

LICENSING ACT 2003

THE SIRLOIN

APPLICATION TO VARY THE PREMISES LICENCE

DOCUMENTS UPON WHICH THE PREMISES LICENCE HOLDER INTENDS TO RELY

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Neutral Citation Number: [2008] EWHC 838 (Admin)

Case No: CO/5533/2006

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/05/2008

Before:

THE HONOURABLE MRS JUSTICE BLACK

Between:

Daniel Thwaites Plc	<u>Claimant</u>
- and -	
Wirral Borough Magistrates' Court	<u>Defendant</u>
- and -	
The Saughall Massie Conservation Society	1st Interested Party
- and -	
Wirral Metropolitan Borough Council	2nd Interested Party

David MW Pickup (instructed by Naphens plc) for the **Claimant**
The Defendant did not appear and was not represented
David Flood (instructed by Messrs Kirwans) for the **1st Interested Party**
Matthew Copeland (instructed by Wirral MBC) for the **2nd Interested Party**

Hearing date: 10th March 2008

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Black J :

1. This is an application by Daniel Thwaites Plc (“the Claimant”) for judicial review of a licensing decision made by the Wirral Magistrates’ Court (“the Magistrates’ Court”) on 5 April 2006 and that court’s decision on 21 April 2006 concerning the costs of the proceedings. The Claimant seeks an order quashing both decisions. Permission to apply for judicial review was granted by Mr Justice Pitchford on 2 November 2006.

The factual background

2. The Claimant owns the Saughall Hotel in Saughall Massie, Wirral which it operates as licensed premises (“the premises”). It originally held a licence under the Licensing Act 1964. In June 2005, it commenced an application to the Licensing Sub-Committee of the Metropolitan Borough of Wirral (“the licensing authority”) for the existing licence to be converted to a premises licence under the Licensing Act 2003 and for the licence to be varied simultaneously.
3. In essence, the Claimant was seeking to conduct business at the premises for longer hours than were permitted under the original licence. The police did not support the extension of the hours to the extent that the Claimant initially proposed. The Claimant agreed to restrict the hours to those that were acceptable to the police. Accordingly, the licensing authority was asked to grant a licence that would permit music and dancing to 11 p.m. and alcohol sales until midnight on all nights except Friday and Saturday and, on Friday and Saturday nights, music and dancing to midnight and alcohol sales until 1 p.m., with the doors closing one hour after the last alcohol sale every night.
4. The police withdrew their representations against the modified proposals and did not appear before the licensing authority when the matter was heard on 23 August 2005. No representations were made by the Wirral Environmental Health Services either. However, there was opposition to the proposals at the hearing from the Saughall Massie Conservation Society (“the First Interested Party”) and other Saughall Massie residents.
5. The Claimant told the licensing authority at the hearing that the hours of operation at the premises would not vary significantly from the existing hours of operation and that the application for extended hours was to allow flexibility to open later “on special occasions” This was a matter of which the licensing authority took note as is recorded in the minutes of their determination.
6. The licence was granted in the modified terms requested together with an additional hour for licensable activities and an extra 30 minutes for the hours the premises were to be open to the public over Christmas and at the major bank holidays. Special arrangements were also permitted for New Year’s Eve. The licensing authority removed certain conditions that had been imposed on the old licence (requiring all alcohol to be consumed within 20 minutes of the last alcohol sale and banning children under 14 from the bar) and imposed other conditions which were obviously aimed at controlling noise, namely that the area outside must be cleared by 11 p.m., that the premises must promote the use of taxi firms which use a call-

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back system, that all doors and windows must be kept closed when regulated entertainment was provided and that prominent notices should be placed on the premises requiring customers to leave quietly.

7. The Saughall Massie Conservation Society and “others” appealed against the licensing decision to the Magistrates’ Court on the ground that the licensing authority’s decision “was not made with a view to promotion of and in accordance with the licensing objectives pursuant to Section 4, Part 2 of the Licensing Act 2003”.
8. The appeal occupied the Magistrates’ Court from 3 – 5 April 2006. The respondents to the appeal were the licensing authority and the Claimant which both defended the licensing authority’s decision. Witnesses were called including Saughall Massie residents, Police Sergeant Yehya who dealt with the stance of the Merseyside police, and Mr Miller, the manager of the premises.
9. The justices granted the appeal. Their Reasons run to 3 pages of typescript, one page of which is entirely taken up with setting out the new hours of operation they imposed. These permitted entertainment until 11 p.m. and alcohol sales until 11.30 p.m. on all nights except Friday and Saturday when entertainment would be permitted until 11.30 p.m. and alcohol sales until midnight. The premises could remain open to the public until midnight on all nights except Friday and Saturday when they could close at 1 a.m.. Similar provisions were imposed to those imposed by the licensing authority in relation to later opening at Christmas and major bank holidays and the provisions relating to New Year’s Eve and the conditions of the licence remained unaltered.
10. The new licence had come into effect on 24 November 2005 so the new arrangements had been running for several months by the time of the hearing before the Magistrates’ Court. There had been no formal or recorded complaints against the premises under the old or the new regime as the justices acknowledged in their Reasons. The residents who gave evidence were fearful of problems if the extended hours were allowed in the summer. The Chairman of the Conservation Society, who gave oral evidence, spoke of people urinating in the gardens and a problem with litter. It appears from the statement filed by the Chairman of the Bench for these judicial review proceedings that evidence was also given of interference with machinery on nearby Diamond Farm. The justices’ Reasons make no reference at all to these matters. As to the statements of the “Witnesses of the Appellant”, they say simply that they have read and considered them but attached little or no weight to them.
11. The justices and their legal advisor have filed a considerable amount of material in response to the judicial review proceedings, in all 31 closely typed pages. These comprise their Response to the Claim, statements from Alistair Beere (who was the chairman of the bench), Mary Woodhouse (another of the bench) and Stephen Pickstock (the legal advisor), and what is said in the index to be a document by Mr Beere from which he prepared his statement. There was limited argument before me as to the status of these documents and the weight that I should give to them. It was not submitted that I should decline to have *any* regard to them although I think it is fair to say that it was common ground between the parties, rightly in my view, that I should concentrate principally on the Reasons. It is established by authorities such

as R v Westminster City Council ex p Ermakov [1996] 2 All ER 302 that the court can admit evidence to elucidate or, exceptionally, correct or add to the reasons given by the decision maker at the time of the decision but that it should be very cautious about doing so. The function of such evidence should generally be elucidation not fundamental alteration, confirmation not contradiction. In the circumstances, I have read carefully what the magistrates have provided but approached its role in the judicial review proceedings cautiously.

The broad nature of the claim in relation to the licensing decision

12. The Claimant argues that the Magistrates' Court decision is unlawful for a number of reasons. It is argued that the decision was not in line with the philosophy of the Licensing Act 2003 ("the Act") and imposed restrictions on the Claimant's operation which were not necessary to promote the licensing objectives set out in that Act, that it was based on speculation rather than evidence, that it took into account irrelevant considerations and failed to take into account proper considerations, and that it was a decision to which no properly directed magistrates' court could have come on the evidence. In so far as the court imposed conditions as to the time at which the premises must close, it is submitted that this was not a matter which can be regulated under the Act. It is further argued that the magistrates failed to give adequate reasons for their decision.

The legal background

13. The Licensing Act 2003 was intended to provide a "more efficient" "more responsive" and "flexible" system of licensing which did not interfere unnecessarily. It aimed to give business greater freedom and flexibility to meet the expectations of customers and to provide greater choice for consumers whilst protecting local residents from disturbance and anti-social behaviour.

14. Note 12 of the explanatory notes to the Act gives an indication of the approach to be taken under the Act. It reads:

"12. In contrast to the existing law, the Act does not prescribe the days or the opening hours when alcohol may be sold by retail for consumption on or off premises. Nor does it specify when other licensable activities may be carried on. Instead, the applicant for a premises licence or a club premises certificate will be able to choose the days and the hours during which they wish to be authorised to carry on licensable activities at the premises for which a licence is sought. The licence will be granted on those terms unless, following the making of representations to the licensing authority, the authority considers it necessary to reject the application or vary those terms for the purpose of promoting the licensing objectives."

15. Section 1 of the Act provides:

"S1(1) For the purposes of this Act the following are licensable activities—

- (a) the sale by retail of alcohol,
- (b) [clubs]
- (c) the provision of regulated entertainment, and
- (d) the provision of late night refreshment."

