

**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 Gemma Hunt on behalf of the Licensing & Out of Hours Team

(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 Cape Coast Restaurant 798 Ashton New Road	
Post town Manchester	Post code (if known) M11 4RY

Name of premises licence holder or club holding club premises certificate (if known) Mrs Nefisa Naa A.A Hammond

Number of premises licence or club premises certificate (if known) 236099

Part 2 - Applicant details

I am

Please tick ✓ yes

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

☐

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

☒

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

☐

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

Please tick ✓ yes

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

Surname

First names

I am 18 years old or over

Please tick ✓ yes

☐

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

Post town

Post Code

Daytime contact telephone number

**E-mail address
(optional)**

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address

Gemma Hunt

Licensing & Out of Hours Team

Hammerstone Road Depot

Hammerstone Road

Gorton

M18 8EQ

Telephone number (if any)

██████████

E-mail address (optional)

████████████████████

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

1) the prevention of crime and disorder

2) public safety

3) the prevention of public nuisance

4) the protection of children from harm

Please tick one or more boxes ✓

☒☒☒☒

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

The Premises Licence Holder (PLH) and Designated Premises Supervisor (DPS) Nefisa Hammond applied for a Temporary Event Notice (TEN) to cover hours outside of the hours permitted by the premises licence, from 0030 to 0300 hours on the 31st July 2021. The notice was rejected as less than 5 working days' notice had been given.

Licensing & Out of Hours (LOOH) attended at 0132 hours and found a large number of customers outside the premises, one hour after permitted opening hours. A customer was witnessed urinating outside the premises.

A request was made for CCTV footage of the event on the 6th August 2021 (6 days after the alleged unauthorised event) in line with conditions attached to the licence. The request for footage has been declined and the licence holder/ DPS advised the footage has been 'rolled over'. This is a S136 offence and a condition which has been in continuous breach since the premises were granted a licence in October 2019.

In line with licence conditions a request for documented staff training for [REDACTED] (Staff member serving on the 31/7/21) was requested on the 11/8/21, no file was present in the training folder. It was advised this was located somewhere else and would be emailed over, as of the 18/08/21 this has not been received.

The following conditions are in breach of the licence:

Annex 3

3. Recorded CCTV images shall be retained for a period of twenty-eight days and shall be produced to the Police or Licensing Authority upon request.

4. CCTV shall be in operation at any time a person is on the premises.

6. Any person left in charge of the premises shall be trained in the use of the CCTV equipment, and be able to produce CCTV images to an officer from a responsible authority upon request.

8. Staff shall be trained in the laws relating to underage sales, and that training shall be documented and repeated at 6 monthly intervals.

35. Documented records of training completed shall be kept for each member of staff. Training shall be regularly refreshed and at no greater than 6 monthly intervals. Training records shall be made available for inspection upon request by a police officer or an authorised officer of Manchester City Council.

36. In addition to any other training, the premises licence holder shall ensure all staff are trained to prevent underage sales, to maintain the refusals log, monitor staff to ensure their training is put into practice.

The premises failed a licensing inspection on the 20th January 2020. A pre-review meeting took place on the 4th February 2020. Out of hours sales, complaints of noise, poor dispersal and failure to comply with staff training and CCTV conditions formed part of the pre-review meeting. Substantial guidance has been provided by LOOH & Greater Manchester Police (GMP) officers to assist the PLH/ DPS in becoming compliant with the licence conditions.

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

S182 guidance, S11.10 '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.'

The LOOH team have taken a stepped approach towards gaining compliance at the premises in line with the guidance. Below is a chronological order of the LOOH team's involvement with Cape Coast Restaurant. Despite a pre-review meeting taking place, unauthorised licensable activity has continued at the premises.

The premises were granted a licence on the 14th October 2019.

2/1/20 – Noise complaint received by resident regarding loud music and dispersal noise

On the 2nd January 2020 the LOOH Team received a complaint regarding dispersal noise emanating from the premises up to 3am and additional nuisance made by taxis and cars parking in the area. On the 4th January LOOH officers visited the premises and spoke with the Licence Holder about the complaint, alongside delivering a letter advising of the complaint (exhibit CCR1). The Licence Holder Mrs Hammond insisted they were running in line with their non-standard timings.

11/1/20 – Out of Hours witnessed by LOOH officers

On the 11th January 2020 LOOH officers visited the premises at 0124 hours. Officers entered the premises and noted loud music emanating, almost one hour after permitted hours for opening and regulated entertainment. Officers entered the premises and could see 7 males stood around the bar drinking Guinness Export. Officers witnessed payment being taken by card. The licence holder and DPS Mrs Hammond was present with her young son in her arms. Condition 31 of annexe 3 states that children shall only be allowed on the premises from 12-8pm. A request for CCTV footage was made.

As per thwaites stated case, Para 67, the opening hours are a condition of the licence. (exhibit CCR2)

CCTV footage was subsequently provided however it was for the wrong day and time, with gaps of time missing in the footage. This is a S136 offence and breach of condition 3 of annex 3.

17/1/20 – Meeting at the premises

On the 17th January 2020 LOOH officers met with Mrs Hammond, the then DPS [REDACTED], along with Mrs Hammond's business partner and their CCTV technician, to discuss the failings and complaints made against the premises. At the meeting [REDACTED] asked if no one else could be inside past the opening hours of 0030, which was confirmed.

20/1/20 – Failed licensing inspection

On the 20th January 2020 a full licensing inspection took place which identified 20 condition breaches along with no licence being held or displayed (warning letter and highlighted list of condition breaches attached as exhibit CCR3).

