

South Cambridgeshire Hall
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Cambridge
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12 June 2017

To: Chairman – Councillor Deborah Roberts
Members of the Licensing (2003 Act) Sub-Committee – Councillors
Kevin Cuffley and Cicely Murfitt

Applicant: Co-Op, Church Street, Gamlingay

Representee(s): Mrs Kennedy, Church Street, Gamlingay

Dear Sir/Madam

Please find below the agenda, and attached the relevant papers, for the hearing by the **LICENSING (2003 ACT) SUB-COMMITTEE** of the application for . The hearing will be held in the **MEZZANINE, SECOND FLOOR** at South Cambridgeshire Hall on **THURSDAY, 22 JUNE 2017 at 3.00 p.m.**

Members are respectfully reminded that when substituting on committees, subcommittees, and outside or joint bodies, Democratic Services must be advised of the substitution *in advance of* the meeting. It is not possible to accept a substitute once the meeting has started. Council Standing Order 4.3 refers.

Yours faithfully
Alex Colyer
Interim Chief Executive

Requests for a large print agenda must be received at least 48 hours before the meeting.

AGENDA

1. INTRODUCTIONS / PROCEDURE

The Chairman will introduce the members of the Sub-Committee and the officers in attendance at the meeting.

A copy of the Licensing (2003 Act) Committee procedure is attached.

2. DECLARATIONS OF INTEREST

3. APPLICATION TO VARY PREMISES LICENCE AT CO-OP STORES, CHURCH STREET, GAMLINGAY

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OUR LONG-TERM VISION

South Cambridgeshire will continue to be the best place to live, work and study in the country. Our district will demonstrate impressive and sustainable economic growth. Our residents will have a superb quality of life in an exceptionally beautiful, rural and green environment.

OUR VALUES

We will demonstrate our corporate values in all our actions. These are:

- Working Together
- Integrity
- Dynamism
- Innovation

GUIDANCE NOTES FOR VISITORS TO SOUTH CAMBRIDGESHIRE HALL

Notes to help those people visiting the South Cambridgeshire District Council offices

While we try to make sure that you stay safe when visiting South Cambridgeshire Hall, you also have a responsibility for your own safety, and that of others.

Security

When attending meetings in non-public areas of the Council offices you must report to Reception, sign in, and at all times wear the Visitor badge issued. Before leaving the building, please sign out and return the Visitor badge to Reception.

Public seating in meeting rooms is limited. For further details contact Democratic Services on 03450 450 500 or e-mail democratic.services@scambs.gov.uk

Emergency and Evacuation

In the event of a fire, a continuous alarm will sound. Leave the building using the nearest escape route; from the Council Chamber or Mezzanine viewing gallery this would be via the staircase just outside the door. Go to the assembly point at the far side of the staff car park opposite the staff entrance

- **Do not** use the lifts to leave the building. If you are unable to use stairs by yourself, the emergency staircase landings have fire refuge areas, which give protection for a minimum of 1.5 hours. Press the alarm button and wait for help from Council fire wardens or the fire brigade.
- **Do not** re-enter the building until the officer in charge or the fire brigade confirms that it is safe to do so.

First Aid

If you feel unwell or need first aid, please alert a member of staff.

Access for People with Disabilities

We are committed to improving, for all members of the community, access to our agendas and minutes. We try to take all circumstances into account but, if you have any specific needs, please let us know, and we will do what we can to help you. All meeting rooms are accessible to wheelchair users. There are disabled toilet facilities on each floor of the building. Infra-red hearing assistance systems are available in the Council Chamber and viewing gallery. To use these, you must sit in sight of the infra-red transmitter and wear a 'neck loop', which can be used with a hearing aid switched to the 'T' position. If your hearing aid does not have the 'T' position facility then earphones are also available and can be used independently. You can get both neck loops and earphones from Reception.

Toilets

Public toilets are available on each floor of the building next to the lifts.

Recording of Business and Use of Mobile Phones

We are open and transparent about how we make decisions. We allow recording, filming and photography at Council, Cabinet and other meetings, which members of the public can attend, so long as proceedings at the meeting are not disrupted. We also allow the use of social media during meetings to bring Council issues to the attention of a wider audience. To minimise disturbance to others attending the meeting, please switch your phone or other mobile device to silent / vibrate mode.

Banners, Placards and similar items

You are not allowed to bring into, or display at, any public meeting any banner, placard, poster or other similar item. Failure to do so, will result in the Chairman suspending the meeting until such items are removed.

Disturbance by Public

If a member of the public interrupts proceedings at a meeting, the Chairman will warn the person concerned. If they continue to interrupt, the Chairman will order their removal from the meeting room. If there is a general disturbance in any part of the meeting room open to the public, the Chairman may call for that part to be cleared. The meeting will be suspended until order has been restored.

Smoking

Since 1 July 2008, South Cambridgeshire District Council has operated a Smoke Free Policy. No one is allowed to smoke at any time within the Council offices, or in the car park or other grounds forming part of those offices.

