

If you would like any further information or have any special requirements in respect of this Meeting, please contact Lynda Eastwood, Democratic Services Officer on (01507) 613422

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Website: www.e-lindsey.gov.uk**

Date: Thursday, 18 January 2024

Dear Councillor,

Licensing Act 2003 Sub Committee

You are invited to attend a Meeting of the **Licensing Act 2003 Sub Committee** to be held at **the Hub, Mareham Road, Horncastle, Lincolnshire LN9 6PH** on **Friday, 2nd February, 2024** at **10.30 am**, for the transaction of the business set out in the attached Agenda.

Councillors observing the meeting and the public and the press may access the meeting via the following link <https://bit.ly/ELDCYT> where a livestream and subsequent recording of the meeting will be available.

Yours sincerely



Robert Barlow
Chief Executive

Conservative

Councillor Stephen Evans and Terry Taylor

Independent Group

Councillor Darren Hobson

District Independent/Liberal Democrat

Councillor Sandra Campbell-Wardman

LICENSING ACT 2003 SUB COMMITTEE AGENDA
Friday, 2 February 2024

Item	Subject	Page No.
1.	ELECTION OF CHAIRMAN:	
2.	DISCLOSURE OF INTERESTS (IF ANY):	
3.	APOLOGIES FOR ABSENCE:	
4.	EXCLUSION OF THE PUBLIC AND PRESS The content of this report is not exempt from publication, however an Evidence Pack has been provided separately to the Sub-Committee and is exempt from publication by virtue of Paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972.	
5.	REVIEW OF A PREMISES LICENCE: Report of Group Manager Public Protection.	1 - 40



REPORT TO:	LICENSING ACT 2003 SUB-COMMITTEE
DATE:	02 FEBRUARY 2024
SUBJECT:	APPLICATION FOR REVIEW OF A PREMISES LICENCE – LA CAFÉ, 1 GRAND PARADE, SKEGNESS, PE25 2UN (MIRCH (2022) LIMITED)
PURPOSE:	This Report considers an application by Mr Victor Fox (of Europa Fisheries Limited and The Factory Rock Shop) for a review of the premises licence held in respect of the LA Café, 1 Grand Parade, Skegness, PE25 2UN.
REPORT OF:	Group Manager Public Protection.
REPORT AUTHOR:	Mr Adrian Twiddy (Principal Licensing Officer)
WARD(S) AFFECTED:	Skegness
EXEMPT REPORT?	The content of this Report is not exempt from publication. However, an evidence pack will be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report. The evidence pack contains information relating to a person's business affairs and so is exempt from publication. The evidence pack is not for publication by virtue of Paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972.

SUMMARY

This Report considers an application by Mr Victor Fox (of Europa Fisheries Limited and The Factory Rock Shop) for a review of the premises licence held by Mirch (2022) Limited in respect of the LA Café, 1 Grand Parade, Skegness, PE25 2UN. The review application has been submitted by Mr Fox, acting in his role as an Other Party, under the provisions of Section 51 of the Licensing Act 2003.

The review relates to the public safety licensing objective. The review application expresses concern regarding the safety of the outside first floor balconies at the LA Café premises. Mr Fox is of the view that the use of the balconies is dangerous and compromises the public safety licensing objective. Mr Fox is expressing concerns relating to the structural integrity of the two balcony areas of the LA Café should they be used by patrons of the LA Café.

The application for licence review has attracted one representation from a Responsible Authority – that is the Council's Environmental Health Team.

RECOMMENDATIONS

The Sub-Committee must consider the application for review of a premises licence and having regard to the application, take such of the steps mentioned below (if any), as it considers appropriate for the promotion of the licensing objectives. The steps are:

- To modify the conditions of the licence.
- To exclude a licensable activity from the scope of the licence.
- To remove the Designated Premises Supervisor (DPS).
- To suspend the licence for a period not exceeding three months.
- To revoke the licence.

The Sub-Committee may also consider issuing a warning to the licence holder and/or to recommend improvement within a particular period of time.

If none of the above steps is considered appropriate the premises licence should remain in the form it was granted.

REASONS FOR RECOMMENDATIONS

The Licensing Authority has a duty to consider the status of premises licences where reviews have been submitted by Other Parties or Responsible Authorities.

All parties within the licensing process must seek to promote the licensing objectives as defined under the Licensing Act 2003.

The Sub-Committee must consider the application for review of the premises licence and having regard to the application, take such steps (if any) as it considers appropriate for the promotion of the licensing objectives.

OTHER OPTIONS CONSIDERED

Not Applicable - Under the terms of the Licensing Act 2003 this Authority must consider the premises licence review submitted by the Other Party.

1. BACKGROUND

1.1. Premises Licence Number: PLA008445.

Licence Holder: Mirch (2022) Limited (Mr Tajinder Singh is the Director of the Company).

Premises: LA Café, 1 Grand Parade, Skegness, PE25 2UN.

Designated Premises Supervisor (DPS): The current DPS for the site is Mr Tajinder Singh whose personal licence was issued by this Authority in 2011.

Licence Holder's Representative: Mr Michael Kheng of Kurnia Licensing Consultants.

Review Applicant's Representative: Mr Victor Fox (the person submitting the review application) will be represented at the licence review hearing by Mr Grant Shackleton of Chattertons Legal Services Limited.