4/2/20 – Pre-review meeting

Subsequently a pre-review meeting took place with LOOH & GMP on the 4th February 2020 to discuss the failings. As [REDACTED] was not in day to day control of the premises advice was provided to Mrs Hammond to obtain her own Personal Licence and nominate herself as the DPS. (follow up letter as exhibit CCR4)

5/2/20 – Second resident complaint received regarding loud music

20/2/20 – Night visit

On the 20th February 2020 a visit took place at the premises, CCTV was showing as being 1 hour out of time.

Shortly following this, the country went into lockdown and covid measures.

24/4/20 – Mrs Hammond submits an application to be appointed as the DPS with immediate effect.

28/8/20 – Licensing re-inspection – S136 Offences – Condition Breaches

On the 28th August 2020 LOOH completed a reinspection of the premises. The following condition breaches were found:

- No written risk assessment for the need of door staff security or log of door security working at the premises (annex 3 condition 7)
- CCTV recording for 16 days as the premises has two new cameras installed. (This is a breach of condition 3 of annexe 3)

On the 7th October 2020 Mrs Hammond confirmed by email that the CCTV technician had installed a new hard drive and on his advice, it was completing 28 days recording. (Email as exhibit CCR5)

31/7/21 – Rejected Temporary Event Notice takes place unauthorised – S136 Offence

Mrs Hammond applied for a Temporary Event Notice (exhibit CCR6) to cover until 0300 hours on the 31st July 2021. The notice was rejected as less than 5 days' notice was provided (Letter as exhibit CCR7)

A LOOH officer visited the premises at 0132 hours in a marked council van, many people were leaving in cars and a man could be seen urinating in the grass area to the side. The officer could hear a male say, 'the council are here', the officer approached the male who advised they had finished and were cleaning up. The officer counted 20 people still outside the premises.

6/8/21 Request for CCTV

On the 6th August 2021 a request was made for CCTV coverage of the event, in line with premises licence conditions (letter at exhibit CCR8)

9/8/21 – CCTV Request Denied – Condition Breach - S136 Offence

On the 9th August 2021 the LOOH team corresponded with Mrs Hammond who advised CCTV could not be provided as it had 'rolled over' on the day of the request. This is a clear breach of the CCTV condition attached to the licence and a S136 offence. (Email trail with PLH/DPS attached as exhibit CCR9)

11/8/21 – Meeting at the premises

On the 11th August 2021 LOOH officers met with Mrs Hammond and [REDACTED] at the premises. [REDACTED] confirmed he was working on the night leading into the early morning hours of 31/7/21 with Mrs Hammond. He advised that alcohol sales ceased at 0000 hours however they struggled getting customers to disperse and they both admitted customers still being present at 0132 hours when LOOH arrived. Officers advised that the CCTV would have confirmed their version of events. It was explained that the CCTV system is a tool to protect their business, that a lot of support had been provided in this regard and there was a concern around the lack of understanding of conditions of the licence and subsequently continuous S136 offences taking place.

A discussion took place over the term 'roll over' of CCTV footage. No explanation could be provided why the system rolled over after 6 days on the 6th August 2021 other than the memory space, to which officers reminded Mrs Hammond that she had emailed LOOH the 7/10/20 confirming a new hard drive had been installed to capture 28 days of footage. Officers requested to see the CCTV system, which showed footage starting from the 9th August 2021. No explanation could be provided why the footage started on the 9th August 2021 when they had advised it restarted on the 6th August 2021, another weekend/ 3 days' of footage had been lost again.

In line with conditions 8, 35 and 36 of annexe 3 officers asked to see the staff training file for [REDACTED]. The training folder was opened, no staff training file was present for [REDACTED]. [REDACTED] advised he had completed training with [REDACTED] and she must have the file. Officers requested Mrs Hammond email the training file across, to which she agreed. As of the 18/8/21 the training file has not been received.

Officers returned to the premises at 4pm, to confirm the start time for CCTV recordings on the 9th August 2021. On entry the bar was unsupervised. Officers knocked on the kitchen door. A staff member named [REDACTED] confirmed she was lone working, that she both cooks and serves the food and confirmed the bar is unsupervised whilst she is cooking in the kitchen. There is a concern that leaving alcohol unsupervised could leave to thefts, most concerningly by children.

13/8/21 – Visit to check CCTV

On the 13th August 2021 LOOH officers returned to the premises to confirm the start time for CCTV. The rear outside CCTV camera footage stated 1630 hours and 1700 for the bar camera for the 9th August 2021. At the time of the visit the CCTV system was recording its 5th day of footage.

The LOOH team submit that the current CCTV conditions attached to the licence are clear, unambiguous, proportionate and justifiable.

With such substantial previous correspondence with the LOOH team & GMP, including a pre-review meeting, it is difficult to conceive the PLH/ DPS still does not understand that CCTV recordings must be kept for 28 days. It is more probable that footage has been deleted.

S182 guidance, S11.18 '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'

As the PLH/ DPS has already had substantial compliance visits and assistance from both LOOH and GMP, there is no further action the team could recommend to remedy the current situation in relation to repeated condition breaches or abiding by permitted hours.

