

MEETING

LICENSING SUB-COMMITTEE

DATE AND TIME

WEDNESDAY 13TH DECEMBER, 2017

AT 10.30 AM

VENUE

HENDON TOWN HALL, THE BURROUGHS, LONDON NW4 4BQ

TO: MEMBERS OF LICENSING SUB-COMMITTEE (Quorum 3)

Councillors

**Alison Cornelius
John Hart
Jim Tierney**

** The licensing authority will only allow licensing decisions to be taken by a minimum of three Councillors. In the event of one Member being unable to attend, their place will be substituted by another Member taken from the membership of the full Licensing Committee. In the event of this substitution taking place, all parties will be informed of the change of Membership at the beginning of the hearing.*

You are requested to attend the above meeting for which an agenda is attached.

Andrew Charlwood – Head of Governance

Governance Services contact: Governance Service governanceservice@barnet.gov.uk

Media Relations contact: Sue Cocker 020 8359 7039

ASSURANCE GROUP

ORDER OF BUSINESS

| Item No | Title of Report | Pages |
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| 1. | APPOINTMENT OF CHAIRMAN | |
| 2. | ABSENCE OF MEMBERS (IF ANY) | |
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| 8. | DELIBERATION BY THE SUB-COMMITTEE IN PRIVATE SESSION | |
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| 10. | ANY OTHER ITEM(S) THE CHAIRMAN DECIDES ARE URGENT | |

FACILITIES FOR PEOPLE WITH DISABILITIES

Hendon Town Hall has access for wheelchair users including lifts and toilets. If you wish to let us know in advance that you will be attending the meeting, please telephone Governance Service governanceservice@barnet.gov.uk. People with hearing difficulties who have a text phone, may telephone our minicom number on 020 8203 8942. All of our Committee Rooms also have induction loops.

FIRE/EMERGENCY EVACUATION PROCEDURE

If the fire alarm sounds continuously, or if you are instructed to do so, you must leave the building by the nearest available exit. You will be directed to the nearest exit by Committee staff or by uniformed custodians. It is vital you follow their instructions.

You should proceed calmly; do not run and do not use the lifts.

Do not stop to collect personal belongings

Once you are outside, please do not wait immediately next to the building, but move some distance away and await further instructions.

Do not re-enter the building until told to do so.

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LONDON BOROUGH OF BARNET

LICENSING SUB COMMITTEE

HEARINGS PROCEDURE

AGENDA ITEM 4

General points

The following procedure is based on Regulations made by the Secretary of State under the Licensing Act 2003 ("the Hearings Regulations") which may be viewed or downloaded from the website of the Department for Culture, Media and Sport by following links from www.culture.gov.uk

The procedure is intended as a general framework to ensure natural justice and a fair hearing. The conduct of individual hearings may vary slightly according to circumstances and the discretion of the Chairman. In all cases, however, this general framework will be followed.

The procedure allows each party a maximum period of 5 minutes in which to present their case (Regulations 16 & 24). At the end of the time allowed, the Chairman will terminate the presentation and the hearing will proceed in the form of a discussion led by the authority to explore points of dispute. The discussion will not be timed.

The procedure is subject to periodic review and amendment to reflect best practice and relevant legislative changes. An updated version of this procedure is published as soon as possible following any such amendments.

Governance Officer

- To seek nominations for Chairman
- Elect Chairman
- Hand over to the Chairman

Chairman

- Introduces him/herself and Members of the Committee, and outlines their roles.
- Introduces Licensing, Legal and Governance Officer.
- Explains that Legal and Governance Officers will be present during the Committee's deliberations to advise only, and that the Licensing Officer will be excluded from deliberations.
- Asks parties present to introduce themselves.
- Outlines procedure to be followed.
- Asks all parties to confirm their understanding of the procedure.
- Clarifies any aspect(s) of the procedure where any parties are uncertain or asks Legal or Governance Officer as appropriate to clarify.

Governance Officer

- Informs Committee of absent parties.
- Details persons whom a party is seeking permission to represent them at hearing.
- Panel confer regarding permission.
- Chairman announces decision regarding permission.

Licensing Officer presents the report to the Committee

- Is a statement of the facts including details of the application and operating schedule, relevant policy details, detail representations made, a chronology of events and highlights the points on which the Authority requires clarification.

Applicant

- Presents opening submissions and clarifies points raised by Authority in notice of hearing. Time allowed 5 mins.

Other parties

- Presents opening submissions either in person or by spokes person Time allowed 5 mins per interested party.

Note regarding use of video evidence

Video evidence must be in DVD format and will form part of the relevant party's five minutes opening submission. Any party wishing to use video evidence must submit a copy to the Authority along with sufficient, identical extra copies to serve on all the opposing parties – i.e. if the applicant is submitting it, there must be enough copies for all parties making representations and if a party making representations is submitting it there must be a copy for the applicant. The recording must be edited down to the highlights, containing only relevant matter which relates to the written representation previously submitted. In addition, a description of how, when and where the video was recorded and what it contains must be submitted. These must be supplied to the Authority at least five working days before the hearing.

Members question Licensing Officer on Policy

Discussion

Chairman leads a discussion concentrating on points of dispute:

Chairman asks Applicant what he disputes in other parties' submissions, and asks other parties to comment.

Chairman proceeds through all objectors dealing with all matters of contention.

When Chairman feels all matters have been thoroughly discussed and all parties have been given a fair and equal opportunity to comment and make representations, she/he closes discussion.

Determination

There are two procedures depending on whether or not determination is to be made at the end of the Hearing or within five working days of the Hearing. This later announcement of determination is permitted in terms of the Legislation for certain types of applications.

Chairman informs all present that the Committee will deliberate, that Legal and Governance Officer will remain to advise but will not be part of decision-making process, and that all others must leave (under Regulation 14).

- Parties, apart from Legal and Governance Officer, leave the room.
- The Committee deliberates, with advice as required from Legal and Governance Officer, and reaches a conclusion. The Legal officer may assist, as required, in formulating the wording of the determination.
- Parties return.
- Chairman reads out determination, and advises it will be sent in⁶

writing to all parties.

- Opportunity for determination to be clarified by any interested party who is unclear.
- Chairman gives advice about appealing against the determination.
- Chairman thanks all for attending and closes the meeting.

...Within five working days of the hearing

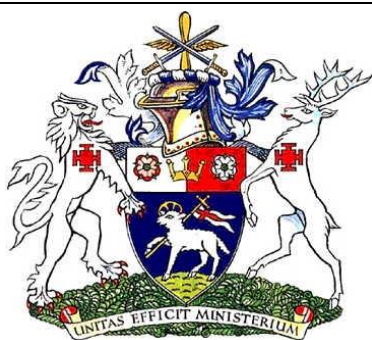
- Chairman explains requirement to determine the Hearing within five working days, and advises that the Committee will proceed to deliberate and announce the determination within that time.
- During deliberations, Legal and Governance Officers remain to advise on law and procedure as required. The Legal Officer may assist, as required, in formulating the wording of the determination. The Licensing Officer plays no part in the determination and withdraws for this part of the proceedings.
- Chairman advises all parties that they will receive written notification of the determination within five working days of the Hearing date, together with general information on how to appeal against the determination.
- Chairman thanks all parties for attending and invites the applicant, objector(s), other party(ies) and the Licensing Officer to leave.

Information on Appealing against the decision

You may at any time before the expiration of a period of 21 days from notification appeal to Willesden Magistrates' Court, 448 High Road London England NW10 2DZ (Telephone 020 8955 0555, DX 110850 Willesden 2) by way of Complaint for an Order. The Court may either dismiss the appeal, substitute for the decision appealed against any other decision which could have been made by the Licensing Authority or remit the case to the Licensing Authority to dispose of it in accordance with the directions of the court, and can make such order as to costs as it thinks fit.

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AGENDA ITEM 5



Licensing Sub-Committee

Wednesday 13th December 2017

| | |
|--------------------------------|---|
| Title | Review of Premises Licence – PND Express, 403 Hendon Way, London, NW4 3LH |
| Report of | Trading Standards & Licensing Manager |
| Wards | West Hendon |
| Status | Public (with exempt Police Statement in Annex 3 By virtue of paragraph(s) 1 of Part 1 of Schedule 12A of the Local Government Act 1972) |
| Enclosures | <p>Report of the Licensing Officer</p> <p>Annex 1 – Review Application</p> <p>Annex 2 – Current Premises Licence</p> <p>Annex 3 – Representations</p> <p>Annex 4 – Extract from Guidance under section 182 Licensing Act 2003</p> <p>Annex 5 – Matters for decision</p> |
| Officer Contact Details | <p>Mariesa Connolly 0208 359 2125</p> <p>mariesa.connolly@barnet.gov.uk</p> |

Summary

This report asks the Sub-Committee to consider the application to Review a premises licence under section 51 of the Licensing Act 2003.