- 1.2.** This case involves an application for a review of a premises licence (Section 51 of the 2003 Act refers) by Mr Victor Fox (of Europa Fisheries Limited and The Factory Rock Shop) acting as an Other Party. The review relates to the public safety licensing objective.
- 1.3.** A plan showing the location of the LA Café premises can be found at **Appendix A** of this Report. A plan showing the internal layout of the premises can be found at **Appendix B**. Photographs, showing the front of the premises and the immediate surrounding area of the premises, will be available for Members of the Sub-Committee on the day of the hearing.
- 1.4.** The premises is currently authorised to undertake the supply of alcohol (for consumption on & off the premises) and provide regulated entertainment during 0900 to 0400 Hours. A full extract from the premises licence for the business can be found at **Appendix C** of this Report. The premises licence was subject of a premises licence variation supplication that was granted in October 2023. The aforementioned application varied the conditions attached to the licence and the up-to-date conditions (resulting from the variation application) can be found within **Appendix C** of this Report.
- 1.5.** The venue was first granted a premises licence, by this Authority, in 2005. Prior to that the venue held a Justices Licence with the Magistrates Court. The venue is a first-floor bar / nightclub venue within the busy night-time economy area of Skegness – however, the premise has been closed since March 2020. The premises closed when the nationwide Covid restrictions / lockdown came into place and has not reopened since. However, the Licensing Team are given to understand that there is now a wish by the premises licence holder to reopen the venue.
- 1.6.** There are two outside balconies at this first-floor venue. The balconies overlook the busy Grand Parade and Lumley Road area of Skegness and are subject to the following condition on the current premises licence:
- The maximum number of people permitted on the Grand Parade balcony is 60 & the maximum number of people permitted on the Lumley Road balcony is 60.*
- 1.7.** The above condition was placed on the existing premises licence by a Consent Order issued by the Magistrates Court on 26 June 2012 following a premises licence appeal to the Court. The Licensing Team are given to understand that the occupancy figure was calculated by the premises licence holder following consultation with Lincolnshire Fire & Rescue.

2. REPORT

- 2.1.** The Licensing Authority has a duty to consider the status of a premises licence where a valid review has been submitted by an Other Party. This duty has been delegated to the Licensing Sub-Committees of the Full Licensing Act 2003 Committee.
- 2.2.** The review application submitted by Mr Victor Fox relates to the public safety licensing objective. His submission expresses concern regarding the safety of the outside balconies at the LA Café premises. He is of the view that the balconies are not structurally safe to withstand the weight of the capacity given in the premises licence condition. Mr Fox is of

the view that the use of the balconies is dangerous and compromises the public safety licensing objective.

- 2.3. Persons, known under the terms of the Licensing Act 2003 as 'Other Parties', can apply to the Council at any time for a review of a premises licence. An Other Party would normally be anyone who is affected by activity at the licensed premises in question. The submission of a review is a request for the Licensing Authority to look at an existing licence and decide whether its conditions are adequate to meet the licensing objectives defined under the 2003 Act. This is because premise licences normally last for the lifetime of the business and would not otherwise be subject to review by the Licensing Authority. The licence review request must not be frivolous, repetitious or vexatious.
- 2.4. In this particular case Mr Fox, in his role as an Other Party, is acting as a person involved in two businesses in the vicinity of the licensed premises.
- 2.5. A copy of the application for premises licence review (including the grounds for the review) can be found at **Appendix D** of this Report. The review application is accompanied by supporting documentation and evidence. A copy of the evidence pack will be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report. A copy of any evidence pack, submitted by premises licence holder, will also be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report.
- 2.6. As required under the terms of the Licensing Act 2003 the review application has been advertised outside the premise, at the Council's Horncastle Offices and on the Council's website, for a period of 28 consecutive days. The Responsible Authorities (e.g., Lincolnshire Trading Standards, Lincolnshire Police, etc.) and other relevant parties were permitted to submit representations regarding the review application. Any representation, made in relation to the review, must relate to one or more of the licensing objectives. The closing date for representations was 15 January 2024.
- 2.7. The Council's Environmental Health Department have submitted a representation in relation to the premises licence review – the representation can be found at **Appendix E** of this Report. There have been no representations received, regarding the review application, from Other Parties (e.g., local residents and local businesses).
- 2.8. The Environmental Health representation expresses concern relating to the structural integrity of the two balcony areas of the LA Café should they be used, when the premises reopens, without the prior submission of a report which conclusively determines the safe load bearing capacity of the structures.
- 2.9. **Guidance Issued by the Home Office Under Section 182 of the Licensing Act 2003:** It is considered that the extracts from the national guidance, shown at **Appendix F** of this Report, have a bearing upon the premises licence review.
- 2.10. **Local Policy Considerations:** It is considered that the extracts from the Council's Local Statement of Licensing Policy, shown at **Appendix G** of this Report, have a specific bearing upon the premises licence review.

3. CONCLUSION

- 3.1. The Licensing Act 2003 sets out options which the Licensing Authority can utilise in order to promote the licensing objectives following the consideration of a premises licence review application. Any step taken by the Licensing Authority must be appropriate for the promotion of the licensing objectives. The licensing objectives are detailed in Point 3 of the Legal Implications Section of this Report.
- 3.2. Any amendment to the premises licence must only be taken if the Sub-Committee are persuaded that it is appropriate for the promotion of the licensing objectives to do so.
- 3.3. The Sub-Committee must seek to establish the cause or causes of the concerns that the premises licence review identifies. The remedial action taken should be directed at these causes and should be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

EXPECTED BENEFITS TO THE PARTNERSHIP

Not Applicable.

IMPLICATIONS

SOUTH AND EAST LINCOLNSHIRE COUNCIL'S PARTNERSHIP

There are no SELCP implications.

CORPORATE PRIORITIES

The licensing and compliance role of the Council is important in improving the health, safety, security and welfare of the district's residents, visitors and business community.

STAFFING

The processing of this premises licence review is being undertaken as part of the normal duties carried out by the Licensing Team and so there are no staffing implications.

LEGAL IMPLICATIONS

1. The power to review a premises licence is designed to provide the Licensing Authority with a suitable mechanism to tackle problems that may subsequently arise once a premise is licensed.
2. The Sub-Committee must consider the application for review of a premises licence and having regard to the application, take such of the steps mentioned below (if any), as it considers appropriate for the promotion of the licensing objectives. The steps are:
 - To modify the conditions of the licence.
 - To exclude a licensable activity from the scope of the licence.
 - To remove the Designated Premises Supervisor (DPS).
 - To suspend the licence for a period not exceeding three months.
 - To revoke the licence.