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16. To carry on a licensable activity, a premises licence granted under Part 3 of the Act is generally required, section 2. Application for a premises licence must be made to the relevant licensing authority, section 17(1).
17. By virtue of section 4, the licensing authority must carry out all its functions under the Act (including its functions in relation to determining an application for a premises licence or an application for a variation of a premises licence) with a view to promoting the “licensing objectives”. These are set out in section 4 as follows:
 - “S 4(2) The licensing objectives are—
 - (a) the prevention of crime and disorder;
 - (b) public safety;
 - (c) the prevention of public nuisance; and
 - (d) the protection of children from harm.”
18. In carrying out its licensing functions, by virtue of section 4(3) the licensing authority must also have regard to its licensing statement published under section 5 and any guidance issued by the Secretary of State under section 182.
19. Section 182 obliges the Secretary of State to issue guidance to licensing authorities on the discharge of their functions under the Act. Guidance was issued in July 2004 (“the Guidance”). It was updated in June 2007 but it is the original guidance that is relevant in this case. In any event, none of the changes made are material to the issues I have to determine.
20. The Foreword says that the Guidance
 - “is intended to aid licensing authorities in carrying out their functions under the 2003 Act and to ensure the spread of best practice and greater consistency of approach. This does not mean we are intent on eroding local discretion. On the contrary, the legislation is fundamentally based on local decision-making informed by local knowledge and local people. Our intention is to encourage and improve good operating practice, promote partnership and to drive out unjustified inconsistencies and poor practice.”
21. As the Guidance says in paragraph 1.7, it does not replace the statutory provisions of the Act or add to its scope. Paragraph 2.3 says:
 - “Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.”
22. An application to the licensing authority for a premises licence must be accompanied by an operating schedule in the prescribed form including a statement of the matters set out in section 17(4) which are as follows:

“(a) the relevant licensable activities,

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- (b) the times during which it is proposed that the relevant licensable activities are to take place,
 - (c) any other times during which it is proposed that the premises are to be open to the public,
 - (d) where the applicant wishes the licence to have effect for a limited period, that period,
 - (e) where the relevant licensable activities include the supply of alcohol, prescribed information in respect of the individual whom the applicant wishes to have specified in the premises licence as the premises supervisor,
 - (f) where the relevant licensable activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or off the premises, or both,
 - (g) the steps which it is proposed to take to promote the licensing objectives,
 - (h) such other matters as may be prescribed.”
23. Section 18 deals with the determination of an application for a premises licence. Section 35 deals in very similar terms with the determination of an application to vary a premises licence. It will be sufficient only to set out here the provisions of s 18.
24. Section 18(2) provides that, subject to subsection (3), the authority must grant the licence in accordance with the application subject only to:
- “(a) such conditions as are consistent with the operating schedule accompanying the application,
 - and
 - (b) any conditions which must under section 19, 20 or 21 be included in the licence.”
25. Section 19 deals with premises licences which authorise the supply of alcohol. Such licences must include certain conditions ensuring that every supply of alcohol is made or authorised by a person who holds a personal licence and that no supply of alcohol is made when there is no properly licensed designated premises supervisor. Sections 20 and 21 are not relevant to this claim.
26. Section 18(3) provides that where relevant representations are made, the authority has certain specified obligations. In so far as is relevant to this appeal “relevant representations” are defined in section 18(6) as follows:
- “(6) For the purposes of this section, “relevant representations” means representations which—
 - (a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives,
 - (b) meet the requirements of subsection (7),
 - (c)”
27. Subsection (7) provides:
- (7) The requirements of this subsection are—
 - (a) that the representations were made by an interested party or responsible authority within the period prescribed under section 17(5)(c),
 - (b) that they have not been withdrawn, and
 - (c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

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28. Where relevant representations are made, the authority must hold a hearing to consider them unless the authority, the applicant and each person who has made representations agrees that a hearing is unnecessary. By virtue of section 18(3)(b), the authority must also:

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

29. Section 18(4) provides:

“(4) The steps are—

(a) to grant the licence subject to—

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

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

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

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

(d) to reject the application.”

30. Conditions are modified for the purposes of subsection (4)(a)(i) if any of them is altered or omitted or any new condition is added.
31. During the currency of a premises licence, by virtue of section 51, an interested party (broadly speaking, a local resident or business) or a responsible authority (police, fire, environmental health etc.) may apply to the relevant licensing authority for a review of the licence on a ground which is relevant to one or more of the licensing objectives. By virtue of section 52, a hearing must be held to consider the application and any relevant representations and the authority must take such steps from a specified list as it considers necessary for the promotion of the licensing objective. The steps range from modifying the conditions of the licence to suspending it or revoking it completely.
32. The Act makes provision in Part 5 for “permitted temporary activity” which, loosely speaking, is a form of ad hoc licensing to cover licensable activities which are not covered by a more general licence. The system involves proper notification of an event to the licensing authority and the police. Provided the applicable number of temporary event notices has not been exceeded and the police do not intervene, the event is automatically permitted. Temporary event notices can only be given in respect of any particular premises 12 times in a calendar year and the period for which each event lasts must not exceed 96 hours.
33. Section 181 provides for appeals to be made against decisions of the licensing authority to a magistrates’ court which is, of course, how the decisions in relation to which judicial review is sought in this case came to be made.

The detail of the claim

34. The Claimant submits that in making its decision to allow the appeal in relation to the premises licence, the Magistrates’ Court failed in a number of respects to take account of the changes that the new licensing regime has made and failed to adopt the

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approach required by the Act. It is further submitted that the magistrates failed properly to consider and take into account the Guidance.

35. There is no doubt that the Guidance is relevant in the magistrates' decision making. As I have set out above, section 4(3) requires the licensing authority to "have regard" to the Guidance. By extension, so must a Magistrates' Court dealing with an appeal from a decision of the licensing authority. The Guidance says:

"10.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court concerned will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it is justified to do so because of the individual circumstances of any case."

36. Mr Pickup submits that although the Guidance is not binding and local variation is expressly permitted, it should not be departed from unless there is good reason to do so.
37. Mr Flood for the First Interested Party submits that the Guidance simply serves to provide information for the magistrates and provided that they have had regard to it, that is sufficient. He also points out that, in some respects (as is clear from the wording of the Guidance), the Guidance is a statement of Government belief rather than proved fact. Inviting attention to the judgment of Beatson J in J. D. Weatherspoon plc v Guildford Borough Council [2006] EWHC 815 (Admin), he identifies that different policy elements in the Guidance may pull in different directions in a particular case, flexibility and customer choice potentially conflicting with the need to prevent crime and disorder. He submits that provided that the magistrates consult the Guidance, they do not need to use it as "a decision making matrix that the deciding Court has to sequentially address in making its decision in the manner it would if considering a section of a statute".
38. There is no doubt that regard must be had to the Guidance by the magistrates but that its force is less than that of a statute. That is common ground between the parties. The Guidance contains advice of varying degrees of specificity. At one end of the spectrum, it reinforces the general philosophy and approach of the Act. However, it also provides firm advice on particular issues, an example being what could almost be described as a prohibition on local authorities seeking to engineer staggered closing times by setting quotas for particular closing times. I accept that any individual licensing decision may give rise to a need to balance conflicting factors which are included in the Guidance and that in resolving this conflict, a licensing authority or magistrates' court may justifiably give less weight to some parts of the Guidance and more to others. As the Guidance itself says, it may also depart from the Guidance if particular features of the individual case require that. What a licensing authority or magistrates' court is not entitled to do is simply to *ignore* the Guidance or fail to give it any weight, whether because it does not agree with the Government's policy or its methods of regulating licensable activities or for any other reason. Furthermore, when a magistrates' court is entitled to depart from the Guidance and justifiably does so, it must, in my view, give proper reasons for so doing. As paragraph 2.3 of the Guidance says in relation to the need for licensing authorities to give reasons:

“When [departing from the Guidance], licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.”

This is a theme to which the Guidance returns repeatedly and is a principle which must be applicable to a magistrates’ court hearing an appeal as it is to a licensing authority dealing with an application in the first instance. I agree with Mr Flood for the First Interested Party that the magistrates did not need to work slavishly through the Guidance in articulating their decision but they did need to give full reasons for their decision overall and full reasons for departing from the Guidance if they considered it proper so to do.

39. In this case, Mr Pickup submits that proper attention to the Guidance would have helped the magistrates to come to a correct and reasonable decision and that they have failed to adhere to it without proper reason and failed to carry out their licensing function in accordance with the Act.
40. The foundation of the Claimant’s argument is that the Act expects licensable activities to be restricted only where that is *necessary* to promote the four licensing objectives set out in section 4(2). There can be no debate about that. It is clearly established by the Act and confirmed in the Guidance. For example, in the Act, section 18(3)(b), dealing with the determination of an application for a premises licence, provides that where relevant representations are made the licensing authority must “take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives” (the steps in subsection (4) include the grant of the licence subject to conditions). Section 34(3)(b), dealing with the determination of an application to vary a premises licence, is in similar terms. The Guidance repeatedly refers, in a number of different contexts, to the principle that regulatory action should only be taken where it is *necessary* to promote the licensing objectives. In particular, it clearly indicates that conditions should not be attached to premises licences unless they are necessary to promote the licensing objectives, see for example paragraph 7.5 and also paragraph 7.17 which includes this passage:

“Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose.”

