

**Licensing Act 2003 – Application for Variation of a Premises Licence  
The Co-Operative Store & Petrol Station  
1 The Boulevard, Worthing, BN13 1JZ**

**Report by the Executive Head of Housing, Health & Community Safety**

**1. Recommendation**

- 1.1 That a Sub Committee of Licensing & Control Committee “B” considers and determines the application from  
**The Co-Operative Group Food Ltd.**  
for a variation of the above Premises Licence (No. LN/000001286) which currently authorises the sale of alcohol, for consumption off the premises, at its mini-supermarket and petrol station.

**2. Reasons for the Hearing**

- 2.1 The application has been the subject of formal representations by a number of members of the public and a responsible authority and it therefore falls to this authority to determine the application.

**3. Background**

- 3.1 An application was made on behalf of the Co-Operative Group Food Ltd. to the Licensing Authority, Worthing Borough Council, on the 6 March 2013 for grant of a variation to its existing Premises Licence.
- 3.2 A plan of the shop & a plan of the area are attached (Appendix A)
- 3.3 A copy of the application is attached. (Appendix B)
- 3.4 A copy of the current Premises Licence is attached. The licence allows:-
1. The sale of alcohol for consumption off the premises between the hours of:  
07.00hrs & 23.00hrs Monday to Sunday incl.
  2. The premises may open between the hours of:  
07.00hrs & 23.00hrs Monday to Sunday incl.  
(Appendix C)
- 3.5 Copies of the representations received from members of the public.  
(Appendix D 1-3)

3.6 A copy of a representation received from a responsible authority, Sussex Police. (Appendix E)

3.7 A copy of an information package provided by the applicant in support of their application. (Appendix F)

#### **4. The Application**

4.1 The application is attached at Appendix B. However, in summary, the Co-Operative Group Food Ltd. is applying to:

a) Amend the hours for the sale of alcohol to:

05.00hrs to 00.00hrs (midnight) Monday to Sunday incl.

b) Add the authority to provide late night refreshment between the hours of:

23.00hrs to 05.00hrs Monday to Sunday incl.

c) Amend the opening hours of the store to allow it to open 24 hours a day.

d) Remove any embedded restrictions present on the premises licence that were converted from the 1964 Licensing Act Liquor Licence that would conflict with this application.

4.2 The applicant has completed a detailed operating schedule as to how it is intended to address the Licensing Objectives at this premise if this variation were granted.

#### **5. Promotion of the Licensing Objectives**

5.1 The Licensing Act 2003 and regulations require that the Council, as local licensing authority, carries out its functions with a view to promoting the four licensing objectives:

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

5.2 In carrying out its licensing functions, the licensing authority must also have regard to Guidance issued by the Home Secretary and its own Statement of Licensing Policy. Members are advised that the following sections of the Worthing Borough Council's Policy may be particularly relevant to consideration of this matter, though of course the Policy in its entirety must be considered. Sections indicated relate to paragraph numbers in the Policy itself:

##### ***The Prevention of Crime & Disorder***

4.1 *Alcohol can fuel violence, disorder, domestic violence and anti-social behaviour that can seriously blight a community. The Council recognises the need to crack down on one of the key causes of such behaviour - the binge drinking culture and fully supports the 'Alcohol Strategy 2012' published by the Home Office.*

- 4.2 *The Council places huge importance on the prevention of crime and disorder. A high standard of control is, therefore, expected to be exercised over all licensed premises.*
- 4.3 *In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications and this is re-emphasised by the Licensing Act 2003 itself, the Guidance issued under section 182 to the Act and this policy. The Council will give "due regard" to all possible implications and its Licensing & Control Committee will always consider all the information available and relevant representations made, including those from the public and the responsible authorities, particularly the Police.*
- 4.4 *In their role as a responsible authority, Sussex Police are an essential source of advice and information on the impact and potential impact of licensable activities in the borough, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and usually have good working relationships with those operating in the local area. The council recognises that Sussex Police are the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder, but may also be able to make relevant representations with regards to the other licensing objectives if they have evidence to support such representations. The Council will accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.*
- 4.8 *In addition to the requirements for the Council to promote the licensing objectives, it also has a duty, as detailed in paragraph 4.3, under Section 17 of the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in the Borough. The Council will consider attaching conditions to licences and permissions to deter and prevent crime and disorder within the vicinity if relevant representations are received. Whether or not incidents can be regarded as being in the vicinity of licensed premises is a question of fact and will depend on the particular circumstances of the case.*
- 4.9 *The Council recognises that the Licensing Act is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from licensed premises. Nonetheless, it is a key aspect of such control and licensing law will always be part of a holistic approach to the management of the evening and night time economy in town centres.*

### **Licensing Hours**

- 6.3 *The Government has acknowledged that different licensing approaches may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement. The guidance recognises that local licensing authorities are best placed to make such decisions based on their local knowledge and in consultation with other responsible authorities. However, the Council will always consider each application and will not impose pre-determined licensed opening hours, without giving individual consideration to the merits of each application.*

- 6.4 *Following relevant representations the Council will deal with the issue of licensing hours having due regard to the individual merits of each application. However, consideration will be given to imposing stricter conditions in respect of noise control where premises are situated in mainly residential areas. This will particularly apply in circumstances where, having regard to the location, size and nature of the licensed premises, it is likely that disturbance will be caused to residents in the vicinity of the premises, or its environs, by concentrations of people either present or leaving during normal night-time sleeping periods (23.00hrs to 07.00hrs).*
- 6.5 *The Council recognises that longer licensing hours for the sale of alcohol may avoid large numbers of people leaving premises at the same time, which in turn could reduce the friction focused on late night fast-food outlets, taxi ranks, and other sources of transport that can lead to disorder and disturbance. Nevertheless, they may need to be satisfied that suitable arrangements are in place to ensure public transport is available at appropriate times and that the licensing objectives regarding the Prevention of Public Nuisance or of Crime & Disorder are not compromised. This aspect should, therefore, be addressed in operating schedules in the appropriate circumstances.*
- 6.18 *The Council will generally consider the licensing of shops, stores and supermarkets to sell alcohol for consumption off the premises at any times they are open for shopping. However, it may consider that in some circumstances there are very good reasons for restricting those hours and these are detailed in paragraphs 7.1 to 7.13 below.*

#### **Off sales of alcohol – Stores & Supermarkets**

- 7.1 *The Home Office Guidance to the Act recommends that shops, stores and supermarkets selling alcohol should generally be permitted to match the hours during which they may sell alcohol with their normal trading hours, unless there are exceptional reasons related to the licensing objectives, in particular ‘the prevention of crime and disorder’ and ‘the prevention of public nuisance’.*
- 7.2 *The council will consider all applications on their own merit and will not consider ‘need or demand’ but if an area is experiencing problems and this is linked to the number of premises in the area already selling alcohol, for consumption off the premises, the council will carefully consider the cumulative impact on the licensing objectives of any new application if relevant representation is received.*
- 7.3 *The council will be particularly concerned with regard to the granting of new licences to stores and supermarkets in localities where the following problems have been identified:*
- *Alcohol sales to persons who are drunk*
  - *Underage drinking*
  - *Street drinking*
  - *Pre-loading & post-loading*
- 7.4 *Selling alcohol to a person who is drunk or to a person who is under the age of 18 are both offences under the Licensing Act. The council recognises that the vast majority of licensees are very aware of their responsibilities and the duty of care they have selling alcohol to the public. However, the council takes both these issues extremely seriously.*
- 7.5 *The Council considers it vital that licence holders provide formal and effective training to all staff involved in the sale of alcohol to recognise members of the public who are drunk or underage and give their staff the ability and confidence to refuse service. The council will expect operating schedules to demonstrate that the licence*

*holder has considered such matters and addressed them as far as possible and that formal training records are kept on the premise and are to be made available for inspection by Police and/or Licensing Unit officers on request.*

- 7.6 *Over recent years problems associated with street drinking have been experienced across the borough but particularly in the town centre, on the promenade, the beach and Worthing's public parks & gardens. While there are some areas with recurring problems with regard to street drinking groups they also crop up in different areas at different times. These individuals and the shops that supply them can be a focus of antisocial behaviour, disorder and disturbance. The supply of alcohol to individuals involved in the day-long consumption of alcohol on the street and in open spaces can directly lead to these groups of drinkers causing various types of crime, public nuisance and anti-social behaviour.*
- 7.7 *Pre-loading and post-loading, the sale of alcohol to people who consume it on the way to or from venues licensed for the consumption of alcohol on the premises, gives rise to problems of drunkenness and disorderly behaviour. The proliferation of stores selling alcohol for consumption off the premises is of concern if it leads to drinking on the streets or alcohol being carried into premises such as pubs and nightclubs. The council is concerned that alcohol loading from off-licence sales is a significant problem in the town and adversely affects the licensing objectives.*
- 7.8 *Where the police or others make representations against the grant of a further licence for off sales, because of their serious concerns over any of the problems listed above and the disorder associated with the off sale of alcohol in the area, the council will give specific consideration to restricting the number, type, and the hours of premises selling alcohol exclusively for consumption off the premises. The council will want to be assured that the Operating Schedule of premises, and their overall management, training and levels of staffing, are appropriate to ensure that the licensing objectives are promoted in what may be challenging circumstances. The earliest and latest hours of opening will be of particular concern. This is because problematic street drinkers and others who are seriously addicted to alcohol, may be drawn to shops that sell alcohol earlier in the morning and later in the evening than other premises and consequently create public nuisance. Where there are representations on problems of disorder the hours when alcohol may be sold for consumption off the premises may be conditioned to be less than the generally granted hours issued to public houses and restaurants in the area.*
- 7.9 *Due to these concerns and their link to crime, disorder and disturbance, the Council will not, as a general rule, grant applications for the 24-hour sale of alcohol for consumption off the premises. It will consider very seriously any representation made by Sussex Police, other responsible authorities, and relevant representations from the public before determining such applications.*
- 7.11 *When requested by the police, or other authorities, the Licensing Authority may impose on new applications, or on existing licences at review, conditions requiring:*
- No sales of alcoholic beverages over a specified limit of alcohol by volume or of specified quantities (e.g. of beers, lagers and ciders over 6.0% alcoholic content by volume).*
  - No sales of single cans or bottles of beer, lager and cider in containers containing less than 500ml.*
  - No sales of miniature bottles of wine or spirit in units of less than 35cl.*
  - Other conditions may be imposed directed at reducing problematic street drinking.*

- *Conditions stopping irresponsible drink promotions that do not follow best practice, that would appeal to underage drinkers or street drinkers or encourage excessive consumption.*
- *Conditions relating to the positioning of alcohol within the shop and the types of displays of alcohol within the store. Particularly those displays that might appeal to younger consumers.*

### **Late Night Refreshment – Cafes & Takeaways**

- 7.18 *Fast food premises which are open after 23.00hrs can attract large groups of customers, many of whom have been consuming alcohol in pubs, bars, or night clubs sometimes some distance away. The congregation of people around these premises leads to additional noise and disturbance and further congestion in the area. Although premises which serve cold food and drink are not subject to licensing and may stay open all night, they are not so attractive to people who have been drinking as those providing hot food and drink. The council considers that the addition of hot fast food and hot drink adds to the attractiveness of premises to people who have been drinking and who are consequently more likely to be involved in anti-social behaviour.*
- 7.19 *Sussex Police have in the past raised concerns about the levels of crime & disorder that can occur outside fast food premises late at night due to alcohol fuelled behaviour, and the opportunities for crime afforded by the congregation of people. Fast food premises have a comparatively high association with reports of crimes of violence against the person. The consumption of food outside premises can result in food waste and litter on pavements, to an extent that amounts to a public nuisance.*
- 7.20 *In addition, where there are fast food premises in the vicinity of public houses and nightclubs the rapid dispersal of people leaving these venues is significantly hindered. This delay in dispersal causes the potential for the licensing objectives to be compromised.*
- 7.21 *Where the police or others make representations against the grant or variation of a licence for late night refreshment regarding a premise in the vicinity of alcohol licensed premises because of serious concerns over dispersal problems the council will want to be assured that the Operating Schedule of the premise, and their overall management, training and levels of staffing, are appropriate to ensure that the licensing objectives are promoted in what may be challenging circumstances. Applications for extended hours may be refused in such circumstances where relevant representations on problems of late night disorder in an area are expressed. Alternatively the licence may be conditioned to include measures to address any concerns. Such as the provision of SIA door supervisors for example.*

## **6. Consultation**

- 6.1 The application has been subject to the statutory consultation and statutory public advertisement arrangements in accordance with the provisions of the Act, in respect of which representations have been received from the following:
- Members of the public – 3 representations from local residents.
  - Responsible Authorities – 1 representation from Sussex Police

## **7. Relevant Representations**

- 7.1 Details of the representations received are reproduced in full at Appendices D & E. The comments made by those objecting are considered to relate to the statutory licensing objectives as follows:

***Prevention of Crime & Disorder.  
Prevention of Public Nuisance.  
Protection of Children from Harm.***

- 7.2 Those making representations have been invited to attend the Sub-Committee and included in this report are the letters of representation reproduced in full.
- 7.3 Sussex Police make a number of comments including:

‘that the conditions currently offered in this application to promote the licensing objectives are considered to be inadequate and accordingly have no alternative other than to raise representations with regard to The Prevention of Crime & Disorder, the Prevention of Public Nuisance and the Protection of Children from Harm. That these premises, although sited fairly close to a small parade of local shops and Durrington on Sea Railway Station, are within a residential area and as such there is a considerable risk that any Crime and Disorder / Anti Social Behaviour problems associated with them will be very impactful on the local community. It is not unreasonable to suspect that customers attending the premises for the purpose of obtaining Late Night Refreshment are going to want to consume those goods soon afterwards, if not immediately afterwards. Those not wishing, or unable for whatever reason, to use facilities that may be provided inside the shop, if indeed such facilities are to be provided, are therefore extremely likely to consume them in the immediate vicinity. There is also a not insignificant possibility that, with alcohol also being available during some of the time that late night refreshment can be provided, some customers will purchase both at what will be a noise sensitive time’.