Recommendations

1. This report asks the Sub-Committee to consider the application to Review a premises licence under section 51 of the Licensing Act 2003 for PND Express, 403 Hendon Way, London, NW4 3LH

1. WHY THIS REPORT IS NEEDED

- 1.1 The licensing authority having received valid review application for an existing premises licence must hold a hearing to consider that application and any valid representations that may have been submitted.

2. REASONS FOR RECOMMENDATIONS

- 2.1 Where an application is submitted under section 51 of the Licensing Act 2003, the authority must hold a hearing to consider it.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 N/A

4. POST DECISION IMPLEMENTATION

- 4.1 The decision will have immediate effect

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 Members are referred to the Council's Licensing Policy for consideration

- 5.1.2 Timely legal and fair decisions support objectives contained within the Corporate Plan. In particular in relation to a "successful London borough" by ensuring that only legal, well regulated licensable activities occur within the borough.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 N/A

5.3 Legal and Constitutional References

- 5.3.1 The Licensing Act 2003 sets out how applications for premises licences should be dealt with where valid representations have been submitted.

- 5.3.2 Under the Constitution, Responsibility for Functions (Annex A), the Licensing Act 2003 and associated regulations, as delegated to it by the Licensing Committee, including the determination of review applications.

5.4 Risk Management

- 5.4.1 N/A

5.5 Equalities and Diversity

- 5.5.1 Licence applications are dealt with according to the provisions of the Licensing Act 2003 and associated Regulations which allow both applications and representations to applications to be made by all sectors of the

5.6 Consultation and Engagement

- 5.6.1 The statutory consultation process that has been followed in accordance with the Licensing Act 2003

6. BACKGROUND PAPERS

- 9.1 The review application and report of the Licensing Officer are and necessary appendices are attached to this report.

Officers Report

LICENSING ACT 2003
REPORT FOR PUBLIC HEARING

Review of the premises licence:

PND Express, 403 Hendon Way, London, NW4 3LH

1. The Applicant

An application was submitted by Michelle Rudland on behalf of the London Borough of Barnet Licensing.

2. The Application

This application has been made under Section 51 of the Licensing Act 2003 to review the Premises Licence held by PND Express Ltd

Licensing objectives to which the review application relates is:

- The prevention of crime and disorder
- The protection of children from harm

Michelle Rudland has made the following statements within licensing application:

- The licensing authority have identified that the premises licence holder is operating its business in such a way as to negatively affect the licensing objectives of the protection of children from harm and the prevention of crime and disorder.

A full copy of the Review application is attached to this report in **Annex 1**.

3. Premises Licence History

This premises licence was first applied for in December 2016 and granted in February 2017.

4. Current Premises Licence

The current licence allows the following licensable activities:

Sale or supply of Alcohol

| | |
|--------------------|---------------------|
| Monday to Saturday | 08:00hrs - 23:00hrs |
| Sunday | 10:00hrs - 22:30hrs |

The hours that the premises are open to the public

| | |
|--------------------|---------------------|
| Monday to Saturday | 08:00hrs - 23:00hrs |
| Sunday | 10:00hrs - 22:30hrs |

A Full copy of the premises licence with all its conditions can be found in **Annex 2**.

5. Representations

Responsible Authorities

The Licensing Team have received a representation from PC Vicky Wilcock on behalf of the Metropolitan Police and Jack Dowler on behalf of Trading Standards. The objections relate to the prevention of crime and disorder and the protection of children from harm.

Other representations

The Licensing Team have received no representations from other parties.

The representations can be seen attached to this report in **Annex 3**.

6. Guidance

A Section from the Guidance issued under Section 182 Licensing Act 2003 (June 2013) regarding Reviews Is attached to this report in **Annex 4**.

7. Determination

The sub-committee shall determine the application in accordance with Section 52 of the Licensing Act 2003.

S 52 (3);

“The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.

4. The steps are-

- (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;

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.

5. Subsection (3) is subject to sections 19, 20 and 21 (requirement to include certain conditions in premises licences).

6. Where the authority takes a step mentioned in subsection (4) (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

Full Copies of the Councils Statement of Licensing Policy and the Statutory Guidance to the Act will be available at the Licensing Sub Committee hearing or in advance if required.

A matters for decision sheet is attached at **Annex 5**

Marissa Connolly
Licensing Officer
Thursday, 02 November 2017

Annex 1 – Review Application
Annex 2 – Current Premises Licence
Annex 3 - Representation
Annex 4 – Guidance issued under Section 182 Licensing Act 2003 (June 2013)
Annex 5 – Matters for Decision

Review Application

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

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

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

You may wish to keep a copy of the completed form for your records.

I Michelle Rudland on behalf of the Licensing Authority (as responsible authority)
(Insert name of applicant)
(delete as applicable)

Part 1 – Premises or club premises details

| | |
|---|-------------------------------------|
| Postal address of premises or, if none, ordnance survey map reference or description | |
| PND Express 403 Hendon Way | |
| Post town London | Post code (if known) NW4 3LH |

| |
|---|
| Name of premises licence holder or club holding club premises certificate (if known) |
| PND Express Ltd |

| |
|---|
| Number of premises licence or club premises certificate (if known) |
| LAPRE1/16/54634 |

Part 2 - Applicant details

I am

Please tick yes

- | | |
|---|-------------------------------------|
| 1) an interested party (please complete (A) or (B) below) | |
| a) a person living in the vicinity of the premises | <input type="checkbox"/> |
| b) a body representing persons living in the vicinity of the premises | <input type="checkbox"/> |
| c) a person involved in business in the vicinity of the premises | <input type="checkbox"/> |
| d) a body representing persons involved in business in the vicinity of the premises | <input type="checkbox"/> |
| 2) a responsible authority (please complete (C) below) | <input checked="" type="checkbox"/> |
| 3) a member of the club to which this application relates (please complete (A)) | <input type="checkbox"/> |

below)

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

Please tick

Mr

Mrs

☐

Miss

Ms

11

Other title

(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick yes

11

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

Post town

| TABLE 1. <i>Continued</i> | TABLE 2. <i>Continued</i> | TABLE 3. <i>Continued</i> |
|---------------------------|---------------------------|---------------------------|
| | | |

Post Code

Daytime contact telephone number

**E-mail address
(optional)**

(B) DETAILS OF OTHER APPLICANT

Name and address

| Name and address |
|------------------|
| |

Telephone number (if any)

Telephone number (if any)

E-mail address (optional)

| |
|---------------------------|
| E-mail address (optional) |
|---------------------------|

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

| |
|---|
| Name and address Michelle Rudland Team Leader, Community Protection (Regulation) Department (Acting as responsible Authority for the Licensing Authority) 2 nd Floor Annex, Barnet House 1255 High Road Whetstone N20 0EJ |
| Telephone number (if any) 020 8359 7443 |
| E-mail address (optional) michelle.rudland@barnet.gov.uk |

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

Please tick one or more boxes

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

Please state the ground(s) for review (please read guidance note 1)

The licensing authority have identified that the premises licence holder is operating its business in such a way as to negatively affect the licensing objectives of the protection of children from harm and the prevention of crime and disorder

As a result of continued breaches of the licence conditions and a failed test purchase the licensing authority no longer has any confidence that the premises licence holder can operate the business lawfully. As a result of the fact that the premises licence holder has not been able to comply with the conditions already attached to the licence we do not feel that it would be effective to attach further conditions to the licence. It is for this reason that the licensing authority acting as a responsible authority respectfully request that the licensing subcommittee consider revoking the premises licence.

Please provide as much information as possible to support the application
(please read guidance note 2)

This premises licence was applied for by PND Express Ltd on 7th December 2016 following the revocation of the previous premises licence for the same property.

Companies House shows that the director of PND Express Ltd is Mr Pahithran Selvarajah. The licensing subcommittee that granted this new premises licence on 1st February 2017 noted that Mr Selvarajah whilst not the licence holder was involved in the management of the previously revoked premises licence

The licence was granted with multiple conditions. These conditions were offered by the applicant within the application that the subcommittee agreed should be attached to the licence after hearing the representations made to the grant of the licence.