41. The Guidance also refers a number of times to the need for regulation to be “proportionate”. This is not a term contained in the Act but if a regulatory provision is to satisfy the hurdle of being “necessary”, it must in my view be confined to that which is “proportionate” and one can understand why the Guidance spells this out.
42. Mr Pickup submits, and I accept, that the Act anticipates that a “light touch bureaucracy” (a phrase used in paragraph 5.99 of the Guidance) will be applied to the grant and variation of premises licences. He submits that this means that unless there is evidence that extended hours will adversely affect one of the licensing objectives, the hours should be granted. A prime example of this arises when an application for a premises licence is made and there are no relevant representations made about it. In those circumstances, s 18(2) obliges the licensing authority to grant the licence and it can only impose conditions which are consistent with the operating schedule submitted by the applicant. Mr Pickup says that such a light touch is made possible, as

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the Guidance itself says, by providing a review mechanism under the Act by which to deal with concerns relating to the licensing objectives which arise following the grant of a licence in respect of individual premises. He invites attention also to the existence of other provisions outside the ambit of the Act which provide remedies for noise, for example the issue of a noise abatement notice or the closure of noisy premises under the Anti-Social Behaviour Act 2003. The Guidance makes clear that the existence of other legislative provisions is relevant and may, in some cases, obviate the need for any further conditions to be imposed on a licence. Paragraph 7.18 from the section of the Guidance dealing with attaching conditions to licences is an illustration of this approach:

“7.18 It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.”

43. The Guidance includes a section dealing with hours of trading which the Claimant submits further exemplifies the philosophy of the Act. It begins with paragraph 6.1 which reads:

“This Chapter provides guidance on good practice in respect of any condition imposed on a premises licence or club premises certificate in respect of hours of trading or supply.”

44. It continues:

“6.5 The Government strongly believes that fixed and artificially early closing times promote, in the case of the sale or supply of alcohol for consumption on the premises, rapid binge drinking close to closing times; and are a key cause of disorder and disturbance when large numbers of customers are required to leave premises simultaneously. This creates excessive pressures at places where fast food is sold or public or private transport is provided. This in turn produces friction and gives rise to disorder and peaks of noise and other nuisance behaviour. It is therefore important that licensing authorities recognise these problems when addressing issues such as the hours at which premises should be used to carry on the provision of licensable activities to the public.

6.6 The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through longer opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided. We will monitor the impact of the 2003 Act on crime and disorder and the other licensing objectives. If necessary in the light of these findings, we will introduce further legislation with the consent of Parliament to strengthen or alter any provisions.”

45. The Claimant submits that in imposing shorter hours than it requested for the supply of alcohol and for entertainment, the magistrates went beyond that which was necessary for these premises and failed to take into account that, as the Guidance explains, longer opening times would in fact reduce the potential for problems arising from licensed premises whereas curtailing operations could run counter to the licensing objectives.
46. The magistrates' Reasons record their acceptance that there had been no reported complaint in regard to public nuisance and that the extended hours had operated

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without any incidents. The magistrates also record in the Reasons, as I have already said, that they had attached little or no weight to the statements from witnesses of the appellants. Nothing is said about difficulties mentioned in evidence by the witnesses. As it was clearly incumbent on the magistrates at least to advert in broad terms to those matters that they took into account, it is fair to conclude in the circumstances that they proceeded upon the basis that there was no reliable evidence of actual problems linked to the premises either under the old licence or under the new revised licence. This was in line with the oral evidence of Police Sergeant Yehya (as recorded in the rather truncated notes of the legal advisor):

“1 reported incident for the site. No other incidents or complaints have been received. There are none in my file. There are no incidents we can directly link to the Saughall Hotel since previously open. There have been incidents locally but not linked to these premises.”

47. To judge by the Reasons therefore, what led the magistrates to impose restricted hours of operation was their forecast as to what would occur in the future in association with the premises, notwithstanding the absence of reliable evidence of past problems. The First Interested Party observes that the manager of the premises had given evidence that he intended in the summer to “make hay while the sun shines” and submits, correctly in my view, that the magistrates were entitled to take this apparent change of emphasis into account. However, Mr Flood further submits that the evidence of what had happened in the winter months was therefore of “little evidential value” in determining what was likely to happen in the future and I cannot wholly agree with him about this. Undoubtedly the fact that the Claimant intended in future to make more use of the extended hours reduced the value of the premises’ past record as a predictor of the future but it could not, in my view, be completely discarded by the magistrates. They still had to take into account that there had been extended hours for some months without apparent problems.

48. It is plain that the magistrates’ particular concern was “migration” rather than problems generated by those coming directly to the premises for their evening out. Under the heading “The Four Licensing Objectives”, they say that they accept that there have been no formal or recorded complaints against the premises “but feel that because of the concept of migration that public nuisance and crime and disorder would be an inevitable consequence of leaving the hours as granted by the Local Authority”. Under the heading “Migration/Zoning” they begin:

“The Saughall Hotel due to its location and the fact that a number of license premises in the surrounding area have reduced hours to that of the Saughall Hotel we believe that as a consequence of this would be that customers would migrate from these premises to the Saughall Hotel. [sic]”

and end:

“We appreciate that the extended hours have been in operation for several months without any incidents but have taken into consideration this was during the Winter months and inevitable numbers will increase in the Summer causing nuisance/criminality.”

49. They reiterate their concern under the heading “Nuisance (Existing/Anticipated)” saying that they “feel that public nuisance will be inevitable”.

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50. The Claimant complains that the magistrates' treatment of the issue of "migration" was fundamentally flawed on a number of grounds.
51. Firstly, it submits that there was no evidence on which the magistrates could find that customers *would* come to the premises when other premises in the vicinity closed or cause trouble and their concerns were no more than inappropriate speculation. The Claimant's position was that there was no evidence of migration to their premises. There were no recorded complaints of any kind about the premises let alone specifically about migration. Ms Lesley Spencer who lives opposite the premises and is the Secretary of the Saughall Massie Conservation Society gave evidence of her fear that customers would migrate but said that she did not think there had been any migration.
52. Apart from their own local knowledge, the only material on which the magistrates could possibly have formed their views about migration was what Police Sergeant Yehya said in evidence. According to the legal advisor's notes, whilst being cross-examined by Mr Kirwan, the sergeant gave evidence about the other licensed premises operating in the vicinity (which I have seen marked on a local map and which were within walking distance of the premises) and their closing hours and said that there were three assaults each week at one of the premises. The legal advisor records that he also said,

"We have staggered closing. This could cause problems it has the potential to cause difficulties in the area. I have a list of considerations but none would rank as high as crime, not even noise. No complaints have been made to me even regarding noise. One concern was dispersal. We gave people one hour to disperse and therefore reduced from 2.00 a.m. to 1.00 a.m.. 1.00 a.m. closing at 2. 280 people leaving premises. Other premises subject to high levels of crime *migration not an issue.*" [my italics]

53. I appreciate that this evidence acknowledged that staggered closing *could* cause problems but, had migration been a significant issue as opposed to a mere possibility, one can, I think, assume that the police would have made representations on that score, particularly given that they had plainly considered the impact of trading hours specifically and *had* initially objected to the even longer hours originally proposed by the Claimant. It is noteworthy that even when they were in opposition to the plans, it was never on the basis of migration of disruptive characters from other licensed premises and always simply on the basis of late noise from ordinary customers of the premises dispersing. The absence of police objections before either the licensing authority or the Magistrates' Court seems to have surprised the magistrates who said so in their Reasons, commenting:

"We were surprised that the Police originally objected to the application but withdrew that objection after a slight variation of the terms."

In so saying, they convey, in my view, not only their surprise about the Police approach but also their disagreement with it.

54. It was not open to the magistrates, in my view, to elevate what Sergeant Yehya said in the witness box to evidence that a problem with migration could reasonably be expected, nor do they say anything in their reasons which suggests that they did rely on his evidence in this way. The only concerns about migration were therefore the

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magistrates' own with perhaps some fears expressed by local residents though not on the basis of firm historical examples of migration to the premises.