The police go on to list a number of conditions that they consider the minimum required to enable this premises to meet the licensing objectives if this variation application were granted in the terms applied for.

## **8. Mediation**

- 8.1 Due to the nature of the representations and comments made it was considered that mediation could not satisfactorily address the concerns expressed by all parties without the applicant fundamentally altering the application.
- 8.2 The applicant has produced a copy of the training manual supplied to new staff and a copy of recent case law for members' attention. (Appendix F)

## **9. Consideration**

- 9.1 Members must take into consideration the following when determining this application:
- The four statutory licensing objectives
  - Worthing Borough Council's Statement of Licensing Policy
  - Guidance issued by the Home Secretary
  - Relevant representations made by all the parties
- 9.2 These are the only matters to be addressed by the authority when considering this application. The statutory licensing objectives are the only grounds on which representations can be made, and the only grounds on which an authority will be able to refuse an application or impose conditions in addition to statutory conditions and those proposed by the applicant in the Operating Schedule.
- 9.3 When considering this application for a variation to the premises licence, pursuant to section 35 of the Act the following options available to the Sub-Committee:
- a. Grant the variation, as requested,
  - b. Grant the variation as requested, with additional conditions appropriate to the promotion of the specific licensing objectives on which relevant representations have been received.
  - c. Reject the whole or part of the application.

Members may also:

- d. Grant the variation but exclude certain licensable activities from the licence,
  - e. Approve different parts of the premises for different activities.
- 9.4 Members are required to give reasons for their decision.

## **10. Legal Implications**

- 10.1 Under Section 181 and Schedule 5 of the Act, rights of appeal to the Magistrates' Court in respect of applications for variation of an existing licence include:
- (1) The applicant / licence holder may appeal against any decision to modify the conditions of the licence.
  - (2) The applicant may appeal against a rejection in whole or part of an Application.
  - (3) Those that have made relevant representations may appeal against a variation being granted, rejected, or against the modification or lack of modification of any conditions.
- 10.2 The Act allows for the local licensing authority to undertake a review following the grant of a premises licence, when requested to do so by a responsible authority, such as the police or the fire authority, or any other party, such as a resident living in the vicinity of the premises. The government's guidance states:



*“The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with licensing objectives are occurring after the grant or variation of a premises licence.*

*At any stage, following the grant of a premises licence, a responsible authority, or any other person, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.*

- 10.3 In determining this application, the principles of the Human Rights Act 1998 must be taken into consideration and the convention rights of both individuals and businesses will be given due weight.
- 10.4 Members must consider each application on its own merits, and in accordance with the principles of natural justice as well as the provisions of the Licensing Act 2003. All relevant factors must be taken into account, and all irrelevant factors must be disregarded.
- 10.5 All applications before Committee must be considered against the backdrop of anti-discriminatory legislation, such as the Equality Act 2010 and also in accordance with the Council's stated policy on Equal Opportunities.
- 10.6 In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications and this is re- emphasised by the Licensing Act 2003 itself. In giving "due regard" to these possible implications members will consider and weigh up all the information available and representations made, including those from the public and the responsible authorities particularly the Police.

## **11. Other implications**

- 11.1 Any decision taken will have regard for the local environment and, in particular, any conditions attached for the purposes of preventing public nuisance will take this principle into account. There are no significant direct race relations or equal opportunity implications that have been identified.

## **12. Recommendation**

- 12.1 **Members are requested to determine the application made by the Co-Operative Group Food Ltd. for a variation to the Premises Licence at the Co-Operative & Petrol Station, the Boulevard and give reasons for that determination.**

**Paul Spedding**  
**Executive Head of Housing, Health and Community Safety**

**Principal Author and Contact Officer:**

Simon Jones  
Senior Licensing Officer  
Telephone: 01273 263191

**Background Papers:**

- Licensing Act 2003
- Guidance issued under section 182 of the Licensing Act 2003  
<http://www.homeoffice.gov.uk/publications/alcohol-drugs/alcohol/guidance-section-182-licensing>
- Worthing Borough Council's Statement of Licensing Policy  
<http://www.adur-worthing.gov.uk/media/media.98561.en.pdf>

**Appendices:**

- Appendix A - Plan of premises & area.
- Appendix B - Application Form
- Appendix C - Current Premises Licence & Club Rules
- Appendix D 1-3 - Representations from members of the public.
- Appendix E - Representation from Sussex Police
- Appendix F - Information supplied by Applicant
  
- A copy of the Co-Operative Group's Training Guide will be forwarded to members separately.

The licensing Unit, 9 Commerce Way, Lancing

Ref: SJ/Lic.U/LA03/Variation – Co-Op, The Boulevard  
Date: 18 April 2013.



Co-op, 1 The Boulevard.

07 March 2013



Copyright.

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence Number 100024321 & 100018624, 2013



## Appendix B – Application

### Application to vary a premises licence 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 fit 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/We Co-operative Group Food Limited

*(Insert name(s) of applicant)*

being the premises licence holder, apply to vary a premises licence under section 34 of the Licensing Act 2003 for the premises described in Part 1 below

<b>Premises licence number</b> LN/000001286
--

#### Part 1 – Premises Details

Postal address of premises or, if none, ordnance survey map reference or description Co-op 1 The Boulevard			
Post town	Worthing	Postcode	BN13 1JZ

Telephone number at premises (if any)	
Non-domestic rateable value of premises	██████████

#### Part 2 – Applicant details

Daytime contact telephone number			
E-mail address (optional)			
Current postal address if different from premises address	1 Angel Square		
Post town	Manchester	Postcode	M60 0AG



**Part 3 - Variation**

Please tick as appropriate

Do you want the proposed variation to have effect as soon as possible?  Yes

No

If not, from what date do you want the variation to take effect?

DD	MM	YYYY
<input type="text"/>	<input type="text"/>	<input type="text"/>

**Please describe briefly the nature of the proposed variation (Please see guidance note 1)**

To vary the hours when licensable activities may take place Mon-Sun from 07.00-23.00 to 05.00-00.00. Also to apply for the provision of late night refreshment from 23:00-05:00.

If your proposed variation would mean that 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend:

**Part 4 Operating Schedule**

Please complete those parts of the Operating Schedule below which would be subject to change if this application to vary is successful.

**Provision of regulated entertainment**

**Please tick all that apply**

- a) plays (if ticking yes, fill in box A)
- b) films (if ticking yes, fill in box B)
- c) indoor sporting events (if ticking yes, fill in box C)
- d) boxing or wrestling entertainment (if ticking yes, fill in box D)
- e) live music (if ticking yes, fill in box E)
- f) recorded music (if ticking yes, fill in box F)
- g) performances of dance (if ticking yes, fill in box G)
- h) anything of a similar description to that falling within (e), (f) or (g) (if ticking yes, fill in box H)

**Provision of late night refreshment** (if ticking yes, fill in box I)

**Sale by retail of alcohol** (if ticking yes, fill in box J)

**In all cases complete boxes K, L and M**

I

<b>Late night refreshment</b> Standard days and timings (please read guidance note 6)			<b><u>Will the provision of late night refreshment take place indoors or outdoors or both – please tick</u></b> (please read guidance note 2)	Indoors	<input checked="" type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
<b>Day</b>	<b>Start</b>	<b>Finish</b>	<b><u>Please give further details here</u></b> (please read guidance note 3) For consumption off the premises only		
Mon	23:00	05:00			
Tue	23:00	05:00	<b><u>State any seasonal variations for the provision of late night refreshment</u></b> (please read guidance note 4)		
Wed	23:00	05:00			
Thur	23:00	05:00	<b><u>Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list</u></b> (please read guidance note 5)		
Fri	23:00	05:00			
Sat	23:00	05:00			
Sun	23:00	05:00			



J

<b>Supply of alcohol</b> Standard days and timings (please read guidance note 6)			<b>Will the supply of alcohol be for consumption – please tick</b> (please read guidance note 7)	On the premises	<input type="checkbox"/>
				Off the premises	<input checked="" type="checkbox"/>
				Both	<input type="checkbox"/>
<b>Day</b>	<b>Start</b>	<b>Finish</b>	<b>State any seasonal variations for the supply of alcohol</b> (please read guidance note 4)		
Mon	05:00	00:00			
Tue	05:00	00:00			
Wed	05:00	00:00			
Thur	05:00	00:00			
Fri	05:00	00:00			
Sat	05:00	00:00			
Sun	05:00	00:00			
			<b>Non-standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list</b> (please read guidance note 5)		

K

<p><b>Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children</b> (please read guidance note 8).</p> <p>None</p>
---

L

<b>Hours premises are open to the public</b> Standard days and timings (please read guidance note 6)			<b>State any seasonal variations</b> (please read guidance note 4)
Day	Start	Finish	
Mon	00:00	00:00	
Tue	00:00	00:00	
Wed	00:00	00:00	
Thur	00:00	00:00	
Fri	00:00	00:00	
Sat	00:00	00:00	
Sun	00:00	00:00	

**Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list** (please read guidance note 5)

No opening hours prescribed

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

Any embedded restrictions from the 1964 Act, including Good Friday and Christmas Day and further, any conditions which conflict with the terms of this application.

Please tick as appropriate

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

If you have not ticked one of these boxes, please fill in reasons for not including the licence or part of it below

Reasons why I have not enclosed the premises licence or relevant part of premises licence.

### **M**

Describe any additional steps you intend to take to promote the four licensing objectives as a result of the proposed variation:

#### **a) General – all four licensing objectives (b, c, d and e) (please read guidance note 9)**

Having had regard to the four licensing objectives and the locality, the following conditions are appropriate.

#### **b) The prevention of crime and disorder**

1. The premises shall maintain a CCTV system which gives coverage of all entry and exit points. The system shall continually record whilst the premises are open and conducting licensable activities. All recordings shall be stored for a minimum period of 21 days. Recordings shall be made available upon the receipt of a request by an authorised Officer of the Police or the Local Authority.
2. There shall be "CCTV in Operation" signs prominently displayed at the premises.
3. An incident log (whether kept in a written or electronic form) shall be retained at the premises and made available to an authorised Officer of the Police or the Local Authority.
4. The premises shall operate a proof of age scheme, such as a Challenge 25, whereby the only forms of acceptable identification shall be either a photographic driving licence, a valid passport or any other recognised form of photographic identification incorporating the PASS logo.
5. The premises will be fitted with a burglar alarm system
6. The premises will be fitted with a panic button system for staff to utilise in the case of an emergency.

#### **c) Public safety**

The premises licence holder shall ensure that the appropriate fire safety, and health and safety regulations are applied at the premises.

**d) The prevention of public nuisance**

The premises licence holder will, upon request, provide the telephone number of their Customer Relations Contact Centre.

**e) The protection of children from harm**

1. All staff will receive comprehensive training in relation to age restricted products and in particular the sale of alcohol. No member of staff will be permitted to sell age restricted products until such time as they have successfully completed the aforementioned training.
2. An age till prompt system will be utilised at the premises in respect of age restricted products.
3. A refusals register (whether kept and written or electronic form) will be maintained at the premises and will be made available for inspection upon request by an authorised Officer of the Police or the Local Authority.

**Checklist:**

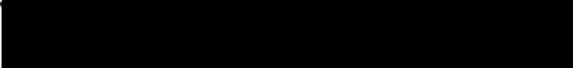
**Please tick to indicate agreement**

- I have made or enclosed payment of the fee.
- I have sent copies of this application and the plan to responsible authorities and others where applicable.
- I understand that I must now advertise my application.
- I have enclosed the premises licence or relevant part of it or explanation.
- I understand that if I do not comply with the above requirements my application will be rejected.

