

MEETING

LICENSING SUB-COMMITTEE

DATE AND TIME

THURSDAY 18TH JANUARY, 2018

AT 2.00 PM

VENUE

HENDON TOWN HALL, THE BURROUGHS, LONDON NW4 4BQ

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

John Hart

Claire Farrier

TBC

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

Andrew Charlwood – Head of Governance

Governance Services contact: paul.frost@barnet.gov.uk

Media Relations contact: Sue Cocker 020 8359 7039

ASSURANCE GROUP

ORDER OF BUSINESS

Item No	Title of Report	Pages
1.	Appointment of Chairman	
2.	Absence of Members (If any)	
3.	Declaration of Members' Disclosable Pecuniary interests and Non Pecuniary interests (If any)	
4.	Licensing Sub-Committee Hearing Procedure	5 - 8
5.	Seasons 205 High Road	9 - 70
6.	Motion to exclude the Press and Public	
7.	Deliberation by the Sub-Committee in Private Session	
8.	Re-admission of the Press and Public: Announcement of the decision of the Sub-Committee	
9.	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.

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 in⁴

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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	<p>AGENDA ITEM 5</p> <p style="text-align: center;">Licensing Sub-Committee Thursday 18th January 2018</p>
<p style="text-align: right;">Title</p>	<p>Review of Premises Licence – Seasons, 205 High Road London, N2 8AN</p>
<p style="text-align: right;">Report of</p>	<p>Trading Standards & Licensing Manager</p>
<p style="text-align: right;">Wards</p>	<p>East Finchley</p>
<p style="text-align: right;">Status</p>	<p>Public</p>
<p style="text-align: right;">Enclosures</p>	<p>Report of the Licensing Officer Annex 1 – Review Application Annex 2 – Current Premises Licence Annex 3 – Representation Annex 4 – Extract from Guidance under section 182 Licensing Act 2003 Annex 5 – Matters for decision</p>
<p style="text-align: right;">Officer Contact Details</p>	<p>Mariesa Connolly 0208 359 2125 mariesa.connolly@barnet.gov.uk</p>

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

Recommendations
<p>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 Seasons, 205 High Road, London, N2 8AN</p>

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:

Seasons, 205 High Road, London, N2 8AN

1. The Applicant

An application was submitted by Roxanne Pateman on behalf of the London Borough of Barnet Noise Nuisance department acting as a Responsible Authority.

2. The Application

This application has been made under Section 51 of the Licensing Act 2003 to review the Premises Licence held by Mr Alireza Yaraghchi, 205 High Road, London, N2 8AN

Licensing objectives to which the review application relates is:

- The prevention of public nuisance

Roxanne Pateman has made the following statements within her application that:

- Allowing this premises to continue to operate on accordance with their licence would undermine the licensing objective of prevention of public nuisance.

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

3. Premises Licence History

This premises licence was first applied for in August 2015 and granted on 12th October by a Licensing Subcommittee.

4. Current Premises Licence

The current licence allows the following licensable activities:

Provision of Late Night Refreshment - Indoors

Sunday to Thursday	23:00hrs - 00:00hrs
Friday & Saturday	23:00hrs - 22:30hrs

The hours that the premises are open to the public

Sunday to Thursday	07:00hrs - 00:00hrs
Friday & Saturday	07:00hrs - 22:30hrs

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

5. Representations

Other representations

The Licensing Team have received one representation from a local resident. The representation relates to the effect that this licence has had on the prevention of public nuisance and the prevention of crime and disorder.

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

Responsible Authorities

No representations have been received from the responsible Authorities

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, 23 November 2017

Annex 1 – Review Application

Annex 2 – Current Premises Licence

Annex 3 – Representation

Annex 4 – Guidance issued under Section 182 Licensing Act 2003 (April 2017)

Annex 5 – Matters for Decision

Review Application



Development & Regulatory Services
The London Borough of Barnet
Environmental Health
Building 4
North London Business Park
Oakleigh Road South
London N11 1NP

Tel: 020 8359 7995
Date: 12th October 2017

Application for the review of a premises licence under Section 51 of the Licensing Act 2003

Premises Address: Seasons Pizza
205 High Road
London
N2 8AN

As the responsible authority for Noise and Nuisance at Barnet Council my colleagues in Scientific Services have requested I submit an application for the review for the above premises licence on the grounds that allowing this premises to continue to operate in accordance with their licence would under mind the licensing objective of the prevention of public nuisance.

RP1 attached is a witness statement from Ralph Haynes, the manager of the Scientific Services team.

The premises is a restaurant/takeaway with the following licence:

Provision of late night refreshment

Standard days and timings:

Sunday to Thursday	23:00hrs - 00:00hrs
Friday to Saturday	23:00hrs - 01:30hrs

The hours that the premises are open to the public

Standard days and timings:

Sunday to Thursday	07:00hrs - 00:00hrs
Friday to Saturday	07:00hrs - 01:30hrs

This licence was granted by the licencing sub-committee on the 12th October 2015.

Since June 2015 there have been a number of complaints regarding noise, vibration, odour and smoke emanating from this premises. In summary the following complaints and action has been taken.

On the 12th June 2015 Environmental Health received a complaint regarding the noise and odour from this premises. Upon inspection it was identified that sound insulation installed by the previous owner had been removed and therefore there was a potential for a statutory noise nuisance to occur.

On the 29th June 2015 the owner was written to asking him to replace the sound insulation that had been removed. On the 17th August 2015 two Officers from the Scientific Services team revisited the shop and found the owner had replaced the sound proofing.

On the 29th October 2015 a further noise complaint was received. Officers from the OOH's service visited but did not witness a nuisance. The premises was informally written to about the matter.

On the 14th January 2016 the licensing team received a request by a member of the public to check the following licensing condition had been complied with: *"The installation of an acoustic ceiling to be installed by the applicant within 3 months (by 12th January 2016)"* This was passed through to the Scientific Services Team.

On the 18th January 2016 a Scientific Services Officer visited and found the works had not been undertaken.

On the 13th February 2016 at 01:20 Officers from the Out of Hours Noise and Nuisance Service visited and witnessed a low frequency rumbling noise from the extraction system which was deemed to be a statutory noise nuisance.

On the 1st March 2016 an Officer from the Scientific Services Team visited and found a new suspended ceiling had been installed with acoustic foam above the canopy. The result of this work means the licensing condition *"The installation of an acoustic ceiling to be installed by the applicant within 3 months (by 12th January 2016)"* had been complied with.

On the 14th March 2016 a Noise Abatement Notice under Section 80 of the Environmental Protection Act 1990 was served on the premises requiring them to reduce the noise and vibration from the kitchen extraction system. RP2 is a copy of this Abatement Notice.

On the 22nd April 2016 Officers from the Scientific Services Team witnessed a statutory nuisance from smoke. It was noted on this visit the major noise problem from the extractor fan had been resolved and therefore the notice served on the 14th March 2016 had been complied with.