55. It is clear from the Guidance that drawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act's approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence will require them to adjust their own impression. This is particularly likely to be so where it is given by a responsible authority such as the police. They must also scrutinise their own anxieties about matters such as noise and other types of public nuisance particularly carefully if the responsible authorities raise no objections on these grounds. These magistrates did recognise the absence of police objections which caused them surprise and they chose to differ from the police in reliance on their own views. The Claimant submits that in so doing they departed into the realms of impermissible speculation not only in concluding that there would be migration but also in concluding that in this case it would generate nuisance and disorder. The First Interested Party is correct in submitting that the Guidance accepts a link between migration and a potential breach of the licensing objectives but it is also clear from the Guidance that each case must be decided on its individual facts so the magistrates could not simply assume that if people came from other premises, there would be trouble.
56. The Claimant complains that the magistrates' treatment of the migration issue also flies in the face of the Guidance because firstly it was an improper attempt to implement zoning and secondly it ignored the general principle of longer opening hours.
57. Zoning is the setting of fixed trading hours within a designated area so that all the pubs in a given area have similar trading hours. The problem created by it, as demonstrated by experience in Scotland, is that people move across zoning boundaries in search of pubs opening later and that causes disorder and disturbance. The Guidance says, at paragraph 6.8:
- "The licensing authority should consider restricting the hours of trading only where this is necessary because of the potential impact on the promotion of the licensing objectives from fixed and artificially-early closing times."
- It stresses that above all, licensing authorities should not fix predetermined closing times for particular areas.
58. I am not convinced that the magistrates' limiting of the Claimant's operational hours can properly be described as implementing zoning which, in my view, is a term that is more appropriate to describe a general policy imposed by a licensing authority for a defined area than an individual decision of this type, albeit made with reference to the opening hours of other premises in the vicinity and having the effect of imposing the same hours as those premises.
59. What has more weight, however, is the Claimant's submission that the magistrates failed to give proper weight to the general principle of later opening hours and to the intention that the approach to licensing under the Act would be to grant the hours

Approved Judgment

sought for the premises unless it was necessary to modify them in pursuit of the licensing objectives. The Reasons include a heading “Flexibility” under which the magistrates say simply:

“We have considered the concept of Flexibility.”

In so saying, they may be referring to the sort of flexibility to which reference is made, for example, in paragraph 6.6 of the Guidance (see above) but their shorthand does not enable one to know to what conclusions their consideration of the concept led them in this case nor whether they had reliably in mind that the starting point should be that limitations should not be imposed upon the licence sought unless necessary to promote the licensing objectives rather than that the licensing authority or the court should form its own view of what was necessary for the premises and only grant that.

60. The Claimant was seeking to have the freedom to open later on certain occasions when the trade justified it or, as the magistrates put it, “the application for extended hours was to allow *flexibility* to open later on certain occasions”. As the First Interested Party would submit, the magistrates may have inferred from Mr Miller’s comment about making hay that the premises would *often* be open late rather than this happening only infrequently in accordance with the picture presented to the licensing authority. If this was their inference, however, it is odd that they considered that the Claimant could deal with the position by applying for a temporary certificate because this would have allowed the premises to open later on only a limited number of occasions. They make no express finding in their Reasons as to the frequency on which they considered the Claimant intended to keep the premises open late. This was material not only to the degree of disturbance that might be caused generally by late opening but also specifically to the issue of whether there would be migration. It would seem unlikely that customers from nearby pubs would bother to walk or even drive to the Saughall Hotel in search of another drink at the end of their evenings unless the Saughall Hotel was open late sufficiently frequently to lead them to a reasonable expectation that their journey would be worthwhile.
61. The magistrates’ comment about the temporary certificate also seems to me to be an example of a failure by them to adopt the lighter approach that the Act dictated and to allow flexibility to those operating licensed premises unless the licensing objectives required otherwise. Temporary certificates would be a cumbersome and restricted means of achieving flexibility, not responsive to the day to day fluctuations in business, only available a limited number of times, and not in line with the philosophy of the Act.
62. There is no consideration in the magistrates’ decision of whether the imposition of conditions to control noise or other nuisance (which were going to be imposed) would be sufficient to promote the licensing objectives without reducing the operating hours of the premises. Given that the Act dictates that only such steps as are necessary should be taken with regard to the variation of the terms of operation sought, such consideration was required.

My overall conclusions

Approved Judgment

63. It would be wrong, in my judgment, to say that the magistrates failed to take account of the licensing objectives. At the outset of their Reasons, they correctly identify those which are relevant. Similarly, as the First Interested Party submits, whilst they did not *articulate* that the curtailment of the hours sought was “necessary” to promote those objectives, it is implied in their decision that they did take this view and it can also be inferred from their comment that because of the concept of migration, public nuisance and crime and disorder would be “an inevitable consequence” of leaving the hours as granted by the Local Authority. However, in my view their approach to what was “necessary” was coloured by a failure to take proper account of the changed approach to licensing introduced by the Act. Had they had proper regard to the Act and the Guidance, they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstances of the case. Their conclusion that it was so required on the basis of a risk of migration from other premises in the vicinity was not one to which a properly directed bench could have come. The fact that the police did not oppose the hours sought on this basis should have weighed very heavily with them whereas, in fact, they appear to have dismissed the police view because it did not agree with their own. They should also have considered specifically the question of precisely how frequently the premises would be likely to be open late and made findings about it. They would then have been able to compare this to the winter opening pattern in relation to which they accepted there had been no complaints and draw proper conclusions as to the extent to which the summer months would be likely to differ from the winter picture. Having formed a clear view of how frequently late opening could be anticipated, they would also have been able to draw more reliable conclusions about the willingness of customers from further afield to migrate to Saughall Massie. They proceeded without proper evidence and gave their own views excessive weight and their resulting decision limited the hours of operation of the premises without it having been established that it was necessary to do so to promote the licensing objectives. In all the circumstances, their decision was unlawful and it must be quashed.
64. I have said little so far about what appears in the magistrates’ response for the judicial review proceedings. The various documents comprising the response did nothing to allay my concerns about the magistrates’ decision. Indeed quite a lot of what was said reinforced my view that the magistrates had largely ignored the evidence and imposed their own views. They refer in their response to incidents about which the residents had given evidence and to the residents not having complained formally for various reasons, for example because it was Christmas or because there was thought to be no point. If the magistrates considered these matters to be relevant, it was incumbent on them to say so clearly in their reasons whereas they there recorded their acceptance that there had been no formal or recorded complaints, that the extended hours had been in operation for several months without incidents and that they had attached little or no weight to the statements of the witnesses of the appellant. They also refer extensively in their response to their thoughts on migration, including that people may come from further afield than the pubs in the vicinity in cars. Particularly concerning is that they refer repeatedly to a perceived issue over police resources which is not something that, as far as I can see, had been raised by Sergeant Yehya or explored with him in evidence. Mr Beere says in his statement for example, “....there is also the question of Police resources

Approved Judgment

and their ability to effectively police this area especially at weekends with already stretched resources being deployed in Hoylake”.

65. Reference is made in the response documents to the court feeling that the Brewery’s proposed opening hours contradicted the acceptable activities of a family pub and that the Saughall Hotel is “a village pub and not a night spot in the centre of town”. For the court to take matters such as this into account seems to me to be an interference with the commercial freedom of the premises of a type that was not permissible under the Act unless it was necessary to promote the licensing objectives. I appreciate that the magistrates’ response seems to suggest that they feared that a different type of customer was being courted or would invite themselves once it got too late for families but this does not seem to have been founded on anything that was given in evidence so was really not much more than speculation.
66. Mr Beere’s statement ends with a reference to the Brewery wanting to make hay while the sun shines, of which he says, “I believe that this statement was indicative of the Brewery’s attitude to local residents and to the general management of the premises.”. Given that problems with or in the vicinity of the premises had been almost non-existent and that the magistrates had not seen fit to make reference in their Reasons to any difficulties caused by the Hotel, it is hard to see how this belief could be justified but it does perhaps exemplify the approach of the magistrates.
67. I have considered quite separately the argument as to whether the hours of opening can be regulated as part of the licensing of premises as opposed to the hours during which licensable activities take place. It was suggested during argument that there was no power to regulate the time by which people must leave the premises. I cannot agree with this. Clearly keeping premises open (as opposed to providing entertainment or supplying alcohol there) is not a licensable activity as such. However, the operating schedule which must be supplied with an application for a premises licence must include a statement of the matters set out in section 17(4) and these include not only the times when it is proposed that the licensable activities are to take place but also “any other times during which it is proposed that the premises are to be open to the public”. On a new grant of a premises licence, where there are no representations the licensing authority has to grant the application subject only to such conditions as are consistent with the operating schedule. I see no reason why, if it is necessary to promote the licensing objectives, these conditions should not include a provision requiring the premises to be shut by the time that is specified in the operating schedule. If representations are made and the licensing authority ultimately grants the application, it can depart from the terms set out in the operating schedule when imposing conditions in so far as this is necessary for the promotion of the licensing objectives. It must follow that it can impose an earlier time for the premises to be locked up than the applicant wished and specified in its operating schedule. It is important to keep in mind in this regard that the role of the licensing authority and, if there is an appeal, the court, has two dimensions: the fundamental task is to license activities which require a licence and the associated task is to consider what, if any, conditions are imposed on the applicant to ensure the promotion of the licensing objectives. A requirement that the premises close at a particular time seems to me to be a condition just like any other, such as keeping doors and windows closed to prevent noise. I see no reason why a condition of

Approved Judgment

closing up the premises at a particular time should not therefore be imposed where controlling the hours of the licensable activities on the premises (and such other conditions as may be imposed) is not sufficient to promote the licensing objectives.