**IT IS AN OFFENCE, LIABLE ON SUMMARY CONVICTION TO A FINE NOT EXCEEDING LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION.**

**Part 5 – Signatures** (please read guidance note 10)

**Signature of applicant (the current premises licence holder) or applicant’s solicitor or other duly authorised agent** (please read guidance note 11). **If signing on behalf of the applicant, please state in what capacity.**

Signature	
Date	5 March 2013
Capacity	Solicitors for the Applicant

Where the premises licence is jointly held, signature of 2nd applicant (the current premises licence holder) or 2nd applicant's solicitor or other authorised agent (please read guidance note 12). If signing on behalf of the applicant, please state in what capacity.

Signature	
Date	
Capacity	

<b>Contact name (where not previously given) and address for correspondence associated with this application (please read guidance note 13)</b>			
[REDACTED] Ward Hadaway Sandgate House 102 Quayside			
Post town	Newcastle upon Tyne	Post code	NE1 3DX
Telephone number (if any)	0191 204 4457		
If you would prefer us to correspond with you by e-mail, your e-mail address (optional)			
[REDACTED]			



Licensing Act 2003 – Sections 16 and 18  
Premises Licence – Part A

Housing, Health & Community Safety  
Civic Centre  
Ham Road  
Shoreham-by-Sea  
BN43 6PR

## Premises Licence Number - LN/000001286

### Part 1 – Premises Details

<b>Postal address of premises or, if none, ordnance survey map reference or description</b>	
The Co-Operative & Petrol Station 1 The Boulevard Worthing West Sussex BN13 1JZ	
<b>Telephone number</b>	01903 500100

<b>Licensable activities authorised by the licence</b>
See attached Schedule

<b>The times the licence authorises the carrying out of the licensable activities</b>
See attached Schedule

<b>Opening hours of the premises</b>		
<b>Location :</b>	Mini Supermarket & Service Station	
<b>Day</b>	<b>Start</b>	<b>Finish</b>
<b>Sunday</b>	07:00	23:00
<b>Monday</b>	07:00	23:00
<b>Tuesday</b>	07:00	23:00
<b>Wednesday</b>	07:00	23:00
<b>Thursday</b>	07:00	23:00
<b>Friday</b>	07:00	23:00
<b>Saturday</b>	07:00	23:00
<b>Non Standard Timings &amp; Seasonal Variations</b>		

<b>Where the licence authorises supplies of alcohol whether these are on and/or off supplies</b>
OFF

**Part 2 – Premises Licence Holder Details**

<b>Name</b>
Co-operative Group Food Ltd.

<b>Registered Address</b>
1 Angel Square Manchester M60 0AG
<b>Telephone Numbers :</b>

<b>Registered number of holder, for example company number, charity number (where applicable)</b>
IP26715R

**Designated Premises Supervisor Details** (Where the premises licence authorises for the supply of alcohol)

<b>Name</b>
Mr David Michael Sharp

<b>Registered Address</b>
██████████ ██████████ ██████████
<b>Telephone Numbers :</b>

<b>Personal licence number and issuing authority of personal licence held by Designated Premises Supervisor where the premises licence authorises the supply of alcohol</b>
<b>Personal Licence Number :</b> ██████████
<b>Licensing Authority :</b> Worthing Borough Council

**Schedule 1 – Licensable Activities authorised by this Licence**

**Times the licence authorises the carrying out of the licensable activities**

<b>Location :</b> Mini Supermarket with Off Licence		
<b>Activities :</b> Alcohol Sales		
<b>Day</b>	<b>Start</b>	<b>Finish</b>
<b>Sunday</b>	07:00	23:00
<b>Monday</b>	07:00	23:00
<b>Tuesday</b>	07:00	23:00
<b>Wednesday</b>	07:00	23:00
<b>Thursday</b>	07:00	23:00
<b>Friday</b>	07:00	23:00
<b>Saturday</b>	07:00	23:00
<b>Non Standard Timings &amp; Seasonal Variations</b>		

**Signed on behalf of the issuing licensing authority**

**Senior Licensing Officer**

**Date:** 11 February 2013



## Durrington Service Station

### **Annexe 1 : Mandatory Conditions**

#### **A. Mandatory conditions where licence authorises supply of alcohol**

1. No supply of alcohol may be made under the 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
2. Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

#### **B. Mandatory conditions: Door Supervision**

When employed each such individual must be licensed by the Security Industry Authority.

#### **C. Mandatory conditions: Age Verification**

An age verification policy for the premises must be produced, implemented and details made available to authorised officers upon request.

#### **D. Conditions consistent with the Embedded Restrictions of the Justices' 'Off' Licence (Licensing Act 1964)**

1. Alcohol shall not be sold or supplied except during the premise's permitted hours.
2. Alcohol shall not be sold in an open container or be consumed on the licensed premises.
3. **Recorded Music**

Premises licensed for the sale and supply of alcohol may provide, at any time, regulated entertainment by the reproduction of wireless, including television broadcast and of public entertainment by way of music and singing only which is provided solely by the reproduction of recorded sound.

### **Annexe 2 : Conditions Consistent with the Operating Schedule**

Not applicable

### **Annexe 3 : Conditions attached after a hearing by the Licensing Authority**

Not applicable

### **Annexe 4 : Plans**

See Attached No. 1426/LICE dated 11.07.05

■ Melrose Avenue

Worthing

West Sussex. BN13 1PA

1<sup>st</sup> April 2013

Dear Sir,

I am writing to object to the proposed new licensing hours for the application below.

**Variation to the premises licence at:  
Co - Op, The Boulevard**

An application for a full variation to the premises licence at the 'Co-Op'. The convenience store & petrol station is situated at 1 the Boulevard, Worthing, BN13 1JZ. The application is seeking to extend the hours authorised for the sale of alcohol, for consumption off the premises, and authorise the sale of late night refreshment (Hot food & drink).

The licence currently authorises:

- Sale of Alcohol - 07.00hrs to 23.00hrs Monday to Sunday incl.

The application is seeking:

- Sale of Alcohol - 05.00hrs to 00.00hrs (midnight) Monday to Sunday incl.
- Sale of Late Night Refreshment - 23.00 to 05.00hrs Monday to Sunday incl.
- Opening to the public - 24 hours a day Monday to Sunday incl.
- Removal of all the embedded restrictions from the 1964 Act.

No further changes to the hours for licensable activities, or changes of licence conditions, are proposed by this application.

**Licence holder and applicant:** Co-operative Group Food Ltd.

**Consultation closes:** Wednesday 3 April 2013

**I note the Council statement below and believe that this proposal fails to ensure the future harmonious environment and community in this area. The Council states:**

1.3 The 2003 Act requires that the Council carries out its various licensing functions so as to promote the following four licensing objectives:

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

The council recognises that each objective is of equal importance and that there are no other statutory licensing objectives so that the promotion of the four objectives is paramount to its considerations at all times.

**I believe the Council will fail in adhering to its own published principles if the licensing committee agree to this variation.**

**I do not believe that the public and local residents can possibly be protected from crime, anti social behaviour and noise nuisance if the Committee agrees to the Co-op extending its hours to include those registered above. These are hours outside of any normal working pattern and can only attract additional problems in each stated category.**

**I do not believe that the police can allocate sufficient time to effectively manage any new situation that could arise in this area with an increase in licensing hours.**

**I do not believe that pubs and other licensed premises should be encouraged to 'open' for longer hours. I have yet to see evidence of the important role that the Co-op can play in the community if given extended licensing.**

**I believe the community should be involved in local licensing decisions and as such wish my objections to the proposal to be noted.**

**The proposal is not acceptable to me as a resident. It is a proposal which seems to be aimed at encouraging consumers to purchase alcohol in a small locality shop at unsociable times of the night. It is a proposal which will inevitably lead to further crime and disorder, more breaches to public safety, increased public nuisance and the possibility of harm to young people.**

**I have full faith that elected members will act to ensure it follows the Council's four published objectives and in doing so, will reject the proposal from the Co-op.**

**Yours sincerely,**

**[REDACTED]**

■ Melrose Avenue

Worthing

West Sussex. BN13 1PA

1<sup>st</sup> April 2013

Dear Sir,

**I am writing on behalf of Field Place Area Residents' Association to object to the proposed new licensing hours for the application below.**

**Variation to the premises licence at:  
Co - Op, the Boulevard**

An application for a full variation to the premises licence at the 'Co-Op'. The convenience store & petrol station is situated at 1 the Boulevard, Worthing, BN13 1JZ. The application is seeking to extend the hours authorised for the sale of alcohol, for consumption off the premises, and authorise the sale of late night refreshment (Hot food & drink).

The licence currently authorises:

- Sale of Alcohol - 07.00hrs to 23.00hrs Monday to Sunday incl.

The application is seeking:

- Sale of Alcohol - 05.00hrs to 00.00hrs (midnight) Monday to Sunday incl.
- Sale of Late Night Refreshment - 23.00 to 05.00hrs Monday to Sunday incl.
- Opening to the public - 24 hours a day Monday to Sunday incl.
- Removal of all the embedded restrictions from the 1964 Act.

No further changes to the hours for licensable activities, or changes of licence conditions, are proposed by this application.

**Licence holder and applicant:** Co-operative Group Food Ltd.

**Consultation closes:** Wednesday 3 April 2013

**I note the Council statement below and believe that this proposal fails to ensure the future harmonious environment and community in this area. The Council states:**

1.3 The 2003 Act requires that the Council carries out its various licensing functions so as to promote the following four licensing objectives:

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

The council recognises that each objective is of equal importance and that there are no other statutory licensing objectives so that the promotion of the four objectives is paramount to its considerations at all times.

**I believe the Council will fail in adhering to its own published principles if the licensing committee agree to this variation.**

**I do not believe that the public and local residents can possibly be protected from crime, anti social behaviour and noise nuisance if the Committee agrees to the Co-op extending its hours to include those registered above. These are hours outside of any normal working pattern and can only attract additional problems in each stated category.**

**I do not believe that the police can allocate sufficient time to effectively manage any new situation that could arise in this area with an increase in licensing hours.**

**I do not believe that pubs and other licensed premises should be encouraged to 'open' for longer hours. I have yet to see evidence of the important role that the Co-op can play in the community if given extended licensing.**

**I believe the community should be involved in local licensing decisions and as such wish my objections to the proposal to be noted.**

**The proposal is not acceptable to me as a resident. It is a proposal which seems to be aimed at encouraging consumers to purchase alcohol in a small locality shop at unsociable times of the night. It is a proposal which will inevitably lead to further crime and disorder, more breaches to public safety, increased public nuisance and the possibility of harm to young people.**

**I have full faith that elected members will act to ensure it follows the Council's four published objectives and in doing so, will reject the proposal from the Co-op.**

**Yours sincerely,**

**██████████.**

**Chairman Field Place Area Residents' Association**

■ Melrose Avenue

Worthing

West Sussex. BN13 1PA

1<sup>st</sup> April 2013

Dear Sir,

I am writing to object to the proposed new licensing hours for the application below.

**Variation to the premises licence at:  
Co - Op, the Boulevard**

An application for a full variation to the premises licence at the 'Co-Op'. The convenience store & petrol station is situated at 1 the Boulevard, Worthing, BN13 1JZ. The application is seeking to extend the hours authorised for the sale of alcohol, for consumption off the premises, and authorise the sale of late night refreshment (Hot food & drink).

The licence currently authorises:

- Sale of Alcohol - 07.00hrs to 23.00hrs Monday to Sunday incl.

The application is seeking:

- Sale of Alcohol - 05.00hrs to 00.00hrs (midnight) Monday to Sunday incl.
- Sale of Late Night Refreshment - 23.00 to 05.00hrs Monday to Sunday incl.
- Opening to the public - 24 hours a day Monday to Sunday incl.
- Removal of all the embedded restrictions from the 1964 Act.

No further changes to the hours for licensable activities, or changes of licence conditions, are proposed by this application.

**Licence holder and applicant:** Co-operative Group Food Ltd.

**Consultation closes:** Wednesday 3 April 2013

**I note the Council statement below and believe that this proposal fails to ensure the future harmonious environment and community in this area. The Council states:**

1.3 The 2003 Act requires that the Council carries out its various licensing functions so as to promote the following four licensing objectives:

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

The council recognises that each objective is of equal importance and that there are no other statutory licensing objectives so that the promotion of the four objectives is paramount to its considerations at all times.

**I believe the Council will fail in adhering to its own published principles if the licensing committee agree to this variation.**

**I do not believe that the public and local residents can possibly be protected from crime, anti social behaviour and noise nuisance if the Committee agrees to the Co-op extending its hours to include those registered above. These are hours outside of any normal working pattern and can only attract additional problems in each stated category.**

**I do not believe that the police can allocate sufficient time to effectively manage any new situation that could arise in this area with an increase in licensing hours.**

**I do not believe that pubs and other licensed premises should be encouraged to 'open' for longer hours. I have yet to see evidence of the important role that the Co-op can play in the community if given extended licensing.**

**I believe the community should be involved in local licensing decisions and as such wish my objections to the proposal to be noted.**

**The proposal is not acceptable to me as a resident. It is a proposal which seems to be aimed at encouraging consumers to purchase alcohol in a small locality shop at unsociable times of the night. It is a proposal which will inevitably lead to further crime and disorder, more breaches to public safety, increased public nuisance and the possibility of harm to young people.**

**I have full faith that elected members will act to ensure it follows the Council's four published objectives and in doing so, will reject the proposal from the Co-op.**

**Yours sincerely,**

**[REDACTED]**



**Sussex Police**  
Serving Sussex

www.sussex.police.uk | 101

**West Sussex Division**

Adur & Worthing Councils  
Licensing Unit  
RECEIVED  
14 MAR 2013  
..... Initials

YOUR REF.