The Licensing team received a report from the Police about a visit that had been made to the premises during which they documented that the premises was in breach of the condition on the licence that relates to the sale of high strength alcohol. Following this visit the Police made contact with the premises licence holder in order to notify them of the witnessed breach(s) of the premises licence.

A programmed risk assessment visit was then carried out on the 10th May 2017 by a licensing officer during which it was documented that the premises was trading in breach of its conditions numbers 5, 7, 8, 10, 12, 16, 17, 20, 23, 24 and 27. A full list of the conditions attached to this licence is attached to this review application.

A further visit was made by the police on 31st May 2017 during which it was noted that the premises was again trading in breach of a number of the licence conditions. It was noted by the officer who attended from the Police during this visit that some improvements had been made in relation to the operating of the premises, including that the premises was now displaying their premises licence summary as is required by Licensing Act 2003.

A further visit was scheduled for 15th July 2017 during an out of hours operation conducted jointly with the Police and the Licensing Authority. During this visit it was noted that despite the slight improvement in the business operation condition numbers 7, 10, 16, 17, 20, 23 and 25 were still being breached. During this visit the director of the company Mr Pahithran Selvarajah was present and again was informed of the seriousness of the breaches of the licence conditions. As some improvements had been made since the last visit to the premises it was felt that a further opportunity should be given to the licence holder to ensure that he becomes fully compliant before the licensing authority takes further enforcement action.

The licensing team were informed that on the 28th July 2017 the premises was subject to a test purchase conducted by Trading Standards and the Police. During this visit the premises failed the test purchase and sold alcohol to a child under the age of 18. Mr Pahithran Selvarajah who is the director of the company who holds the premises licence and the DPS for this premises was the individual who made the sale.

As a result of the continued breaches of the licence conditions and the failed test purchase the licensing authority no longer has any confidence that the premises licence holder can operate the business lawfully. As a result of the fact that the premises licence holder has not been able to comply with the conditions already attached to the licence we do not feel that it would be effective to attach further conditions to the licence. It is for this reason that the licensing authority acting as a responsible authority respectfully request that the licensing subcommittee consider revoking the premises licence

Please tick yes

Have you made an application for review relating to this premises before ☐

If yes please state the date of that application

Day Month Year

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
|---|---|---|---|---|---|---|---|

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

N/A

Please tick yes

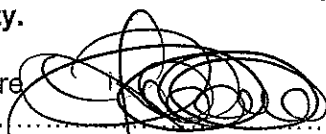
- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate ☒
- I understand that if I do not comply with the above requirements my application will be rejected ☒

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO 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 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant's solicitor or other duly authorised agent (See guidance note 4). If signing on behalf of the applicant please state in what capacity.

Signature



Date

24th September 2017

Capacity Team Leader, Community Protection (Regulation)

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

Decisions of the Licensing Sub-Committee

1 February 2017

Members Present:-

Councillor Alison Cornelius (Chairman)
Councillor Claire Farrier
Councillor Maureen Braun

Officers:

Sinéad Clifford - (Legal Officer)
Daniel Pattenden (Licensing Officer)
Sheri Odoffin - (Governance Officer)

Also in attendance

PC Vicky Wilcock
PC John Arkers

Others

Mr Pahitharan Selvarajah - Licensee
Mr Noel Samaroo - Agent

1. APPOINTMENT OF CHAIRMAN (Agenda Item 1):

Councillor Maureen Braun, seconded by Councillor Claire Farrier, nominated Councillor Alison Cornelius to preside as Chairman for the meeting.

RESOLVED: That Councillor Alison Cornelius be appointed as Chairman for the meeting.

2. ABSENCE OF MEMBERS (IF ANY) (Agenda Item 2):

None.

3. DECLARATION OF MEMBERS' DISCLOSABLE PECUNIARY INTERESTS AND NON PECUNIARY INTERESTS (IF ANY) (Agenda Item 3):

None.

4. LICENSING SUB-COMMITTEE HEARING PROCEDURE (Agenda Item 4):

The Chairman explained the procedure that would be followed for the meeting.

5. NEW PREMISES APPLICATION, PND EXPRESS, 403 HENDON WAY, LONDON, NW4 3LH (Agenda Item 5):

The sub-committee considered a New Premises application for PND Express, 403 Hendon Way, London NW4 3LH.

The sub-committee heard representations from the appellant and his representative, the Responsible Authority (London Borough of Barnet Trading Standards) and the Metropolitan Police.

6. MOTION TO EXCLUDE THE PRESS AND PUBLIC (Agenda Item 6):

RESOLVED: That the parties be excluded from the meeting, together with the press and public, in accordance with regulation 14(2) of the Licensing Act 2003 (Hearings and Regulations) 2005.

7. DELIBERATION BY THE SUB-COMMITTEE IN PRIVATE SESSION (Agenda Item 7):

The sub-committee deliberated in private session, accompanied by officers from HB Public Law and the London Borough of Barnet Governance Service.

8. RE-ADMISSION OF THE PRESS AND PUBLIC: ANNOUNCEMENT OF THE DECISION OF THE SUB-COMMITTEE (Agenda Item 8):

The parties to the application were readmitted to the meeting.

The Chairman read out the decision of the committee, which was as follows:

This is an application for a new licence in respect of PND Express 403 Hendon Way, NW4 3LH. Essentially the application seeks an off-licence for the premises.

The Police have made a representation against the application based on the licensing objective of the prevention of crime and disorder. There are no other objections to consider.

The objections refer to a search of the premises in August 2016 which found drugs in a staff member's car parked outside the premises and drugs paraphernalia actually on the premises. The applicant had been in charge on that occasion and it was believed that he had been running the business for some time despite not having applied for the transfer of the licence. A review of the Licence on the 7th November 2016 resulted in it being revoked.

The applicant has proposed numerous conditions to be included on the licence in his application Sections 18 and 19.

We have heard detailed submissions from the applicant, his representative and the Police. We acknowledge the concerns of the Police, however, the Committee accepts that the applicant was not the owner of the premises at the time of the search of the premises in August 2016. It is accepted that he was managing the premises on a part-time basis on behalf of the current owners at the time of the search. The applicant informed the Committee that he is currently in the process of purchasing a new lease from the landlord of the premises and not from the existing business owners. The applicant also confirmed that he has set up this new business, PND Express Ltd. Furthermore, the applicant advised that he will be the Designated Premises Supervisor and that all employees will be personal licence holders.

In light of the all representations heard today, we hereby grant the application for a new premises licence with the all of the proposed conditions as set out in the application at sections 18 and 19. We recommend that condition 37 is amended to read "refresher training (every 6 months) to all personal licence holders relating to the sale of alcohol and the conditions of the premises licence".

If any parties wish to appeal this decision they can do so via the Magistrates Court within 21 days of notification of this decision.

9. ANY OTHER ITEM(S) THE CHAIRMAN DECIDES ARE URGENT (Agenda Item 9):

None.

The meeting finished at 12.15 pm

Annex 1 – Mandatory Conditions

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.
3. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
 - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
- ii. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

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

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

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

(a) a holographic mark, or

(b) an ultraviolet feature.

iv. The responsible person must ensure that—

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

(i) beer or cider: ½ pint;

(ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and

(iii) still wine in a glass: 125 ml;

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

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

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

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

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

(b)"permitted price" is the price found by applying the formula -
$$P = D + (D \times V)$$

Where -

(i)P is the permitted price

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

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

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

(i) The holder of the premises licence

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

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

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

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

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

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

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

Annex 2 – Conditions consistent with the operating schedule

5. A CCTV system will be installed that comply with the following specifications:
- a. The premises shall install and maintain a comprehensive CCTV system which records 24 hours a day. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.
 - b. All CCTV recordings shall be stored for a minimum period of 31 days and all recordings will be stamped with the correct date and time. Viewing of recordings shall be made available, subject to Data Protection legislation, immediately upon the request of Police or an authorised council officer.
 - c. A CCTV will monitor the exterior front of the premises.