The Sub-Committee may also consider issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time.

3. The licensing objectives under the Licensing Act 2003 are:

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

4. The Other Party, Environmental Health Department and the premises licence holder may appeal any decision made by the Sub-Committee to the Magistrates Court. On determining an appeal, the Court may:

- Dismiss the appeal.
- Substitute for the decision appealed any other decision which could have been made by the Licensing Authority, or
- Remit the case to the Licensing Authority to dispose of in accordance with the direction of the Court.

5. The conditions of the licence are modified if any of them are altered or omitted, or any new condition is added. Conditions can only be attached to a premises licence if they are considered appropriate for the promotion of the licensing objectives.

6. If consideration is being given to attaching new or amended conditions to the premises licence, Members should consider, are the proposed conditions:

- Appropriate;
- Relevant;
- Relevant to the activity/premises/venue;
- Enforceable;
- Precise;
- Reasonable, and
- Achievable.

7. The breach of a premises licence condition is an offence punishable (if the Licensing Authority or Lincolnshire Police are minded to prosecute) by an unlimited fine and/or six months imprisonment.

8. The Licensing Authority's determination of the licence review should be evidence-based. Any decision must be justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

DATA PROTECTION

An evidence pack, in relation to the premises licence review, will be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report. The evidence pack contains business information and is exempt from publication.

FINANCIAL

As with all licence applications it is possible that if a Licensing Committee decision is appealed to the Magistrates Court and the appeal is upheld, costs may be awarded against the Council. However, the judgement of the Courts is that costs should not normally be awarded against the Local Authority provided the Authority has acted properly and reasonably.

RISK MANAGEMENT

There is a theoretical risk of civil action against the Licensing Authority if it is found not to have exercised due diligence in licensing matters.

STAKEHOLDER / CONSULTATION / TIMESCALES

The representation, regarding the premises licence review, was received from the Environmental Health Team within the requisite 28-day period.

REPUTATION

There is a risk that the Council's reputation could be damaged if licensing legislation and guidance are not upheld and applied appropriately.

CONTRACTS

Not Applicable.

CRIME AND DISORDER

All Local Authorities must fulfil their obligations under Section 17 of the Crime and Disorder Act 1981 when carrying out their functions as Licensing Authorities. Section 17 places a duty on Local Authorities to do all they reasonably can to prevent crime and disorder in their area.

EQUALITY AND DIVERSITY/ HUMAN RIGHTS/ SAFEGUARDING

Equality Implications: There are no equality implications arising from the recommendations of this Report.

Human Rights: The Licensing Authority must ensure that its decisions can withstand scrutiny by reference to the principle of proportionality, i.e., is the decision / action proportionate to what it wishes to achieve, or, colloquially does the end justify the means.

The premise licence holder is entitled to a fair hearing. The right to respect for private and family life, also applies as the "licence" is crucial to the livelihood of the premises licence holder.

The Human Rights of the wider community are also engaged.

Safeguarding Implications: Licensing Authorities must consider the need to protect children and vulnerable persons from exploitation when undertaking licensing functions.

HEALTH AND WELL BEING

Not Applicable.

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

Not Applicable.

ACRONYMS

DPS - Designated Premises Supervisor.

APPENDICES

Appendices are listed below and attached to the back of the report: -

APPENDIX A	Location plan of the LA Café, 1 Grand Parade, Skegness, PE25 2UN.
APPENDIX B	Site Plan of the LA Café, 1 Grand Parade, Skegness, PE25 2UN.
APPENDIX C	Extract from the current premises licence for the LA Café, 1 Grand Parade, Skegness, PE25 2UN.
APPENDIX D	Copy of the Premises Review Application submitted in relation to the LA Café, 1 Grand Parade, Skegness, PE25 2UN.
APPENDIX E	Copy of the Representation submitted by the Environmental Health Team.
APPENDIX F	Extracts from the Guidance Issued by the Home Office Under Section 182 of the Licensing Act 2003.
APPENDIX G	Extracts from the Local Licensing Policy Statement.

BACKGROUND PAPERS

Background papers used in the production of this report are listed below: -

Document title	Where the document can be viewed
Guidance issued by the Home Office to Licensing Authorities under Section 182 of the Licensing Act 2003	https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003
The Council's Statement of Licensing Policy adopted under the Licensing Act 2003.	https://www.e-lindsey.gov.uk/article/5539/Alcohol-and-Entertainment

CHRONOLOGICAL HISTORY OF THIS REPORT

A report on this item has not been previously considered by a Council body.

REPORT APPROVAL

Report author:	Mr Adrian Twiddy (Principal Licensing Officer) Email: adrian.twiddy@e-lindsey.gov.uk
Signed off by:	Donna Hall (Group Manager Public Protection) Email: donna.hall@sholland.gov.uk