13<sup>th</sup> March 2013

PLEASE ASK FOR PC WHITCOMBE

DIRECT DIAL T/P 101 ex [REDACTED]

Dear Mr Jones

**Sussex Police representation under the Licensing Act 2003 against the application for the variation of the Premises Licence in respect of Co-op, 1 The Boulevard, Worthing, West Sussex. BN13 1JZ**

The conditions currently offered in this application to promote the licensing objectives are considered to be inadequate. Accordingly Sussex Police have no alternative other than to raise representations with regard to The Prevention of Crime & Disorder, the Prevention of Public Nuisance and the Protection of Children from Harm.

Attached for your information is a copy of a letter sent to the applicant's agent outlining the reasons for this representation.

Upon receipt of any response, which enables the representation to be resolved, I will notify you accordingly.

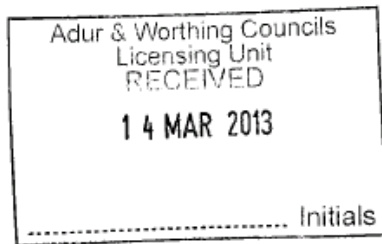
Yours sincerely /

*RP*

[REDACTED]  
Worthing & Adur District Commander

Mr Simon Jones  
Principle Licensing Officer, Environmental Health, Worthing Borough Council  
Adur District & Worthing Borough Councils  
Licensing Unit  
Commerce Way  
Lancing. BN15 8TA





**Sussex Police**  
Serving Sussex

www.sussex.police.uk | 101

**West Sussex Division**

YOUR REF.

13<sup>th</sup> March 2013

PLEASE ASK FOR PC WHITCOMBE

DIRECT DIAL T/P [REDACTED]

Dear Sir

**Sussex Police representation under the Licensing Act 2003 against the application for the variation of the Premises Licence in respect of Co-op, 1 The Boulevard, Worthing, West Sussex. BN13 1JZ**

I acknowledge receipt of a copy of your application for the variation of the premises licence in respect of Co-op, 1 The Boulevard, Worthing, West Sussex. It is noted that an amendment has been submitted with regard to the hours during which the premises are open to the public.

As no details have been provided on the application form to indicate exactly how it is intended to operate the provision of Late Night Refreshment from these premises, and given that the locality has suffered from Crime and Disorder/ Anti Social Behaviour problems in the recent past and based on the information provided in the Operating Schedule, the steps taken to promote the licensing objectives are considered inadequate.

Accordingly Sussex Police have no alternative other than to raise representations on the grounds of The Prevention of Crime & Disorder, The Prevention of Public Nuisance and The Protection of Children from Harm.

You should be aware that these premises, although sited fairly close to a small parade of local shops and Durrington on Sea Railway Station, are within a residential area and as such there is a considerable risk that any Crime and Disorder / Anti Social Behaviour problems associated with them will be very impactful on the local community.

It is not unreasonable to suspect that customers attending the premises for the purpose of obtaining Late Night Refreshment are going to want to consume those goods soon afterwards, if not immediately afterwards. Those not wishing, or unable for whatever reason, to use facilities that may be provided inside the shop, if indeed such facilities are to be provided, are therefore extremely likely to consume them in the immediate vicinity. There is also a not insignificant possibility that, with alcohol also being available during some of the time that late night refreshment can be provided, some customers will purchase both at what will be a noise sensitive time.

....continued

Messrs Ward Hadaway, Solicitors  
Sandgate House  
102 Quayside  
Newcastle upon Tyne  
NE1 3DX

As such the premises licence holders need to ensure that those working at the premises are properly equipped and prepared to either prevent or control disorder problems in the immediate vicinity of the Service Station, especially on the Station forecourt. Despite this the only proposal currently put forward to address this issue is the premises of being provided with a telephone number for a Customer Relations Contact Centre, which it is understood is based in Manchester and not available after 8pm in the evening.

Unless and until Sussex Police can be satisfied that either the mode of operation at the premises with regard to the provision of late night refreshment will not adversely impact upon the Licensing Objectives, or that suitable and appropriate proposals are in place to minimise the risk, this aspect of the variation request will be subject to a Police Objection.

It is noted that, to reflect the increased hours that are being applied for during which alcohol may be supplied, some conditions have been offered in this regard. Sussex Police will however require that the following conditions all be attached to the licence to resolve the representation raised concerning this aspect of the variation application. Whilst some of these are similar to the proposals offered these are still the conditions required.

#### **Prevention of Crime & Disorder**

- CCTV to be installed in accordance with Home Office Guidelines relating to UK Police Requirements for Digital CCTV System.
- CCTV Images shall be retained for at least 28 days and except for mechanical breakdown beyond the control of the proprietor, shall be made available upon request to the police. Any breakdown or system failure will be notified to the police immediately & remedied as soon as practicable.
- It will be the responsibility of the DPS to ensure that any request from the police for a recording to be made for evidential purposes, is carried out as soon as possible
- Spirits will be stored and displayed behind the servery
- Between 0500hrs and 0800hrs each day no Beer and Cider that has an alcohol by volume (ABV) level of more than 6% may be sold, and no beer or cider to be sold in single units.

#### **Prevention of Public Nuisance**

- The premises shall at all times maintain and operate a sales refusals book and an incident log which shall be reviewed by the Designated Premises Supervisor at intervals of no less than four (4) weeks and feedback given to staff as relevant.
- The refusals book & incident log shall be available upon request to Police, Police Licensing Officers, Local Authority Staff and Trading Standards

#### **Protection of children from harm**

- The premises will operate a "Challenge 25" policy whereby any person attempting to buy alcohol who appears to be under 25 will be asked for photographic ID to prove their age.
- The only form of ID that will be accepted are passports, driving licences with a photograph or Portman Group, Citizen card or validate proof of age cards bearing the "PASS" mark hologram.
- Suitable and sufficient signage advertising the "Challenge 25" policy will be displayed in prominent locations in the premises.

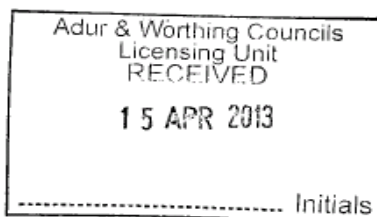
- All staff members engaged, or to be engaged, in selling alcohol on the premises shall receive full training pertinent to the Licensing Act, specifically in regard age-restricted sales, and the refusal of sales to persons believed to be under the influence of alcohol or drugs.
- Induction training must be completed, and fully documented, prior to the sale of alcohol by the staff member and refresher training thereafter at intervals of no less than eight (8) weeks.
- All restricted sales training undertaken by staff members shall be fully documented and recorded. All training records shall be made available to the Sussex Police and the local Trading Standards service upon request.
- At all times the premises is open and undertaking licensable activity, members of staff must be able to communicate sufficiently to enable them to promote the 4 licensing objectives, specifically, the ability to make effective age and ID challenges and ensure alcohol is retailed responsibly.

Your response is now awaited.

Yours faithfully

P.C. Dave Whitcombe  
West Downs Division, Licensing

**wardhadaway**  
lawfirm



Simon Jones  
Senior Licensing Officer  
Worthing Borough Council  
Licensing Unit  
Commerce Way  
LANCING  
BN15 8TA

Your Ref:  
Our Ref: (L)RXA.AS.COO229.86  
Document No: wh6880792v1  
Date: 12 April 2013  
Direct Line: [REDACTED]  
Direct Fax: [REDACTED]  
Email Address: [REDACTED]

Dear Simon

**Co-op Application to Vary Premises Licence, 1 The Boulevard, Worthing BN13 1JZ**  
**1 May next**

Further to the above, please find enclosed five copies of my client's Citrus training document together with a copy of the recent Matthew Taylor case (ref para 77-78), to which I will refer in the hearing.

I would be grateful if you could acknowledge receipt.

Yours sincerely



**Richard Arnot**  
**Partner**

Enclosure(s)

**Ward Hadaway Solicitors**  
Sandgate House, 102 Quayside, Newcastle upon Tyne NE1 3DX  
Tel: +44 (0)191 204 4000 Fax: +44 (0)191 204 4001 DX: 730360 Newcastle upon Tyne 30  
Email: legal@wardhadaway.com Web Site: <http://www.wardhadaway.com>

Also at: Leeds and Manchester

Authorised and Regulated by the Solicitors Regulation Authority (Registration Number 204387)  
A list of Partners is available at all offices.



INVESTOR IN PEOPLE





[\[Home\]](#) [\[Databases\]](#) [\[World Law\]](#) [\[Multidatabase Search\]](#) [\[Help\]](#) [\[Feedback\]](#)

## England and Wales High Court (Administrative Court) Decisions

---

You are here: [BAILII](#) >> [Databases](#) >> [England and Wales High Court \(Administrative Court\) Decisions](#) >> Taylor v Manchester City Council TCG Bars Ltd [2012] EWHC 3467 (Admin) (07 December 2012)  
URL: <http://www.bailii.org/ew/cases/EWHC/Admin/2012/3467.html>  
Cite as: [2012] EWHC 3467 (Admin)

---

[\[New search\]](#) [\[Printable RTF version\]](#) [\[Help\]](#)

---

Neutral Citation Number: [2012] EWHC 3467 (Admin)  
Case No: CO/5736/2012

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT IN MANCHESTER  
(ON APPEAL FROM THE MANCHESTER AND SALFORD MAGISTRATES' COURT BY WAY OF CASE  
STATED)

Leeds Combined Court,  
1 Oxford Row, Leeds LS1 3BG  
07/12/2012

Before:

MR JUSTICE HICKINBOTTOM

---

Between:

MATTHEW TAYLOR

Appellant

- and -

MANCHESTER CITY COUNCIL  
TCG BARS LIMITED

Respondents

---

Jeremy Phillips (instructed by LR Law) for the Appellant  
Sarah Clover (instructed by Susan Orrell, City Solicitor, Manchester City Council)  
for the First Respondent

The Second Respondents were not represented and did not appear.  
Hearing date: 26 November 2012

---

HTML VERSION OF JUDGMENT

---

Crown Copyright ©



**Mr Justice Hickinbottom:**

**Introduction**

1. When and to what extent, if at all, can an application to vary a licence under the Licensing Act 2003 be amended?
2. That is an important question in practice, because many applicants seek to change their proposed variation in the light of representations they receive objecting to it or some part of it. It is a question which, as I understand it, has never before been addressed by the courts.
3. The question comes before this court in the form of a case stated by Deputy District Judge Robinson sitting in the Manchester and Salford Magistrates' Court. On 8 and 9 March 2012, he heard an appeal by the Appellant Matthew Taylor against a decision of the Licensing Sub-Committee of the First Respondent Manchester City Council ("the Council"), taken on 7 October 2011, to grant a variation to a premises licence relating to premises known as Via in Canal Street, Manchester. The Second Respondents TCG Bars Limited ("TCG Bars") owned and operated Via, and were the premises licence holder.
4. As a preliminary issue, Mr Taylor contended that the Council had acted unlawfully because TCG Bars had significantly revised their application after the statutory period of advertisement and consultation had expired, meaning that responsible authorities (such as the Council's own Environmental Health Department) and local residents had no reasonable notice of the revision and no proper opportunity of making representations in respect of it.
5. The Deputy District Judge held that the Council did not act unlawfully, and Mr Taylor appealed that decision to this court by way of case stated dated 14 May 2012. In paragraph 52 of the Case Stated, the Deputy District Judge poses the following question for this court:

"Given the variance between the application to vary the premises licence originally advertised and the revised scheme, and the timing of those revisions, was I correct in ruling that it was lawful for [the Council] to proceed to determine [TCG Bars'] application in accordance with section 35 of the Licensing Act 2003?"

**The Licensing Act 2003**

6. In this judgment, all statutory references are to the Licensing Act 2003, unless otherwise indicated.
7. The Licensing Act 2003, which came into force on 24 November 2005, radically changed licensing in England and Wales. Until then, there had been a patchwork of licensing systems, under which alcohol licences were granted by licensing justices, reflecting their historical role in maintaining the peace; whilst other licensing functions, such as entertainment, were in the administrative province of local councils.
8. The 2003 Act created a single system, in which magistrates were relieved of their administrative licensing responsibilities, in favour of local authorities. The White Paper which led to the reforms ("Time for Reform: Proposals for the Modernisation of Our Licensing Laws" (Cm 4696) (April 2000)) identified three reasons for the transfer of all licensing functions to local councils, as follows (paragraph 123):

"...

