be introduced for all staff in a position to sell, serve or deliver alcohol. A written record for each member of staff shall be kept of the content of such training and shall be made available for inspection at the request of Local Authority Officers and Police.
- The DPS or Premises Licence Holder shall conduct regular training reviews with all members of staff authorised to sell, serve or deliver alcohol in order to reinforce the training and to promote best practice. A written record for each member of staff shall be kept of the content of such reviews and shall be made available for inspection at the request of Local Authority Officers and Police.

Reasons

To protect the interests of residents and patrons and to ensure the promotion of the licensing objectives of:

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

Application

The application is for licensable activities to be undertaken at premises in Crewe trading as a Turkish restaurant with the name Swish Lounge. Oral representations in support of the application were received from Mr Kadir Anik on behalf of the Applicant. In summary these were:

- i) This is a new business in the area. A Turkish Restaurant.
- ii) A considerable amount of money has been spent on the Premises. It has already got good reviews online (Facebook, Trip Advisor). It has made 8 local jobs. If they had to close there would be 8 job losses. The Applicant has spent £300k to build up the business.
- iii) The Applicant wants to sell alcohol for his customers as he feels it would be beneficial to the business. He sells coffee and deserts now. The Premises was previously Square One which was a bar with a premises license and music.
- iv) The hours sought are comparable to surrounding businesses in Crewe. This is a busy street with an Indian restaurant next door and a pub on the corner which open until late at night.
- v) The Applicant has been in the area for 20 years and has been an active businessman.
- vi) The Applicant is aware of complaints about waste. He has collections of non-domestic waste. It is collected from a pathway around the back of the Premises leading to Pedley Street. Bottles are taken from there. They are kept in black bin bags and then put in blue bins for glass with the cans.
- vii) The Applicant is aware of complaints about noise. Square One had live bands. He will not be doing live bands. He just has basic speakers. Other restaurants and bars around use the same systems until the early hours. In the garden there is a glass extension with a retractable roof. This has already been approved by Planning. The music in the glass house is background and not for dancing. The Applicant no longer wants a licence for dancing.
- viii) This is not a bar or nightclub. There are child areas in the restaurant. This is not a membership club. It is a shisha lounge and Turkish restaurant.
- ix) The Applicant is happy to work with Responsible Authorities and neighbours but if the license is not granted the business will close. It is noted that Environmental Health did not find any issues when they visited.

Representations

There were relevant representations from two of the statutory consultees to the application. These were from the Environmental Health Department of Cheshire East Council as the Responsible Authority and Cheshire Police. These related to the prevention of public nuisance caused by noise, prevention of crime and disorder at the Premises and to protect children from harm. In return for agreeing to withdraw the representation the Applicant agreed to the Additional Conditions being imposed.

There were no other relevant representations from the statutory consultees to the application.

There were two relevant representations objecting to the application which between them engaged the licensing objective of prevention of public nuisance. Oral submissions were heard from Mr Barrie Davies and Mr Denis Brogan. In summary these were:

- i) Barrie Davies has owned the Waverley Hotel for 35 years and this the first time he has complained.
- ii) When the Premises was Square One, the operation was from the front of the building on Mill Street. Now there is a glass conservatory on the rear it creates a lot of noise. Music has been played loudly until 5am.
- iii) The impact of Swish Lounge has had a big effect on the hotel. People in the hotel are unable to sleep and have left complaints.
- iv) The noise from the large extractors is considerable. Would like the Council to look at these.
- v) The music and shouting is disturbing people. The glass conservatory has no sound proofing and is a big problem.
- vi) The extractors are odorous and the smoking from the Premises make alarms go off in the hotel when doors and windows are open.
- vii) Do not know why the venue continues beyond 11pm. Concerned if the license is given the Applicant will not adhere to it.

The Sub Committee also took guidance from Environmental Health Officers present about the Premises. They advised:

- i) They looked at noise nuisance complaints but do not consider it a statutory nuisance.
- ii) They have asked for conditions to reduce impacts. These conditions are for the Premises to manage everyday operations.
- iii) There is current planning application for the two chimney extraction units but this hasn't been approved yet. The glass conservatory has been approved though.

Determination

In consideration of the application, the Sub-Committee took into account:

- The oral and written representations made by all parties.
- The Application and Operating Schedule attached to this Notice
- The four licensing objectives (namely the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm) and the steps appropriate to promote them.
- The Secretary of State's Guidance under the Licensing Act 2003 (April 2018).
- Cheshire East Borough Council's Statement of Licensing Policy.

The Sub Committee is mindful that in the absence of relevant representations the default position for the Licensing Authority is that it must grant the licence in accordance with the application.

Where an application comes before the Sub Committee because of relevant representations, having regard to those representations the Sub Committee must take such of the following steps as it considers appropriate for the promotion of the licensing objectives:

- a) Grant the licence subject to conditions.
- b) Exclude from the licence any of the licensable activities to which the application relates.
- c) Refuse to specify a person as the premises supervisor.
- d) Reject the application.