Please tick ✓ yes

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

☐

If yes please state the date of that application

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

A representation was made towards the grant of the application, however after the PLH proposed amendments to the operating schedule, the LOOH team withdrew their objection and agreed to the changes and the licence being granted. (Licence granted 14/10/19)

Please tick ✓

- 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 **18/8/21**

Capacity **Responsible Authority – Licensing & Out of Hours Compliance Officer**


Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)

Gemma Hunt
Licensing & Out of Hours Team
Hammerstone Road Depot
Hammerstone Road

Post town
Manchester

Post Code



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.

Premises Licence Review

Cape Coast Restaurant

798 Ashton New Road

M11 4RY

Licensing & Out of Hours Supporting Evidence

Index

Exhibit

CCR1 – Noise Compliant Letter to PLH

CCR2 – Thwaites Case

CCR3 – Licence Inspection Fail Letter to PLH

CCR4 – Pre- Review Letter to PLH

CCR5 – Email from PLH confirming CCTV captures 28 days

CCR6 - TEN

CCR7 – TEN Rejection Letter to PLH

CCR8 – CCTV Request Letter

CCR9 – Email trail with PLH, CCTV request denied

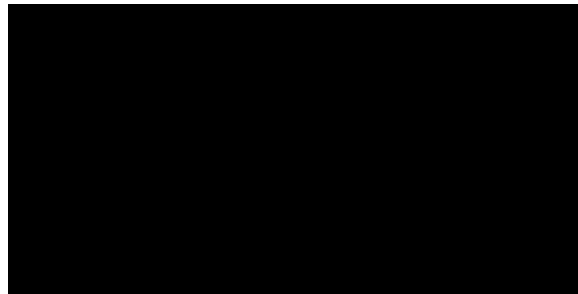
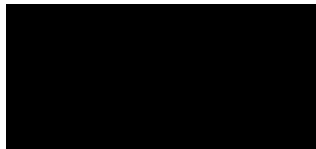
CCR1



MANCHESTER
CITY COUNCIL

Licensing & Out of Hours Compliance
The Neighbourhoods Service
PO Box 532, Town Hall
Manchester, M60 2LA

Mrs Nefisa Naa Hammond



Date. 3 January 2020

Dear Mrs Nefisa Naa Hammond

Premises Licence Holder
Licensing Act 2003

Receipt of a Complaint

I write to you following receipt of a complaint concerning loud music from within the premises and noise from patrons dispersing the premises. The problem is reported to be generally occurring at weekends.

I am writing to you to make you aware of this complaint to ask you to consider if this problem is or has been occurring. At this stage I have not carried out any other investigation. However, if the alleged problem has been occurring I would ask that you take the necessary steps to ensure that it does not happen in the future.

I would like to take this opportunity to remind you of your obligations under the Licensing Act 2003 to uphold all of the "Licensing objectives." The licensing objectives are the prevention of public nuisance, public safety, the protection of children from harm, and the prevention of crime and disorder.

Under the Licensing Act 2003 any responsible authority or interested party, including local residents, can request a Review of a premises license if it is felt that any of the Licensing Objectives are not being upheld in relation to the premises. As a result of any review that may take place, additional conditions, changes in licensable activities or a restriction in a premises operating hours may be imposed.

I enclose a copy of the Premises Licence for your premises and have highlighted specific conditions that you may need to look at further to ensure you are meeting these requirements. Please review this document and ensure you comply with all its terms and conditions. You should be aware that under Section 136 of the Licensing Act 2003 subsection it is an offence to carry on or attempt to carry on a licensable activity on or from any premises otherwise than under and in accordance with an 'authorisation' or knowingly allow a licensable activity to be so carried on. An authorisation includes a premises licence, club premises certificate or temporary

CCR1

event notice A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to an unlimited fine, or to both

You should be aware that we may now carryout monitoring visits to your premises or the area around it to ensure that you are operating as instructed to do so on your premises licence

If you have any questions about this letter or wish to discuss this further please contact me on the number above.

Yours sincerely

Lauren Connell
Licensing & Out of Hours Officer

Approved Judgment

Double-click to enter the short title

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.

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-

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."

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,

- (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

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

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

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

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 appellant. 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):

"I 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".

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

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

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

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

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.

CCR3



MANCHESTER
CITY COUNCIL

Mrs Hammond
CapeCoast Restaurant
798 Ashton New Road
Manchester
M11 4RY

The Neighbourhoods Service
Growth & Neighbourhoods



Date. 17 January 2020

Our ref. 243080

Dear Mrs Hammond

Licensed Premises Inspection
Licensing Act 2003

Following my visit to your premises on **Monday 20th January 2020** it was found that you were not fully complying with all the conditions within your premises licence. I have enclosed a copy of your licence and highlighted the relevant conditions which were not being upheld at the time of my visit. It was agreed that you would take the necessary steps to ensure that you fully comply with the highlighted conditions following my inspection visit.

As we discussed during the visit, it was also established that:

- There was no summary of licence on display in the premises
- There was no copy of full licence on site
- There was no working fire alarm or fire risk assessment for the premises
- There was no refusal log or evidence of ID checks
- There was no written risk assessment for the need of door security or log of door security working at the premises (e.g. sign in and out)
- Waste collections have been collected before stipulated times

You should be aware that under Section 136 of the **Licensing Act 2003** it is an offence to carry on or attempt to carry on a licensable activity on or from any premises otherwise than under and in accordance with an 'authorisation' or knowingly allow a licensable activity to be so carried on. An authorisation includes a premises licence, club premises certificate or temporary event notice. A person found guilty of these offences is liable on conviction to 6 months imprisonment and an unlimited fine.