- d. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open, This staff member must be able to provide a police or authorised council officer copies of recent CCTV images or data with the minimum of delay when requested.
 - e. Signage will be prominently displayed advising customers that they are being recorded on CCTV.
 - f. The installed digital CCTV system will record for 31 days all public areas of the premises which will monitor all public safety issues. The DPS will be responsible to carry out a fire and health and safety risk assessments for licensed premises all notices in relation to public health and safety will be displayed.
 - g. Any antisocial behaviour CCTV recordings will be made available to the police and environmental health officers.
 - h. A CCTV will monitor the exterior front of the premises
6. The premises will not sell any SUPER- STRENGTH beer, lager, or cider that is equal to or greater than 6.0% ABV. For the avoidance of doubt, this does not include specialist products from craft or microbreweries or limited edition / seasonal products (e.g. Christmas gift packs), subject to Police and Local Authority discretion.
 7. All alcohol to be price labelled with the name of the premises for clear identification as to place of purchase by any Responsible authority.
 8. No single cans of beer, lager or ciders shall be sold at the premises.
 9. No sales of alcohol will be made from these premises to known street drinkers.
 10. A refusals book shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale, a description of the refusal and the name of the member of staff who refused the sale. Records shall be kept on the premises and maintained for a minimum of 12 months. Records will be made available for inspection at the premises by the police or an authorised officer of the Council at all times.
 11. Any person showing any sign of intoxication will be refused the sale of alcohol.
 12. There will always be a Personal Licence holder on the premises throughout the time that licensable activity is taking place to authorise any sales or alcohol.
 13. No alcoholic drinks will be purchased by the premises owners, DPS or staff from sellers calling at the premises.
 14. All invoices (originals or copies) for all alcoholic goods for retail sale on the premises will be kept at the premises and made available to Police officers, authorised County Council Trading Standards Officers and HMRC Officers upon request.
 15. The DPS will ensure that the premises operate in line with existing health and safety legislation and is aware that it is also the responsibility of the premises licence holder that this legislation is adhered to.

16. Signage will be prominently displayed advising customers that they are being recorded on CCTV. Additional signage which can read as follows:
 - a. No Alcohol will be served to known street drinkers.
 - b. This store does not stock or sell any strong beers or cider with an ABV of 6% or higher.
 - c. No single cans or bottles of beer or cider will be sold.
 - d. No loitering
 - e. Strict challenge 25 policy is in place at these premises
17. A challenge 25 proof of age scheme shall operate at the premises. Signage shall be displayed advising customers that the scheme is in place. All staff authorised to sell alcohol will be trained in the Challenge 25 scheme and this training will be documented to include the date the training was given, the name of the person who gave the training, the person who received the training and signatures by both trainer and trainee.
18. The DPS will monitor the external areas of the premises in relation to public nuisance or antisocial behaviour.
19. Deliveries and rubbish collections will only take place during normal business hours and are at the rear of the premises.
20. Notices will be prominently displayed at the exit requesting that customers to respect the nature of the residential area and leave quietly.
21. The DPS and the Premises Licence holder are responsible for ensuring that the premises do not cause any nuisance to the local residents, other business operators or the general public.
22. Customers shall be discouraged from congregating outside the premises.
23. The proposed DPS will ensure that all staff receives fully documented training in relation to Challenge 25 and the licensing Objectives.
24. All necessary signage will be displayed with regard to challenge 25 and the fact that NO ID NO SALE policy is in place.
25. Refresher Training (every six months) to all personal licence holders, relating to the sale of alcohol and the conditions of the premises licence.
26. The DPS and premises licence holder ensures that there are no specific promotions targeting alcohol products at young people e.g. alco-pops drinks or very cheap alcohol sales.
27. There will be an unimpeded view of the street from the service counter/till area as to prevent Proxy Sales.

Annex 3 – Conditions attached after hearing by the licensing authority

N/A

STATEMENT OF WITNESS

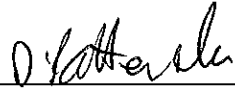
(CJ Act 1967, s9; MC Act 1980, ss 5A (3) (a) & 5B: MC Rules 1981, r70)

STATEMENT OF: Daniel Pattenden

Age of Witness (if over 18, enter "over 18"): Over 18


Occupation of Witness : Licensing officer.


The following statement, consisting of 2 page(s) each signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have willfully stated in it anything which I know to be false or do not believe to be true.

Dated the 20th September 2017 (signed) 

On the 10th May 2017 at 14:48 I visited the premises to conduct a standard risk assessment on this remises. Whilst at the premises I witnessed breaches of condition 5, 7, 8, 10, 12, 16, 17, 20, 23, 24 and 27 (**DP1**). Mr Pahithran Selvarajah (director of the named company PND Express Ltd that holds the premises licence) was not present at the premises during the inspection. The member of staff that was present at the time of the risk assessment did not seem to be aware of the conditions attached to the licence or indeed of the licensing objectives.

On the 15th July 2017 we visited PND during a night of joint visits carried out throughout the borough. This visit was made along with members of the Police Licensing Team. Mr Pahithran Selvarajah was present at the premises during this visit. Upon inspection it was noted that there were breaches of conditions 7, 10, 16, 17, 20, 23 and 25 of the premises licence. A warning was given to the licence holder and advice provided in relation to achieving compliance with the licence and the Licensing Act 2003.

(Signed) 

(Witnessed by) 

MG11

(Name in Capitals) M RUDLAND

Premises record of Inspection – Licensing Act 2003

| | | |
|----------------------------------|--------------------------------------|---------------------------|
| Premises name and address | PND Express, 403 Henden way, NW4 3LH | |
| Premises person(s) present | Shantha lunara | |
| Licence Number | LAPRE 1/16/54634 | |
| Type of authorisation | <u>Premises Licence</u> | Club Premises Certificate |
| Authorised Inspecting Officer(s) | Daniel Pattenden | |
| Date of Inspection | Start Time | End Time |
| 10/05/2017 | 14:48 | 15:01 |

Licence/Certificate inspection:

| | | |
|--|------------|-----------|
| Is the Summary on display? | <u>Yes</u> | No |
| Is the Licence/Conditions held at the premises | <u>Yes</u> | No |
| Is the DPS as per the licence? | <u>Yes</u> | No |
| If no provide reason | | |
| Is the DPS present? | Yes | <u>No</u> |
| If no person authorised in their absence | | |

LICENSABLE ACTIVITIES carried on:

| | | | | |
|--|------------|----------------|------------------------|--------------------|
| Regulated Entertainment | Plays | Films | Indoor Sporting Events | Boxing & Wrestling |
| | Live Music | Recorded Music | Performance of Dance | Anything Similar |
| Provision of Late Night Refreshment | Yes | | <u>No</u> | |
| Supply of Alcohol | On | <u>Off</u> | Both | |
| Does the licence/certificate permit the licensable Activities identified by the premises | <u>Yes</u> | | <u>No</u> | |

CONDITIONS OF LICENCE/CERTIFICATE:

The following conditions of the licence were found to be NOT being Complied with:

5, 7, 8, 10, 12, 16, 17, 20, 23, 24, 27

AWARENESS OF LICENSING OBJECTIVES BY PREMISES LICENCE HOLDER/DPS:

| | | |
|-----------|------|------------|
| Very Good | Fair | <u>Bad</u> |
|-----------|------|------------|

DETAILS OF ANY OTHER MATTERS IDENTIFIED DURING INSPECTION

| | |
|---|--|
| 1 | |
| 2 | |
| 3 | |

Current Premises Licence

| | |
|---|---|
| Licensing Act 2003 Part A Premises Licence Premises Licence Number : LAPRE1/16/54634 | Licensing Authority: London Borough of Barnet, Community Protection (Regulation) Barnet House 1255 High Road Whetstone London N20 0EJ 21/02/2017 |
|---|---|

Part 1 – Premises details

| | |
|--|-----------------------------|
| Postal address of premises, or if none, ordnance survey reference or description PNA Express , 403 Hendon Way | |
| Post Town London | Post Code NW4 3LH |
| Telephone number N/A | |
| Where the licence is time limited the dates This premises licence is not time limited. | |
| Licensable activities authorised by the licence The Sale by Retail of Alcohol | |
| The times the licence authorises the carrying out of licensable activities <u>Sale or supply of Alcohol</u> <u>Standard Days & Timings</u> Monday to Saturday 08:00hrs - 23:00hrs Sunday 10:00hrs - 22:30hrs | |
| The hours that the premises are open to the public <u>Standard Timings</u> Monday to Saturday 08:00hrs - 23:00hrs Sunday 10:00hrs - 22:30hrs | |
| Where the licence authorises supplies of alcohol whether these are on and/or off supplies Off the premises | |

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

PND Express Ltd
46 The Ridgeway
North Harrow
Harrow
Greater London
HA2 7QN

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

10508745

Name of designated premises supervisor where the premises licence authorises for the supply of alcohol

Pahithran Selvarajah

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

Annex 1 – Mandatory Conditions

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

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
- ii. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

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

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

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

(a) a holographic mark, or

(b) an ultraviolet feature.

iv. The responsible person must ensure that—

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

(i) beer or cider: ½ pint;

(ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and

(iii) still wine in a glass: 125 ml;

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

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

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

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

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

(b)"permitted price" is the price found by applying the formula -
 $P = D + (D \times V)$

Where -

(i)P is the permitted price

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

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

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

(i) The holder of the premises licence

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

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

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

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

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

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

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

Annex 2 – Conditions consistent with the operating schedule

5. A CCTV system will be installed that comply with the following specifications:

- a. The premises shall install and maintain a comprehensive CCTV system which records 24 hours a day. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.
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- c. A CCTV will monitor the exterior front of the premises.