- o **Accountability:** we strongly believe that the licensing authority should be accountable to local residents whose lives are fundamentally affected by the decisions taken.
- o **Accessibility:** many local residents may be inhibited by court processes, and would be more willing to seek to influence decisions if in the hands of local councillors.
- o **Crime and disorder:** Local authorities now have a leading statutory role in preventing local crime and disorder, and the link between

alcohol and crime persuasively argues for them to have a similar lead on licensing."

The first bullet point emphasises that licensing decisions were to be regarded as administrative decisions, taken in the public interest and subject to political accountability.

9. The role of a licensing authority under the 2003 Act was recently considered by the Court of Appeal in R (Hope and Glory Public House Limited) v City of Westminster [2011] EWCA Civ 31 ("Hope and Glory Public House"). Having rehearsed the history behind the Act, Toulson LJ, giving the judgment of the court, said (at [41]-[42]):

"41. ... [T]he licensing function of a licensing authority is an administrative function. By contrast, the function of the district judge is a judicial function. The licensing authority has a duty, in accordance with the rule of law, to behave fairly in the decision-making procedure, but the decision itself is not a judicial or quasi-judicial act. It is the exercise of a power delegated by the people as a whole to decide what the public interest requires...."

42. Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance. Although such questions are in a sense questions of fact, they are not questions of the 'heads or tails' variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact."

That chimes with the White Paper, Toulson LJ again stressing the essentially evaluative nature of the decision making process in most licensing matters, which demands a complex balancing exercise, involving particularly the requirements of various strands of the public interest in the specific circumstances, including the specific locality. He also marked the fact that Parliament has determined that, in this context, local authorities are best placed to make decisions of that nature.

10. The administrative nature of a licensing authority's function is also emphasised by, e.g., regulation 23 of the Licensing Act 2003 (Hearings) Regulations 2005 (SI 2005 No 44) ("the Hearing Regulations"), which provides that the hearing of an application "shall take the form of a discussion led by the authority..." and forbids cross-examination except in limited circumstances.
11. However, the justices still have a role to play in the new scheme. The main sanction for those who fail to comply with the new licensing laws is criminal, and magistrates have retained responsibility for dealing with people charged with offences under the licensing laws, as well as having an appellate function from licensing decisions of the relevant local authority.
12. The basic mechanism for regulation of the relevant activities is as follows. By section 2 of the 2003 Act, "licensable activities" can only be carried on under and in accordance with a "premises licence" issued by a "licensing authority", defined in section 3(1) usually to be the relevant local council; and section 136 imposes a criminal sanction on those who carry on licensable activities otherwise than under and in accordance with such a licence. "Licensable activities" include the retail sale of alcohol, the provision of regulated entertainment and the provision of late night refreshment (section 1(1)).
13. Section 4 is also an important provision. Under it, a licensing authority must carry out its functions under the Act (and hence must determine any licensing decision it has to make) with a view to promoting the following "licensing objectives":
- (a) the prevention of crime and disorder;
  - (b) public safety;
  - (c) the prevention of public nuisance; and



(d) the protection of children from harm.

It is noteworthy that all of these objectives are essentially concerned with the public interest; although, of course, evidence of how a licence might affect individuals may be relevant to the assessment of that public interest.

14. By section 4(3), in exercising those functions, the authority must also have regard to both:
  - i) Guidance issued by the Secretary of State under section 182, which requires her to issue such guidance. The relevant version for the purposes of this appeal, which I shall refer to as simply "the section 182 Guidance", was issued in April 2012. It has now been replaced by new guidance issued in October 2012.
  - ii) The authority's own licensing statement published under section 5, which requires each authority to publish a statement of licensing policy regularly, at the relevant time for a period of three years and now (by virtue of section 122 of the Police Reform and Social Responsibility Act 2011) for a period of five years. The Council's current Statement of Licensing Policy ("the Council's Statement of Licensing Policy") covers the period 2011-14.
15. The licensing functions of an authority are in practice delegated to a licensing committee or sub-committee (sections 6 and 7). In the Council's case, they have established a Licensing Committee of 15 Council Members, with any application that requires a decision being determined by a Sub-Committee of three members of the Licensing Committee at a hearing (paragraph 3.36 of the Council's Statement of Licensing Policy).
16. As Mr Phillips submitted, the regime is essentially a permissive one, generally allowing anyone to carry out "licensable activities" in an unfettered way by requiring the licensing authority to grant or vary a licence on application, unless the decision making powers of the licensing authority are triggered – by, e.g., representations being made on an application to vary – whereupon the authority must take a decision in response to the application based upon the promotion of the licensing objectives. However, even then, the steps it has power to take are limited to those specifically identified in the scheme.
17. Section 17 sets out the procedure for making an application for a new licence. Section 17(3) requires an application to be accompanied by "a plan of the premises to which the application relates, in the prescribed form". Section 17(5) provides that the Secretary of State must by regulations require the applicant and the licensing authority to advertise the application for a prescribed period and in a prescribed manner, and "prescribe a period during which interested parties and responsible authorities may make representations to the relevant licensing authority about the application". "Interested parties" are defined in section 13(3) as including a person living in the vicinity of the premises. (Under section 105 of the Police Reform and Social Responsibility Act 2011, "interested parties" has now been substituted by "persons who live, or are involved in a business, in the relevant licensing area"; but that change has no relevance to this appeal). "Responsible authorities" are defined in section 13(4) to include relevant local weights and measures, police, fire, rescue, health, environmental health and planning authorities.
18. An application must also put forward an individual as the "designated premises supervisor", and no supply of alcohol can be made under a licence unless there is such a supervisor named in the licence and he has a current "personal licence" in accordance with Part 6 of the 2003 Act (sections 15 and 19). Personal licences form no part of this appeal, and I need not say anything further about them; except that, since May 2010, the designated premises supervisor for the premises at 28-30 Canal Street has been Anthony Cooper.
19. The Secretary of State has made procedural regulations in respect of applications for premises licences in the form of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 (SI 2005 No 42) ("the Premises Regulations"), as well as the Hearing Regulations.
20. Subject to the express requirements of the Hearing Regulations, procedure at the hearing of an application is expressly a matter for the licensing authority (regulation 21 of the Hearing Regulations). There is no similar provision in the Premises Regulations, which are generally prescriptive as to the pre-hearing procedure that must be followed by the applicant (who must comply with the appropriate provisions in Parts 2 and 4), and the licensing authority (which must comply with the appropriate provisions in Parts 4 and 5) (regulations 4 and 6).



21. Regulation 23(1) of the Premises Regulations repeats the requirement that an application for a new licence must be accompanied by a plan; and regulation 23(3) provides that a plan, when required, must show various specified topographical features, including:

- "(a) The extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
- (b) the location of points of access to and egress from the premises;
- (c) if different from subparagraph (3)(b), the location of escape route from the premises;
- (d) ..."

Of course, in addition to the elements required by regulation 23(3), a plan that is lodged may show other matters which are not required by law.

22. Regulation 25 requires applications to be advertised in specific ways for 28 days.

23. "Relevant representations" are defined as representations made by an interested party or responsible authority, which are neither frivolous nor vexatious nor withdrawn, and which are in time and "are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives" (section 18(6) and (7) of the 2003 Act). That definition is important: representations to be relevant have to be about the effect of the licence on the promotion of the public interest licensing objectives set out in section 4, although evidence of the actual or potential impact of the licence on individuals may be relevant to the various strands of public interest involved. That is reflected in Appendix 2 to the Council's Statement of Licensing Policy which, under the heading "Relevant Information for Residents and Other Interested Parties", states:

" ...

- o In accordance with [the definition of 'relevant representation'], you should demonstrate how your representation affects the promotion of the licensing objectives.
- o Provide an evidential base for the grounds of the representation; which could include written logs of problems, details of previous complaints, photographs or video evidence of the particular case."

24. The relevant period for representations in a case such as this is "28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant" (regulation 22 of the Premises Regulations).

25. Where no "relevant representations" are made, the licensing authority is bound to grant the application subject only to specified conditions derived from the operating schedule (section 18(2)). Where such representations are made, a decision making power arises in the licensing authority, because the requirement that the authority is bound to grant the application is subject not only to those same conditions but also to section 18(3) and (4), which provides that, where relevant representations are made:

"(3) ... the authority must –

- (a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary; and
- (b) having regard to the representations, take such steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

(4) The steps are –

- (a) to grant the licence subject to [such conditions mandated by the statutory provisions, and such conditions as are consistent with the operating schedule accompanying the application modified to such extent as the authority considers necessary for the promotion of the licensing objectives];
- (b) to exclude from the scope of the licence any 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."

26. With regard to subsection (4)(a):

(i) by section 18(5), for these purposes, conditions are "modified" if any of them is "altered or omitted or any new condition is added"; and

(ii) by section 109 of the Police Reform and Social Responsibility Act 2011, "necessary" has now been replaced by "appropriate"; but again that change is not material to this appeal.

27. Whilst the provisions of section 18(3) and (4) are written in mandatory terms ("... the authority *must...*"), a discretion arises as the result of the words "take such steps ... *as it considers necessary* ..." (emphases added). However, in determining a licence application, the discretion that an authority has is limited in two ways: (i) that authority can only take one or more of the steps listed in section 18 (4), and (ii) it is empowered (although also obliged) to take only such of those steps it "considers necessary for the promotion of the licensing objectives". The statutory provisions consequently both define and limit an authority's powers in determining an application for a new licence.
28. Once a licence has been granted, if it is proposed to change the relevant business or premises such that the carrying out of licensable activities will fall outside the licence which has been granted, then the licence holder can change the licence in one of three ways.
29. First, if it is proposed to extend the period for which the licence has effect or to vary substantially the premises to which it relates, then a new application under section 17 has to be made (section 36(6), and paragraph 8.73 of the section 182 Guidance). That requires, not only advertisement and a period for the making of relevant representations to be made, but also the licensing authority to reconsider and review the entire licence afresh.
30. Second, at the other end of the scale, if the proposal is of a very limited nature, which is incapable of having an adverse impact on the promotion of any of the licensing objectives, then a simplified procedure involving restricted publicity can be adopted (sections 41A-41D, introduced by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 (SI 2009 No 1772)). Paragraphs 8.59 and 8.60 of the section 182 Guidance provide:
- "8.59. Many small variations to layout will have no adverse impact on the licensing objectives. However, changes to layout should be referred to the full variation process if they could potentially have an adverse impact on the promotion of the licensing objectives, for example by... affecting access between the public part of the premises and the rest of the premises or the street or public way, e.g. block emergency exits or routes to emergency exits....
- 8.60. Licensing authorities will also need to consider the combined effect of a series of applications for successive small layout changes (for example, as part of a rolling refurbishment of a premises) which in themselves may not be significant, but which cumulatively may impact on the licensing objectives. This emphasises the importance of having an up to date copy of the premises plan available."
31. It is not suggested by any party that the changes proposed in this case, to which I shall come shortly, warranted a new section 17 application for a new licence, or could properly have been the subject of the minor variation procedure. It is common ground that it was appropriate for those proposed changes to be the subject of the third procedure, namely an application for a variation of the licence under



section 34.

32. The procedure for an application under section 34 mirrors the procedure for a new application under section 17.
33. The Secretary of State has to make regulations for the due advertisement of the application (section 34 (2)); and, by regulations 25 and 26 of the Premises Regulations, she has provided that the advertisement of such application must be the same as for an application under section 17 for a new licence.
34. Any premises licence has to be accompanied by a plan; but that does not mean that a plan always has to accompany an application to vary. Section 34(5) and regulations 27 and 27A of the Premises Regulations refer, expressly or implicitly, to accompaniment by a plan *where appropriate*; and regulation 23(1) only requires a plan to accompany an application for a new licence under section 17. For example, if an application to vary is made merely to extend hours for the same licensed activities without any change to the premises themselves, a plan would be unnecessary in practice and is not required by the scheme. However, it was properly common ground that where, as here, there is an application for a variation including significant changes to the internal layout of the premises (including elements required to be on a plan by regulation 23(3)), a plan complying with regulation 23(3) would be essential to the application.
35. Section 35(2)-(4) of the 2003 Act, reflecting to an extent section 18(2)-(4) in respect of a section 17 application for a new licence, provides that, where no relevant representations are received within the relevant period, then the licensing authority must grant the variation; but, where such representations are received, then they trigger a decision making process. The authority must hold a hearing and must, having regard to the representations, take such steps from those listed in section 35(4), if any, as it considers necessary for the promotion of the licensing objectives. Sub-section (4) states that:
 

"(4) The steps are –

  - (a) to modify the conditions of the licence;
  - (b) to reject whole or part of the application

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added."
36. Again, the licensing authority has a discretion in its decision making here; but, as with section 18(4) for an application for a new licence, where there are relevant representations in respect of an application to vary, it is limited: the authority can only respond to the application in one or more of the ways set out in section 35(4), and it can only take such steps "as it considers necessary for the promotion of the licensed objectives." Again, that requires an evaluation of what is necessary for the promotion of those objectives.
37. Therefore, as with a section 17 application, it can be seen that it is the making of relevant representations in respect of an application to vary that triggers a process of decision making by the authority, in the form of a hearing and decision to take such steps as are allowed and required by section 35(3) and (4). Where no representations are received within the relevant period, the applicant is entitled to the variation he seeks: no decision making process is triggered at all (Corporation of the Hall of Arts and Sciences v The Albert Court Residents' Association [2011] EWCA Civ 430, "Corporation of the Hall of Arts and Sciences"). It was suggested, obiter, in Corporation of the Hall of Arts and Sciences that an authority has no power to take into account late representations even where the decision making process may have been triggered by other, in-time representations (see, e.g., [41]); and it seems to me that that follows from the wording of section 35(3), which focuses exclusively on relevant representations which are defined in terms of being in-time. However, it was common ground before me – and, in my view, properly so – that, if someone has made relevant representations, then he may later amplify them.
38. There is one final procedure that should be mentioned. Under section 51, where a premises licence is in effect, a responsible authority or interested party may apply to the licensing authority for a review of the licence. The onus of establishing grounds for review falls upon the person initiating the application – including establishing that the ground is relevant to one or more of the licensing objectives (section

51(4)(a) – but, otherwise, the procedure again reflects that for a new licence. In particular, any such application has to be the subject of advertisement (as well as notice to the licence holder), and there is a period in which representations may be made. There must be a hearing to consider the application and any relevant representations, which are again defined by reference to relevance to the licensing objectives (section 52(7)). In response to an application, the authority again must take such steps that are listed as it considers necessary for the promotion of the licensing objectives, those steps being, in this context:

- “(a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence.”