You were advised that I would be arranging to carry out a pre review of your licence in conjunction with Greater Manchester Police and PC Alan Isherwood. During the pre review I will ensure that the above matters have been addressed and an action plan will be devised. Please await further correspondence with regards to a date for the pre review meeting. In addition, I

intend to visit your premises again on **Tuesday 4th February 2020 at 12:00pm** to confirm that you are now complying with all the conditions within your licence

As dicussed within the inspection I have made a referral to Greater Manchester Fire Service following concerns around fire safety at the premises You should expect contact from them shortly with regards to this

If you will be unavailable for the above proposed revisit, please contact me using the above details at your earliest opportunity to arrange a more mutually convenient time and date.

In the meantime, may I thank you for your anticipated cooperation and I look forward to seeing you.

Yours Sincerely

Lauren Connell
Neighbourhood Officer
City Centre Compliance



MANCHESTER CITY COUNCIL

LICENSING ACT 2003 PREMISES LICENCE

Premises licence number	236099
Granted	14/10/2019
Latest version	As above

Part 1 - Premises details

Name and address of premises
Cape Coast Restaurant 798 Ashton New Road, Manchester, M11 4RY
Telephone number
0161 223 2302

Licensable activities authorised by the licence
<ol style="list-style-type: none">1. The sale by retail of alcohol*.2. The provision of regulated entertainment, limited to: Live music; Recorded music; Anything similar to live music, recorded music or the performance of dance.3. The provision of late night refreshment. <p>* All references in this licence to "sale of alcohol" are to sale by retail</p>

The times the licence authorises the carrying out of licensable activities

Sale by retail of alcohol							
Standard timings							
Day	Mon	Tue	Wed	Thu	Fri	Sat	Sun
Start	1200	1200	1200	1200	1200	1200	1200
Finish	2300	2300	2300	2300	0030	0030	2330
The sale of alcohol is licensed for consumption on the premises only							
Seasonal variations and Non-standard Timings:							
Bank Holidays 1200 to 0100							
New Year's Eve 1200 to 0300							
1200 to 0100 if the following fall on a weekday Christmas Eve, Christmas Day, Boxing Day, New Year's Day							

Live music							
Standard timings							
Day	Mon	Tue	Wed	Thu	Fri	Sat	Sun
Start	Not permitted				1700	1200	1200
Finish					2400	2400	2330
Licensed to take place indoors only							
Seasonal variations and Non-standard Timings:							
Bank Holidays 1200 to 0100							
New Year's Eve 1200 to 0300							
1200 to 0100 if the following fall on a weekday Christmas Eve, Christmas Day, Boxing Day, New Year's Day							

Recorded music; Anything similar to live music, recorded music or the performance of dance							
Standard timings							
Day	Mon	Tue	Wed	Thu	Fri	Sat	Sun
Start	1200	1200	1200	1200	1200	1200	1200
Finish	2300	2300	2300	2300	0030	0030	2330
Licensed to take place indoors only							
Seasonal variations and Non-standard Timings:							
Bank Holidays 1200 to 0100							
New Year's Eve 1200 to 0300							
1200 to 0100 if the following fall on a weekday Christmas Eve, Christmas Day, Boxing Day, New Year's Day							

Provision of late night refreshment							
Standard timings							
Day	Mon	Tue	Wed	Thu	Fri	Sat	Sun
Start	Not permitted				2300	2300	2300
Finish					0030	0030	2330
Licensed to take place indoors only							
Seasonal variations and Non-standard Timings:							
Bank Holidays 1200 to 0100							
New Year's Eve 1200 to 0300							
1200 to 0100 if the following fall on a weekday Christmas Eve, Christmas Day, Boxing Day, New Year's Day							

Hours premises are open to the public							
Standard timings							
Day	Mon	Tue	Wed	Thu	Fri	Sat	Sun
Start	1200	1200	1200	1200	1200	1200	1200
Finish	2300	2300	2300	2300	0030	0030	2330
Seasonal variations and Non-standard Timings:							
Bank Holidays 1200 to 0100							
New Year's Eve 1200 to 0300							
1200 to 0100 if the following fall on a weekday Christmas Eve, Christmas Day, Boxing Day, New Year's Day							

Part 2

Details of premises licence holder	
Name:	Mrs Nefisa Naa Hammond
Address:	[REDACTED]

Details of designated premises supervisor where the premises licence authorises for the supply of alcohol	
Name:	[REDACTED]
Address:	[REDACTED]
Personal Licence number:	[REDACTED]
Issuing Authority:	[REDACTED]

Annex 1 – Mandatory conditions	
Door Supervisors	
1	<p>Only individuals licensed by the Security Industry Authority shall be used at the premises to undertake security activities, which include guarding against -</p> <ul style="list-style-type: none"> (a) Unauthorised access or occupation (e g through door supervision), (b) Outbreaks of disorder, or (c) Damage, <p>unless otherwise entitled by virtue of section 4 of the Private Security Industry Act 2001 to carry out such activities</p>

Supply of alcohol

- 2 No supply of alcohol may be made under this premises licence
- (a) At a time when there is no designated premises supervisor in respect of the premises licence or,
 - (b) At a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended
- 3 Every retail sale or supply of alcohol made under this licence must be made or authorised by a person who holds a personal licence
- 4
- (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 licence 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
- 5
- (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 (1) above–
 - (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 (2)(b) 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) (a) Sub-paragraph (4)(b) applies where the permitted price given by paragraph (2)(b) 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

- (b) 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

- 6
 - (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)
- 7 The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available
- 8 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,
 - (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