- d. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open, This staff member must be able to provide a police or authorised council officer copies of recent CCTV images or data with the minimum of delay when requested.
 - e. Signage will be prominently displayed advising customers that they are being recorded on CCTV.
 - f. The installed digital CCTV system will record for 31 days all public areas of the premises which will monitor all public safety issues. The DPS will be responsible to carry out a fire and health and safety risk assessments for licensed premises all notices in relation to public health and safety will be displayed.
 - g. Any antisocial behaviour CCTV recordings will be made available to the police and environmental health officers.
 - h. A CCTV will monitor the exterior front of the premises
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 7. All alcohol to be price labelled with the name of the premises for clear identification as to place of purchase by any Responsible authority.
 8. No single cans of beer, lager or ciders shall be sold at the premises.
 9. No sales of alcohol will be made from these premises to known street drinkers.
 10. A refusals book shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale, a description of the refusal and the name of the member of staff who refused the sale. Records shall be kept on the premises and maintained for a minimum of 12 months. Records will be made available for inspection at the premises by the police or an authorised officer of the Council at all times.
 11. Any person showing any sign of intoxication will be refused the sale of alcohol.
 12. There will always be a Personal Licence holder on the premises throughout the time that licensable activity is taking place to authorise any sales or alcohol.
 13. No alcoholic drinks will be purchased by the premises owners, DPS or staff from sellers calling at the premises.
 14. All invoices (originals or copies) for all alcoholic goods for retail sale on the premises will be kept at the premises and made available to Police officers, authorised County Council Trading Standards Officers and HMRC Officers upon request.
 15. The DPS will ensure that the premises operate in line with existing health and safety legislation and is aware that it is also the responsibility of the premises licence holder that this legislation is adhered to.

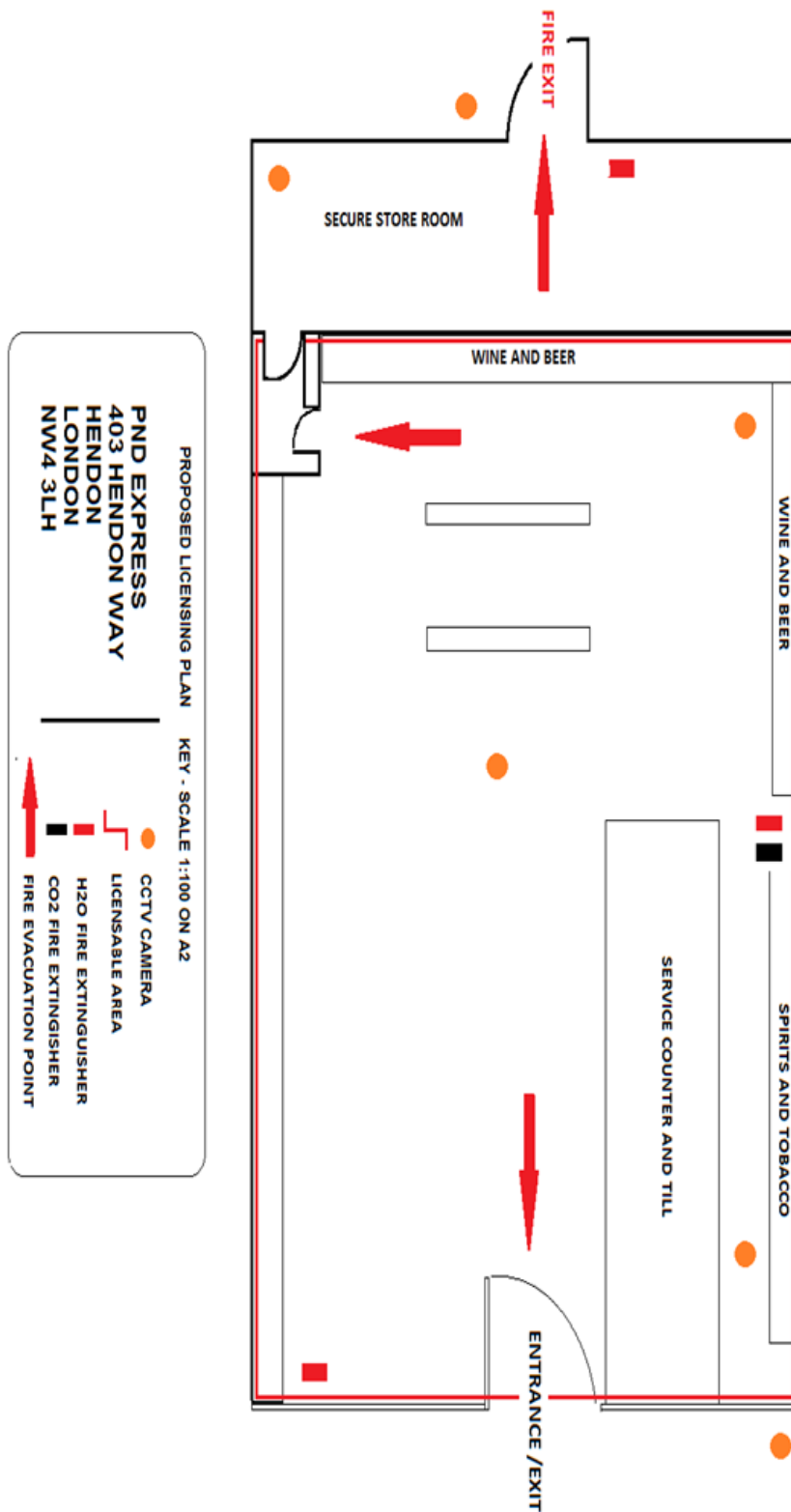
16. Signage will be prominently displayed advising customers that they are being recorded on CCTV. Additional signage which can read as follows:
 - a. No Alcohol will be served to known street drinkers.
 - b. This store does not stock or sell any strong beers or cider with an ABV of 6% or higher.
 - c. No single cans or bottles of beer or cider will be sold.
 - d. No loitering
 - e. Strict challenge 25 policy is in place at these premises
17. A challenge 25 proof of age scheme shall operate at the premises. Signage shall be displayed advising customers that the scheme is in place. All staff authorised to sell alcohol will be trained in the Challenge 25 scheme and this training will be documented to include the date the training was given, the name of the person who gave the training, the person who received the training and signatures by both trainer and trainee.
18. The DPS will monitor the external areas of the premises in relation to public nuisance or antisocial behaviour.
19. Deliveries and rubbish collections will only take place during normal business hours and are at the rear of the premises.
20. Notices will be prominently displayed at the exit requesting that customers to respect the nature of the residential area and leave quietly.
21. The DPS and the Premises Licence holder are responsible for ensuring that the premises do not cause any nuisance to the local residents, other business operators or the general public.
22. Customers shall be discouraged from congregating outside the premises.
23. The proposed DPS will ensure that all staff receives fully documented training in relation to Challenge 25 and the licensing Objectives.
24. All necessary signage will be displayed with regard to challenge 25 and the fact that NO ID NO SALE policy is in place.
25. Refresher Training (every six months) to all personal licence holders, relating to the sale of alcohol and the conditions of the premises licence.
26. The DPS and premises licence holder ensures that there are no specific promotions targeting alcohol products at young people e.g. alco-pops drinks or very cheap alcohol sales.
27. There will be an unimpeded view of the street from the service counter/till area as to prevent Proxy Sales.