The costs argument

68. In the light of my conclusion that the magistrates' decision is unlawful and therefore must be quashed, it is not appropriate for me to consider the arguments in relation to their costs order further. The appellants had given an undertaking to the Licensing Authority that they would not seek costs against the Licensing Authority and they sought the entirety of their costs of the appeal from the Claimant. The magistrates granted that order and the Claimant submits that that was not an order that was open to them. Whatever the merits of that argument, the magistrates' order in relation to costs cannot now stand. The basic foundation for the order for costs was that the appeal had succeeded and the Claimant had lost. That position has now been overturned and the costs order must go along with the magistrates' main decision. The magistrates would have had no reason to grant costs against the Claimant if the appeal had been dismissed.

LICENSING ACT 2003
APPLICATION TO VARY THE PREMISES LICENCE

THE SIRLOIN, HOGHTON

WITNESS STATEMENT OF WAYNE CORTILLA

I am Wayne Cortilla and I make this statement in relation to the above matter. This statement is true to the best of my knowledge and belief.


I am Head Chef at The Sirloin and have worked there for 1 1/2 years.

I was working at The Sirloin on the evening of Saturday 7 March 2015. The premises had no live music on that evening, only some background music.

For a Saturday evening it was very quiet and the premises were empty at 23.30 apart from staff. We decided to close and lock the doors at 23.30 due to the lack of customers. All members of staff had left the premises at 23.30.

I believe that the facts stated in this witness statement are true.

Signed



Dated

19/3/15

Name: Gokhan Gundogdu
Statement Number:
Dated: 19th March 2015

1

**LICENSING ACT 2003
APPLICATION TO VARY THE PREMISES LICENCE**

THE SIRLOIN, HOUGHTON

WITNESS STATEMENT OF GOKHAN GUNDOGDU

I am Gokhan Gundogdu and I make this statement in relation to the above matter. This statement is true to the best of my knowledge and belief.

I am Director at The Sirloin and have worked there since April 2012.

I was working at The Sirloin on the evening of Saturday 7 March 2015. The premises had no live music on that evening, only some background music.

For a Saturday evening it was very quiet and the premises were empty at 23:30 apart from staff. We decided to close and lock the doors at 23:30 due to the lack of customers. All members of staff had left the premises at 23:30.

I believe that the facts stated in this witness statement are true.

Signed



Dated

19.03.2015

Direct Dial: 01254 686225
Email: Samantha.Faud@naphthens.co.uk
Date: 11 March 2015

Our Ref: MFI/SEF/143282-001

Your Ref:

[name and address]

Greenbank Court, Challenge Way
Greenbank Business Park
Blackburn, BB1 5QB
T: 01254 667733
F: 01254 681166
E: Blackburn@naphthens.co.uk
W: naphthens.co.uk
DX: 745450 Blackburn 12

Dear

**Re: The Sirloin, Hoghton
Application to Vary a Premises Licence**

I have been instructed by the Applicant in relation to the above matter and as such, I have had sight of your objection to the application to vary a premises licence.

As you may already be aware, the Licensing Act 2003 (which is the primary piece of legislation governing matters such as this) and the associated Guidance strongly encourage a spirit of "partnership working", with open lines of communication between applicants, responsible authorities, local businesses and local residents. In addition the operators of The Sirloin have a genuine desire to work with local residents rather than against them.

For the above reasons, the premises licence holders are keen to meet with those who have objected to the application in order that they can explain their intentions for the premises and the rationale behind the application, and also so that they may listen to the concerns of residents and explore any ways in which they can be addressed to the satisfaction of all parties.

To facilitate this, the premises licence holders are proposing a meeting for all parties. It is proposed that the meeting will take place on Monday 16th March at 19.00 and your attendance would be very much appreciated. It is proposed to hold the meeting in The Sirloin. I would be grateful if you would contact me on 01254 686225 or 07415447358 to confirm whether or not you are able to attend. I can also be contacted through e-mail, the address for which appears above.

I look forward to hearing from you.

Yours sincerely

**Samantha Faud
Solicitor
for Naphthens LLP, Solicitors**

Naphthens LLP. Registered office: 7 Winckley Square, Preston, Lancashire, PR1 3JD.
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Direct Dial: 01254 686225
Email: Samantha.Faud@naphthens.co.uk
Date: 17 March 2015

Our Ref: MFI/SEF/143282-001

Your Ref:

Greenbank Court, Challenge Way
Greenbank Business Park
Blackburn, BB1 5QB
T: 01254 667733
F: 01254 681166
E: Blackburn@naphthens.co.uk
W: naphthens.co.uk
DX: 745450 Blackburn 12

[name and address]

Dear

**Re: The Sirloin, Hoghton
Application to Vary a Premises Licence**

I write further to the mediation meeting that was held last night.

We discussed the various concerns and I confirmed I would contact the local residents today to provide you with details of our proposals. I have enclosed a document titled "The Sirloin – Application to Vary the Premises Licence". This document shows in table format what we currently have on the premises licence, what we applied for and what we are proposing now after mediation.

I have also amended the plan to show the exact licensable area and I have enclosed this for your attention.

At the meeting we also discussed various conditions that we could propose that would hopefully alleviate some of the concerns. I have attached a document titled "Proposed Conditions". This document shows the conditions that are currently on the premises licence, those that we offered on the application, those that we have agreed with the Police and those conditions that we are willing to offer as a result of our discussions last night.

As a summary, the premises licence holders wish to continue operating the premises as they are currently operating. The first floor will continue to be a restaurant and the ground floor will continue to be a bar area. The terrace to the rear of the premises will be used mostly in the summer months for people to sit outside during the day, weather permitting. There is a bar on the rear terrace that we propose to be licensed until 22.30. Customers are to leave this area by 23.00. As explained last night due to the smoking ban, people do have to smoke outside, and unfortunately we cannot prevent people from doing this. After 23.00 people can smoke outside the premises but they are not permitted to take their drinks with them in order to try and prevent people from socialising whilst smoking.

The car park area is to be licensed but only for up to 12 events per year. During these events licensable activities will cease at 22.30 and door supervisors will ensure that customers are dispersed by 23.00.

I hope this goes some way to alleviating your concerns, but please feel free to telephone me or email me to discuss the above.

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I look forward to hearing from you.

Yours sincerely

Samantha Faud
Solicitor
for Napthens LLP, Solicitors

Napthens LLP. Registered office: 7 Winckley Square, Preston, Lancashire, PR1 3JD.
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The term "partner" indicates a member of Napthens LLP who is not in partnership for the purposes of the Partnership Act 1890. A list of members is available from our registered office. Authorised and regulated by the Solicitors Regulation Authority. Firm No 462103 This firm does not accept service by email

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The Sirloin – Application to Vary the Premises Licence

Currently have	Applied for	Proposed
Live Music (Indoors) 11.00-00.00	Live Music (Indoors and outdoors) 08.00-23.30	Live Music Indoors – 11.00-00.00 Outdoors 11.00-22.30
Recorded Music (Indoors) 11.00-00.00	Recorded Music (Indoors and outdoors) 08.00-23.30	Recorded Music Indoors 11.00-00.00 Outdoors 11.00-22.30
Late Night Refreshment (indoors) Sunday 23.00-23.30 Monday to Thursday 23.00-00.30 Friday & Saturday 23.00-01.30	Late Night Refreshment (indoors and outdoors) 23.00-05.00	Late Night Refreshment (indoors) Sunday to Thursday 23.00-00.30 Friday & Saturday 23.00-02.00
Sale of Alcohol (on and off) Sunday 11.00-23.30 Monday to Thursday 11.00-00.30 Friday & Saturday 11.00-01.30	Sale of Alcohol (on and off) 00.00-24.00	Sale of Alcohol (on and off) Sunday to Thursday 11.00-00.30 Friday and Saturday 11.00-02.00 Alcohol sales will cease in the outside area at 22.30
Opening Hours Sunday 11.00-23.30 Monday to Thursday 11.00-01.00 Friday & Saturday 11.00-02.00	Opening hours 00.00-24.00	Opening Hours Sunday to Thursday 11.00-01.00 Friday and Saturday 11.00-02.30
	Plays (indoors and outdoors) 08.00-23.30	Indoors – 11.00-23.30 Outdoors 11.00-22.30
	Films (indoors and outdoors) 08.00-23.30	Indoors – 11.00-23.30 Outdoors 11.00-22.30
	Boxing or Wrestling (Indoors and outdoors) 08.00-23.30	Indoors – 11.00-23.30 Outdoors 11.00-22.30
	Performances of dance (indoors and outdoors) 08.00-23.30	Indoors – 11.00-23.30 Outdoors 11.00-22.30
	Anything of a similar description as above (indoors and outdoors) 08.00-23.30	Indoors – 11.00-23.30 Outdoors 11.00-22.30

Proposed Conditions

Current Conditions

The Designated Premises Supervisor is a fully qualified first aider.

Pre-opening safety checks are carried out daily.

There are notices inside the premises requesting that customers leave in an orderly manner.

Local taxi firms will be informed of any changes in opening hours.

Recorded music may be played from 00.00 until close provided that it is played at a reduced level, as not to disturb neighbours i.e. music is inaudible to the nearest noise sensitive location.