For the purposes of conditions 6, 7 and 8 above, a responsible person in relation to a licensed premises means the holder of the premise licence in respect of the premises, the designated premises supervisor (if any) or any individual aged 18 or over who is authorised by either the licence holder or designated premises supervisor. For premises with a club premises certificate, any member or officer of the club present on the premises in a capacity that which enables him to prevent the supply of alcohol

Annex 2 – Conditions consistent with the operating schedule

Not applicable

Annex 3 – Conditions attached after hearing by the licensing authority

- 1 The premises shall operate predominantly as food-led
- X 2 A CCTV system shall be maintained and operated at the premises, with cameras positioned both internally and externally
- X 3 Recorded CCTV images shall be retained for a period of twenty-eight days and shall be produced to the Police or Licensing Authority upon request
- 4 CCTV shall be in operation at any time a person is on the premises
- 5 In instances of equipment breakdown a log book shall be kept to record incidents
- X 6 Any person left in charge of the premises shall be trained in the use of the CCTV equipment, and be able to produce CCTV images to an officer from a responsible authority upon request
- X 7 Door staff shall be employed at the premises, upon recommendation after a risk assessment, to be carried out by the DPS
- X 8 Staff shall be trained in the laws relating to under age sales, and that training shall be documented and repeated at 6 monthly intervals
- 9 Security lighting shall be provided around the building and in the car park
- 10 Any aggressive or badly behaved customers shall be escorted off the premises by security
- 11 A first-aid box shall be available at the premises at all times
- 12 Regular safety checks shall be carried out by staff
- X 13 Fire equipment shall be maintained and serviced annually
- X 14 Fire safety procedures shall be in place, including fire alarms, and staff shall be trained on evacuation processes
- 15 Signage for fire exits and assembly points shall be put up on the premises
- X 16 Customers shall not be allowed to carry alcoholic drinks and beverages out of the premises
- X 17 Noise from amplified music shall not be such so as to cause a noise nuisance to occupants of nearby premises
- 18 The exterior of the building shall be cleared of litter at regular intervals
- 19 Notices shall be positioned at the exits to the premises to advise and remind customers to leave the premises quietly
- 20 Doors and windows at the premises are to remain closed after 11 00pm except for access and egress
- X 21 The emptying of bins into skips, and refuse collections, shall only take place between 8 00am and 10 00pm
- X 22 A 'No Smoking' policy shall apply to the front of the premises, this shall ensure that patrons do not congregate at the front of the premises. Notices shall be put up at the front of the building to make customers aware of this policy
- 23 Windows and doors shall be closed during regulated entertainment, except for access and egress
- 24 The premises shall be fitted with sound-proofed ceilings and double glazed windows to minimise noise escape
- 25 The premises lobbies at the entrance and exit shall also help minimise noise escape
- X 26 Speakers and entertainment stands shall be positioned away from walls adjacent to residential properties.
- X 27 Rubbish bins and glass refuse shall be kept at the rear of the premises, away from public access

- X 28 Notices shall be put up encouraging customers to use the premises car park, so as to show consideration for residential parking.
- 29 Notices providing taxi firm numbers shall be displayed in a prominent location within the premises assist customers in ordering a taxi. Customers shall be encouraged to wait for taxi's to arrive before leaving
- X 30 Notices shall be displayed in prominent positions indicating that the Challenge 25 policy is in force
- X 31 Children shall only be allowed from 12 00pm mid-day to 8 00pm. Notices shall be put up to inform customers
- X 32 No persons under the age of 16 shall be allowed on the premises at any time without appropriate adult supervision.
- 33 Parents shall be responsible for their own children
- 34 The Challenge 25 scheme shall be operated to ensure that any person who appears to be under the age of 25 shall provide documented proof that he/she is over 18 years of age. Proof of age shall only comprise a passport, photo card driving licence, an HM Forces warrant card, or a card bearing the PASS hologram
- X 35 Documented records of training completed shall be kept for each member of staff. Training shall be regularly refreshed and at no greater than 6 monthly intervals. Training records shall be made available for inspection upon request by a police officer or an authorised officer of Manchester City Council
- X 36 In addition to any other training, the premises licence holder shall ensure all staff are trained to prevent underage sales, to maintain the refusals log, monitor staff to ensure their training is put into practice
- X 37 The premises shall display signage at the point of sale indicating that it is an offence to buy, or attempt to buy, alcohol for a person under 18

Annex 4 – Plans

See attached

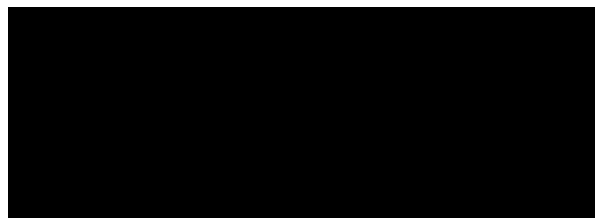
CCR4



MANCHESTER
CITY COUNCIL

Mrs Nefisa Naa Hammond
CapeCoast Restaurant
798 Ashton New Road
Manchester
M11 4RY

The Neighbourhoods Service
Growth & Neighbourhoods



Date: 5 February 2020

Our ref: 243080

Dear Mrs Hammond

Licensed Premises Inspection
Licensing Act 2003

Following my visit to your premises on **Monday 20th January 2020** it was found that you were not fully complying with all the conditions within your premises licence. It was agreed that you would take the necessary steps to ensure that you fully comply with the highlighted conditions following my inspection visit and pre review meeting.