Appendix A

Tower
Cinema

Shelter

**LA Cafe, 1 Grand Parade,
SKEGNESS, PE25 2UN
(First Floor)**

Page 9

113

2

3

TCB

5.4m

5.7m

Jubilee

TF5663SE

Scale 1:401

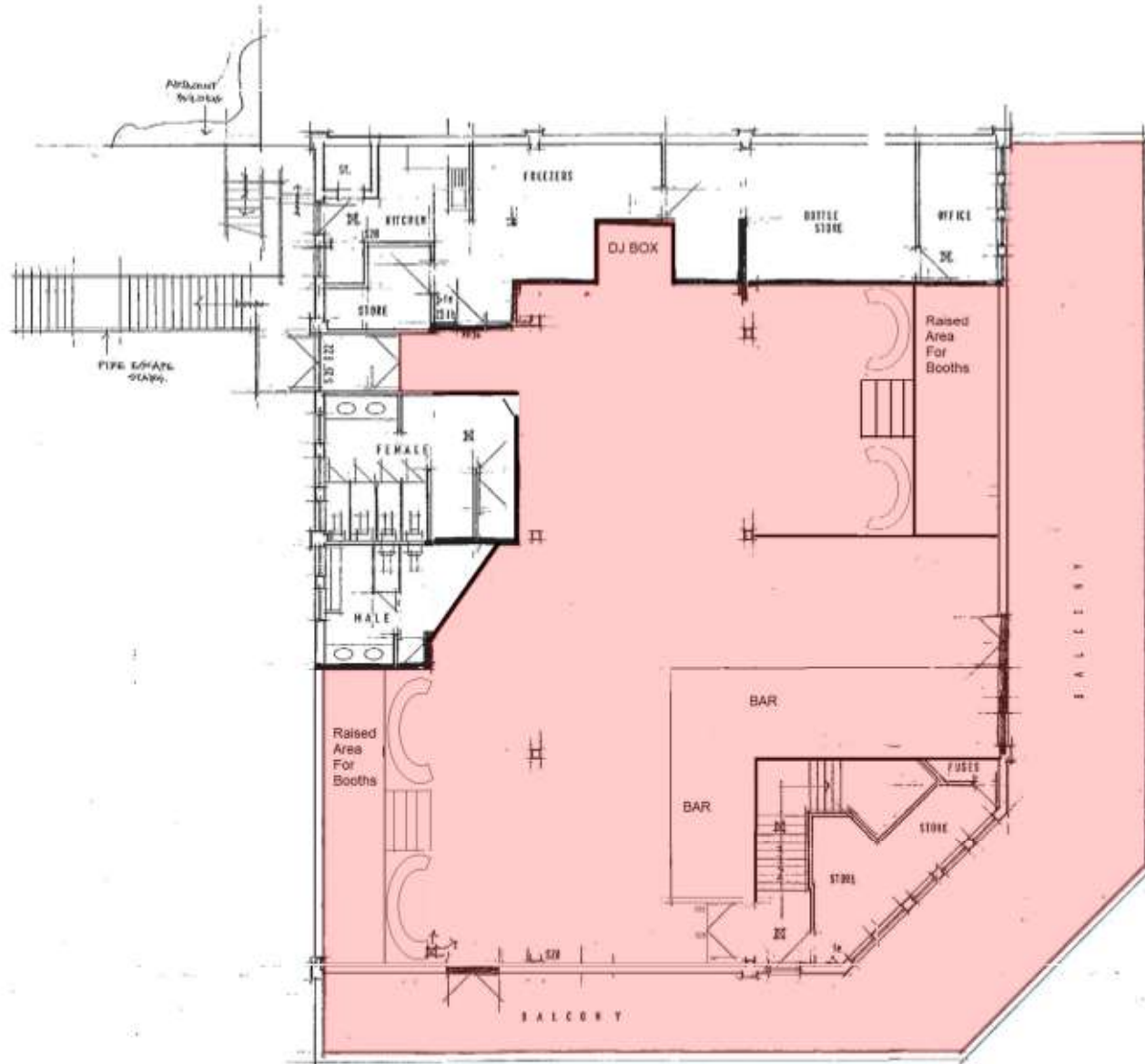
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Agenda Item 5

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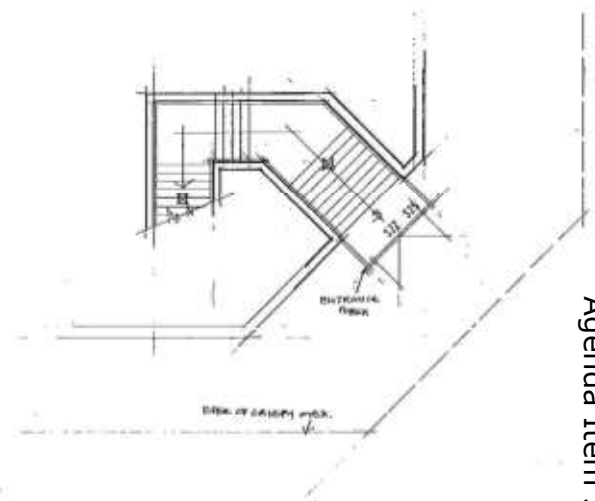
LA Cafe
1 Grand Parade
Skegness
PE25 2UN

Licensed area shaded red



PLAN AT FIRST FLOOR

1:100



GROUND FLOOR

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APPENDIX C

Premises Licence Number: PLA008445

Part 1 - Premises Details

LA Café, 1 Grand Parade, Skegness, PE25 2UN

Licensable Activities Authorised by the Licence:

Supply of Alcohol (For Consumption On & Off the Premises)
Late Night Refreshment (Indoors)
Plays (Indoors)
Films (Indoors)
Indoor Sporting Events
Live Music (Indoors)
Recorded Music (Indoors)
Performances of Dance (Indoors)
Anything of a Similar Description to Live Music, Recorded Music or Performances of Dance (Indoors)

The Times the Licence Authorises the Carrying out of Licensable Activities:

Supply of Alcohol

Monday to Sunday 0900 to 0400 Hours

Seasonal Variations: New Year's Eve from start hour as above until New Year's Day terminal hour.

Non-Standard Timings: An additional hour to the standard and non-standard times when British Summer Time commences.

Late Night Refreshment

Monday to Sunday 2300 to 0500 Hours

Plays, Films, Indoor Sporting Events, Live Music, Recorded Music, Performances of Dance, Anything of a Similar Description to Live Music, Recorded Music or Performances of Dance

Monday to Sunday 0900 to 0400 Hours

Seasonal Variations: New Year's Eve from start hour as above until New Year's Day terminal hour.

Non-Standard Timings: An additional hour to the standard and non-standard times when British Summer Time commences.

The Opening Hours of the Premises:

No time restriction regarding the opening hours of the premises.