Food and Drink

Vending machines and a water dispenser are available on the ground floor near the lifts at the front of the building. You are not allowed to bring food or drink into the meeting room.

Agenda Item 1

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

LICENSING ACT 2003 COMMITTEE

HEARING PROCEDURE

1. Introduction

- The Chairman of the sub-committee will welcome and introduce everyone present, giving explanations of roles where necessary, and outline the procedure to be followed.
- The hearing will take the form of a discussion to be led by the sub-committee.
- Members of the sub-committee will be able to ask questions of any party, or the Licensing Officer, at the hearing. They will try, so far as possible, to ask their questions at the conclusion of each party's submission.
- The sub-committee will consider any requests for permission to ask questions of other parties. It will decide if questions are required in order for it to consider the case properly. If permission is given to one party, it will usually be given to all other parties.
- The Chairman may ask any person behaving in a disruptive manner to leave and may refuse to permit that person(s) to return or may permit them to return with specified conditions. Such a person may, before the end of the hearing, submit to the authority in writing any information which they would have been entitled to give orally had they not been required to leave.
- Members of the sub-committee will be asked to make any Declaration of Interests.

2. Witnesses

The sub-committee will consider any requests from any of the parties to call witnesses.

3. New evidence/information

The sub-committee will consider any requests for permission to present new evidence or information not previously disclosed to all the parties and the sub-committee prior to the hearing. The general rule is that such information or evidence must not be considered unless all parties at the hearing agree to it being considered on the day of the hearing. A request may be made for a short adjournment to allow time for everyone to receive copies of the extra information and time to read it.

4. Allocation of time

Each party will be asked for a time estimate for the presentation of their case. The sub-committee will hear all estimates and then allocate each party an equal amount of time to speak.

5. Licensing Officer's report

The Council's Licensing Officer will outline details of the application and representations received by the council. No recommendation to members will be made.

6. Applicant's case

The applicant will present their case first. They have a right to:

- address the sub-committee on any points of clarification the council has sought;
- address the committee generally; and
- call any witnesses that they have been given permission to call. Witnesses may be cross-examined if permission is granted. If this happens, the time taken for questions will count towards the allocated time of the party asking the questions, not the party answering them.

Members of the sub-committee may ask questions of the applicant.

7. Police representations

The Police will make any representations about the application, with the same rights as listed at s.6.

Members of the sub-committee may ask questions of the police representative.

8. "Responsible authorities" representations

Other "responsible authorities" (Police/Fire/Environmental Health Officer/Social Services/Trading Standards/Planning Directorate) will then make representations, with the same rights as listed at s.6.

Members of the sub-committee may ask questions of those authorities represented.

9. Any other representations

Anybody else making representations will go last, with the same rights listed at s.6.

Members of the sub-committee may ask questions of any person who has made a representation.

10. Legal advice

Once all parties have presented their cases to the sub-committee, and the members of the sub-committee have no more questions for any of the parties, the Council's Legal Officer will be asked to outline any relevant legal guidance.

11. Decision-making

The sub-committee will then retire to another room to make its decision. The Council's Legal Officer and Clerk will accompany members to advise where necessary and take notes of the decision.

12. Notification of decision

Depending on the nature of the application, a determination of the case will either be made at the conclusion of the hearing, or within 5 working days. In most cases, all parties will be notified of the decision in writing.

Agenda Item 3

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Licensing Sub-Committee (2003 Act)

22 June 2017

AUTHOR/S: Licensing team

APPLICATION TO VARY PREMISES LICENCE AT CO OP STORES, CHURCH STREET, GAMLINGAY

The Application

1. The application for a variation of premises licence for the Co-Op Stores, Church Street Gamlingay, was served in accordance with the Licensing Act 2003. **(Appendix A)**
2. The requirements for advertising and displaying relevant notices were carried out in accordance with the Licensing Act 2003.
3. The proposed variation if approved would extend the hours for the sale of alcohol to the public. The details can be found within the operating schedule **(Appendix A)**.
4. A summary of the main changes are: -
 - To amend the commencement hours of sale by retail from 08.00 (10.00 on Sunday) to 06.00 Monday to Sunday all year.
 - To amend the terminal hours for sale by retail of alcohol from 22.30 (Sundays, Christmas day and Good Friday) to 23.00.

Background

5. The Co-op is located on Church Street running through the village and is generally located in close proximity to residential premises. **(Appendix B)**.
6. The current premises licence does not limit opening times to the public.
7. The current permitted hours for sale of alcohol are:

• Monday to Saturday	08.00 to 23.00
• Sunday	10.00 to 22.30
• Good Friday	08.00 to 22.30
• Christmas Day	12.00 to 15.00 & 19.00 to 22.30

8. The Sub-Committee must be mindful to focus only on the proposed variations when considering representations e.g. extension to alcohol sales.

Relevant Representations

9. A representation from Mrs Kennedy was received on 1st June 2017 **(Appendix C)** concerning the proposed alcohol extensions. The representation is primarily concerned with the Public Nuisance objective .