Annex 3 – Conditions attached after hearing by the licensing authority

N/A

Annex 4 – Plan

As submitted to the Council with the application for the grant of a premises licence under schedule 8 of the Licensing Act 2003. Reference LAPRE1/16/54634



Representations



**London Borough Barnet
Licensing Team
Barnet House
1255 High Road
Whetstone
N20 0EJ**

**Licensing (Barnet Police Station)
C/O COLINDALE POLICE STATION
GRAHAM PARK WAY
LONDON
NW9 5TW**

Telephone: 02087334195

**email: barnet.licensing@met.police.uk
Date: 23rd October 2017**

Ref:

Our ref: 225/17

CC: London Borough of Barnet

Police objection to a new premises licence

| Section | Review | Licensing Act 2003 |
|---------|--------|--------------------|
|---------|--------|--------------------|

Notice Received: 28th September 2017

From: Michelle Rudland

Premises: PND Express, 403 Hendon Way NW4 3LH.

For the following reason(s) The Metropolitan Police Service are in support of the application for review of the premise licence relating to the above premises which has been applied for by Barnet Licensing Authority.

- The police have visited the premises numerous times since this licence was granted and found breaches of conditions on most of those occasions.
- The premises has failed a test purchase and this sale was made by the licence holder.

Dates to avoid where possible

If possible could we avoid the 9th – 10th November due to annual leave and operational commitments. Many thanks.

Yours Sincerely,

**Vicky Wilcock
Licensing Office
Barnet Borough Police.**

Pattenden, Daniel

From: Dowler, Jack
Sent: 24 October 2017 16:26
To: Pattenden, Daniel
Cc: Phasey, Emma; Connolly, Mariesa; Martin, Kevin
Subject: RE: Review of a premises licence – PND Express, 403 Hendon Way, London, NW4 3LH

Dear Mr Pattenden,

Trading Standards are satisfied that allowing these premises to continue being used in accordance with the current permissions of their premises licence could have further negative impact on the licensing objective of the Protection of Children from Harm.

On the 28th July 2017, Mr Selvarajah the Premises Licence Holder and Designated Premises Supervisor sold alcohol to an individual under the age of 18 during a Test Purchase. This is despite there being clear signage for a 'Challenge 25' policy in the premises. I must note that Mr Selvarajah was also subject to a Test Purchase on the 5th September 2017 and this resulted in no sale being made.

Regards

Jack Dowler
Trading Standards Enforcement Officer, Community Protection (Regulation)
Development & Regulatory Services
London Borough of Barnet, 2nd Floor Barnet House, 1255 High Road, Whetstone, N20 0EJ
Tel: 020 8359 7575
Mob: 07951 985 176
Email: Jack.Dowler@barnet.gov.uk
Barnet online: www.barnet.gov.uk
www.re-ltd.co.uk



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Is there an empty property in your street? Please let the Council know on 0208 359 7995 or e mail empty.properties@barnet.gov.uk

From: LicensingAdmin
Sent: 27 September 2017 16:30

To: Barnet SCB; Dowler, Jack; Phasey, Emma; Carabine, Chris; Hammond, Elisabeth; Immigration; Pateman, Roxanne; Planning Licensing; Police licensing; Junaideen, Shamalee; Rudland, Michelle; Vicky Wilcock (vicky.johnson@met.pnn.police.uk); Fire Service; Heena Patel - Fire

Subject: Review of a premises licence – PND Express, 403 Hendon Way, London, NW4 3LH

Review of a premises licence – PND Express, 403 Hendon Way, London, NW4 3LH

We have accepted an application made by Michelle on behalf of the London Borough of Barnet licensing authority, under section 53 of the Licensing Act 2003 for a review of an existing licence for the above premises. In summary, the grounds for review are:

- The licensing authority have identified that the premises licence holder is operating its business in such a way as to negatively affect the licensing objectives of the protection of children from harm and the prevention of crime and disorder.

Written representations, either for or against the application, can be made to me by interested parties. That is people living or working in the vicinity, (which we interpret as close enough to be affected personally), bodies representing interested parties, or by the statutory responsible authorities. To be relevant, a representation must address the likely effect of the licence on one or more of the licensing objectives. The last date for representations is **25th October 2017**

If you require any advice about the role of ward members in licensing, please contact Democratic or Legal Services.

regards

Trading Standards & Licensing Department Community Protection (Regulation)

London Borough of Barnet, Barnet House, 1255 High Road, Whetstone, London, N20 0EJ

Tel: 020 8359 2175

Barnet Online: www.barnet.gov.uk



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MAYOR OF LONDON

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Guidance issued by Home Office on Reviews

11. Reviews

The review process

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.3 An application for review may be made electronically, provided that the licensing authority agrees and the applicant submits a subsequent hard copy of the application, if the licensing authority requires one. The licensing authority may also agree in advance that the application need not be given in hard copy. However, these applications are outside the formal electronic application process and may not be submitted via GOV.UK or the licensing authority's electronic facility.
- 11.4 In addition, the licensing authority must review a licence if the premises to which it relates was made the subject of a closure order by the police based on nuisance or disorder and the magistrates' court has sent the authority the relevant notice of its determination, or if the police have made an application for summary review on the basis that premises are associated with serious crime and/or disorder.
- 11.5 Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder or the sexual exploitation of children. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.
- 11.6 Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities. Further information on how licensing authorities should achieve this separation of responsibilities can be found in Chapter 9, paragraphs 9.13 to 9.19 of this Guidance.

- 11.7 In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives. Following the grant or variation of a licence or certificate, a complaint regarding a general issue in the local area relating to the licensing objectives, such as a general (crime and disorder) situation in a town centre, should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time, could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.
- 11.8 Where a licensing authority receives a geographic cluster of complaints, the authority may consider whether these issues are the result of the cumulative impact of licensed premises within the area concerned. In such circumstances, the authority may also consider whether it would be appropriate to include a special policy relating to cumulative impact within its licensing policy statement. Further guidance on cumulative impact policies can be found in Chapter 14 of this Guidance.
- 11.9 Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent hard copy, unless the licensing authority waives this requirement.
- 11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.
- 11.11 If the application for a review has been made by a person other than a responsible authority (for example, a local resident, residents' association, local business or trade association), before taking action the licensing authority must first consider whether the complaint being made is relevant, frivolous, vexatious or repetitious. Further guidance on determining whether a representation is frivolous or vexatious can be found in Chapter 9 of this Guidance (paragraphs 9.4 to 9.10).

Repetitious grounds of review

- 11.12 A repetitious ground is one that is identical or substantially similar to:
- a ground for review specified in an earlier application for review made in relation to the same premises licence or certificate which has already been determined; or
 - representations considered by the licensing authority when the premises licence or certificate was granted; or
 - representations which would have been made when the application for the premises

licence was first made and which were excluded then by reason of the prior issue of a provisional statement; and, in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or grant.

- 11.13 Licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a further means of challenging the grant of the licence following the failure of representations to persuade the licensing authority on an earlier occasion. It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, it is recommended that more than one review originating from a person other than a responsible authority in relation to a particular premises should not be permitted within a 12 month period on similar grounds save in compelling circumstances or where it arises following a closure order.
- 11.14 The exclusion of a complaint on the grounds that it is repetitious does not apply to responsible authorities which may make more than one application for a review of a licence or certificate within a 12 month period.
- 11.15 When a licensing authority receives an application for a review from a responsible authority or any other person, or in accordance with the closure procedures described in Part 8 of the 2003 Act (for example, closure orders), it must arrange a hearing. The arrangements for the hearing must follow the provisions set out in regulations. These regulations are published on the Government's legislation website (www.legislation.gov.uk). It is particularly important that the premises licence holder is made fully aware of any representations made in respect of the premises, any evidence supporting the representations and that the holder or the holder's legal representative has therefore been able to prepare a response.

Powers of a licensing authority on the determination of a review

- 11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.
- 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.
- 11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.
- 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)¹⁰;
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

- 11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.
- 11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.
- 11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.
- 11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

¹⁰ See chapter 15 in relation to the licensing of live and recorded music.

Reviews arising in connection with crime

- 11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.
- 11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.
- 11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.
- 11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:
- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
 - for the sale and distribution of illegal firearms;
 - for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
 - for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
 - for prostitution or the sale of unlawful pornography;
 - by organised groups of paedophiles to groom children;
 - as the base for the organisation of criminal activity, particularly by gangs;

- for the organisation of racist activity or the promotion of racist attacks;
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

Review of a premises licence following closure order

11.29 Licensing authorities are subject to certain timescales, set out in the legislation, for the review of a premises licence following a closure order under section 80 of the Anti-social Behaviour, Crime and Policing Act 2014 or section 38 of and Schedule 6 to the Immigration Act 2016. The relevant time periods run concurrently and are as follows:

- when the licensing authority receives notice that a magistrates' court has made a closure order it has 28 days to determine the licence review – the determination must be made before the expiry of the 28th day after the day on which the notice is received;
- the hearing must be held within ten working days, the first of which is the day after the day the notice from the magistrates' court is received;
- notice of the hearing must be given no later than five working days before the first hearing day (there must be five clear working days between the giving of the notice and the start of the hearing).