39. Such an application would be appropriate where a licence holder performs licensable activities, within the scope and in accordance with the terms and conditions of his licence, but nevertheless those activities impact adversely on local residents, by causing unanticipated disorder or a public nuisance. It might be prompted by, e.g., a change in the manner in which the business is conducted (albeit within the scope and conditions of the licence), or merely busier trade.

#### **The Facts**

40. Canal Street is an area of restaurants and bars, as well as residential accommodation, in a central part of Manchester known as the Village.
41. Since September 2005, TGC Bars have operated a bar in premises at 28-30 Canal Street, under a premises licence granted by the Council. Those premises front onto Canal Street, and back onto Richmond Street, a parallel street. They comprise essentially two licensed floors: the ground floor including a mid-level mezzanine floor, and a basement.
42. The licence authorises three activities: the retail sale of alcohol, the provision of identified regulated entertainment and the provision of late night refreshment. The licence as initially granted was subject to 94 conditions, including the following in Annex 2:

Condition 31: "The licensed premises shall be provided with an adequate number of exits clearly indicated and so placed and maintained so as to readily afford the audience ample means of safe egress."

Condition 33: "Emergency doors must not be fitted with any securing device other than an approved type of panic bolt fitting...."

Condition 34: "Doors not in normal use, which are regarded as emergency exits, should be fitted with an alarm which is activated when they are opened. The alarm should be inaudible in public areas and should sound in an area permanently manned by management/staff whilst the premises are occupied...."

Condition 60: "Alterations or additions, either permanent or temporary, to the structure, lighting, heating or other installations or to the approved seating gangways or any other arrangements in the premises must not be made except with the prior approval of the City Council."

Condition 71: "Occupancy: Basement 240 persons, Mid Level 120 persons, Ground Level 260 persons, Total 620 persons."

Condition 72: "The windows and external doors on the Canal Street façade to be kept closed after 23.00 hours except for access and egress."



43. The licence had a plan of each floor attached to it, showing the matters required by regulation 23(3), and more. It showed five sets of external doors on the Canal Street façade ground floor, two (each with a lobby inside) marked, "Entrance"; and one, at the south east end of the building, giving access to the basement only via a doorway onto Canal Street ("the V2 doorway") and a set of stairs. The V2 doorway is adjacent to the door to the residential apartments on the upper floors of 10 Canal Street (the first floor, ground floor and basement of those premises being another licensed bar called "Crunch", owned and managed at the relevant time and now by the Appellant, which has an entrance just a few yards further up Canal Street). At the bottom of those stairs from the V2 doorway, the basement plan attached to the licence for the Via premises shows double doors marked "FD" into a bar area with dance floor.
44. The extent to which the V2 doorway had been used prior to the application to vary is contentious. However, it was common ground before the Deputy District Judge that it had not been used as the principal entrance and exit to the premises, and use of the doorway had not been required to cease as a result of being a breach of licence. For the purposes of the preliminary ruling, the parties agreed that it was not necessary for the judge to make a finding about the extent of the use that had been made of that doorway (Case Stated, paragraph 13) – and he did not make any such finding.
45. On those licence plans, there are a number of doors shown from the rear of the building onto Richmond Street; notably one set, again to the east end of the building, giving access to a second set of stairs down to the basement ("the Richmond Street doorway"). The external doors to the Richmond Street doorway are again marked on the plan, "FD". The evidence was, and the Deputy District Judge found (Case Stated, paragraph 10), that at all material times that doorway was in fact only used by staff and as an emergency escape.
46. In addition, the plans showed that there were several sets of internal stairs joining the ground floor and basement.
47. On 9 August 2011, TGC Bars made an application to the Council, under section 34, to vary their licence. The proposed variation had a number of elements, comprising in effect as follows (Case Stated, paragraph 14):

"...

- o An extension of hours [for both sale of alcohol and provision of entertainment by one hour per day, ending one hour later each day].
- o Internal works to the ground floor premises.
- o The creation of two separate venues (Via – ground floor; Club Polari – basement), by the construction of internal walls, which had the effect of providing new toilet accommodation for Via at basement level. Club Polari would have its own completely separate toilet accommodation.
- o The provision of a wholly new and independent means of access to Club Polari for members of the public/club patrons by way of a public entrance doorway on Richmond Street (necessary because the previously utilised access from Via would no longer be possible with the new layout)."

The "previously utilised access from Via" is, of course, not a reference to the V2 doorway and stairs; but to the internal access from the ground floor.

48. The application was based upon a completed prescribed form, schedule of alterations and plans. The plans showed considerable changes to the internal walls and general layout of each floor (which made a plan a vital component of the application: see paragraph 34 above); but no change to the structure or layout of either the staircase at the north east corner of the building to the Richmond Street doorway (where the legend "FD" still appeared on the external doors), or the staircase at the south east corner onto Canal Street via the V2 doorway (where the doors at the foot of the stairs were also still marked "FD"). However, the schedule made clear that the alterations would include:

"... a full refurbishment of the rear staircase (currently used for staff and as an emergency escape) to provide improved and independent public access to this basement area from the rear of the building."

49. The application was duly advertised, and a number of representations were received by the Council in respect of the proposed extension of hours and the public access from Richmond Street. None objected to the division of the premises into two separate public venues, *per se*.
50. The Council's Environmental Health Department opposed both the proposed increase in hours and the proposed public use of the Richmond Street doorway on grounds of public nuisance. In respect of the latter, they said that that door was likely to lead to issues of public nuisance because Richmond Street is very narrow and bordered by high sided buildings, so any noise created by customers using that side of the building would likely be exaggerated by the corridor effect of the buildings which could lead to noise nuisance for the occupiers of the apartments that back onto Richmond Street. Those apartments include some in 10 Canal Street. No representations were received from any other responsible authority.
51. With regard to interested parties, the occupants of Flat 8, 10 Canal Street (Mr & Mrs Seymour) objected to the public use of the Richmond Street doorway on similar grounds, asking for permission for that new public entrance to be refused. Mr Taylor (who lives in Flat 1), the occupant of Flat 3 (Mr Welford) and another local resident living in a different block, all objected to the extension of hours. All of those representations were received by the Council before the close of statutory period for representations, on 7 September 2011.
52. On 12 September, solicitors for TCG Bars responded to those representations by writing to the Council as follows:

"The application is made up of three parts –

1. To carry out some internal alterations.
2. To create a new entrance on Richmond Street.
3. To extend the operation hours at the premises for alcohol and entertainment.

We have received representations from some residents and from the Environmental Health [Department] which our client has considered fully.

We are instructed, therefore, to amend the application in the light of the representations as follows.

1. We withdraw the part of the application to extend the hours for licensable activities which will remain as existing.
2. We attach amended layout plans which remove the application for the new entrance on Richmond Street.

The application to carry out other internal works which have not received any representation remains as per the amended plans.

We have copied in all authorities and the residents with email addresses and would ask them to confirm as soon as possible that the representations are now withdrawn as they have no relevance to the application so that the application can be granted by delegated powers."

It is be noted that the letter purported to "amend" the application to vary.

53. The "amended plans", dated 12 September 2011, were headed "Revision A – Main entrance to basement bar now positioned to front elevation". They showed most of the external doors at the back of the building (including the Richmond Street doorway) marked, "Escape"; and the V2 doorway



marked, "Entrance to Basement Bar". However, there were no differences in the structure or layout from the plan used for the original application. The doors in the basement at the foot of the V2 doorway stairs, and the external doors of the Richmond Street doorway, were both still marked "FD".

54. The new proposal came to Mr Taylor's immediate notice, and he discussed it with three other residents of 10 Canal Street on the evening of 12 September, before writing to TGC Bars' solicitors, with a copy to the Council, the following day:

"Looking at your revised plans. On your ground floor plan there is a new second entrance planned for named "Entrance to Basement Bar". This entrance is new on this plan which is currently a fire escape for the premises. This new proposed Entrance is directly next to the entrance door way to the 10 Canal Street flats. This is of great concern as Via already creates more than an acceptable amount of noise and I believe that this entrance will create further noise and disturbance.

My objection has been based around noise...

... I believe most if not all premises in the area now include operating conditions in their licences to assist with the management of noise and disturbance including having sound limiters, closing doors and windows when regulated entertainments are taking place, and the use and training of dispersal aids and policies with staff.

If the applicant can provide some conditions in their licence for this, I believe I would be happy to agree the application."

55. Mrs Seymour, having first withdrawn her representation, reinstated it on 7 October, having been contacted by Mr Taylor who pointed out the intention to use the V2 doorway as the sole means of public access to the basement. Mr Welford, the same day (7 October) also objected to the revision, on that same basis. The Environmental Health Department appears to have withdrawn its objection on the basis that the hours were not to be extended and Richmond Street would not be used for public access.

56. The hearing before the Council's Licensing Sub-Committee was held that day, 7 October 2011. Mr Taylor was the only interested party to attend, and he pressed for a number of conditions. In the event, the Sub-Committee granted the application, but included two further conditions on the licence, as follows:

1. Exit from the premises onto Richmond Street is to be used as a fire exit only.
2. A barrier to ensure queue forms in front of Via is to be operational from 20.00 daily. The barriers to be removed at the same time as the barriers which define the smoking area.

The second additional condition reflects paragraph CD1 of the Council's Statement of Licensing Policy, which requires the effective management of queues to prevent any nuisance or disorderly behaviour: "... [L]icensees are expected to demonstrate how they will manage queues to the premises."

57. That decision was formally notified to Mr Taylor on 20 October 2011. On 24 October, he lodged an appeal with the Magistrates' Court, under section 181 of the 2003 Act. It was in the context of that appeal that the Deputy District Judge made his ruling in respect of the preliminary issue, which has in turn been appealed to this court.
58. To complete the chronology, without prejudice to this appeal, the Council, TGC Bars and the interested parties who had made representations (notably, Mr Taylor) have now agreed that further conditions should be imposed; the Council have imposed those further conditions; and the premises have been operating as two discrete bar venues for some months on the basis of those conditions. No application for any review of the licence has been made under section 51, and there is no evidence of any difficulties in practice occurring as a result of the business operating under the licence with those conditions. Mr Cooper's apparently unchallenged evidence (paragraph 3 of the undated and unsigned statement used before the Deputy District Judge) was to the effect that, since the opening of the discrete basement bar in November 2011, there have been no issues with the Council's Environmental Health Department, the premises have been trading well, and he has maintained good relations with

neighbours including those who live in 10 Canal Street.