On the 29th April 2016 an Abatement Notice was served under Section 80 of the Environmental Protection Act 1990 requiring the premises to reduce the smoke and odour emitted from the kitchen extraction system. RP3 is a copy of this Abatement Notice.

On the 26th May 2017 at 13:04 an Officer from the Scientific Team witnessed a statutory nuisance from cooking odours from this premises. This was a breach of the notice that was served on the 29th April 2016 (evidence RP3). Three further visits were made between 19:40 and 23:10 on the 26th May 2017 by Ralph Haynes, the Manager of the Scientific Services team and each time he witnessed the odour nuisance and the rear door to the premises being left open which was allowing the escape of noise the premises.

On the 29th May 2017 the Out of Hours Noise and Nuisance Officers witnessed a statutory noise nuisance from a compressor at the premises.

On the 20th June 2017 the owner of this premises attended a PACE interview to address the offence of the breach of the Abatement Notice witnessed on the 26th and 29th May 2017. Mr Yarahichi defence was ill health following a heart attack. Mr Yarahichi advised he had instructed an acoustic consultant to carry out an assessment to address the remaining issues.

On the 3rd July 2017 an Abatement Notice under Section 80 of The Environmental Protection Act 1990 was served due to the noise from the compressor. RP4 is a copy of this notice.

On the 10th July a Scientific Services Officer revisited and found some works had been undertaken and the compressor had been replaced. Therefore the notice served on the 3rd July had been complied with.

The main unresolved issue is that of the odour nuisance from the premises. The main source of this is from the extraction system which is not fit for purpose and needs replacing. In addition to the odour nuisance the premises doesn't have sufficient ventilation which means staff are leaving the doors open and this is allowing noise to escape and affect local residents.

Although the licence holder has addressed some of the issues, it has been done in a slow manner and the odour issue still remains. The Scientific Services team fear this will not be addressed in a timely manner, and therefore the residents affected by this nuisance will continue to be disturbed having already experienced issues since June 2015.

I would request the licensing subcommittee consider all options available in relation to the outcome of this hearing. Should the committee be minded to attach conditions to the licence then I would like to suggest that conditions around ensuring all doors and windows to be kept closed, except for ingress and egress and also directing that the odour nuisance from the premises to be addressed before licensable activities can take place, would go some way towards resolving the issues.

Regards,



Roxanne Pateman

Environmental Health Officer & Responsible Authority for Noise and Nuisance.

**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 Roxanne Pateman, Environmental Health Officer & Responsible Authority for
Noise Nuisance

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Seasons Pizza, 205 High Road	
Post town London	Post code (if known) N2 8AN

Name of premises licence holder or club holding club premises certificate (if known) Mr Alireza Yaraghchi

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

Part 2 - Applicant details

I am

Please tick ✓ yes

- 1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)
- 2) a responsible authority (please complete (C) below)
- 3) a member of the club to which this application relates (please complete (A) below)

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

Please tick ✓ yes

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

Surname

First names

I am 18 years old or over

Please tick ✓ yes

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

Post town

Post Code

Daytime contact telephone number

**E-mail address
(optional)**

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Roxanne Pateman, Environmental Health & Responsible Authority for Noise Nuisance Development & Regulatory Services The London Borough of Barnet Environmental Health Building 4 North London Business Park Oakleigh Road South London N11 1NP
Telephone number (if any) 020 8359 7995
E-mail address (optional)

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

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

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

As the responsible authority for Noise and Nuisance at Barnet Council my colleagues in Scientific Services have requested I submit an application for the review for the above premises licence on the grounds that allowing this premises to continue to operate in accordance with their licence would under mind the licensing objective of the prevention of public nuisance.

Since June 2015 there have been a number of complaints regarding noise, vibration, odour and smoke emanating from this premises. In summary the following complaints and action has been taken.

The main unresolved issue is that of the odour nuisance from the premises. The main source of this is from the extraction system which is not fit for purpose and needs replacing. In addition to the odour nuisance the premises doesn't have sufficient ventilation which means staff are leaving the doors open and this is allowing noise to escape and effect local residents.

Although the licence holder has addressed some of the issues, it has been done in a slow manner and the odour issue still remains. The Scientific Services team fear this will not be addressed in a timely manner, and therefore the residents affected by this nuisance will continue to be disturbed having already experienced issues since June 2015.

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

RP1 attached is a witness statement from Ralph Haynes, the manager of the Scientific Services team.

The premises is a restaurant/takeaway with the following licence:

Provision of late night refreshment

Standard days and timings:

Sunday to Thursday	23:00hrs - 00:00hrs
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The hours that the premises are open to the public

Standard days and timings:

Sunday to Thursday	07:00hrs - 00:00hrs
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This licence was granted by the licencing sub-committee on the 12th October 2015.

Since June 2015 there have been a number of complaints regarding noise, vibration, odour and smoke emanating from this premises. In summary the following complaints and action has been taken.

On the 12th June 2015 Environmental Health received a complaint regarding the noise and odour from this premises. Upon inspection it was identified that sound insulation installed by the previous owner had been removed and therefore there was a potential for a statutory noise nuisance to occur.

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reduce the noise and vibration from the kitchen extraction system. RP2 is a copy of this Abatement Notice.

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Although the licence holder has addressed some of the issues, it has been done in a slow manner and the odour issue still remains. The Scientific Services team fear this will not be addressed in a timely manner, and therefore the residents affected by this nuisance will continue to be disturbed having already experienced issues since June 2015.

I would request the licensing subcommittee consider all options available in relation to the outcome of this hearing. Should the committee be minded to attach conditions to the licence then I would like to suggest that conditions around ensuring all doors and windows to be kept closed, except for ingress and egress and also directing that the odour nuisance from the premises to be addressed before licensable activities

can take place, would go some way towards resolving the issues.

Please tick ✓ yes

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

If yes please state the date of that application

Day		Month		Year			
┆	┆	┆	┆	┆	┆	┆	┆

If you have made representations before relating to the 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 4)

Signature of applicant or applicant’s solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature

.....

Date

.....

Capacity

.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)	
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. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

WITNESS STATEMENT**(CJ Act 1967, s.9; MC Act 1980, ss.5A(3) (a) and 5B; MC Rules 1981, r.70)****Statement of:** Ralph HaynesAge if under 18: **OVER 18**

Occupation: Environmental Health Practitioner

This statement (consisting of 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 wilfully stated anything which I know to be false or do not believe to be true.

Signature: *Ralph Haynes* **Date:** *8th June 2017*

Signature: *[Signature]* **Signature witnessed by:** *Michael Polyviou*

Form MG11

WITNESS STATEMENT CONTINUATION SHEET PAGE ...1.. OF ...2....

My Names is Ralph Haynes I am a Group manager in Environmental Health at the L.B. Barnet and have 23 years of experience in enforcement of Statutory nuisance complaints and licensing issues.