You should be aware that under Section 136 of the **Licensing Act 2003** it is an offence to carry on or attempt to carry on a licensable activity on or from any premises otherwise than under and in accordance with an 'authorisation' or knowingly allow a licensable activity to be so carried on. An authorisation includes a premises licence, club premises certificate or temporary event notice. A person found guilty of these offences is liable on conviction to 6 months imprisonment and an unlimited fine.

You were advised that I would be revisiting your premises to ensure that the above matters have been addressed and I would like to inform you that I intend to visit your premises again on **Friday 20th February 2020 at 10:00pm** to confirm that you are now complying with all the conditions within your licence.

If you will be unavailable for the above proposed revisit, please contact me using the above details at your earliest opportunity to arrange a more mutually convenient time and date.

In the meantime, may I thank you for your anticipated cooperation and I look forward to seeing you on the **20th February 2020 at 10:00pm.**

Yours Sincerely

Lauren Connell
Neighbourhood Officer

CCR5

----- Original message -----

From:

Date: 07/10/2020 21:56 (GMT+00:00)

To: Lauren Connell

Subject: FW: HDD upgrade

Hi Lauren,

Please see email below. It has been difficult to get engineers to resolve issues on time as scheduled.

I can confirm that the new hard drive has been installed today which should hopefully as per the engineers advice capture 28days with of surveillance. The engineer will be monitoring from today to confirm the roll over date.

Please do not hesitate to let me know if you have any further queries.

Regards,

Naa

Temporary Event Notice

Payment Transaction number:- SSES00080935 | Form Reference number EF1/108523

Premises User Information

Title

Mrs

If other please state

n/a

Surname

Ankrah Hammond

Forenames

Nefisa Naa Ayikailey

Previous names (Please enter details of any previous names or maiden names, if applicable)

n/a

Your date of birth

[REDACTED]

Your place of birth

[REDACTED]

National Insurance Number

[REDACTED]

Your current address (We will use this address to correspond with you unless you complete the separate correspondence box)

[REDACTED]

Telephone

[REDACTED]

Evening telephone

n/a

Mobile phone

[REDACTED]

Fax number

n/a

Email address

[REDACTED]

Address

n/a

Telephone

n/a

Evening telephone

n/a

Mobile phone

n/a

Fax number

n/a

Email

n/a

Premises information

Please give the name and address of the premises where you intend to carry on the licensable activities or if it has no address give a detailed description (including the Ordnance Survey references)

798 Ashton New Road
M11 4RY
Clayton
Manchester

Premises licence number

236099

Club premises certificate number

n/a

If you intend to use only part of the premises at this address or intend to restrict the area to which this notice applies, please give a description and details.

n/a

Please describe the nature of the premises

It's open floor with 60 people sitting capacity and 80 people standing capacity
It's got 4 bar stools in front of the bar and a toilet at the side of the bar

Please describe the nature of the event

We're looking at bringing a musician in to entertain clients on the night as a welcome since we have been on lockdown for a while. Something to draw our clients back

Licensable activities

The sale by retail of alcohol

Yes

The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club

No

The provision of regulated entertainment

Yes

The provision of late night refreshment

Yes

Are you giving a late temporary event notice?

Yes

Please state the dates on which you intend to use these premises for licensable activities.

30th July 2021

Please state the times during the event period that you propose to carry on licensable activities (please give times in 24 hour clock).

20.00 - 03.00

Please state the maximum number of people at any one time that you intend to allow to be present at the premises during the times when you intend to carry on licensable activities, including any staff, organisers or performers (maximum 499).

60

If the licensable activities will include the supply of alcohol, please state whether the supplies will be for consumption on or off the premises, or both

On

Please state if the licensable activities will include the provision of relevant entertainment.

No

If yes selected, please state the times during the event period that you propose to provide relevant entertainment.

n/a

Personal Licence Details

Do you currently hold a valid Personal Licence?

Yes

Issuing Authority



Licence Number



Date of Issue



Date of Expiry

n/a

Any further relevant details

Card has not been issued due to covid

Have you previously given a temporary event notice in respect of any premises for events falling in the same calendar year as the event for which you are now giving this temporary event notice?

No

If answering yes, please state the number of temporary event notices you have given for events in that same calendar year

n/a

a) ends 24 hours or less before; orb) begins 24 hours or less after the event period proposed in this notice?

Yes

Has any associate of yours given a temporary event notice for an event in the same calendar year as the event for which you are now giving a temporary event notice?

No

If answering yes, please state the total number of temporary event notices your associate have given for events in the same calendar year

n/a

a) ends 24 hours or less before; orb) begins 24 hours or less after the event period proposed in this notice?

No

Has any person with whom you are in business carrying on licensable activities given a temporary event notice for an event in the same calendar year as the event for which you are now giving a temporary event notice?

No

If answering yes, please state the total number of temporary event notices your business colleague(s) have given for events in the same calendar year.

n/a

a) ends 24 hours or less before; or b) begins 24 hours or less after the event period proposed in this notice?