Review of a premises licence following persistent sales of alcohol to children

11.30 The Government recognises that the majority of licensed premises operate responsibly and undertake due diligence checks on those who appear to be under the age of 18 at the point of sale (or 21 and 25 where they operate a Challenge 21 or 25 scheme). Where these systems are in place, licensing authorities may wish to take a proportionate approach in cases where there have been two sales of alcohol within very quick succession of one another (e.g., where a new cashier has not followed policy and conformed with a store's age verification procedures). However, where persistent sales of alcohol to children have occurred at premises, and it is apparent that those managing the premises do not operate a responsible policy or have not exercised appropriate due diligence, responsible authorities should consider taking steps to ensure that a review of the licence is the norm in these circumstances. This is particularly the case where there has been a prosecution for the offence under section 147A or a closure notice has been given under section 169A of the 2003 Act. In determining the review, the licensing authority should consider revoking the licence if it considers this appropriate.

12. Summary reviews

- 12.1 Summary reviews can be undertaken when the police consider that the premises concerned is associated with serious crime or serious disorder (or both). The summary review process, set out under sections 53A-53D of the 2003 Act, allows interim conditions to be quickly attached to a licence and a fast track licence review. The provisions were inserted by section 21 of the Violent Crime Reduction Act 2006 and amended by sections 136-137 of the Policing and Crime Act 2017, including the addition of section 53D.
- 12.2 The powers apply only where a premises licence authorises the sale of alcohol. They do not apply in respect of other premises licences, or to premises operating under a club premises certificate. The powers are aimed at tackling serious crime and serious disorder, in particular (but not exclusively) the use of guns and knives. The powers complement the general procedures in the 2003 Act for tackling crime and disorder associated with licensed premises and should be reserved for the most serious matters which cannot be adequately or otherwise redressed unless urgent action is taken. Separate powers in the Anti-social Behaviour, Crime and Policing Act 2014 provide for the instant closure of premises by the police in some circumstances (in essence, disorder or nuisance). The consequent review of premises licences by the licensing authority is provided for by section 167 of the Licensing Act 2003.

Application for summary review

- 12.3 Section 53A of the 2003 Act sets out who may apply for an expedited review and the circumstances in which it can be used. The application is made by, or on behalf of, the chief officer of police and must be made in the form which is set out in Schedule 8A to the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 (SI 2005/42).
- 12.4 The completed application must be accompanied by a certificate issued by a senior officer of the rank of superintendent or above. The certificate is a formal note which identifies the licensed premises and includes a signed statement by the senior officer that in his/her opinion the premises is associated with serious crime, serious disorder or both. This form is not prescribed in legislation. However, a sample form which forces may wish to adopt is published on gov.uk.
- 12.5 The tests to determine the kinds of conduct that amount to serious crime are set out in section 81(2) and (3) of the Regulation of Investigatory Powers Act 2000. Those tests are that the conduct:
- (a) constitutes an offence for which a person who is 21 years of age or over with no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 years or more; or
 - (b) Involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.
- 12.6 There is no definitive list of behaviours that constitute serious disorder, and the matter is one for judgment by the local police. The phrase should be given its plain, ordinary meaning, as is the case under section 12 of the Public Order Act 1986 in which it is also

used.

12.7 In deciding whether to sign a certificate, the senior officer should consider the following (as applicable):

- The track record of the licensed premises concerned and whether the police have previously had cause to give advice about serious criminal or disorderly conduct (or the likelihood of such conduct) attributable to activities taking place on the premises. It is not expected that this power will be used as a first response to a problem and summary reviews triggered by a single incident are likely to be the exception.
- The nature of the likely crime and/or disorder – is the potential incident sufficiently serious to warrant using this power?
- Should an alternative power be deployed? Is the incident sufficiently serious to warrant use of the powers in Part 4, Chapter 3 of the Anti-social Behaviour, Crime and Policing Act 2014, or section 38 of and Schedule 6 to the Immigration Act 2016, to close the premises? Or could the police trigger a standard licence review to address the problem? Alternatively, could expedited reviews be used in conjunction with other powers (for example, modifying licence conditions following the use of a closure power)?
- What added value will use of the expedited process bring? How would any interim steps that the licensing authority might take effectively address the problem?

12.8 It is recommended that these points are addressed in the chief officer's application to the licensing authority. In particular, it is important to explain why other powers or actions are not considered to be appropriate. It is up to the police to decide whether to include this information in the certificate or in section 4 of the application for summary review. The police will also have an opportunity later to make representations in relation to the full review. In appropriate circumstances the police might want to make representations to the licensing authority suggesting that they modify the conditions of the premises licence to require searches of customers for offensive weapons upon entry. Under the powers in sections 53A to 53D, this could be done on an interim basis pending a full hearing of the issues within the prescribed 28-day timeframe or for an appropriate period determined by the licensing authority.

12.9 Similarly, the power could, where appropriate, be used to reduce the risk of injury caused by glass by requiring the adoption of a safer alternative (but see paragraphs 12.15 and 12.16 below). However, it should always be borne in mind that the aim of the powers is to provide a selective tool, to be used proportionately.

The licensing authority and interim steps pending the review

12.10 Within 48 hours of receipt of the chief officer's application, the licensing authority must give the premises licence holder and responsible authorities a notice of the review and should include a copy of the application for review and a copy of the certificate, and must also consider whether it is necessary to take interim steps (place temporary conditions on the licence). When calculating the 48 hour period any non-working day can be disregarded¹¹.

¹¹ This means that, for example, if the application was received at 3pm on a Friday, the 48 hour period would cover the remaining 9 hours on that Friday and the remaining 39 hours starting on the Monday morning (provided it was not a bank holiday). In this case the licensing authority would have to decide on interim steps by 3pm on the Tuesday.

- 12.11 The licensing authority may want to consult the police about the steps that it thinks are necessary, pending the determination of the review, to address the immediate problems with the premises, in particular the likelihood of serious crime and/or serious disorder. The licensing authority may consider the interim steps without the holder of the premises licence having been given an opportunity to make representations. This does not, of course, mean that the licensing authority *cannot* afford such an opportunity if it thinks it appropriate and feasible to do so in all the circumstances.
- 12.12 The determination of interim steps is not a matter that may be delegated to an officer of the licensing authority. The relevant decisions are likely to be taken by a licensing sub-committee rather than the full committee. It should also be noted that there is no requirement for a formal hearing in order to take interim steps. This means that the relevant sub committee members can communicate by telephone or other remote means in order to reach a decision. A written record should always be produced as soon as possible after a decision is reached.
- 12.13 The interim steps that the licensing authority must consider taking are:
- the modification of the conditions of the premises licence;
 - the exclusion of the sale of alcohol by retail from the scope of the licence;
 - the removal of the designated premises supervisor from the licence; and
 - the suspension of the licence.

Modification of the conditions of the premises licence can include the alteration or modification of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place.

- 12.14 If the licensing authority decides to take steps at the initial interim stage:
- the decision takes effect immediately, or as soon after it as the licensing authority directs; but
 - the licensing authority must give immediate notice of its decision and its reasons for doing so to the holder of the premises licence and the chief officer of police who made the application. The 2003 Act does not specify that the immediate notice has to be in writing. However, in an individual case the licensing authority may consider that the need for immediate communication at least initially requires a non-written approach, such as a telephone call. This may happen when, for example, the authority decides that the decision should have immediate effect. In such a case, the decision and the reasons for it should be explained clearly and in full to the licence-holder (or someone who may properly act for the licence-holder), and the call followed up as soon as possible with a written version of the decision and the reasons (for example, by email or fax) which is identical to, or not significantly different from, the version given by telephone.
- 12.15 The licensing authority, in deciding when its decision on interim steps should take effect, should consider the practical implications of compliance in relation to the premises. For example to comply with a modification of the conditions of a licence that requires employment of door supervisors, those running the premises may need some time to recruit appropriately qualified and accredited staff.
- 12.16 In addition, very careful consideration needs to be given to interim steps which would require significant cost or permanent or semi-permanent adjustments to premises which

would be difficult to remove if the outcome of the subsequent full review was to withdraw or modify those steps. For example, making structural changes, installing additional CCTV or replacing all glassware with safer alternatives may be valid steps, but might be disproportionate if they are not likely to be deemed necessary following the full review (or any subsequent appeal). The focus for interim steps should be on the immediate measures that are necessary to prevent serious crime or serious disorder occurring.