Children must be accompanied by an adult at all times.

There shall be placed at all exits from the premises and in the car park, in a place where they can be seen and easily read by the public, notices requiring customers to leave the premises and the area quietly. (Note this may also include a reference to vehicles.)

Conditions offered on the application

Staff including door staff will be trained and have knowledge of fire precaution measure, illegal sales of alcohol, first aid and drug policy.

All staff training will be recorded and these records made available for inspection on request by a responsible authority.

The premises licence holder will implement a daybook to be maintained and managed to the satisfaction of Lancashire Constabulary and the local authority.

Any person employed on the premises who are under the age of 18 shall be employed in accordance of the statutory regulations relating to the employment of young persons.

Conditions agreed with the Police (some of which we had offered in our application or are current conditions but to avoid duplication have propose to agree to the below)

The premises shall operate and maintain a CCTV system which shall be in use during all times licensable activities are taking place at the premises and comply as follows:

1. The system shall cover all entrances and exits from the premises, in addition to covering all internal areas open to the public and the external decking area.
2. CCTV recordings shall be of evidential quality.
3. The system will be capable of time and date stamping recordings and retaining said recordings for at least 21 days.
4. The data controller shall make footage available to a police officer of authorised officer, where such a request is made in accordance with the Data Protection Act 1998.
5. There shall be a member of staff on duty at all times the premises is open to the public, who is trained in the operation of the CCTV system and capable of providing a copy of any recording to any responsible authority on reasonable request.

The premises will have a written drugs policy to the satisfaction of the police that will include a search policy and all staff will have a working knowledge of it.

All staff will receive on going training in drugs awareness this training will be recorded and retained by the premises. These records will be made available for inspection by an responsible authority n reasonable request.

The use and number of door supervisors on any trading night at the premises shall be determined by a written format, kept at the premises and produced for inspection by any responsible authority on reasonable request.

Staff will make regular checks of internal and external areas to ensure any unused glasses and bottles are collected.

The licence holder or his representative shall conduct regular assessments of the noise (every hour) during the provision of any regulated entertainment at the premises and shall take steps to reduce the level of noise where it is likely to cause a nuisance to local residents.

A written record will be made of these assessments which shall include the time and date of the checks, the person making them and the results of any action taken.

There shall be placed at all exits from the premises and in the car park notices which can be seen and easily read by the public, notices requesting that customers leaving the premises and area do so quietly.

The DPS will ensure the premises maintains an incident book which will contain a record of all incidents relating to the premises, it's staff and customers, including time date nature of incident and outcome to the satisfaction of Lancashire Constabulary and the local authority. This record will be available on request to any responsible authority.

The premises will operate a policy that prevents the sale of alcohol to persons under 18 to the satisfaction of the police and the local authority. This policy shall state that any person who does not appear to be at least 25 years of age, will not be served unless they can produce a recognised proof of age card accredited under the proof of age standards scheme (PASS), photocard driving licence of passport.

Any challenges made by staff relating to this policy will be recorded in the incident book situated at the premises.

Notices will be displayed where they can be clearly seen and read in the premises indicating that the premises operates a challenge policy in relation to the sale of alcohol.

All staff will be training in relation to the sale of alcohol to persons under 18. This training will be recorded and made available for inspection by any responsible authority in reasonable request.

Conditions proposed as a result of mediation

When regulated entertainment is taking place after 22.00 all windows and doors will be kept closed except for access and egress and in the event of an emergency.

All licensable activities will cease in the external areas at 22.30.

Consumption of alcohol will not be permitted in the outside areas after 23.00.

The car park will only be used for licensable activities for up to twelve events per year.

When there are events on the car park, the licence holder or his representative shall conduct noise assessments every hour during the provision of any regulated entertainment. The noise assessments will be taken using a sound measuring device at two points, one at the nearest noise sensitive premises and the second one on the opposite side of the car park. Action will be taken to reduce the noise levels if the results are unreasonable.

The results of the noise assessments will be recorded as well as the date, time, name of the person taking the assessment and details of any action taken. The sound records will be kept on the premises and produced to an authorised officer if requested.

When events are held on the car park, two SIA door supervisors will be employed throughout the event. Between 22.30 and 23.00 the door supervisors will encourage customers to disperse from the car park. At 23.00 the door supervisors will ensure the car park is clear of customers.

Prior to events being held on the car park, the DPS or their representative will provide the local residents with information relating to the event including details regarding car parking and a contact mobile number they can call during the event.

Members of staff will be monitoring the terrace area to the rear of the premises on a regular basis to ensure customers are not consuming alcohol there after 23.00.

Samantha Faud

From: Samantha Faud
Sent: 16 March 2015 11:51
To: Anthony.Bushell@lancashire.pnn.police.uk
Subject: The Sirloin
Attachments: The Sirloin - Details of premises licence - proposed.docx

Hi Tony

As discussed, please find attached a table showing the current times, what was applied for and what we are proposing now.

In relation to the additional conditions you have requested. My clients will agree to the conditions you have proposed with the following amendments:

The premises shall operate and maintain a CCTV system which shall be in use during all times licensable activities are taking place at the premises and comply as follows:

- 1. The system shall cover all entrances and exits from the premises, in addition to covering all internal areas open to the public and the external decking area.*
- 2. CCTV recordings shall be of evidential quality.*
- 3. The system will be capable of time and date stamping recordings and retaining said recordings for at least 21 days.*
- 4. The data controller shall make footage available to a police officer of authorised officer, where such a request is made in accordance with the Data Protection Act 1998.*
- 5. There shall be a member of staff on duty at all times the premises is open to the public, who is trained in the operation of the CCTV system and capable of providing a copy of any recording to any responsible authority on reasonable request.*

When regulated entertainment is taking place after 22.30 all windows and doors will be kept closed except for access and egress and in the event of an emergency.

Consumption of alcohol will not be permitted in the outside areas after 23.00.

Please let me have your thoughts on the above.

Kind regards.

Sam

Samantha Faud

From: Bushell, Anthony <Anthony.Bushell@lancashire.pnn.police.uk>
Sent: 16 March 2015 14:11
To: Samantha Faud
Cc: Elsdon, Philip
Subject: RE: The Sirloin

Hi Sam

Thanks for this, in relation to the proposals outlined our position is as follows;

Having considered your document there is nothing contained within that would alleviate our concerns in relation to this application.

It is accepted that the starting times for existing licensable activity have been amended from 8:00 hrs to 11:00 hrs, it is not the start times which are of concern. The main area of concern is the terminal hours for these activities. It is again noted that the applicant has reduced the hours initially requested however the amended proposal seeks to still increase the hours for licensable activity by 30 minutes from those that are currently operated. It is our position that the current hours of operation are reasonable for the area and the police would resist any attempt to extend these even by 30 minutes.

The police would maintain their representations against any activity taking place outside the premises

With regards the proposed additional licensable activity the police, as stated, have no representations with these being added to the licence, save that they remain at 23:30 hrs and are not permitted outdoors.

With regards the conditions no issues with the CCTV amendments, however would defer back to our reps in relation to the last two amendments.

Regards
Tony

PS 1506 Tony Bushell
South Licensing - Preston and West Lancs
Preston DHQ
Lancaster Road North
Preston
PR1 2SA
01772 209794
07984650358
anthony.bushell@lancashire.pnn.police.uk

From: Samantha Faud [mailto:samantha.faud@naphthens.co.uk]
Sent: 16 March 2015 11:51
To: Bushell, Anthony
Subject: The Sirloin

Hi Tony

menu



Platters or to share

Charcuterie board milano, napoli, parma ham, sun blushed tomatoes, marinated olives, parmesan and warm focaccia	£7.00/£13.00
Fish platter Smoked salmon, crayfish tails, roll mops, anchovies and marie rose	£8.00/£15.00
Vegetarian platter marinated olives, sun blushed tomatoes, hummus, buffalo mozzarella and baba ganoush	£7.00/£12.00

All platters served with warm focaccia bread

bar snacks

Farmhouse pork pie and piccalilli	£4.00
Garlic Bread with mozzarella	£4.00
Butchers choice chipolatas	£4.00
Marinated olives, sun blush tomatoes	£4.00
Crayfish pot with marie rose	£4.00
Roll mops	£4.00
Warm bread, oil and balsamic syrup	£4.00

starters

Today's soup with warm bread roll	£5.00	Chicken liver paté, tomato & apple chutney and toasted brioche	£6.00	Pan seared scallops, black pudding, slow roasted pork belly and roasted apple puree	£7.00
Ham hock and caper terrine piccalilli served with toasted croutes	£6.00	Pan fried sardines, garlic butter, parsley, lemon and warm bread	£7.00	King prawn with coconut milk sweet chilli and coriander	£6.00
Potted confit duck, ginger, hoisin and coriander with warm focaccia	£6.00	Sautéed wild mushrooms with Welsh rarebit brioche, poached hen egg and Worcester sauce syrup	£6.00	Crayfish cocktail Gem lettuce, marie rose, lemon and bread roll	£6.00