Yes

Declaration and Payment New

Name

Nefisa Ankrah-Hammond

Capacity in which you are making this application

Director

Additional information

I understand ☐ yes ☒ no

These are the files included with this application :-

Acknowledgement

I acknowledge receipt of this temporary event notice

Signature:

On behalf of the Licensing Authority

Date:

Name of officer signing:

CCR7



MANCHESTER
CITY COUNCIL

Premises Licensing

premises.licensing@manchester.gov.uk
Level 1 Town Hall Extension, Albert Square
PO Box 532, M60 2LA

Mrs Nefisa Naa Hammond

27 July 2021

Ref: LTX261689

Subject Line. Temporary Event Notice 261689DS7, Cape Coast Restaurant, 798 Ashton New Road, Manchester, M11 4RY - REJECTED

Dear Sir / Madam

The Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005

Notification of a Temporary Event under the Licensing Act 2003

Premises name: Cape Coast Restaurant

Premises address: 798 Ashton New Road, Manchester, M11 4RY

Event Details

Dates: 30 July 2021 to 31 July 2021

Times:

Thank you for your Temporary Event Notice (TEN), which we received on 26 July 2021. Unfortunately, we are unable to accept the notification for the following reason(s):

- You have not given at least 5 clear working days notice of the event (please note that the date on which the TEN is received and the date on which the event begins cannot be counted as part of the notice period).

Should you require any further information, please contact the undersigned on 0161 234 4915

Yours faithfully

Premises Licensing Team

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified

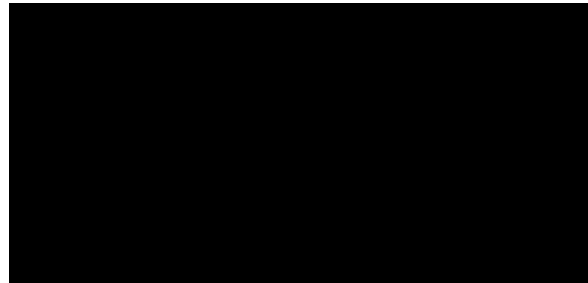


MANCHESTER
CITY COUNCIL

CCR8

Mrs Nefisa Ankrah Hammond
Cape Coast Restaurant
798 Ashton New Road
Manchester
M11 4RY

Licensing & Out of Hours Team
The Neighbourhoods Service
Hammerstone Road Depot
Gorton
M18 8EQ



Date: 6th August 2021

Our ref. 261689

Dear Mrs Hammond

Request for CCTV

The Licensing and Out of Hours Team request CCTV footage from your premises for the following date.

Sunday 31st July 2021 from 0030 – 0300 hours
(This is the early morning hours of Saturday Night)

Images are requested for the cameras covering the bar, customer seating area, and exit/entrance.

The reason for the request of CCTV images is in relation to an investigation regarding offences under section 136 taking place at the premises; unauthorised sales of alcohol and a breach of permitted opening hours for the premises

A Temporary Event Notice (TEN) was submitted and rejected, the TEN was submitted to cover extended hours until 0300 on the 31st July 2021 at Cape Coast Restaurant. A Licensing & Out of Hours officer witnessed customers leaving the premises at 0132 hours, one hour after permitted opening hours for the premises

This request is made in line with conditions 2 – 6 of annex 3 of your premises licence:

- 2 A CCTV system shall be maintained and operated at the premises, with cameras positioned both internally and externally
- 3 Recorded CCTV images shall be retained for a period of twenty-eight days and shall be produced to the Police or Licensing Authority upon request
- 4 CCTV shall be in operation at any time a person is on the premises.

5. In instances of equipment breakdown a log book shall be kept to record incidents
6. Any person left in charge of the premises shall be trained in the use of the CCTV equipment, and be able to produce CCTV images to an officer from a responsible authority upon request

I will return to collect the CCTV footage on Monday 9th August at 11am.

If you would like to discuss this letter in any more detail, please feel free to contact me

Yours sincerely

Gemma Hunt
Licensing & Out of Hours Compliance Officer

CCR9

Sent: 09 August 2021 01:54

To: Gemma Hunt <gemma.hunt@manchester.gov.uk>

Subject: Request for CCTV

Dear Gemma,

Sorry you missed me the other day. I did receive your letter, unfortunately the proposed date to visit the premises on 9th of August is not suitable as the premises is not open and it is my day off. I will like to respond to your letter in this email, however if you still require to visit and see me, I am back in work on Wednesday 11th August at 2pm.

First of all, I did submit a TEN application for 31st July from 0030-0300hours which was not granted. For this reason, we did adhere to opening hours and ended event at 12midnight. When the Out of hours team arrived at 0130 there were customers stood outside the building waiting for their various means of transport home. We still had security ensuring there was minimal noise from customers as they waited for their transport home. I was outside coordinating that myself. There were no customers being served alcohol inside the restaurant as staff had already begun clean-up of the premises.

Unfortunately, I am unable to provide CCTV footage of the day as the 28 days roll over occurs on the 6th of every month and by the time, I received the letter this had already occurred.

Do not hesitate to contact me further if required.

Kind Regards,

Naa Ankrah-Hammond

CapeCoast Bar & Restaurant Ltd

From: Gemma Hunt
Sent: 09 August 2021 09:14
To: 'CapeCoast Restaurant' [REDACTED]
Cc: Lauren Connell <[REDACTED]>
Subject: RE: Request for CCTV

Dear Mrs Hammond,

Thank you for your email below.

I will meet you at the premises on **Wednesday 11th August at 2pm**, the date you have provided below so that we can discuss in more detail.

In relation to your response regarding CCTV. I am aware you had substantial conversations with my colleague Lauren Connell following a failed inspection in 2020. One of the failings, was that you were not compliant with your CCTV condition. A pre-review meeting subsequently took place.

I requested CCTV footage 6 days after the required date, your CCTV must be kept for 28 days as per the condition attached to your licence which is binding in law.

Even though your licence finishes at 0030, you have a condition that CCTV must run whilst people are on the premises, which you have admitted below and something our officers were witness to.