There was a history of noise complaints at the site 205 High Road East Finchley N2 prior to the night cafe license being granted in 2014-15. The complaints started again once the license was extended past 11:00pm on weekends. In my opinion, the structure of the premises does not lend itself for a late night license, particularly as the premises and the complainant's share the same structure so there is structure borne and air borne noise arises from this premises as it is only single glazed and has no air conditioning or powerful climate control ventilation so windows are often left open, which would be more noticeable at night to the residents upstairs. The noise / vibration is less noticeable during the day but our Out of hours team / EH have confirmed since the late night licence was granted that a noise nuisance has been witnessed for the following different reasons since 2015.

Environmental Health received a valid complaint in June 2015 as a result of the owner removing insulation which had been installed by the previous owner which related to an abatement notice that was served and complied with in 2011 as the previous owner had installed anti-vibration mounts and an absorbent material around the internal and external parts (inside and outside of the shop) of the unit. When I visited 205 High Road in June 2015 there was no absorbent material visible which indicates that the material was removed which increased the likelihood of a noise nuisance arising. Following this the owner had installed some insulation but we received further noise related complaints.

A statutory noise nuisance was witnessed by myself and Michael Polyviou in March 2016 which related to noise from the kitchen odour extractor fan. Michael Polyviou Scientific officer served a noise abatement notice which resulted after several months delay in the owner installing a new fan and installed and anti-vibration mounds and additional insulation. The fan has also been lowered and is 2 to 3 feet below the ceiling and is significantly quieter and noted at full power there was far less vibration.

Signature: *Ralph Haynes* **Signature witnessed by:** *[Signature]*

Form MG11

WITNESS STATEMENT CONTINUATION SHEET PAGE ...2.. OF ...2....

..... However, our out of hours received a recent call on the 29th May and bank holiday after midnight regarding vibration from the compressor at the rear of 205 High road which is mainly noticeable at night as it vibrates residents beds in the rear bedroom. This would not be a nuisance during the day but considered a nuisance at night, particularly when the complainant's upstairs are trying to sleep when the night café is in operation. There is also a complaint of noise from the Doner kebab machine vibrating the structure at the front of both premises which affects the front bedroom.

A license condition was set at the licensing committee in 2015 for an acoustic ceiling. The condition was not prescriptive. The condition was complied with but it is difficult to assess how effective this is. I carried out a visit on the 26th May 2017- 3 visits between 7:40pm and just after 11pm at night, to witness and photograph that the restaurant, had open their rear door and windows at night for ventilation, so the suspended ceiling would not be sufficient enough for controlling noise late at night and the noise from the restaurant, take-away, patrons and preparing food will break out of the doors and windows affecting the residents directly above at 205A High Road.

The complainant has also recently complained about noise from the fridge condenser. A nuisance for this has not been witnessed to date at night, the noise is audible during the day. However, the owner informally agreed to change the unit in April 2017 and was asked to repair the broken window right beside the fridge condenser but this has not been carried out yet.

I and Michael Polyviou had witnessed on 22nd April 2016 a cooking odour nuisance from 205 High Road. Michael Polyviou served an Abatement Notice for odour nuisance on 29th April 2016 under the Environmental Protection Act 1990.

The extraction system and flue requires planning permission in order to be updated. However, although planning permission was granted on 12th December 2016, the system has not been updated by the time of my visit on Friday 26th May 2017.

The flue is low and discharges downwards at a height of only a metre above the ground well below the complainant's property which means that smoke and odour rise upwards towards their property. The flue should be 1.5 metres above eaves or any open able windows in the vicinity. The final discharge must be vertically upwards.

I arrived at the complainant's property 3 times on Friday 26th May 2017 between 7:40pm and 11:10pm and each visit I witnessed odour from cooking directly coming from the flue at 205 High Road on the stairs leading to 205A High Road and the balcony directly next to the habitable bedroom windows. The weather outside was warm even at night but it meant the residents could not open their windows due the cooking smell and noise from 205 High Road, therefore in my opinion a statutory nuisance existed. I and Michael Polyviou have tried to work with the owners Mr Yaraghchi so that they can update their extract system but their response has always been slow and has required constant chasing and we have not reached a satisfactory outcome to date.

Therefore there has been a regular source of valid complaints for noise, smoke and odour from 205 High Road in the last 2 years since the night café licence has been issued. I have no confidence that the manager of the premises Mr Yaraghchi who I have advised many times, and staff can satisfactorily resolve these complaints considering their previous slow response and the fact the property at 205 High Road has poor glazing and ventilation, and the food canopy odour extract system is directly attached to the shared structure with neighbours above. Therefore the slight improvements from the partial acoustic ceiling are negated when windows and doors are opened and the cooking extraction equipment when used at night vibrates the shared structure in habitable bedrooms.

These are the reasons for requesting a formal review of the night café licence.

Signature: *Ralph Haynes*

Signature witnessed by: *MA*

Development & Regulatory Services
The London Borough of Barnet
Environmental Health
9th Floor, Barnet House,
1255 High Road,
London N20 0EJ

Mr Yaraghchi
205 High Road
London
N2 8AN

Contact: Michael Polyviou
Tel: 020 8359 7468 / 7995
Fax: 0870 889 6793
E-mail: Michael.polyviou@barnet.gov.uk
Date: 14th March 2016
Our Ref: SSSR/16/00592

Dear Mr Yaraghchi

ENVIRONMENTAL PROTECTION ACT 1990
205 High Road, London N2 8AN

I refer to the above mentioned premises. This service has received a nuisance complaint regarding noise and vibration emitted from the kitchen extraction system associated with the above address. My manager, Mr Ralph Haynes, investigated this complaint and found that a statutory nuisance is being caused.

Therefore, please find enclosed an Environmental Protection Act 1990 abatement notice, requiring you to reduce the noise and vibration emitted from your kitchen extraction system to abate the existing nuisance. The notice enclosed has allowed you 4 weeks to abate the existing nuisance.

I understand that you intend to change your fan to a quieter fan. In order to abate the notice, I would strongly advise you to employ a suitably qualified consultant / engineer to carry out the following:

- Isolate the ducting from the structure with flexible resilient materials
- Isolate the motor from the ducting
- Silence the fan motor
- Install anti-vibration mounts
- Ensure that the fan is adequate enough not to cause a smoke / odour nuisance. This must include a sufficient filter system

In the meantime, please can you forward me any manufacturer specification details for the fan along with details of any mitigation measures.

If you have any questions with regards to the above, please do not hesitate to contact me.