Part 2

Details of Premises Licence Holder

Mirch (2022) Limited

Designated Premises Supervisor

Name: Mr Tajinder Singh

Personal Licence Issued By: East Lindsey District Council

Annex 1 – Mandatory Conditions

MC1

Only individuals licensed by the Security Industry Authority may be used at the premises to guard against:

- a) unauthorised access or occupation (e.g. door supervision) or,
- b) outbreaks of disorder, or
- c) damage

S21 Licensing Act 2003

MC2

No supply of alcohol may be made under this licence:

- a) at a time when there is no designated premises supervisor in respect of it, or
- b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

S19(1) Licensing Act 2003

MC3

Every retail sale or supply of alcohol made under this licence must be made or authorised by a person who holds a personal licence.

S19(2) Licensing Act 2003

MC4

The admission of children under the age of 18 to film exhibitions permitted under the terms of this licence shall be restricted in accordance with any recommendations made

- a) by the British Board of Film Classification (BBFC), where the film has been classified by that Board, or
- b) by the Licensing Authority where no classification certificate has been granted by the BBFC, or, where the licensing authority has notified the licence holder that section 20(3)(b) (74(3)(b) for clubs) of the Licensing Act 2003 applies to the film.

S20/74 Licensing Act 2003

MC6

(1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises.

- a) games or other activities which require or encourage, or are designed to require or encourage, individuals to -

- (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
- b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
- c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
- d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.
- e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

The Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014

MC8

The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

The Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014

MC9

(1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licences must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either:-

- (a) a holographic mark or
- (b) an ultraviolet feature.

The Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014

MC10

The responsible person must ensure that -

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures -

- (i) beer or cider: ½ pint;
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
- (iii) still wine in a glass: 125 ml; and

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

The Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014

MC11

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

2. For the purposes of the condition set out in paragraph 1:

(a) 'duty' is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;

(b) 'permitted price' is the price found by applying the formula: $P = D + (D \times V)$ where:

(i) P is the permitted price,

(ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) 'relevant person' means, in relation to premises in respect of which there is in force a premises licence:

(i) the holder of the premises licence,

(ii) the designated premises supervisor (if any) in respect of such a licence, or

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) 'relevant person' means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) 'value added tax' means value added tax charged in accordance with the Value Added Tax Act 1994.

3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (the first day) would be different from the permitted price on the next day (the second day) as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

The Licensing Act 2003 (Mandatory Conditions) Order 2014

Annex 2 – Conditions Consistent with the Operating Schedule

General

Not Applicable.

The Prevention of Crime and Disorder

There shall be provided at the premises door supervisors to such number, if any, as the management of the premises consider are sufficient to control the entry of persons to the premises and for the keeping of order in the premises when they are used for a licensable activity. This condition must be observed in conjunction with conditions set out below and the condition at Annex 3 of the premises licence.

When regulated entertainment is provided after midnight a minimum of 2 door supervisors will be employed at the premises to close.

At least one door supervisor shall be provided at the front door of the premises from 2300 Hours until close when the premises are open to the public for licensable activities.

When a balcony at the premises is open to customers after 2200 Hours until close a door supervisor shall be employed and positioned at the entry to, or on, the balcony to supervise entry and insofar as is reasonably practicable, prevent crime and disorder from occurring on the balcony, until close.

A tamper resistant CCTV system shall be installed, maintained in working order and operated at the premises and CCTV images shall be retained for a period of no less than 28 days. All areas the public have access to in the premises (including the toilets) shall be covered by the CCTV system.

Recordings of incidents at the premises must be made secure for inspection by the Police and provided on lawful request. This means that a member of staff shall be available within 24 hours who can operate the CCTV system and provide recordings.

A record/logbook shall be kept on the premises by the Designated Premises Supervisor (DPS) of every person employed on the premises as a door supervisor. The record shall be retained for a period of 12 months from date of completion and contain the following details:

- a) The door supervisor's name;
- b) His/her Security Industry Authority (SIA) licence number;
- c) The time and date he/she commenced and concluded their duty;
- d) The door supervisors shall sign each entry; and
- e) The Designated Premises Supervisor (DPS) or other authorised person shall also endorse each entry as having checked the authenticity of the individual door supervisor.

An incident book shall be kept at the premise in which details of crime and/or disorder relating to the premises shall be recorded. The incident book shall contain the following details:

- a) time, date, and location of incident.
- b) nature of the incident
- c) names, addresses, and contact details of persons involved, if possible.
- d) the result of the incident.
- e) action taken to prevent further such incidents.
- f) each entry signed by the Designated Premises Supervisor (DPS), or other responsible person employed at the premises and so authorised by the DPS.

The incident book shall be made available to Police upon request. Each entry shall be retained for a period of 12 months from date of completion.

A refusals book, or electronic record, shall be kept recording all instances where service of alcohol is refused. Records to be retained for at least 12 months and shall be made available for inspection to the Police, or other Officers of a Responsible Authority, upon request.

There shall be in place a drugs policy and the policy made available for inspection upon request by a Police Licensing Officer or any other person authorised by the Licensing Authority.

All staff shall be trained in the sale of alcohol and drugs policy. Such training shall include the refusal of the sale of alcohol to persons under 18 and Challenge 25 and the refusal of the sale of alcohol to persons who are intoxicated. Such training shall be recorded, and refresher training given annually.

Public Safety

There shall be a policy and/or risk assessment in relation to when polycarbonate drinking vessels will be used.

Where available any glass drinking vessels shall be toughened glass.

Balconies shall be screened in Perspex or other solid transparent medium to a minimum height of 1.8 metres.

The Prevention of Public Nuisance

If there are 25 or more customers on the balcony when regulated entertainment is taking place, then between midnight and close no glass drinking vessels or glass bottles shall be permitted on the balcony area.

The Protection of Children from Harm

A Challenge 25 Proof of Age Policy to be applied with the accepted means of proof being:

- Passport
- Photo Driving Licence
- A recognised valid photo-id card bearing the PASS hologram.

No persons under the age of 18 shall be permitted on the premises after 2230 Hours and there shall be no under 18's to remain on the premises after 2330 Hours.

Annex 3 – Conditions Attached After a Hearing by the Licensing Authority

Except for employees or authorised persons, no glass drinking vessels shall be taken outside the premises.