Therefor if CCTV is not supplied, this would be a breach of a licence condition which is an offence under S136 of the licensing act 2003. On prosecution this carried an unlimited fine and or up to 6m in prison.

I will discuss this with you in more detail on Wednesday. However, if CCTV cannot be supplied, as you have already had a pre-review meeting and not rectified the breach the next stage would be for us to consider reviewing the licence and or a prosecution for the offence.

Kind regards

Gemma Hunt

Licensing & Out of Hours Compliance Officer
[REDACTED]

From: capecoastrestaurant [REDACTED]

Sent: 09 August 2021 10:23

To: Gemma Hunt [REDACTED]

Subject: FW: HDD upgrade

Importance: High

Hi Gemma,

Thanks for getting back to me. Please see below my correspondence with Lauren last October confirming that the HDD had been upgraded to capture 28days and a further 6 days storage before rollover.

I look forward to seeing you on Wednesday.

Thank you.

Regards,

Naa Hammond

Sent from my Galaxy

----- Original message -----

From: capecoastrestaurant [REDACTED]

Date: 07/10/2020 21:56 (GMT+00:00)

To: Lauren Connell [REDACTED]

Subject: FW: HDD upgrade

Hi Lauren,

Please see email below. It has been difficult to get engineers to resolve issues on time as scheduled.

I can confirm that the new hard drive has been installed today which should hopefully as per the engineers advice capture 28days with of surveillance. The engineer will be monitoring from today to confirm the roll over date.

Please do not hesitate to let me know if you have any further queries.

Regards,

Naa

Sent from my Samsung Galaxy smartphone

----- Original message -----

From: B

Date: 06/10/2020 16:31 (GMT+00:00)

Subject: HDD upgrade

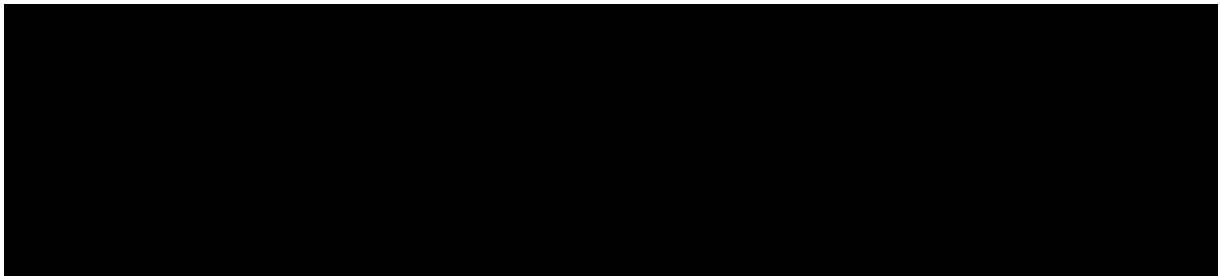
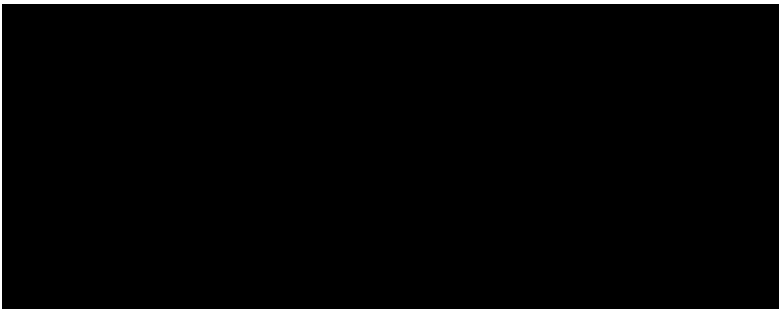
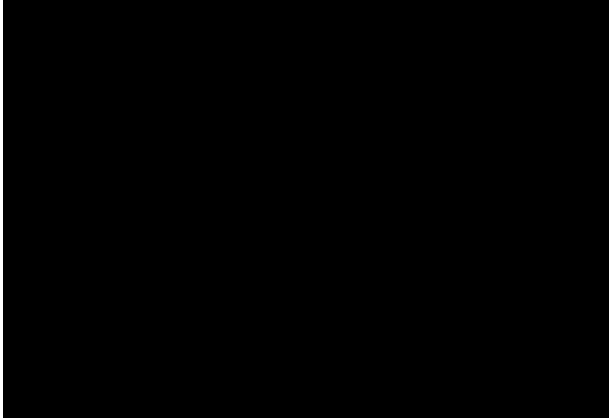
Hi Naa,

Just a quick update: The hard drive was not delivered as expected but I have received a confirmation for tomorrow morning.

I have rescheduled the installation of the new hard drive to tomorrow Wednesday 07/10/2020 at 5.30pm

Apologies for any inconvenience

Kind Regards



From: Gemma Hunt
Sent: 09 August 2021 10:52
To: 'capecoastrestaurant' [REDACTED]
Subject: RE: HDD upgrade

Dear Mrs Hammand,

In your email below to Lauren you confirm that your CCTV now captures 28 days of surveillance, which is in line with your licence condition.

I am unsure what you mean by a 'roll over' period? If roll over means that you delete your entire footage, then it is very clear that would be a breach of your licence condition as you are not keeping 28 days of footage at all times.

The condition on your licence is very clear and unambiguous, you have also had meetings with Lauren and GMP about this very issue. If you are still not able to abide by your licence conditions or understand them, that leaves us with no option but to take formal action.

Kind regards

Gemma