Making representations against the interim steps

- 12.17 The premises licence holder may make representations against the interim steps taken by the licensing authority. There is no time limit for the premises licence holder to make representations on the interim steps, although in practice this would at some point be superseded by the full review which would have to be completed within 28 days of the application being received by the licensing authority. On receipt of such representations, the licensing authority must (if the representations are not withdrawn) hold a hearing within 48 hours of their receipt. When calculating the 48 hour period, any non-working day can be disregarded. Where the licensing authority has already held a hearing to consider representations against the interim steps, the holder of the licence may only make further representations if there has been a material change in circumstances.
- 12.18 The licensing authority must give advance notice of the hearing to the premises licence holder and the chief officer of police. Given that these measures are designed to deal with serious crime and/or serious disorder on an interim basis only, the process is designed to avoid delay and, as such, significant portions of the Licensing Act 2003 (Hearings) Regulations 2005 (SI 2005/44) (which set out the usual processes governing the conduct of licensing authority hearings) do not apply in order to streamline the hearing process. One result of this is that the licensing authority cannot adjourn the hearing to a later date if the licence holder fails to attend at the scheduled time, as is the case under the normal review procedure. And as is the case with that procedure, the licence holder does not have to be present for the hearing to take place. In addition, there is no timescale for notifying the licence holder of the hearing under the modified process, providing the notification takes place before the hearing is held. However, it is imperative that the licence holder be given as much notice as is possible in the circumstances to afford the holder a maximum practicable opportunity to prepare for and attend the hearing. Licensing authorities should bear in mind that the usual principles of public law decision-making will apply to interim determinations, in a form that has regard to the statutory context of an expedited process.
- 12.19 At the hearing to consider representations against interim steps the licensing authority must:
- consider whether the interim steps are appropriate for the promotion of the licensing objectives; and
 - determine whether to withdraw or modify the steps taken.
- 12.20 When considering the case the licensing authority must take into account:
- the senior officer's certificate that accompanied the application;
 - the chief officer's representations (if any); and
 - any representations made by the premises licence holder.

- 12.21 There is no right of appeal to a magistrates' court against the licensing authority's decision at this stage.

The review of the premises licence under section 53C

- 12.22 The licensing authority must hold a full review of the premises licence and determine the review within 28 days after the day of receipt of the chief officer's application. There can be no adjournment of the hearing or delay in reaching a determination beyond the end of the 28 day period. This must take place even if the chief officer asks to withdraw his application or representations. At the review hearing, the licensing authority must consider what steps are appropriate for the promotion of the licensing objectives, consider any relevant representations, and review the interim steps already taken (if any).
- 12.23 In making its final determination the steps the licensing authority can take are:
- the modification of the conditions of the premises licence;
 - the exclusion of a licensable activity from the scope of the licence;
 - the removal of the designated premises supervisor from the licence;
 - the suspension of the licence for a period not exceeding 3 months; and
 - the revocation of the licence.
- 12.24 Modification of the conditions of the premises licence can include the alteration or modification of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place.
- 12.25 The licensing authority must:
- advertise the review inviting representations from any persons for no less than seven consecutive days, by notice as described in regulation 38 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 (SI 2005/42) and, if applicable, on the licensing authority's website (see regulation 38(1)(b) of the above). The relevant notices should be published on the day after the day of receipt of the chief officer's application.
 - advertise that any representations which the premises licence holder, responsible authority or any other person want the licensing authority to consider at the review hearing, should be submitted to the licensing authority within 10 working days of the advertisement of the review appearing.
 - give formal notice of the hearing no later than five working days before the day or first day on which the hearing is to be held to the premises licence holder and to every responsible authority.
- 12.26 A party shall give to the licensing authority a notice no later than two working days before the day or the first day on which the hearing is to be held stating –
- whether he intends to attend or be represented at the hearing;
 - whether he considers a hearing to be unnecessary.
 - whether he would like permission for any other person (other than the person he intends to represent him at the hearing) to appear at the hearing and, if so, explain on which points that person will be able to contribute.

- 12.27 The regulations relating to hearings are set out in the Licensing Act 2003 (Hearings) Regulations 2005 (S.I. 2005/44). They apply to final hearings under the section 53A(2)(b) in a similar way to hearings following closure orders under section 167 of the 2003 Act (it should be emphasised that the truncated version of the hearings regulations described in paragraph 12.18 above applies to interim hearings only). The issues they address include who can make representations and what those representations can be about. It is therefore possible for responsible authorities or any other persons to make representations in relation to any of the licensing objectives, not just crime and disorder. Similarly, where it is in the public interest, the regulations relating to the exclusion of individuals from hearings, or conducting the hearing in private, will apply.
- 12.28 The licensing authority must notify its decision and the reasons for making it to:
- the holder of the premises licence;
 - any person who made relevant representations; and
 - the chief officer of police who made the original application.

Review of the interim steps under section 53D

- 12.29 The licensing authority's determination does not have effect until the end of the 21 day period given for appealing the decision, or until the disposal of any appeal that is lodged (see below information on right of appeal). To ensure that there are appropriate and proportionate safeguards in place at all times, the licensing authority is required to review any interim steps that it has taken that are in place on the date of the hearing and consider whether it is appropriate for the promotion of the licensing objectives for the steps to remain in place, or if they should be modified or withdrawn. The review of the interim steps should take place immediately after the determination under section 53C has been reached. In making its decision, the licensing authority must consider any relevant representations made.
- 12.30 In conducting the review of the interim steps the licensing authority has the power to take any of the steps that were available to it at the initial stage (see paragraph 12.13). Any interim steps taken at the review hearing apply until—
- (a) the end of the period given for appealing against a decision made under section 53C (21 days),
 - (b) if the decision under section 53C is appealed against, the time the appeal is disposed of, or
 - (c) the end of a period determined by the relevant licensing authority (which may not be longer than the period of time for which such interim steps could apply under (a) or (b) above).

Right of appeal against review of interim steps decision

- 12.31 The licence holder or the chief officer of police may appeal against the decision made by the licensing authority concerning its review of the interim steps to a magistrates' court. The appeal must be made within 21 days of the appellant being notified of the licensing authority's decision and must be heard by the magistrates' court within 28 days beginning with the day on which the appellant lodged the appeal.

Right of appeal against final review decision

- 12.32 An appeal against the final review decision may be made to a magistrates' court within 21 days of the appellant being notified of the licensing authority's determination on the review. An appeal may be made by the premises licence holder, the chief officer of police and/or any other person who made relevant representations.
- 12.33 The decision of the licensing authority, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the disposal of the appeal.
- 12.34 Where appeals are lodged both against the decision following the review of the interim steps and against the final determination, the courts may decide to consider the appeal against the final determination within the 28 day period, allowing the interim steps appeal to be disposed of at the same time.

Flow diagram of the summary review process

- 12.35 The following flow diagram summarises the process.

Matters for Decision

MATTERS FOR DECISION

An application made under Section 51 of the Licensing Act 2003

The Wallace, 1023 Finchley Road, London, NW11 7ES

Determination in accordance with Section 52(3) of the Licensing Act 2003.

S 52 (3);

“The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.

4. The steps are-

- (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;

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.

5. Subsection (3) is subject to sections 19, 20 and 21 (requirement to include certain conditions in premises licences).

6. Where the authority takes a step mentioned in subsection (4) (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify”.

Notification in accordance with Section 52 (10) of the Licensing Act 2003.

10. Where a licensing authority determines an application for review under this section it must notify the determination and its reasons for making it to-

- (a) the holder of the licence,
- (b) the applicant,
- (c) any person who made relevant representations, and
- (d) the chief officer of police for the police area (or each police area) in which the premises are situated.

11. A determination under this section does not have effect-

- (a) until the end of the period given for appealing against the decision, or
- (b) if the decision is appealed against, until the appeal is disposed of.

| Steps taken (if any) | Reason(s) |
|----------------------|-----------|
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By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

AGENDA ITEM 7

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