ENVIRONMENTAL PROTECTION ACT 1990 SECTION 80
Abatement Notice in respect of Statutory Nuisance

To: Mr Yaraghchi

of : 205 High Road N2 8AN

TAKE NOTICE that under the provisions of the Environmental Protection Act 1990 the London Borough of Barnet Council being satisfied of the [existence] [~~likely~~ [~~occurrence~~] [~~recurrence~~] of a statutory nuisance under section 79(1)(a) of that Act at the premises

205 High Road N2 8AN

[within the district of the said Council] arising from **noise & vibration**
[HEREBY REQUIRE YOU as the [~~person responsible for the said nuisance~~] [owner] [~~occupier~~] of the premises] **within four weeks from the service of this notice** [to abate the same] [and also]

[HEREBY [PROHIBIT][RESTRICT] the [occurrence][~~recurrence~~] of the same] [and for that purpose require you to:‡ **reduce the noise and vibration emitted from your kitchen extraction system to abate the existing nuisance.**

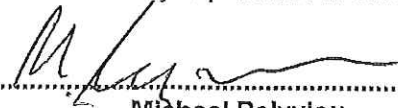
[This is a notice to which paragraph (2) of regulations 3 of the Statutory Nuisances (Appeals) Regulations 1995 applies and, in consequence in the event of an appeal this notice shall NOT be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council, the nuisance to which this notice relates is [~~injurious to health~~] [likely to be of a limited duration such that suspension would render the notice of no practical effect] [the expenditure which would be incurred by any person in carrying out works in compliance with this notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance]

IF without reasonable excuse you contravene or fail to comply with any requirement of this notice you will be guilty of an offence under section 80(4) of the Environmental Protection Act 1990 and on summary conviction will be liable to a fine not exceeding level 5 on the standard scale ** together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after conviction. A person who commits an offence on industrial, trade or business premises will be liable on summary conviction to a fine not exceeding £20,000.

The Council may also take proceedings in the High Court for securing the abatement, prohibition or restriction of the nuisance. Further, if you fail to execute all or any of the works in accordance with this notice, the Council may execute the works and recover from you the necessary expenditure incurred.

DATED: 14th March 2016

Ref : SSSR/16/00592

Signed 
Michael Polyviou
Authorised Officer

Environmental Health
Development & Regulatory Services
Building 4,
North London Business Park,
Oakleigh Road South,
London, N11 1NP

Tel: 020 8359 7995

SEE NOTES OVER

N.B. The person served with this notice may appeal against the notice to a magistrates' court within twenty-one days beginning with date of service of the notice.

- † Describe the cause of the nuisance. ** Currently £5,000, subject to alteration by Order.
- ‡ State specific works to be done or action to be taken.

The Statutory Nuisance (Appeals) (Amendment) (England) Regulations 2006 provide as follows:

APPEALS UNDER SECTION 80 (3) OF THE ENVIRONMENTAL PROTECTION ACT 1990 ("the 1990 Act")

2. (1) The provisions of this regulation apply in relation to an appeal brought by any person under section 80(3) of the 1990 Act (appeals to magistrates) against an abatement notice served upon him by a local authority
- (2) The grounds on which a person served with such a notice may appeal under section 80(3) are any one or more of the following grounds that are appropriate in the circumstances of the particular case
- (a) that the abatement notice is not justified by section 80 of the 1990 Act (summary proceedings for statutory nuisances);
 - (b) that there has been some informality, defect or error in, or in connection with, the abatement notice, or in connection with any copy of the abatement notice served under section 80A(3) (certain notices in respect of vehicles, machinery or equipment);
 - (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonable in character or extent, or are unnecessary;
 - (d) that the time, or, where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
 - (e) where the nuisance to which the notice relates
 - (i) is a nuisance falling within section 79(1)(a), (d), (e), (f), (fa) or (g) of the 1990 Act and arises on industrial, trade, or business premises, or
 - (ii) is a nuisance falling within section 79(1)(b) of the 1990 Act and the smoke is emitted from a chimney or
 - (iii) is a nuisance falling within section 79(1)(ga)(a) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes, that the best practical means were used to prevent, or to counteract the effects of, the nuisance; or
 - (iv) is a nuisance falling within section 79(10)(fb) of the 1999 Act and-
 - (aa) the artificial light is emitted from industrial, trade or business premises, or
 - (bb) the artificial light (not being light to which sub paragraph (aa) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility (within the meaning given by section 8 (8A) of the 1990 Act).
 - (f) that, in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act (noise emitted from premises), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise which the notice relates, of -
 - (i) any notice served under section 60 or 66 of the 1974 Act (control of noise on construction sites and from certain premises), or
 - (ii) any consent given under section 61 or 65 of the 1974 Act (consent for work on construction sites and consent for noise to exceed registered level in noise abatement zone), or
 - (iii) any determination made under section 67 of the 1974 Act (noise control of new buildings)
 - (g) that, in the case of a nuisance under section 79(1)(ga) of the 1990 Act (noise emitted from or caused by vehicles, machinery or equipment), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of schedule 2 to the 1993 Act (loud speakers in streets or roads);
 - (h) that the abatement notice should have been served on some person instead of the appellant, being -
 - (i) the person responsible for the nuisance, or
 - (ii) the person responsible for the vehicle, machinery or equipment, or
 - (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises, or
 - (iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;
 - (i) that the abatement notice might lawfully have been served on some person instead of the appellant being
 - (i) in the case where the appellant is the owner of the premises, the occupier of the premises, or
 - (ii) in the case where the appellant is the occupier of the premises, the owner of the premises, and that it would have been equitable for it to have been so served
 - (j) that the abatement notice might lawfully have been served on some person in addition to the appellant, being
 - (i) a person also responsible for the nuisance, or
 - (ii) a person who is also an owner of the premises, or
 - (iii) a person who is also an occupier of the premises, or
 - (iv) a person who is also the person responsible for the vehicle, machinery or equipment, and that it would have been equitable for it to have been so served
- (3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the notice served under Section 80A(3), the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one
- (4) Where the grounds upon which an appeal brought include a ground specified in paragraph (2)(i) or (j) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which this regulations applies he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.
- (5) On the hearing of an appeal the court may
- (a) quash the abatement notice to which the appeal relates, or
 - (b) vary the abatement notice in favour of the appellant, in such manner as it thinks fit, or
 - (c) dismiss the appeal and an abatement notice that is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.
- (6) Subject to paragraph (7) below, on the hearing of appeal the court may make such order as it thinks fit
- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or
 - (b) as to the proportions in which any expenses which may become recoverable by the authority under Part III of the 1990 Act are to be borne by the appellant and by any other person
- (7) In exercising its powers under paragraph (6) above, the court
- (a) shall have regard, as between an owner and an occupier, to the terms and conditions' whether contractual or statutory' or any relevant tenancy and to the nature of the works required' and
 - (b) shall be satisfied, before it imposes any requirement there under on any person other than the appellant' that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

BARNET
LONDON BOROUGH

I Michael Polunov employed in Development & Regulatory Services of the London

Borough of Barnet hereby certify that on: 14th March 2016

I served Mr Yafaghchi

With a Notice(s) under:

Dated: 14th March 2016

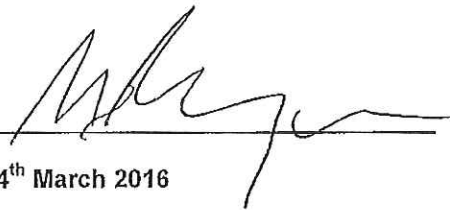
Our Ref: SSSR/16/00592

- (i) by sending it/them by Recorded Delivery No.
- (ii) by handing it to him/her → Mr Alex Yafaghchi's girlfriend &
- (iii) by leaving it/them at Shop was closed for renovations
- (iv) by affixing it to

in respect of **205 High Road N2 8AN**

and addressed to

Signed



Dated 14th March 2016

Development & Regulatory Services
 The London Borough of Barnet
 Environmental Health
 9th Floor, Barnet House,
 1255 High Road,
 London N20 0EJ

Mr Yaraghchi
 205 High Road
 London
 N2 8AN

Contact: Michael Polyviou
 Tel: 020 8359 7468 / 7995
 Fax: 0870 889 6793
 E-mail: Michael.polyviou@barnet.gov.uk
 Date: 29th April 2016
 Our Ref: SSSR/16/00592

Dear Mr Yaraghchi

ENVIRONMENTAL PROTECTION ACT 1990
205 High Road, London N2 8AN

I refer to a nuisance visit that Mr Haynes and I carried out on Friday 22nd April 2016.

During our visit, we witnessed a smoke and odour nuisance when you were cooking shish kebabs.

As a statutory nuisance was witnessed by us, I have enclosed an Environmental Protection Act 1990 abatement notice, requiring you to reduce the smoke and odour emitted from your kitchen extraction system to abate the existing nuisance. The notice enclosed has allowed you 14 weeks to abate the existing nuisance.

The problem with your flue is that it is positioned very low and discharges down which means that the smoke and odour are not dispersed efficiently and this impacts the residents directly above your premises.

I would recommend that you update your flue so that it is 1.5 m above eaves or any open able windows in the vicinity (within 20 metres of the flue). The final discharge must be vertically upwards. There should be no hat or cowl on the top of the flue. Your system should also incorporate anti-vibration mounts, flexible couplings and silencers to the ducting and fan motors.

Relocating or extending your flue extract is likely to require planning permission which is why we have allowed 14 weeks for the work to be carried out. However, there may also be secondary methods to reduce the smoke and odour such as the use of carbon filters, odour neutralization and electrostatic precipitators (ESP).

I would strongly advise you to engage a qualified kitchen extraction consultant to advise on the scheme, including the specifications of any materials, construction, fittings and equipment necessary to achieve satisfactory smoke and odour control.

I have provided you with the contact details for Don Miles from Purified Air who is an expert in kitchen extraction systems and mitigation measures who would be able to advise you further.

As well as the flue not being sufficient we also noted that there is the potential for odour and smoke escaping from your windows. One window was kept open during our visit and in poor repair (linked to the boiler). I would advise that you keep the windows as air tight as possible and seal around any vents / outlets.

There was also a gap around one of your fan covers which should be insulated. This will also reduce the noise affecting the neighbouring premises.

I would also strongly advise you keep doors closed when cooking.

If you have any questions in the meantime, please do not hesitate to contact me.

Yours Sincerely,



Michael Polyviou
Scientific Services Officer
Environmental Health

Enclosed – Environmental Protection Act 1990 abatement notice.



ENVIRONMENTAL PROTECTION ACT 1990 SECTION 80
Abatement Notice in respect of Statutory Nuisance

To: Mr Yaraghchi

of : 205 High Road N2 8AN

TAKE NOTICE that under the provisions of the Environmental Protection Act 1990 the London Borough of Barnet Council being satisfied of the [existence] [likely [occurrence] [recurrence]] of a statutory nuisance under section 79(1)(a) of that Act at the premises

205 High Road N2 8AN

[within the district of the said Council] arising from **noise & vibration**
[HEREBY REQUIRE YOU as the [person responsible for the said nuisance] [owner] [occupier] of the premises] **within 14 weeks from the service of this notice [to abate the same] [and also]**

[HEREBY [PROHIBIT][RESTRICT] the [occurrence][recurrence] of the same] [and for that purpose require you to: ‡ **reduce the smoke and odour emitted from your kitchen extraction system and premises to abate the existing nuisance.**

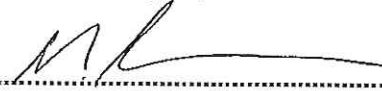
[This is a notice to which paragraph (2) of regulations 3 of the Statutory Nuisances (Appeals) Regulations 1995 applies and, in consequence in the event of an appeal this notice shall NOT be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council, the nuisance to which this notice relates is [injurious to health] [likely to be of a limited duration such that suspension would render the notice of no practical effect] [the expenditure which would be incurred by any person in carrying out works in compliance with this notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance]

IF without reasonable excuse you contravene or fail to comply with any requirement of this notice you will be guilty of an offence under section 80(4) of the Environmental Protection Act 1990 and on summary conviction will be liable to a fine not exceeding level 5 on the standard scale ** together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after conviction. A person who commits an offence on industrial, trade or business premises will be liable on summary conviction to a fine not exceeding £20,000.

The Council may also take proceedings in the High Court for securing the abatement, prohibition or restriction of the nuisance. Further, if you fail to execute all or any of the works in accordance with this notice, the Council may execute the works and recover from you the necessary expenditure incurred.

DATED: 29th April 2016

Ref : SSSR/16/00592

Signed 
Michael Polyviou
Authorised Officer

Environmental Health
Development & Regulatory Services
Building 4,
North London Business Park,
Oakleigh Road South,
London, N11 1NP

Tel: 020 8359 7995

SEE NOTES OVER

N.B. The person served with this notice may appeal against the notice to a magistrates' court within twenty-one days beginning with date of service of the notice.

† Describe the cause of the nuisance. ** Currently £5,000, subject to alteration by Order.

‡ State specific works to be done or action to be taken.