The Sub Committee determined the application should be granted with Additional Conditions. In coming to this decision, the Sub Committee considered whether the licensing objectives would not be promoted. These are:

The prevention of crime and disorder

The Cheshire East Statement of Licensing Policy 2019 to 2024 requires the Licensing Authority to consider whether the premises to be licensed makes or will make a detrimental contribution to levels of crime and disorder and whether the Applicants Operating Schedule is based on an adequate risk assessment of the likelihood of crime and disorder occurring as a result of the application.

Representations had been made by Cheshire Police on what steps it thought appropriate for the promotion of this licensing objective. These had been accepted by the Applicant. These went considerably further than the Applicant's Operating Schedule. No other representations about crime and disorder at the Premises had been made. Comment had been made by the Licensing Authority about infringement of Temporary Event Notices, but no action was taken, and no criminal activity found. As a result little weight has been attached to this.

The Sub Committee is satisfied that the adoption of the conditions requested by the Police have sufficient safeguards to prevent crime and disorder arising from licensable activities at the Premises. It reminds the Applicant that the Police, Local Authority and residents have the ability to seek a review of the Premises Licence in the event this objective is being undermined.

Public safety

The Cheshire East Statement of Licensing Policy 2019 to 2024 requires the Licensing Authority to have regard the physical safety of customers using the premises to be licensed. It is not concerned with public health.

A representation had been made about the safety of the public using the Premises. A locked fire escape. Whilst this is clearly serious the Sub Committee has nothing else to support this allegation such as a picture or report to the relevant authorities. It has not therefore placed much weight on its source and is satisfied that the conditions requested by the Police and adopted by the Applicant has sufficient safeguards to ensure public safety arising from licensable activities at the Premises.

The prevention of public nuisance

There was opposition to the application based on noise and general nuisance to the local residents.

The Cheshire East Statement of Licensing Policy 2019 to 2024 requires the Licensing Authority to consider the potential impact of the licensed premises on the surrounding locality and will consider, the type of licensed activity, the proposed hours of operation, the capacity of the premises, the character of the area and the proximity to local residents.

There had been relevant objections that:

- Now there is a glass conservatory on the rear of the Premises it creates a lot of noise. Music has been played loudly until 5am. It has no sound proofing and is a big problem.
- People in the adjoining hotel are unable to sleep and have left complaints.
- The noise and smell from the large extractors are considerable.
- The extractors and the smoking from the Premises make alarms go off in the hotel when its doors and windows are open.

The Premises is already in a developed area with established similar premises operating similar hours. The Sub Committee does not feel the Premises would be unsuitable for the area it is intending to operate in. An element of noise and odour is to be expected. The view of Environmental Health was therefore important for the Sub Committee in this regard.

They looked at noise nuisance complaints about the Premises. They felt these could be managed by the imposition of conditions to reduce impacts. These conditions are for the Premises to manage everyday operations. In short:

- Noise emanating from the Premises is not to be clearly audible at the boundary of the nearest residential property.
- Noise emanating from the Premises is not to be clearly audible at the boundary of noise sensitive properties.
- All external windows and doors at the Premises shall be closed whilst live and recorded music or anything of a similar description to live or recorded music or dance is taking place inside the Premises.
- Regular noise assessments shall be undertaken around the boundary of the Premises when live and recorded music or anything of a similar description to live or recorded music or dance is taking place inside the Premises and steps shall be taken to reduce the level of noise where it is likely to cause a disturbance to local residents.

The Applicant has agreed to these conditions on his licence. They are what Environmental Health feel is necessary to keep nuisance from his everyday operations to a minimum. The Sub Committee does not therefore feel a need to go behind these to be satisfied that this licensing objective would not be undermined by the licensing of the Premises.

The Sub Committee recognised odours can be a nuisance but is again mindful of the location of the Premises and that similar business are nearby. Environmental Health has made no comment on odour pollution or the noise of the extractors. The Applicant has a planning application for new and improved extractors in place of what is already there. The Sub Committee places weight on the fact that extractors are and have been operating from the Premises for some time and before the Applicant's business. Odours would not be new or unexpected.

.

The Sub Committee is again satisfied that the objective of prevention of public nuisance arising from licensable activities at the Premises would not be undermined. However, as before, the Applicant is reminded that the Police, Local Authority and residents has the ability to seek a review of the Premises Licence in the event this objective is not upheld in the future.

The protection of children from harm

The Cheshire East Statement of Licensing Policy 2019 to 2024 requires the Licensing Authority to consider whether there are effective measures to check the age of those young people who appear to be under 25, to ensure alcohol is not sold to those under 18 and those under 16 are accompanied in alcohol led premises. Whether the supply of alcohol for consumption on the premises is the exclusive or primary purpose.

It was noted that no objection had been forthcoming by Children's Services. Representations had been made by Cheshire Police on what steps it thought appropriate for the promotion of this licensing objective. These had been accepted by the Applicant. These went considerably further than the Applicant's Operating Schedule.

There was a Challenge 25 Policy and required acceptable means of identification. The primary purpose of the Premises is not to sell alcohol but to provide food. The Sub Committee is satisfied that the adoption of the conditions requested by the Police have sufficient safeguards to prevent harm to children arising from licensable activities at the Premise.