The maximum number of people permitted on the Grand Parade balcony is 60 and the maximum number of people permitted on the Lumley Road balcony is 60.

Signage shall be visibly placed and maintained at every exit asking customers to "Please leave the premises and the area quietly".

NOTE REGARDING ANNEX 3 - The above conditions were attached to the Premises Licence as the result of a Consent order made at Skegness Magistrates Court on 26 June 2012. The full range of conditions, detailed in the Consent Order, were subsequently varied in a premises licence variation granted on 30 October 2023.

[Insert name and address of relevant licensing authority and its reference number (optional)]

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 MR VICTOR FOX

(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 The LA Café, 1 Grand Parade	
Post town Skegness	Post code (if known) PE25 2UN

Name of premises licence holder or club holding club premises certificate (if known) Mirch (2022) Limited

Number of premises licence or club premises certificate (if known) PLA008445
--

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

Fox

First names

Victor

Please tick ✓ yes

I am 18 years old or over

Current postal address if different from premises address

1 to 2 Grand Parade

Post town

Skegness

Post Code

PE25 2UN

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address

Europa Fisheries Ltd
1 to 2 Grand Parade
Skegness
Lincolnshire

The Factory Rock Shop
113b Lumley Road
Skegness
Lincolnshire

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address
Telephone number (if any)
E-mail address (optional)

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

- Please tick one or more boxes ✓
- 1) the prevention of crime and disorder
 - 2) public safety /
 - 3) the prevention of public nuisance
 - 4) the protection of children from harm

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

Please see attached/enclosed for your attention the following:–

- i. Applicant's letter of objection to the grant of a new Premises Licence dated 10 August 2023.
- ii. The report of Gateley Smithers Purslow of 26 September 2023 together with plan.
- iii. The report of Gateley Smithers Purslow of 27 September 2023.
- iv. A copy of our letter to Asak Leisure Ltd of 30 October 2023.
- v. A copy of the licence conditions in respect of this Premises Licence.

The request for the review is based upon the grounds of public safety.

As can be seen from the current conditions for the Licence, there are two balcony areas within premises. See in particular condition 9 states which as follows:–

" The maximum number of people permitted on the Grand Parade balcony is 60 and the maximum number of people permitted on the Lumley Road balcony is 60."

The balconies have caused concern to the Applicant, for fear that they are not of sufficient structural integrity to withhold these sorts of numbers of people. As a consequence thereof Gateley Smithers Purslow (Andrew Gooud) was instructed to consider the structural integrity of the balconies.

In particular I refer to the conclusions in that report from paragraph 5. In particular it appears that the loading on the balcony could be five times more than which was originally intended, and Mr Gooud says this is "unacceptable".

I am also concerned about the "rusted beam and goal post steel structure" which has been fixed on the underside of the balcony towards the entrance of the premises. Clearly this structure had been put in place due to concerns about the structural integrity/capacity of the balcony. My concern, and that of Mr Gooud, relates to the level of corrosion which is visible at the base of the post and also in the beam. This again gives real cause for concern.

I note that the Premises Licence holder produced a report to suggest the balcony areas were safe. As a consequence I commission a second report from Gateley Smithers Purslow, dated 27 September 2023.

Mr Gooud states that the Licence holder's expert has made an incorrect assumption about the loading for the balcony areas, in particular there is a 4 metre cantilever over my fish and chip shop which has no intermediate supports. Mr Goode remains of the view that the balcony could be supporting loads of up to five times greater than that first envisaged, which is clearly unsafe.

Mr Gooud has also referred to a steel balustrade, and believes this to be inadequate and that the push test undertaken was not sufficient to prove its safety.

Due to these concerns I have written to the Licence holder. I provided the Licence

holder with a copy of both of the reports of Gateley Smithers Purslow and raised my concerns with them regarding the safety of the balconies and also the balustrade.

In essence I requested the Licence holder either confirms in writing that the balconies would not be used or otherwise provide details of remedial work that would be undertaken to address the public safety concerns raised by the expert reports.

Unfortunately to this date I have had no response. I have also written to the Licence holder's representative, who his assisting with the licensing applications. He stated that he is not instructed on this matter and directed that I contact his client directly (as I have done).

I therefore believe that if the balconies are used, which is clearly the intention of the Licence holder bearing in mind condition 9 of the Licence, there is a real risk of harm to the public. I do not believe that either of the balconies in question will be able to safely withhold the loading of up to 60 persons. There could be a serious accident. I am also concerned about the safety of persons visiting my fish and chip shop at 1 to 2 Grand Parade and my confectionary shop at 113b Lumley Road, as they will walk underneath these unsafe balconies.

Recently, in August/September 2023, an application was made for a new Premises Licence for this premises. Please see attached the Objections that I made then, which related to public safety. Significantly the Applicant for that new Premises Licence did withdraw the application, and now it seems that the current existing Licence is being relied upon (with a variation that was recently made to East Lindsey District Council).

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

Please tick ✓ yes

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

No

If yes please state the date of that application

Day	Month	Year
<input type="text"/>	<input type="text"/>	<input type="text"/>

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

Although representations for review have not previously been made, I refer to my enclosed letter of 10 August 2023 about a previous application for a new Premises Licence. I objected to that Premises Licence upon the grounds of public safety. That application for a new Premises Licence was then withdrawn.

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



Date

18/12/23

Capacity

SOLICITOR FOR THE CLIENT

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)	
Grant Shackleston Chattertons Solicitors 28 Wide Bargate	
Post town Boston	Post Code PE21 6RT
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.



Licensing Act 2003 - Representation by a Responsible Authority

All premises licence applications (that receive valid representations) will be considered by a Licensing Sub-Committee hearing (consisting of 3 Councillors).

Representations may be made at any time during a period of 28 consecutive days starting on the day after the premises licence application was submitted to the Licensing Authority.

Please be aware that this completed form may be viewed by the premises licence applicant or by a representative of the applicant. In addition, the details (and suitably redacted copies) of all representations will be included in a Report that will be prepared by Officers from the Council's Licensing Section. These Reports are public documents and the Council is required to publish them. Copies of the Report and accompanying documentation (including the details of all parties to the review application) will be placed on the Council's website.