The Statutory Nuisance (Appeals) (Amendment) (England) Regulations 2006 provide as follows:

APPEALS UNDER SECTION 80 (3) OF THE ENVIRONMENTAL PROTECTION ACT 1990 ("the 1990 Act")

2. (1) The provisions of this regulation apply in relation to an appeal brought by any person under section 80(3) of the 1990 Act (appeals to magistrates) against an abatement notice served upon him by a local authority
- (2) The grounds on which a person served with such a notice may appeal under section 80(3) are any one or more of the following grounds that are appropriate in the circumstances of the particular case
- (a) that the abatement notice is not justified by section 80 of the 1990 Act (summary proceedings for statutory nuisances);
 - (b) that there has been some informality, defect or error in, or in connection with, the abatement notice, or in connection with any copy of the abatement notice served under section 80A(3) (certain notices in respect of vehicles, machinery or equipment);
 - (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonable in character or extent, or are unnecessary;
 - (d) that the time, or, where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
 - (e) where the nuisance to which the notice relates
 - (i) is a nuisance falling within section 79(1)(a), (d), (e), (f), (fa) or (g) of the 1990 Act and arises on industrial, trade, or business premises, or
 - (ii) is a nuisance falling within section 79(1)(b) of the 1990 Act and the smoke is emitted from a chimney or
 - (iii) is a nuisance falling within section 79(1)(ga)(a) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes, that the best practical means were used to prevent, or to counteract the effects of, the nuisance; or
 - (iv) is a nuisance falling within section 79(1)(fb) of the 1990 Act and
 - (aa) the artificial light is emitted from industrial, trade or business premises, or
 - (bb) the artificial light (not being light to which sub paragraph (aa) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility (within the meaning given by section 8 (8A) of the 1990 Act).
 - (f) that, in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act (noise emitted from premises), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise which the notice relates, of -
 - (i) any notice served under section 60 or 66 of the 1974 Act (control of noise on construction sites and from certain premises), or
 - (ii) any consent given under section 61 or 65 of the 1974 Act (consent for work on construction sites and consent for noise to exceed registered level in noise abatement zone), or
 - (iii) any determination made under section 67 of the 1974 Act (noise control of new buildings)
 - (g) that, in the case of a nuisance under section 79(1)(ga) of the 1990 Act (noise emitted from or caused by vehicles, machinery or equipment), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of schedule 2 to the 1993 Act (loud speakers in streets or roads);
 - (h) that the abatement notice should have been served on some person instead of the appellant, being -
 - (i) the person responsible for the nuisance, or
 - (ii) the person responsible for the vehicle, machinery or equipment, or
 - (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises, or
 - (iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;
 - (i) that the abatement notice might lawfully have been served on some person instead of the appellant being
 - (i) in the case where the appellant is the owner of the premises, the occupier of the premises, or
 - (ii) in the case where the appellant is the occupier of the premises, the owner of the premises, and that it would have been equitable for it to have been so served
 - (j) that the abatement notice might lawfully have been served on some person in addition to the appellant, being
 - (i) a person also responsible for the nuisance, or
 - (ii) a person who is also an owner of the premises, or
 - (iii) a person who is also an occupier of the premises, or
 - (iv) a person who is also the person responsible for the vehicle, machinery or equipment, and that it would have been equitable for it to have been so served
- (3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the notice served under Section 80A(3), the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one
- (4) Where the grounds upon which an appeal brought include a ground specified in paragraph (2)(i) or (j) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which this regulations applies he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.
- (5) On the hearing of an appeal the court may
- (a) quash the abatement notice to which the appeal relates, or
 - (b) vary the abatement notice in favour of the appellant, in such manner as it thinks fit, or
 - (c) dismiss the appeal and an abatement notice that is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.
- (6) Subject to paragraph (7) below, on the hearing of appeal the court may make such order as it thinks fit
- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or
 - (b) as to the proportions in which any expenses which may become recoverable by the authority under Part III of the 1990 Act are to be borne by the appellant and by any other person
- (7) In exercising its powers under paragraph (6) above, the court
- (a) shall have regard, as between an owner and an occupier, to the terms and conditions 'whether contractual or statutory' or any relevant tenancy and to the nature of the works required' and
 - (b) shall be satisfied, before it imposes any requirement there under on any person other than the appellant' that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

BARNET
LONDON BOROUGH

I Michael Polyviou employed in Development & Regulatory Services of the London Borough of Barnet hereby certify that on: **29th April 2016**

I served

With a Notice(s) under:

Dated: 29th April 2016

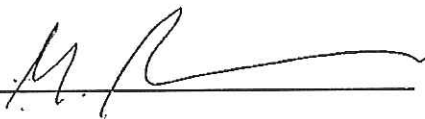
Our Ref: SSSR/16/00592

- (i) by sending it/them by Recorded Delivery No.
- (ii) by handing it to ~~him/her~~ Mr Yasaguchi.
- (iii) by leaving it/them at
- (iv) by affixing it to

in respect of **205 High Road N2 8AN**

and addressed to

Signed



Dated 29th April 2016

Development & Regulatory Services
The London Borough of Barnet
Community Protection (Regulation)
Barnet House, 1255 High Road
London, N20 0EJ

Mr Yaraghchi
Seasons
205 High Road
London N2 8AN

Contact: Michael Polyviou
Tel: 020 8359 7468
Fax: 0870 889 6793
E-mail: michael.polyviou@barnet.gov.uk
Date: 3rd July 2017
Our Ref: SSSR/16/00592

Dear Mr Yaraghchi,

ENVIRONMENTAL PROTECTION ACT 1990, Section 79 & 80

Re: Seasons 205 High Road, London N2 8AN

I refer to a nuisance visit that our Out of Hours (OOH) team had carried out on 29th May 2017 at 01:17 am. During their visit, they witnessed a noise nuisance which was coming from your condenser / compressor units. This is something that we spoke to you about during the PACE interview we held with you on 20th June 2017.

As a statutory nuisance was witnessed by our OOH team, I have enclosed an Environmental Protection Act notice, requiring you to reduce the noise and vibration emitted from your plant. The notice enclosed has allowed you 4 weeks to abate the nuisance.

I have already spoken with your noise consultant, Steven Liddell, regarding the noise compressor. I understand that he has already undertaken 24 hour background monitoring regarding the new proposed extract plant. As well as externalising the unit, I have asked that you consider two different locations (one to the back of the shop and one to the side of the building).

I would recommend that you use best practical means to minimise the noise the neighbouring premises.

If the noise problem cannot be resolved then we may take formal action which may result in a prosecution.

If you have any questions in the meantime, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'M. Polyviou', with a long horizontal flourish extending to the right.

Michael Polyviou
Scientific Services Officer



**ENVIRONMENTAL PROTECTION ACT 1990 SECTION 80
Abatement Notice in respect of Statutory Nuisance**

Ref: SSSR/16/00592

TO Mr Yaraghchi
OF 205 High Road London N2 8AN

TAKE NOTICE that under the provisions of the Environmental Protection Act 1990 the London Borough of Barnet Council being satisfied of the [existence] [likely occurrence] [recurrence] of a statutory nuisance under section 79(1) of that Act at the premises neighbouring:

205 High Road London N2 8AN
[within the district of the said Council] arising from the compressor / condenser unit associated with 205 High Road London N2 8AN

[HEREBY REQUIRE YOU] as the [person responsible for the said nuisance] [owner] [occupier] of the premises] within 4 weeks from the service of this notice to abate the noise nuisance caused by your plant / condenser units.


Hereby prohibit the occurrence of the same and for that purpose require you to: abate the noise nuisance caused by the plant / condenser units associated with 205 High Road London N2 8AN by any means necessary (See accompanying letter).