Conclusion

Overall, the Sub Committee felt the licensing objectives would not be undermined by the granting of a Premises Licence to the Applicant. It determined its application as follows:

Licensed Premises

31 Mill Street
Crewe
CW2 7AJ

The opening hours of the Premises:

Monday to Sunday: 11.00 – 23.00

Save for:

- From the end of permitted hours on Christmas Eve to 04.00 on Christmas Day.
- From the end of permitted hours on Christmas Day to 04.00 on Boxing Day.
- From the end of permitted hours on New Years Eve to 04.00 on New Years Day.

Sale and Supply of alcohol

Monday to Sunday: 11.00 – 22.45

Provision of Recorded Music

Monday to Sunday: 11.00 – 23.00

Indoors only.

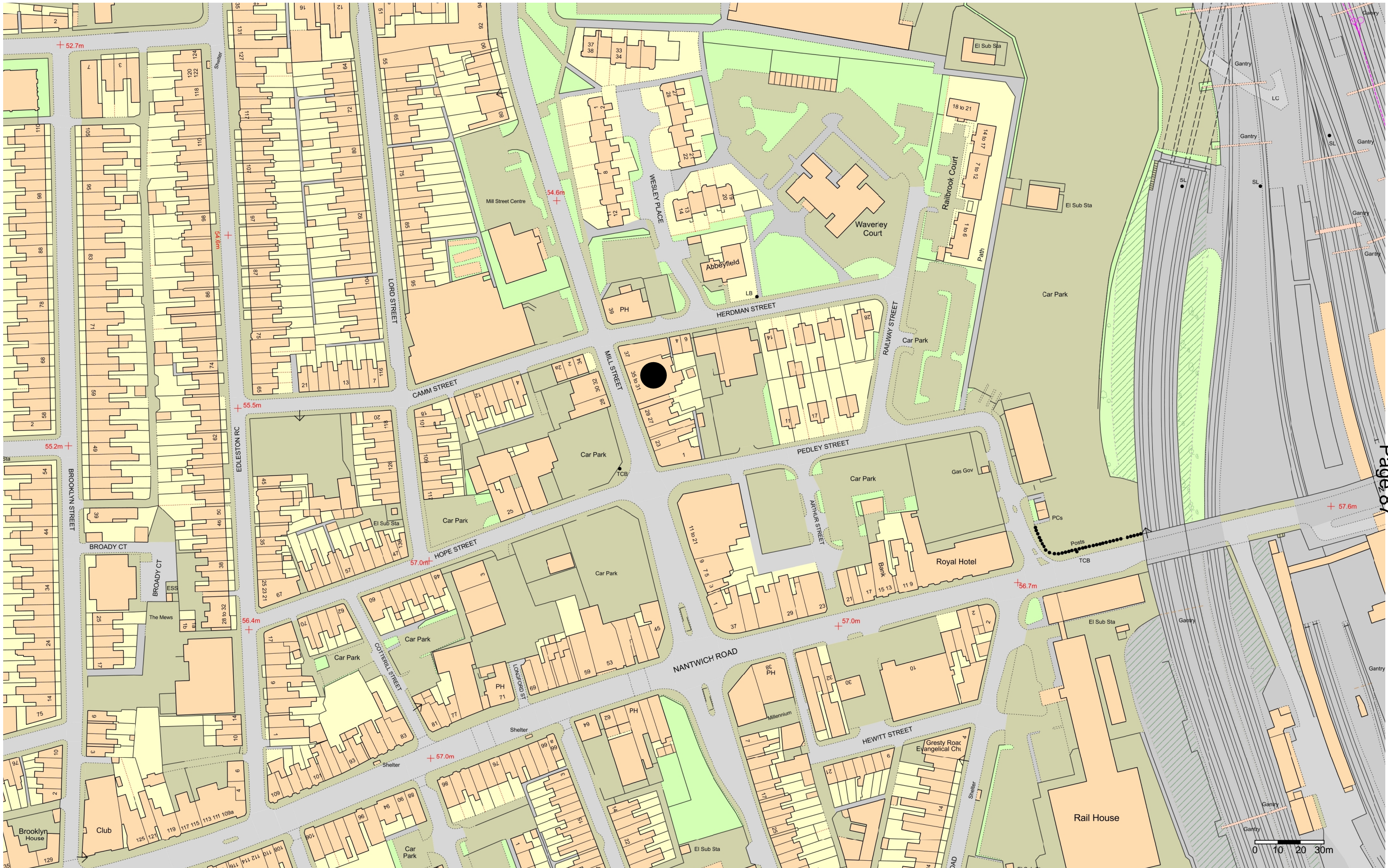
Provision of anything of a similar description to live music, recorded music or performances of dance

Monday to Sunday: 11.00 – 23.00
Indoors only.

Dated: 7th March 2022

If you are aggrieved by this Decision of Cheshire East Council you may appeal to a magistrate's court within 21 days of being notified of this Decision.

You are advised to seek independent legal advice before doing so.



7/11/2022



Appendix 6



This page is intentionally left blank