Representations are only relevant to an application if they relate to at least one of the four Licensing Objectives listed below:

- 1. The Prevention of Crime and Disorder**
- 2. Public Safety**
- 3. Prevention of Public Nuisance**
- 4. The Protection of Children from Harm**

Please enter your details below:

Responsible Authority:	East Lindsey District Council
Contact Officer:	David Dodds
Address:	The Hub, Mareham Road, Horncastle LN9 6PH
Telephone Number:	██████████
E-mail:	████████████████████

Please provide details of the application to which your representation refers:

Name:	Existing request for review – Chattertons Solicitors
Address:	1 Grand Parade Skegness
Application Details:	LA Cafe

Please provide details of your representation in the box below. Indicate which of the Licensing Objectives your representation refers to by ticking the relevant box(es):

- **The Prevention of Crime and Disorder**
- **Public Safety**
- **Prevention of Public Nuisance**
- **The Protection of Children from Harm**

Representation:

We are in receipt of a notification from Chatterton Solicitors in respect of the above which has triggered a review of the premises license for the above.

This review related to a perceived structural stability issue relating to the premises subject to the license which lies directly above Chattertons clients' premises.

We are aware that the current operator of the premises had previously commissioned an inspection of the balcony in August 2023.

The owners of the premises below have commissioned their own report in September 2023.

It appears that the balcony has not been placed under the proposed level of structural stress for a considerable length of time. There have been at least 2 verified instances of significant water ingress through the structure one during the last year.

After reading both reports presented by both parties, neither report fully addresses the concerns relating to the structural integrity of the balcony area of the LA café should it be used in the manner in which it is proposed.

As neither report carried intrusive structural surveys and could not accurately verify the load-bearing capacity to determine the integrity of this structure this raises concern that this structure could fail and therefore place the public at risk, both in terms of those on and those below the structure.

If possible, please suggest alterations to the application/license that would resolve the problem mentioned above, again paying attention to the **Licensing Objectives**:

1. Undertake to not use or open the balcony area to the general public until such time as:-
 - a) A full intrusive structural survey has been carried out of the balcony and associated newly fitted balustrade which conclusively determines the safe load bearing capacity of the structure, in terms of the maximum number of people that can use the area at any one time.
 - b) That this survey has been submitted in full to the Environmental Health team.
 - c) That the Environmental Health Department have been able to independently verify any report submitted or have employed an expert to do so on their behalf.
 - d) That this verification has deemed that the balcony is safe to use or that suitable works have been carried out in compliance with any recommendations contained within the report to render it safe to use for this purpose.

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APPENDIX F**Guidance issued by the Home Office under Section 182 of the Licensing Act 2003**

It is considered that the extracts from the Home Office Guidance (December 2023), shown below, have a bearing upon the application for review.

Licence Conditions – General Principles

Paragraph 1.16

Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met;
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

Other Relevant Legislation

Paragraph 1.19

While licence conditions should not duplicate other statutory provisions, licensing authorities and licensees should be mindful of requirements and responsibilities placed on them by other legislation. Legislation which may be relevant includes:

- The Gambling Act 2005
- The Environmental Protection Act 1990
- The Noise Act 1996
- The Clean Neighbourhoods and Environmental Act 2005
- The Regulatory Reform (Fire Safety) Order 2005
- The Health and Safety at Work etc. Act 1974
- The Equality Act 2010
- The Immigration Act 2016
- Regulators’ Code under the Legislative and Regulatory Reform Act 2006

Public Safety

Paragraph 2.8

Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person’s health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority’s powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

Paragraph 2.9

A number of matters should be considered in relation to public safety. These may include:

- Fire safety;
- Ensuring appropriate access for emergency services such as ambulances;
- Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts;
- Providing information on the premises of local taxi companies who can provide safe transportation home; and
- Ensuring adequate lighting outside the premises, particularly on paths leading to and from the premises and in car parks.

Maintenance and Repair

Paragraph 2.17

Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be inappropriate for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if appropriate, checks on this equipment to be conducted at specified intervals and for evidence of these checks to be retained by the premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for licensing authorities, if they receive relevant representations from responsible authorities or any other persons, to attach conditions which require equipment of particular standards to be maintained on the premises. Responsible authorities – such as health and safety authorities – should therefore make their expectations clear in this respect to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules.

Safe Capacities

Paragraph 2.18

“Safe capacities” should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.

Paragraph 2.19

The permitted capacity is a limit on the number of persons who may be on the premises at any time, following a recommendation by the relevant fire and rescue authority under the Regulatory Reform (Fire Safety) Order 2005. For any application for a premises licence or club premises certificate for premises without an existing permitted capacity where the applicant wishes to take advantage of the special provisions set out in section 177 of the 2003 Act¹, the applicant should conduct their own risk assessment as to the appropriate capacity of the premises. They should send their recommendation to the fire and rescue authority which will consider it and decide what the “permitted capacity” of those premises should be.

The Role of Responsible Authorities

Paragraph 9.12

Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority’s main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority’s main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority’s interest or expertise in the promotion of a particular objective may not

be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

Determining Actions that are Appropriate for the Promotion of the Licensing Objectives

Paragraph 9.42

Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

Paragraph 9.43

The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

Paragraph 9.44

Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that any condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

Conditions Attached to Premises Licences

Paragraph 10.2

Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions that the holder of the premises licence or the club premises certificate will be required to take or refrain from taking in relation to the carrying on of licensable activities at the premises in question. Failure to comply with any condition attached to a licence or certificate is a criminal offence, which on conviction is punishable by an unlimited fine or up to six months' imprisonment. The courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided.