[This is a notice to which paragraph (2) of regulations 3 of the Statutory Nuisances (Appeals) Regulations 1995 applies and, in consequence in the event of an appeal this notice shall NOT be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council, the nuisance to which this notice relates is [~~injurious to health~~] [likely to be of a limited duration such that suspension would render the notice of no practical effect] [the expenditure which would be incurred by any person in carrying out works in compliance with this notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance]

IF without reasonable excuse you contravene or fail to comply with any requirement of this notice you will be guilty of an offence under section 80(4) of the Environmental Protection Act 1990 and on summary conviction will be liable to a fine not exceeding level 5 on the standard scale ** together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after conviction. A person who commits an offence on industrial, trade or business premises will be liable on summary conviction to a fine not exceeding £20,000.

The Council may also take proceedings in the High Court for securing the abatement, prohibition or restriction of the nuisance. Further, if you fail to execute all or any of the works in accordance with this notice, the Council may execute the works and recover from you the necessary expenditure incurred.

Dated: 3rd July 2017

Signed: 
Authorised Officer: Michael Polyviou
Designation: Scientific Officer

Please send communications to: Michael Polyviou
Environmental Health Department, Development & Regulatory Services, London Borough of Barnet,
Environmental Health, Barnet House, 1255 High Road, London, N20 0EJ
Email: michael.polyviou@barnet.gov.uk
Tel: 020 8359 7468
Ref: EH/17/00158/N516

**N.B. The person served with this notice may appeal against the notice to a magistrates' court within twenty-one days beginning with date of service of the notice.
Currently £5,000, subject to alteration by Order.**

The Statutory Nuisance (Appeals) (Amendment) (England) Regulations 2006 provide as follows:

APPEALS UNDER SECTION 80 (3) of the ENVIRONMENTAL PROTECTION ACT 1990 ("the 1990 Act")

2. (1) The provisions of this regulation apply in relation to an appeal brought by any person under section 80(3) of the 1990 Act (appeals to magistrates) against an abatement notice served upon him by a local authority
- (2) The grounds on which a person served with such a notice may appeal under section 80(3) are any one or more of the following grounds that are appropriate in the circumstances of the particular case
 - (a) that the abatement notice is not justified by section 80 of the 1990 Act (summary proceedings for statutory nuisances);
 - (b) that there has been some informality, defect or error in, or in connection with, the abatement notice, or in connection with any copy of the abatement notice served under section 80A(3) (certain notices in respect of vehicles, machinery or equipment);
 - (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonable in character or extent, or are unnecessary;
 - (d) that the time, or, where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
 - (e) where the nuisance to which the notice relates
 - (i) is a nuisance falling within section 79(1)(a), (d), (e), (f), (fa) or (g) of the 1990 Act and arises on industrial, trade, or business premises, or
 - (ii) is a nuisance falling within section 79(1)(b) of the 1990 Act and the smoke is emitted from a chimney or
 - (iii) is a nuisance falling within section 79(1)(ga)(a) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes, that the best practical means were used to prevent, or to counteract the effects of, the nuisance; or
 - (iv) is a nuisance falling within section 79(10)(fb) of the 1999 Act and-
 - (aa) the artificial light is emitted from industrial, trade or business premises, or
 - (bb) the artificial light (not being light to which sub paragraph (aa) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility (within the meaning given by section 8 (8A) of the 1990 Act).
 - (f) that, in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act (noise emitted from premises), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise which the notice relates, of -
 - (i) any notice served under section 60 or 66 of the 1974 Act (control of noise on construction sites and from certain premises), or
 - (ii) any consent given under section 61 or 65 of the 1974 Act (consent for work on construction sites and consent for noise to exceed registered level in noise abatement zone), or
 - (iii) any determination made under section 67 of the 1974 Act (noise control of new buildings)
 - (g) that, in the case of a nuisance under section 79(1)(ga) of the 1990 Act (noise emitted from or caused by vehicles, machinery or equipment), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of schedule 2 to the 1993 Act (loud speakers in streets or roads);
 - (h) that the abatement notice should have been served on some person instead of the appellant, being -
 - (i) the person responsible for the nuisance, or
 - (ii) the person responsible for the vehicle, machinery or equipment, or
 - (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises, or
 - (iv) in the case where the person responsible for the nuisance cannot be found or the

- nuisance has not yet occurred, the owner or occupier of the premises:
- (i) that the abatement notice might lawfully have been served on some person instead of the appellant being
 - (i) in the case where the appellant is the owner of the premises, the occupier of the premises, or
 - (ii) in the case where the appellant is the occupier of the premises, the owner of the premises, and that it would have been equitable for it to have been so served
 - (j) that the abatement notice might lawfully have been served on some person in addition to the appellant, being
 - (i) a person also responsible for the nuisance, or
 - (ii) a person who is also an owner of the premises, or
 - (iii) a person who is also an occupier of the premises, or
 - (iv) a person who is also the person responsible for the vehicle, machinery or equipment, and that it would have been equitable for it to have been so served
- (3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the notice served under Section 80a(3), the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one
 - (4) Where the grounds upon which an appeal brought include a ground specified in paragraph (2)(i) or (i) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which this regulations applies he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.
 - (5) On the hearing of an appeal the court may
 - (a) quash the abatement notice to which the appeal relates, or
 - (b) vary the abatement notice in favour of the appellant, in such manner as it thinks fit, or
 - (c) dismiss the appeal and an abatement notice that is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.
 - (6) Subject to paragraph (7) below, on the hearing of appeal the court may make such order as it thinks fit
 - (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or
 - (b) as to the proportions in which any expenses which may become recoverable by the authority under Part III of the 1990 Act are to be borne by the appellant and by any other person
 - (7) In exercising its powers under paragraph (6) above, the could
 - (a) shall have regard, as between an owner and an occupier, to the terms and conditions' whether contractual or statutory' or any relevant tenancy and to the nature of the works required' and
 - (b) shall be satisfied, before it imposes any requirement there under on any person other than the appellant' that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

Current Premises Licence

Part 2

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

Mr Alireza Yaraghchi
205 High Road
London
N2 8AN

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

N/A

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

N/A

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

N/A

Annex 1 – Mandatory Conditions

N/A

Annex 2 – Conditions consistent with the operating schedule

1. A CCTV system will be installed that complies with the following specifications:
 - a. Digital recording CCTV comprising a multi camera system.
 - b. The head unit (recorder) for storing the images will store such data on a hard drive or similar quality medium.
 - c. A CD or DVD burner will also form part of the system to facilitate making copies of the images.
 - d. If the head unit (recorder) is kept on the premises it must be located in a secure cabinet or other secure area, preferably out of the sight and reach of the public. The unit must be further secured by physical means to prevent anyone from merely picking up and removing the unit, e.g. a secure metal boot, or metal case strap, bolted to an immovable object like a wall or floor.
 - e. The quality of the images must be of a sufficiently high standard to allow identification of the subject matter
 - f. Cameras will cover key areas identified by the operator and Police. These will include clear headshots of persons entering the premises, at the serving counter, and the till point.
 - g. Images must be retained for a period of 31 days before overwriting.
 - h. The images will be made available in reasonable time on demand by the Police and authorised officers of the London Borough of Barnet with the minimum possible delay.
 - i. At all times when the premises are open there shall be at least one person who is capable of operating the CCTV system if required to do so by the Police or authorised of the London Borough of Barnet.
 - j. This system will be fully maintained at all times to ensure correct operation