Pub Classics and Main Courses

The 'Sirloin' real ale beer battered fish, hand cut chips and caper salad	£10.00
Half buttered roast corn fed chicken, hand cut chips, garden salad aioli	£11.00
Butchers sausage with truffle mash, baby onions and rich gravy	£10.00
Posh ham and egg, slow cooked ham hock, poached hen egg, hand cut chips, honey and mustard glaze	£12.00
Wild mushroom risotto with truffle oil and parmesan	£10.00
Slow cooked lamb henry, braised baby onions, wild garlic mash and braising liquor	£14.00
Pan roasted sea bass, saffron mash, wilted spinach, crayfish and caper butter	£13.00
Slow cooked pork belly with Weston's cider, braised baby gem, baby onions and truffle mash	£13.00
Steak and ale button mushroom pot pie, with pure butter puff pastry, butter mash and seasonal vegetables	£11.00
Pan roasted duck breast, pomme anna, greens and wild berries	£15.00
Smoked haddock, buttered mash, spinach, poached hen egg and parmesan cream	£13.00

The Sirloin 10oz Gourmet Burgers

100% ground beef burger with smoked bacon and mature cheddar cheese, tomato and apple chutney	£11.00
Lamb and mint burger served with tatziki	£11.00
Halloumi burger, (v) tomato and apple chutney	£10.00
Duo of 5oz burgers, beef and lamb	£11.00

All burgers served with fries, dill pickle and coleslaw

The Sirloin Grill

10oz sirloin steak Served with cherry vine tomato, portobello mushroom, hand cut chips and caramelised baby onions	£21.00
10oz ribeye steak Served with cherry vine tomato, portobello mushroom, hand cut chips and caramelised baby onions	£19.00
10oz gammon steak, pineapple salsa, poached hen egg, hand cut chips and garden salad	£13.00
10oz fillet steak, Served with cherry vine tomato, hand cut chips, garden salad and caramelised baby onions	£25.00
Sauces and butters all £2.00 each Bloody mary butter Garlic butter Peppercorn sauce Blackstick blue cream	

Pasta

Wild mushroom linguine (v) with roasted pine nuts	£10.00
King prawn and cherry tomato linguine, with lime dressing and fresh cherry tomatoes	£12.00
Chicken carbonara, crispy parma ham, parmesan and wild mushroom	£11.00
Penne arrabbiata (v) slow roasted cherry vine tomatoes, olives, fresh basil and chilli	£9.00

All served with garlic bread ciabatta

Salad Bar

Buffalo mozzarella vine plum tomatoes (v) and fresh basil	£10.00
Crayfish and smoked salmon marie rose	£11.00
Chicken Caesar salad	£10.00
Capricorn goats cheese (v)	£11.00

All Salads served with warm focaccia

Sides

Vegetables of the day	£3.00
Hand cut chips	£3.00
French fries	£3.00
Rocket, parmesan and pinenuts	£3.00

Midweek Market Menu

Served Monday to Thursday

2 Courses £14.00
3 Courses £16.00

Chicken liver paté
tomato & apple chutney and toasted brioche

Sautéed wild mushrooms
with Welsh rarebit
brioche, poached hen egg and Worcester sauce syrup

Today's soup
with warm bread roll

The 'Sirloin' real ale beer battered fish,
hand cut chips and caper salad

Penne arrabbiata
slow roasted cherry vine tomatoes, olives, fresh basil and chilli

Steak and ale button mushroom pot pie
with pure butter puff pastry, butter mash and seasonal vegetables

Chocolate Brownie
with vanilla bean ice cream

Sticky Toffee Pudding
with caramel sauce

Selection of Ice Creams

Allergy Advice

Before you order your food and drinks please speak to a member of our staff if you would like to know about our ingredients or for allergy information. Some fish dishes may contain bones. All dishes are subject to availability. Whilst we take every care to preserve the integrity of our vegetarian products, we must advise that these products are handled in a multi-use kitchen environment.

(v) Denotes dishes which are vegetarian. Due to the presence of nuts in our restaurant there is a small possibility that nut traces may be found in any of our items.

wines



White Wine by the Glass

Altoritas Sauvignon Blanc, BOT 175ml 250ml
 Central Valley, Chile £15.95 £4.15 £5.60
 Bright, refreshing, herbaceous aromas with gentle gooseberry and lemon fruit.

Belvino Pinot Grigio delle BOT 175ml 250ml
 Venezie, Italy £15.95 £4.15 £5.60
 Delicately flavoured with notes of green apple and pear, with just a hint of sweetness.

Berri Estates Unoaked BOT 175ml 250ml
 Chardonnay, South-Eastern Australia £15.95 £4.15 £5.60
 A crisp style with a fresh, yet ripe lemon character with no oak ageing.

Kleine Zalze Bush Vines BOT 175ml 250ml
 Chenin Blanc, Stellenbosch, South Africa £15.95 £4.15 £5.60
 Soft and creamy, a hint of ripe exotic fruit and a delicious vanilla sweetness.

White Wines

Vidal Sauvignon Blanc, Marlborough, Bottle
 New Zealand £22.50
 Classically crisp and herbaceously intense with great complexity, a mingling of passion fruit and melon flavours.

Vinuva Fiano Beneventano, Bottle
 Italy £18.95
 Shows ripe pear, white peach, nectarine with notes of pineapple.

Vavasour Pinot Gris, Awatere Valley Bottle
 New Zealand £25.65
 Displays a richly structured palate featuring layers of ripe fruit, notes of ginger and the long mineral finish so typical of the Awatere Valley.

Wise Sea Urchin Reising, Frankland River Bottle
 Australia £28.95
 Intense aromas of orange blossom and fresh lime with lively citrus, mandarin and pear on the palate: refreshing to the finish.

Petit Chablis, J. Moreau et Fils Bottle
 France £29.95
 Made in classic Chablis style, it is lean and elegant with underlying Chardonnay fruit from the northern tip of Burgundy.

Sancerre, Les Collinettes, Joseph Mellot Bottle
 France £32.95
 Stylish and crisp aromas of gooseberries and powerful fruit flavours, linked with a clean finish, from one of the finest and most dynamic producers.

Red Wine by the Glass

Altoritas Merlot, BOT 175ml 250ml
 Central Valley, Chile £15.95 £4.15 £5.60
 Soft, light and fruity Merlot with plummy aromas and a hint of spice.

Ayrum Tempranillo Tinto Albali, BOT 175ml 250ml
 Valdepenas, Spain £15.95 £4.15 £5.60
 Cherry-red, very smooth with blackberry and plum fruit: the tannins are light and finish soft.

Berri Estates Shiraz, BOT 175ml 250ml
 South-Eastern Australia £15.95 £4.15 £5.60
 Medium-bodied and fruity with raspberry, cherry and plum, complemented by vanilla spices.

Red Wines

Pablo Old Vine Garnacha, Calatayud Bottle
 £19.95
 Ripe blueberry, blackberry and cherry fruit, backed by a refreshing juicy finish.

Vleurie Château de Fleurie, E. Loran et Fils Bottle
 France £23.95
 Vibrancy of violet aromas and soft raspberry smoothness with a lingering elegance from 18th Century heritage and northern granite hills.

Portillo Malbec, Valle de Uco, Mendoza Bottle
 Argentina £23.50
 Plums, blackberries and a touch of vanilla: fresh fruit flavours, supported by a touch of spice.

Bethany gó Shiraz, Barossa Valley Bottle
 Australia £32.50
 The aroma is generous and the mouth-feel elegant yet full flavoured, whilst the lingering finish is a delightful blend of blackberry fruit and restrained oak spice.

Valpolicella Classico, Superiore Ripasso, Pe Poiane, Bolla Bottle
 Italy £32.00
 The traditional ripasso technique of fermentation on famous Amarone skins, entices reminiscence of Christmas dates and soft prune richness.

Don Jacobo Rioja Gran Reserva, Bodegas Corral Bottle
 Spain £37.00
 A smooth, mellow, plump pluminess enclosed in an elegant creamy character, only in classic vintages from some of the best Rioja vineyards.

Châteauneuf-du-Pape, Les Bartavelles, Jean-Luc Colombo Bottle
 France £43.00
 On the nose a powerful wine, full, complete and silky with notes of ripe fruit, liquorice and gingerbread. The palate is elegant, rich and deep with mature and velvety tannins.

Rosé Wine by the Glass

Belvino Pinot Grigio Roasto delle BOT 175ml 250ml
 Venezie, Italy £15.95 £4.15 £5.60
 Slightly drier in style, full of fresh summer berry fruit aromas.

Vendage White Zinfandel BOT 175ml 250ml
 California, USA £14.95 £4.45 £5.25
 A brief time with juice and skin together gives this delicate colour, delicious strawberry aroma and zingy freshness.

Sparkling Wine & Champagne

Conti D'Arco Prosecco, Brut Bottle
 Italy £22.00
 Sparkling with fresh apples, pears and just a hint of white peach.