Imposed Conditions

Paragraph 10.8

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

Paragraph 10.9

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

Proportionality

Paragraph 10.10

The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that evidence of a right to work check, either physical or digital (e.g. copy of any document checked or a clear copy of the online right to work check) is retained at the licensed premises. Licensing authorities may also wish to consider placing additional conditions on licences to safeguard patrons against spiking, if deemed appropriate and proportionate for a specific venue where there is evidence to justify such action (a definition of spiking can be found in para 2.7). Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

Reviews

Paragraph 11.10

Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

Powers of a Licensing Authority on the Determination of a Review

Paragraph 11.16

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

Paragraph 11.17

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

Paragraph 11.18

However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.

Paragraph 11.19

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

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;

- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

Paragraph 11.20

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

Paragraph 11.21

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

Paragraph 11.22

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

Paragraph 11.23

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

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APPENDIX G**Local Policy Considerations:**

Extracts from the local policy, relevant to this case, can be found below:

Paragraph 1.8 - Representations

The Act describes two "bodies" that may make representations to licence applications and may apply for an existing premises licence to be reviewed by the Licensing Authority, Responsible Authorities and "Other Persons". A list of Responsible Authorities can be found in Appendix 3 of this Policy Document.

Paragraph 1.9

"Other Persons" means any individual, body or business who is affected by the operation of a licensed premises regardless of their geographical location. Although they may be in any geographical position, any representation they make must be relevant to one or more of the licensing objectives, and must not be considered to be frivolous or vexatious. Additionally, any application to review a premises licence must not be repetitious.

Paragraph 1.10

This Licensing Authority will, however, look at the geographical location of the author of any representation or review application received. Where the author lives or works a significant distance from the premises subject of an application or review, this Authority will examine the content of the representation particularly closely. We would expect the author to explain in detail how, in terms of the licensing objectives, they would be affected by the application. The Licensing Authority will consider rejecting any representations which did not include sufficient detail to outline any harm or disturbance which may be caused.

Paragraph 1.13

It is recognised that the licensing function is only one means of securing the delivery of the licensing objectives and should not therefore be seen as solving all problems within the community. The Licensing Authority will therefore continue to work in partnership with its neighbouring authorities, the Police, local businesses and local people towards the promotion of the objectives as outlined.

Paragraph 3.2

We recognise that the licensing and compliance role of the Licensing Authority is important in improving the health, safety, security and welfare of the District's residents, visitors and business community. As part of that remit we will have a responsible licensing regime, which balances the needs of licence holders and residents.

Paragraph 3.11

In order to avoid duplication with other existing legislation and regulatory regimes the Licensing Authority will, as far as possible, not attach conditions to a licence unless they are considered necessary for the promotion of the licensing objectives. Conditions will generally be considered unnecessary if they are already adequately covered by other legislation. It is not intended to duplicate existing legislation and regulatory regimes that already places obligations on employers and operators (e.g. The Health & Safety at Work Act 1974).

Paragraph 5.10 - **Public Safety**

The Licensing Authority will carry out its licensing functions with a view to promoting public safety and will seek to ensure that licensees take measures to protect the safety of performers and persons attending licensable activities. The risk to public safety will vary according to the type of premises and the activities carried out.

The Licensing Authority encourages applicants to include in their operating schedules the steps they propose to take to promote public safety.

Paragraph 5.12

Where appropriate the occupancy capacity for premises or events should be addressed. When music and dancing are a key feature in a venue, then capacity limits may be appropriate.

Paragraph 5.13

The design and layout of premises are important in determining capacity, as is the availability and size of exits. Other factors should also be considered when assessing the appropriate capacity for premises or events. These include:

- The nature of the premises or event.
- The nature of the licensable activities being provided.
- The provision or removal of such items as temporary structures, such as stage, or furniture.
- The number of staff available to supervise customers both ordinarily and in the event of an emergency.
- The age of the customers.
- The attendance by customers with disabilities, or whose first language is not English.
- Availability of suitable and sufficient sanitary accommodation.
- Nature and provision of facilities for ventilation.

Paragraph 10.16 - **Review of Premises Licences**

The Licensing Authority will consider the full range of powers available to it when a review of a premise licence becomes necessary. It will, however, be mindful of the need to prevent the review process being used as an opportunity by Responsible Authorities and interested parties to re-run earlier representations without due cause. The power to review premises licences represents a crucial protection for the community, especially with regards to the promotion of the four licensing objectives. Reviews of licences may be triggered at any stage by Responsible Authorities or interested parties because of a matter arising at the licensed premises and relating to one of the four licensing objectives. Reviews will become necessary following the service of a closure order by the Police. It is the Licensing Authority's belief that the promotion of the licensing objectives is best achieved in an atmosphere of mutual co-operation between all stakeholders. Reviews should therefore be mainly reserved for circumstances where early warnings of concerns and the need for improvement have gone unheeded by the management of the licensed premises.

Paragraph 10.17

This Authority emphasises the importance of all parties working in partnership to achieve the promotion of licensing objectives; the Authority expects that Responsible Authorities will aim to give licensees early warning of any concerns identified at a premises.

Paragraph 10.26

The Licensing Authority will seek to establish the cause or causes of the concern and remedial action will be targeted at such causes. Any action will be proportionate to the problems involved.

Paragraph 10.27

The following is a list of steps the Authority is empowered to take if it considers them necessary to promote the licensing objectives:

- To modify the conditions of the licence.
- To exclude a licensable activity from the scope of the licence.
- To remove the Designated Premises Supervisor (DPS).
- To suspend the licence for a period not exceeding three months.
- To revoke the licence.

The Sub-Committee may also consider issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. If none of the above steps is considered necessary the premises licence will remain in the form it was granted.

Paragraph 10.28

This Authority has adopted the "Red Card, Yellow Card" approach to reviews recommended by the Secretary of State in September 2008 and will use such an approach when it is appropriate to do so. Further information on this approach is available by contacting the Licensing Team.

Paragraph 10.29

Whilst bearing the Red Card, Yellow Card approach in mind this Policy stresses that in cases when the crime prevention objective is being undermined it can be expected that revocation of the licence – even in the first instance – will be seriously considered.

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