### The Parties' Contentions

59. Mr Phillips for the Appellant Mr Taylor stressed that the 2003 Act, Regulations and Guidance do not on their face allow for *any* change to an application to vary a licence. Whilst he was prepared to accept that *de minimis* changes to an application might be made, he submitted that no amendment could be made that might reasonably be considered capable of having an adverse impact on the promotion of the licensing objectives. Where such a change is contemplated, an applicant is bound to start again by resubmitting the application, with the consequent new obligations for advertisement and new rights for responsible authorities and interested parties to make representations. Such changes, he submitted, should not generally arise when an applicant has engaged in pre-application consultation with responsible authorities and interested parties, as encouraged by paragraph PN3 of the Council's Statement of Licensing Policy. However, to allow amendments greater than that after the application had been made and advertised would fundamentally undermine the regulatory scheme's provisions for representations; encourage the undesirable practice of applicants lodging applications in a form designed to attract a lesser degree of objection, with the intention of amending subsequently and without notice to those who might be detrimentally affected; and be "transparently at odds" with local residents' right to private life under Article 8 of the European Convention on Human Rights.
60. Applying those principles to this case, Mr Phillips submitted that the 12 September amendment, with its change of route for public access to the basement floor, was clearly at least capable of having an effect on the licensing objectives, notably the prevention of public nuisance. By advertising the initial proposal to create a discrete basement venue with a new means of access on Richmond Street and then, after the expiry of the time for making representations and without public notice, amending the location of that access to the V2 door onto Canal Street, responsible authorities and interested parties were effectively deprived of the opportunity to make representations in relation to potential effects the revised scheme might have upon the promotion of the licensed objectives. They would not necessarily have become aware of the new means of access at all; but, even if they did, they could not have become aware of them until, at the earliest, 12 September 2011, when the revision was put forward. By that date, they would have been debarred from making any representations against the revised scheme, as the time limit for representations is strictly construed and had expired.
61. In the circumstances of this case, the legislative scheme required responsible authorities and interested parties to be given an opportunity to make representations in respect of that new proposal. As they were denied that opportunity, the Sub-Committee acted unlawfully in proceeding on the basis of the amended application.
62. Miss Clover for the Council submitted that, under the premises licence, the licence holder had always been able lawfully to use the V2 doorway for public access to the premises. On 12 September 2011, TGC Bars abandoned their application for extended hours and the refurbishment of the Richmond Street stairway and entrance to enable them to be used for public access to the basement. The application was thereafter restricted to the internal structural and layout changes, which did not include any changes to the structure of the V2 doorway and stairs, nor any changes to which any relevant representations had been made. The mere increase in intensity of use of that doorway for public access that was likely as a result of the proposed change did not require any formal variation to the licence.
63. The Sub-Committee was therefore able, and indeed right, to deal with the application solely on the basis of that limited remaining proposed variation in structure and layout. If, in the view of interested parties such as local residents, the change of business operation in fact impacted upon the licensing objectives, then the appropriate remedy lay in an application for review under section 51 (see paragraphs 38-39 above).

### Discussion

64. This appeal concerns the principles and structure of the licensing scheme implemented by the 2003 Act.
65. As I have described (paragraph 12 above), regulation of the retail sale of alcohol and prescribed entertainment is effected by imposing a criminal sanction upon those who carry out such activities other than in accordance with a licence granted by the relevant local authority. This means that a licence holder is entitled to sell alcohol and provide entertainment in any manner he wishes, so long as



the licence does not prohibit that manner of provision in some way, because (e.g.) it falls entirely outside the scope of the licence or it breaches one of the licence conditions.

66. If those activities are carried out lawfully, within the scope of the premises licence and in accordance with the licence conditions, but the manner in which they are carried out adversely impacts on one of the licensing objectives (e.g. by in fact causing disorder or a public nuisance), then the remedy of any person affected (whether a responsible authority or an interested party) is to apply for a review of the licence under section 51, to which the licence holder, and responsible authorities and other interested parties can respond.
67. Where the holder of a licence intends to carry out activities in a way that he considers may not be in accordance with his licence, then he is able to apply for a variation of the licence to extend the scope of the licence to cover that manner of carrying out those activities or remove a condition in respect of which he considers he would be in breach, using one of the three procedures set out above. If he does not, and the activities do fall outside the scope of the licence or breach the licence conditions, he is liable to prosecution. So the risk of not applying for a variation is his. That is no doubt why the terms of section 34(1) do not require an application for variation to be made in any circumstances, those terms being merely permissive: "The holder of a premises licence *may* apply to the relevant licensing authority for variation of the licence" (emphasis added).
68. On an application to vary, the Premises Regulations provide detailed rules for both advertisement, and as to how, when and by whom representations can be made in respect of the application. Representations can only be made on the public interest grounds set out in section 4, and must be made within 28 days: although representations can be amplified once made, once the 28 day period has expired the authority has no power to receive representations from those who have not previously submitted any. If no representations at all are made on those grounds in that 28 day period, then the licence holder is entitled to his variation as of right. If representations are made on those grounds, then that triggers a process of decision making by the authority. The very purpose of the representations is, initially, to be that trigger.
69. Once the decision making process is triggered, it is driven by the terms of the scheme, the discretion given to the authority by the scheme, and the requirement that the authority acts fairly.
70. The scheme provides no mechanism for amending an application once made, and neither the Act nor the regulations, nor the Secretary of State's Guidance nor the Council's own Statement of Licensing Policy, makes any mention of the possibility of amendment. Clearly, a power to amend that would defeat or undermine the object of the procedural provisions relating to advertisement and right of responsible authorities and interested parties to make representations could not conceivably be implied; and neither Mr Phillips nor Miss Clover suggested otherwise.
71. However, the scheme has no express power enabling an applicant to amend an application to vary; and, in my judgment, properly construed, the regulatory scheme does not as such allow or envisage any amendment to an application to vary once it has been made.
72. It does not need to do so, because of the nature of the decision making process with which the authority is involved. As stressed in the illuminative judgment of Toulson LJ in Hope and Glory Public House (see paragraph 9 above), in respect of licensing, a licensing authority exercises an administrative function given to it by Parliament. Whilst the authority must no doubt take into account the rights of those people who live and work in the vicinity, those interested parties can only make representations as to the "likely effect of grant of the application on the promotion of the licensing objectives", i.e. on the basis that the *public* interest will be adversely affected. It is the potential impact upon that *public* interest, and that alone, which triggers any decision making process at all. In its absence, the licence holder has a right to the variation it seeks.
73. Once triggered, it requires the making of an evaluative judgment, involving (as Toulson LJ said in Hope and Glory Public House) the weighing of a variety of competing public policy considerations, such as the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, and including the impact generally on the lives of those who live and work in the vicinity. It inherently involves an evaluation of what is to be regarded as reasonably acceptable in the particular location, and of what is necessary and proportionate to the promotion of the statutory licensing objectives in terms of scope of the licence and conditions in a local context.

74. The scheme is based on the premise that the relevant local authority is uniquely equipped and well-placed to make such judgments. In such areas of quintessential policy, the State generally has a wide margin of appreciation, or, in the more domestic terms used by the Divisional Court in Meade v Brighton Corporation [1968] 67 LGR 289 (a case concerning a gaming machine permit under the Betting, Gaming and Lotteries Act 1963): "The discretion in the local authority is about as wide as it could be". The court will be cautious before interfering with the exercise of such a discretion.
75. However, wide as a licensing authority's discretion might be in general, it is limited by the specific terms of the scheme: in the context of premises licence applications under the 2003 Act – whether for new licences under section 17, or for variations under section 34, or for review under section 51 – a licensing authority does not simply have an open discretion, even when its decision making function is brought into play.
76. The principle restrictions on an authority's discretion are, for the purposes of this appeal, two-fold.
77. First, an application to vary never triggers a general review of the licence: the scope of the review of the licence is limited. "Relevant representations", which trigger the review, must be (i) confined to the subject matter of the variation (paragraph 9.4 of the section 182 Guidance), and (ii) "about the likely effect of the grant of the application on the promotion of the licensing objectives". That focus reflects the fact that, where those representations are made, they trigger an enquiry by the authority into the effect the proposed variation may have upon the promotion of the licensing objectives (and, to that extent, I respectfully agree with the authors of Alcohol and Entertainment Licensing Law by Manchester, Poppleston & Allen (2nd Edition) (2008), at paragraph 6.9.4, to that effect). An application for a new licence or for a review is similarly limited, although the precise statutory restrictions are different, tailored to the nature of the particular application.
78. Second, in the light of the conclusions of that enquiry, the authority must determine the application to vary. However, the scheme again does not give the authority an open discretion to do whatever it likes. Indeed, the provisions are prescriptive. Section 32(5) requires the authority to consider whether, for the promotion of the licensing objectives, it is necessary to reject the application (in whole or in part) and/or to modify the conditions of the licence to accommodate the variation in the context of the licence as a whole. There is a discretion here, insofar as the authority only has to act if it considers such rejection or modification is necessary: but, if and insofar as it does consider that, then it has both a power and an obligation to reject the application or modify the licence conditions accordingly. The authority can do no more, and no less. Again, an application for a new licence or for a review has similar restrictions on the authority's powers.
79. These provisions therefore effectively define and limit the extent of the authority's powers as to how a licensing authority may respond to an application to vary a licence. Its field of potential action is limited by the scope of the extant licence and the application to vary that licence; and it is limited to rejecting the application to vary (in whole or in part) and/or to modifying the conditions of the licence to accommodate the variation in the context of the licence as a whole.
80. It is here that an applicant's changing wishes or intentions may come into play. Given the power of a licensing authority to reject part of an application for variation or modify the licence conditions, it is open to an applicant (e.g. in the face of relevant representations received) to indicate to both licensing authority and responsible authorities/interested parties who have made relevant representations that (i) he does not wish to pursue part of an application and/or (ii) he is willing to agree to a modification to the licence conditions to cater for the concerns expressed.
81. Whilst that may be expressed, as in this case, as an "amendment" to the application to vary, in my view it does not amount to a formal amendment to his application; but the licensing authority is bound to take those views of the licensee into account in exercising its discretion as to appropriate steps it might take in deciding the application in its original form. An authority would not usually consider it necessary to consider further any part of the application which the applicant no longer wishes to pursue – although, on particular facts, it may do so if, for example, the part abandoned cannot be properly severed from other aspects of the licence. The authority would also wish to consider, with the responsible authorities/interested parties, whether the conditions to which the applicant is prepared to submit address the concerns raised in their relevant representations as to the potential impact of the proposed variation on the promotion of the licensed objectives.
82. Given the administrative nature of the authority's function, it is perfectly appropriate for the authority thus to liaise with the applicant licensee and the responsible authorities/interested parties to see



whether a compromise can be reached. Where, after relevant representations are lodged, discussions between the licensing authority, the applicant and responsible authorities/interested parties who have made relevant representations lead to an agreement within the scope of the extant licence and original application to vary as to the parts of the application to be granted and the conditions upon which that grant will be made, then it is open to the authority to make a grant on those conditions; so long as it considers that the rejection of the parts agreed to be rejected and modification of the conditions agreed to be modified are necessary for the promotion of the licensing objectives. In those circumstances, the responsible authorities/interested parties might withdraw their representations (regulation 10 of the Hearing Regulations), or the parties may agree that a hearing is unnecessary and the authority may dispense with a hearing if it agrees that it is unnecessary (section 35(3)(a), and regulation 9 of the Hearing Regulations)

83. For the reasons already explored, given the decision making power granted to it by Parliament, the administrative nature of that power and the unique position an authority is in to make the relevant judgments, subject to any restrictions expressly imposed by the terms of the statutory scheme itself, the discretion of a licensing authority is necessarily wide, and the exercise of such a discretion with which this court should be cautious of interfering. Whilst the pre-hearing procedure is detailed and prescriptive, and does not have the equivalent of regulation 21 of the Hearing Regulations (which expressly gives the authority power over its own procedure), that discretion applies to the procedure the licensing committee adopts pre-hearing, subject to the procedure adopted (i) complying with the procedural requirements of the scheme, and (ii) being "fair" and directed to promoting the licensing objectives in section 4. That was illustrated in Corporation of the Hall of Arts and Sciences, in which, in addition to the mandated advertisement of the application to vary, the authority had a practice of notifying directly businesses and residents in the immediate vicinity of the relevant premises. "Fair" here has to be seen in the context that the authority is performing an administrative function: it is not acting in a judicial or quasi-judicial capacity (see Hope and Glory Public House at [41] per Toulson LJ). If the licensing committee stray outside that wide discretion, and adopt a procedure which is irrational or otherwise unlawful, then the resulting decision may be open to challenge by way of appeal or judicial review (see Hope and Glory Public House at [51]-[52] per Toulson LJ; and Corporation of the Hall of Arts and Sciences at [39] per Stanley Burnton LJ).
84. In conclusion, it is to that extent, but only to that extent, that an applicant may notify "amendments" to the parts of the application he wishes to pursue, and the conditions he is prepared to accept to enable the variation to be granted. However, the licensing authority in the form of the licensing committee or sub-committee must eventually itself come to a judgment as to whether the promotion of the licensing objectives requires the rejection of the whole or part of the original application as made, and, insofar as it does not, whether it requires any modification to the licence conditions. In making that judgment, it cannot however extend the scope of the licence.
85. If the variation is granted in terms that are unacceptable to an interested party, then there are a number of routes of challenge. First, of course, as in this case, an appeal can be made to the Magistrates Court. Second, if the procedure adopted by the authority is irrational or otherwise unlawful, then the resulting decision would be open to challenge by way of judicial review (see paragraph 83 above). Third, if the variation results in unexpected adverse effects on the licensing objectives, then an interested party can seek a review of the licence under section 51.
86. Let me deal finally with two specific submissions made by Mr Phillips.
87. First, he submitted that, on an application to vary, no change to the licence could be made that might reasonably be considered capable of having an adverse impact on the promotion of the licensing objectives, unless that change was made clear in the initial application as advertised; and, where such a change to an application to vary is contemplated, an applicant is bound to start again by resubmitting the application, with the consequent new obligations for advertisement and new rights for responsible authorities and interested parties to make representations.
88. I do not agree with that proposition – or, at least, the full extent of it – which, with respect, does not seem to me to be in line with the nature of the scheme when looked at as a whole.
89. The proposition might have more force if the function of the decision maker were judicial, rather than administrative. However, relevant representations trigger an administrative investigation by the licensing authority into the effect the proposed changes will make to the promotion of the licensing objectives: that decision making process having been triggered, it is then for the authority to weigh the various strands of public interest and determine whether the promotion of those objectives requires the

rejection of any part of the application or modification of the licence conditions.