Piper-Heidsieck Brut Bottle
 France £45.00
 A classic Pinot Noir dominated Brut Champagne: plenty of freshness with citrus notes, such as grapefruit, followed by Granny Smith green apple, and crunchy, juicy pear, ample and intense.

Laurent-Perrier Brut L.P. Bottle
 France £45.00
 Dry and lemony with a crisp, buscuity finish. From the three classic grape varieties, Chardonnay, Pinot Noir and Pinot Meunier.

Piper-Heidsieck Cuvée Sublime Demi-Sec Bottle
 France £49.95
 Fresh and well-structured the palate shows notes of caramel, pineapple and other exotic fruits: with vanilla and cinnamon accents.

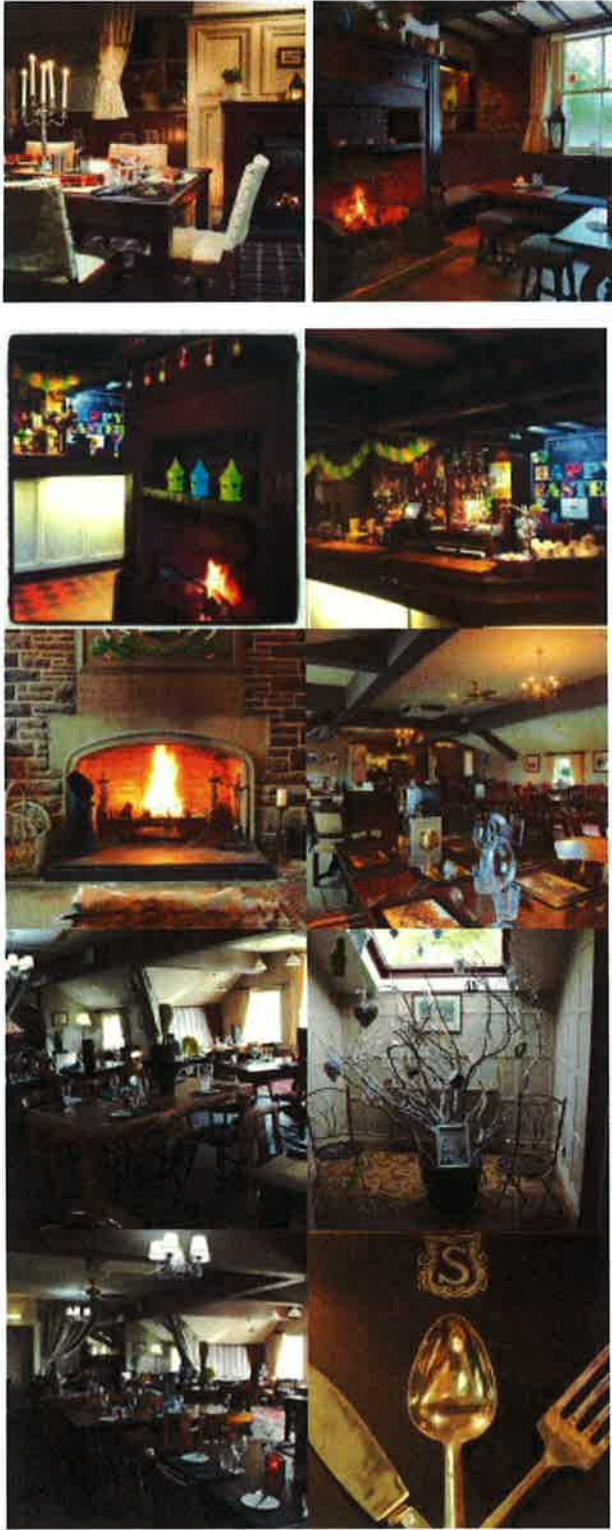
Veuve Cliquot Yellow Label, Brut Bottle
 France £52.50
 Reflecting the traditions of the past, this is full, yet dry and has a rich, creamy style with biscuity flavours.

Laurent-Perrier Cuvée Rosé Brut Bottle
 £65.00
 The briefest liaison with grape skins tantalisingly leaves this delicate colour yet exudes a floral fragrance evolving soft red berry richness.

Dom Perignon Brut Bottle
 France £130.00
 Long and satisfying on the palate with layers of yeasty, nutty flavours, superbly fat and ripe. Complex, luxury Grand Cru Champagne made only in the best years.

Piper-Heidsieck Rare Brut Bottle
 £150.00
 Silky textured: with exotic, rich, tropical fruit flavours including pineapple, kiwi and passion fruit: it's backed by a fresh mineral finish and rediscovered spice notes.

Louis Roederer Cristal Brut Bottle
 £200.00
 Aromas of green apple, caramel and lemon zest: with concentrated, minerally flavours that announce apples served with cream.



Continued from previous page...

Non standard timings. Where you intend to use the premises to be open to the members and guests at different times from those listed above, list below.

For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.

New years Eve
Christmas Eve
Good Friday
The day prior to a bank holiday and;
Any other days of significance or national importance.

On these dates outside activity may go on until 24:00.

Identify those conditions currently imposed on the licence which you believe could be removed as a consequence of the proposed variation you are seeking.

Those sections highlighted within a pink box on the attached scanned copy of our Premises Licence will be removed.

- I have enclosed the premises licence
 I have enclosed the relevant part of the premises licence

Reasons why I have failed to enclose the premises licence or relevant part of premises licence.

Section 16 of 17

LICENSING OBJECTIVES

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

a) General – all four licensing objectives (b,c,d,e)

List here steps you will take to promote all four licensing objectives together.

See sections outlined below.
We will work closely with Lancashire Police Constabulary and the Local Authority to ensure that the four licensing objectives are adhered to and actively promoted at all times.

b) The prevention of crime and disorder

1. Installation of digital CCTV system with cameras both internally and externally. The system to be recording 24 hours a day 7 days a week, to be fully operated and, maintained to the satisfaction of Lancashire Constabulary.
2. Ensure there is one member of staff on duty at all times when the premises are trading who can operate and download images from the CCTV system. These images to be made available on reasonable request and in accordance with current provisions of the Data protection Act from any responsible authority.
3. The premises will operate an age challenge policy 25
4. The premises will have a written Drugs Policy.

Licensing Act 2003

Premises Licence

PLA0307

Prevention of Crime and Disorder

Incident logbooks are used to record any accidents or incidents of non-service.

Toughened drinking glasses are used as much as possible.

An operational drugs policy is in force and the premises is part of the Pubwatch scheme in the local area.

Those who appear to be below the age of 21 must provide photographic evidence to prove they are over 18 in order to be served alcohol.

Those appearing to be drunk and disorderly will be refused service of alcohol.

Public Safety

The designated premises supervisor is a fully qualified first aider. Emergency lighting, gas installation and fire alarms are checked annually.

Pre-opening safety checks are carried out daily.

Free drinking water is available throughout the hours of opening.

Disabled toilets are located down stairs and there is a ramp to the ground floor.

Prevention of Public Nuisance

The premises are located in a residential area therefore all doors are kept closed, except for access to the public, in order to reduce noise pollution. There are notices inside the premises requesting that customers leave in an orderly manner.

Local taxi firms will be informed of any changes in opening hours.

Recorded music may be played from 00.00 until close provided that it is played at a reduced level, as not to disturb neighbours i.e. music is inaudible to the nearest noise sensitive location.

Protection of Children From Harm

Children must be accompanied by an adult at all times.

ANNEX 3 – CONDITIONS ATTACHED AFTER A HEARING BY THE LICENSING AUTHORITY

PUBLIC ENTERTAINMENTS LICENCE

Conditions For the purpose of these special conditions and to which they relate the expressions "the Council" and/or "the Licensing Authority" means Chorley Borough Council.

The Maximum number of persons permitted in the licensed area at any one time shall not exceed 100 (one hundred) persons

Additional conditions

The internal door glazing panel shall be fitted with double or secondary acoustic glazing to a specification agreed with the Council.



Licensing Act 2003

Premises Licence

PLA0307

trained staff to

persons injured within the premises.

1) All external doors and windows shall be kept closed when regulated entertainment is being provided except in the event of an emergency.

2) The licence holder or his representative shall conduct regular assessments of the noise coming from the premises on every occasion

the premises is used for regulated entertainment and shall take steps to reduce the level of noise where it is likely to cause a disturbance

to local residents. A written record shall be made of those assessments in the logbook kept for that purpose and shall include,

the time and date of the checks, the person making them and the results including any remedial action.

3) There shall be placed at all exits from the premises and in the car park, in a place where they can be seen and easily read by the public,

notices requiring customers to leave the premises and the area quietly. (Note this may also include a reference to vehicles.)

4) No outside areas (i.e. decking area) designated for the consumption of alcohol shall be used after 22.00 hours and all glasses and bottles

should be removed at this time and a physical barrier placed across the entrance to emphasise the closure.

ANNEX 4 - PLANS