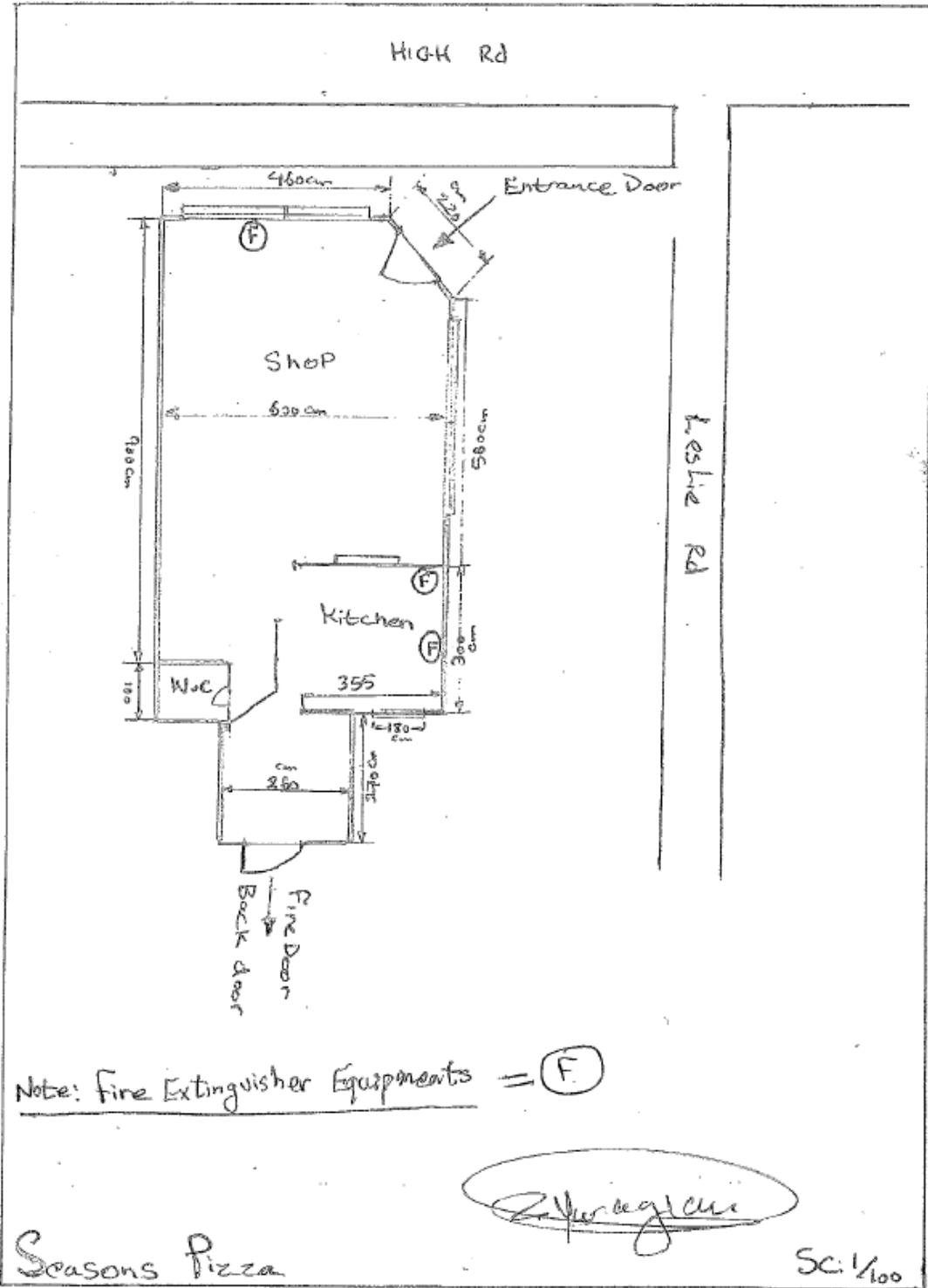
Annex 3 – Conditions attached after hearing by the licensing authority (where/if appropriate)

2. The Front Door and shutters are to be closed at 00:00hrs Sunday to Thursday and 01:30hrs Friday and Saturday with clear signage that the premises is closed.
3. Clear signage on the front door and behind the counter encouraging customers to leave the premises quietly.
4. The instillation of an acoustic ceiling to be installed by the applicant within 3 months (by the 12th January 2016).
5. The seating area to be closed to the public, with take away and delivery only after 23:00hrs seven days a week.

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 LAPRE1/15/51620

East Finchley Library



205 High Rd
East Finchley

Representation

Comments for Licensing Application LAPRE6/17/56888

Application Summary

Application Number: LAPRE6/17/56888
Address: 205 High Road London N2 8AN
Proposal: Review Premises Licence

Customer Details

Name: Mr kyri joannou
Address: High Road, London N2

Comment Details

Commenter Type: Neighbour
Stance: Customer objects to the Licensing Application
Comment Reasons:
- Crime and Nuisance

Comment:6:12 PM on 10 Nov 2017 We welcome the review of this licence following a prolonged period of late night nuisance that this premises has caused.

We initially objected to the initial application that was made in 2015 to extend the opening hours beyond 11pm and raised a number of concerns at the time which were not addressed correctly leading to our home being subjected to late night nuisance.

The council has been notified on a regular basis as to the nature of the disturbances and we can provide all correspondence, photographic and video evidence if necessary of the issues that this late licence has caused to our home.

The premises was asked as a condition of its licence to install an acoustic ceiling by January 2016, 3 months after the licence was issued. After raising the issue well after this date with the council that it had not been done and only by force they eventually installed it months late but it is not sufficient to stop noise, it is NOT an acoustic ceiling and does not cover the complete ceiling. This cannot continue.

The premises has a current enforcement for odour nuisance caused by an extract system unfit for purpose and even though planning was granted in Late 2016 the premises has yet to comply and persist. The current extract also causes a noise nuisance within our bedroom and this cannot be acceptable any longer after 11pm.

During the summer months the premises trades with all windows and doors open both at the front and rear of the building until its closing hours of 12am or 1.30am. This causes a constant

nuisance and means we cannot enjoy our home or sleep until they go home, usually well past 2am.

There are multiple reasons why this licence should be reviewed and we look forward to attending the committee meeting in due course to raise these and all other relevant issues.

**Guidance issues
under Section 182
Licensing Act 2003
(April 2017)**

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

Seasons, 205 High Road, London, N2 8AN

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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