90. It is true that the investigation is restricted to the matters raised in the representations, but the important point is that the action the authority can take is restricted by the scheme to rejecting the application in whole or part, or modifying the licence conditions.
91. In respect of the former, insofar as the authority rejects the application to vary, that will have the effect of leaving the licence, to that extent, unaltered: the authority cannot extend the scope of the licence beyond that of the extant licence and the variation proposed.
92. With regard to modification of the licence conditions, the statutory scheme gives the authority full scope to add, subtract or vary any conditions to accommodate the variation in the context of the licence as a whole. The scheme requires the authority to modify the conditions if and to the extent that it considers modifications necessary to promote the licensing objectives. "Promoting the licensing objectives", as I have described, requires the balancing of various strands of public interest; and, in performing that balance, it is possible, of not inevitable, that one of the objectives may be demoted in order to benefit another. Where that is so, the scheme simply does not require further consultation of local residents and other interested parties in the form of re-advertisement with a fresh opportunity to make new relevant representations. It does not do so because:
- i) The authority is already charged with the task of balancing the strands of public interest involved, on the basis of such evidence as it has collected. In many cases, it will consider that it is in a position to make that decision without formally consulting interested parties and local residents again. If it is not – e.g. if it considers that the procedure will be unfair to local residents without such further consultation – then it is open to the authority to require the applicant to start again with a fresh application. However, absent a proposed change extending the scope of the licence, that would be an exceptional case.
- ii) If the authority were required to start the process over again, simply because the exercise of its statutory powers might adversely affect one strand of the public interest involved, that would seriously compromise the dialogue between the authority, applicant and responsible authorities/interested parties who have made representations, which is encouraged as an inherent part of the scheme.
93. Responsible authorities and interested parties can take considerable comfort from the fact that the authority cannot extend the scope of the licence beyond that of the extant licence and variation proposed. Furthermore, where such authorities and parties have made relevant representations, they are able to play a full part in both the pre-hearing dialogue (designed to come to a result that is satisfactory to the applicant and responsible authorities/interested parties) and the hearing itself. If they are dissatisfied with the result of the hearing in practice, they are able to appeal or challenge the result by way of judicial review or seek a review of the licence. If the manner in which the licensed business is operated causes (e.g.) a private nuisance, then they can bring a private law claim. But, in licensing terms, their rights and interests are not paramount: they are just one factor which the authority must take into account, when determining an application to vary. For the reasons I have given, in exercising a licensing function, the focus is on the public interest.
94. For those reasons, I do not accept Mr Phillips' proposition.
95. Nor do I find Mr Phillips' reliance on Article 8 effective. Article 8 concerns an individual's right to a private life. For the reasons I have just given, there are considerable safeguards for that right in the scheme, and in the private law. There is no arguable breach of Article 8 simply because the scheme does not provide for re-advertisement of any proposed change of licence conditions which might arguably affect either the licensing objectives or the private life of a specific individual. Far from being "transparently at odds" with local residents' right to private life under Article 8, I do not consider that Article 8 has any role to play in the issue in this appeal.
96. It seems to me that the principles that I have outlined are not only clear from the terms of the regulatory scheme, but are also practical in their application. Whilst I have been involved in an exercise in the proper construction of the terms of the statutory scheme, that comes as some comfort – particularly as it must have been Parliament's intention to impose a regulatory scheme that is workable. On the evidence before me, they also appear to be the principles which, in practice, licensing authorities have in substance generally applied since the advent of the new scheme in 2005. That may explain why the issue in this appeal has not until now ever come before the courts.

#### **Application of the Principles to this Appeal**



97. I now turn to apply those principles to the appeal before me.
98. The Appellant's complaint is that the initial application to vary the licence did not indicate that the V2 doorway would be used as the only means of public access to and egress from the new self-contained basement bar. In that application, the proposal was to refurbish the Richmond Street doorway and stairway to or from the basement, and use that to get the public to and from the basement. That change to the application was not the subject of advertisement, and consequently the Appellant and other local residents were denied the opportunity to make representations in respect of the use of the V2 doorway for that purpose. That amendment, it was submitted, required the licence holder applicant to start the variation process again – at least so far as advertisement and period for representations are concerned. It was that failure which rendered the decision of the authority unlawful.
99. For the reasons I have given above, the applicant could not formally amend his application, once it had been submitted; but the Council, in determining whether it was appropriate to reject the whole or part of the application, or modify the licence conditions to accommodate the proposal, was entitled to take into account the applicant's changed wishes and intentions. In the face of opposition to both the extension of hours and the refurbishment of the Richmond Street doorway and stairway to enable public access to the basement bar by that route, the Council was entitled to conclude that they could and should properly reject those parts of the application.
100. The real issue, of course, is whether the Council was entitled to grant the variation, on the basis of the original application, with the V2 doorway being the sole public means of access to the newly-discrete basement bar, without requiring the applicant to submit a new application or at least requiring the new proposal to be re-advertised with a fresh period for responsible authorities and interested parties to lodge relevant representations.
101. As I have indicated, the extent to which the V2 doorway was in fact used for public access to the premises prior to the application to vary is controversial. As I understand it, there was some evidence that, for a short period, the V2 doorway had been used for public access to the basement; but the evidence suggests that the doorway was not used a great deal, and Mr Cooper (the premises licence's designated premises supervisor: see paragraph 19 above) appears to confirm that the V2 door was used as a fire door but not used as a (public) entrance, access to the basement being through the main doors of Via and internal stairs (paragraph 2 of an unsigned and undated statement used at the hearing before the Deputy District Judge).
102. However, as the parties properly conceded before the Deputy District Judge, in respect of the application to vary, what mattered was not the use to which the V2 doorway had actually been put, but the use of it that was lawful under the original licence. In my judgment, the licence as issued in 2005 undoubtedly allowed the V2 doorway to be used for public access to the premises.
103. Mr Phillips conceded before me that the 2005 licence enabled that doorway to be used for public access to the basement, in the sense that the licence did not limit the use to which that entrance/exit could be put and, therefore, if that doorway were used for public access to the basement, a prosecution under section 136 for breach would fail. He submitted that it would fail merely because of the high burden of proof required in criminal proceedings; but, in my view, there was clearly no restriction on the use of that entrance/exit to the premises in the 2005 licence.
104. I accept that, by virtue of regulation 23(3)(b) and (c) (paragraph 21 above), a licence plan should identify the location of points of access to and egress from the premises on the one hand, and, if different, identify discretely the location of escape routes from the premises; but the marking "FD" in the internal doors at the foot of the V2 stairs cannot indicate that the route from the basement to the V2 doorway was merely an escape route and no more. Many internal doors are marked on the plans with "FD" and, whatever that means (and, of course, it might stand for "Fire Door": see also paragraph 2 of Mr Cooper's statement), it does not appear to identify mere escape routes. Even on the final plan, from the face of which it is clear that the applicant proposed to use the V2 doorway and stairs as the only means of public access to the basement, the doors at the foot of the stairway are marked "FD".
105. In the 2005 licence, in my judgment, there were no restrictions on the use of doorways between the premises and the streets, front and back, either in the conditions or on the face of the plans that form part of the licence. In those circumstances, any of the doorways (including the V2 doorway and the Richmond Street doorway) could be used for public access to and egress from the premises. If the means of access through a particular door caused an adverse impact on the licensing objectives, it would have been open to either a responsible authority or an interested party to have made an

application for review under section 51.

106. Mr Phillips relied upon the well-known passage from the judgment of Scott-Baker LJ in Crawley Borough Council v Stuart Attenborough [2006] EWHC 1278 (Admin) at [6]-[7], to the effect that licence conditions must be enforceable, and consequently sufficiently clear for that purpose; but, in my judgment, the scope of the licence and conditions in this case, so far as the allowable use of the V2 entrance is concerned, were manifestly clear.
107. The ability of the licence holder lawfully to use the V2 doorway means of public access to and egress from the basement was not lost, even if the licence holder did not in fact use that doorway in that manner either very much or at all or to the extent that he may use it in the future. Nor, in my view, was it lost merely by the separation of the ground floor and basement bars into distinct units. That separation, of course, had an inevitable effect on how the business would operate. The final proposal, which involved the V2 doorway being used as the sole entrance/exit for the new discrete basement bar, inevitably changed the degree of use of the V2 doorway by (i) reducing the number of people who might use the V2 entrance/exit, from 620 (the total capacity of the premises) to 240 (the capacity of the basement alone), whilst (ii) meaning that all of those who used the basement bar would have to use the V2 entrance/exit. That was a change of business which resulted in a change of intensity of use of the doorway – in effect, reducing the possible maximum usage of that doorway whilst substantially increasing the likely use – but that did not require a variation to the licence at all.
108. That applied equally to the door into Richmond Street at the north east corner of the premises: there were no restrictions on the use of that doorway either, and, under the 2005 licence, the licence holder could have used that doorway for public access – although it may have been likely that, had they done so, there would have been an application for review by the Environmental Health Department, if not the occupiers of residential accommodation that abutted Richmond Street. However:
- i) The application to vary included an application to change the structure and layout of the building to this extent, namely the "full refurbishment of the rear staircase... to provide improved and independent public access to this basement area from the rear of the building...". That appears, not from the plan – the plan was unaltered from that attached to the 2005 licence – but from the schedule of proposed alterations (see paragraph 48 above). Insofar as that involved a change to the structure or lay out of the premises, it may have required a variation to the licence (and/or approval under Condition 60 of the licence conditions: see paragraph 42 above).
- ii) In any event, it was open to the applicant, in the light of opposition to the use of the Richmond Street doorway, to indicate that it would not use that doorway for the public, but would use the V2 doorway. No structural or layout changes were requested (or, as I understand it, required) for use of the V2 stairs and doorway for the purposes of access to the basement. The only change marked on the final plans, and the only change intended, was substantially greater use of that route for public access to the premises than had previously occurred. However, that was not required to be put into the plan, and that use already fell within the boundaries of the extant licence. Increased use of a means of egress and ingress in fact, where that use is already lawful in terms of the licence, does not require a variation of the licence.
109. In those circumstances, TCG Bars did not need a variation in their licence to enable them lawfully to use the V2 doorway for public access to the basement. After 12 September 2011, the only variation proposed by TCG Bars related to the internal structure and layout of the premises, in respect of which no representations were made and of which neither Mr Taylor nor any other person making relevant representations made any complaint.
110. However, the TCG Bars nevertheless had to satisfy the Council that queues would be managed effectively (paragraph CD1 of the Council's Statement of Licensing Policy: see paragraph 56 above). It was open to the Council, in the light of the likely future use in fact of the V2 doorway as a public entrance/exit to modify the conditions of the licence, by imposing an additional condition relating to queuing. It can properly be assumed that that condition was imposed because the Council considered it necessary for the promotion of the licensing objectives relating to the prevention of disorder and public nuisance.
111. For those reasons, in my judgment, the Council's Licensing Sub-Committee was lawfully entitled (i) to proceed with the application to vary the licence; (ii) to take into account the applicant's express wish not to proceed with parts of the application, namely the extension of hours and refurbishment of the Richmond Street entrance and stairway for use by the public; (iii) to determine, in accordance with



those wishes, to reject those parts of the application as not being necessary for the promotion of the licensing objectives; (iv) to determine that, if the remaining parts of the application were to proceed, a new condition relating to queuing outside the V2 entrance was necessary for the promotion of those objectives; and (v) to grant the variation on that basis. That is the substance of the Sub-Committee's decision in this application.

### **Conclusion**

112. For those reasons, in my judgment, the judge was correct in ruling that it was lawful for the Council to proceed to determine the application to vary in accordance with section 35 as it did, even though the applicant had notified the change of scheme whereby the public access to and egress from the basement would be by way of the V2 doorway and not the Richmond Street doorway. The result was not outwith the scope of the existing licence and application to vary as seen together.
113. I would consequently answer the question posed by the Deputy District Judge in the affirmative, and I dismiss this appeal accordingly.

---

**BAILII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#) | [Donate to BAILII](#)**  
URL: <http://www.bailii.org/ew/cases/EWHC/Admin/2012/3467.html>