Officer's Views

10. In considering the application for variation, the Sub-Committee must be mindful to view the application on its individual merits and only those aspects that are being varied. Where representations have been made, only relevant representations in line with the licensing objectives may be taken into account. The objectives are as follows:

- Prevention of public nuisance
- Prevention of crime and disorder
- Public safety
- Protection of children from harm

Each objective is of equal importance.

The Sub-Committee is reminded that it has three options when determining the application:-

1. Reject the application
2. Approve the application
3. Modify the application in respect of times, activities or conditions for the retail sale of alcohol.

Regard should be given to the particular characteristics of the premises, namely it's proximity to residential dwellings and the public highway.

When considering the application, the Sub-Committee must be mindful of the guidance issued by Central Government under S.182 of the Licensing Act 2003 and South Cambridgeshire District Council's Licensing Policy.

In considering the application, the Licensing Act 2003 only allows conditions or decisions to be taken that relate to a licensable activity. Mention of noisy lorries early in the morning for example can only be considered if they are delivering alcohol, likewise whilst members may wish to consider the request for an increase in times that alcohol is available for sale, they cannot impose conditions relating to the general opening of the premises if alcohol is not sold.

11. Conditions relating to the prevention of public nuisance.

- a) Consideration may be given to conditions that ensure that:

- 1) Noise or vibration does not emanate from the premises so as to cause a nuisance to nearby properties
- 2) Prominent, clear and legible notices are displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.
- 3) The use of explosives, pyrotechnics and fireworks of a similar nature which could cause disturbance in the surrounding areas are restricted.
- 4) The placing of refuse - such as bottles- into receptacles outside the premises takes place at times that will minimise the disturbance to nearby properties.

b) **Hours**

1. Restrictions may be necessary on the times when certain licensable activities take place even though the premises may be open to the public at such times
2. Restrictions may be necessary on parts of a premise used for certain licensable activities at certain times.

Legal Implications

12. All parties will maintain a right of appeal to a Magistrate's Court after the determination of this committee.

Contact Officer: Suzanne Christie, Environmental Health Officer
01954 713636

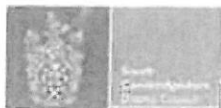
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APPENDIX A.

End of
consultation
01/01/17

Lalpac 060261
M3 309943
502 -
Received
4/5/17

Paid £190.00
online
Sent to Power



South Cambridgeshire
Application to vary a premises licence
Licensing Act 2003

Sent for consultation

For help contact
licensing@scambs.gov.uk
Telephone: 03450 450 063

* required information

Section 1 of 17

You can save the form at any time and resume it later. You do not need to be logged in when you resume.

System reference

Not Currently In Use

This is the unique reference for this application generated by the system.

Your reference

(L)STG.CXSJQM.COO251.327

You can put what you want here to help you track applications if you make lots of them. It is passed to the authority.

Are you an agent acting on behalf of the applicant?

☒ Yes

☐ No

Put "no" if you are applying on your own behalf or on behalf of a business you own or work for.

Applicant Details

* First name

Co-operative Group Food Limited

* Family name

Co-operative Group Food Limited

* E-mail

jasmine.mann@wardhadaway.com

Main telephone number

0191 204 4491

Include country code.

Other telephone number

☐ Indicate here if the applicant would prefer not to be contacted by telephone

Is the applicant:

☒ Applying as a business or organisation, including as a sole trader

☐ Applying as an individual

A sole trader is a business owned by one person without any special legal structure. Applying as an individual means the applicant is applying so the applicant can be employed, or for some other personal reason, such as following a hobby.

Applicant Business

Is the applicant's business registered in the UK with Companies House?

☒ Yes

☐ No

Note: completing the Applicant Business section is optional in this form.

Registration number

IP26715R

Business name

Co-operative Group Food Limited

If the applicant's business is registered, use its registered name.

VAT number

GB

403314604

Put "none" if the applicant is not registered for VAT.

Legal status

Private Limited Company

Continued from previous page...

Applicant's position in the business

Home country

The country where the applicant's headquarters are.

Registered Address

Address registered with Companies House.

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Agent Details

* First name

* Family name

* E-mail

Main telephone number

Include country code.

Other telephone number

☐ Indicate here if you would prefer not to be contacted by telephone

Are you:

☒ An agent that is a business or organisation, including a sole trader

A sole trader is a business owned by one person without any special legal structure.

☐ A private individual acting as an agent

Agent Business

Is your business registered in the UK with Companies House? ☐ Yes ☒ No

Note: completing the Applicant Business section is optional in this form.

Is your business registered outside the UK? ☐ Yes ☒ No

Business name

If your business is registered, use its registered name.

VAT number

Put "none" if you are not registered for VAT.

Legal status

Continued from previous page...

Your position in the business

Home country

The country where the headquarters of your business is located.

Agent Business Address

If you have one, this should be your official address - that is an address required of you by law for receiving communications.

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Section 2 of 17

APPLICATION DETAILS

This application cannot be used to vary the licence so as to extend the period for which the licence has effect or to vary substantially the premises to which it relates. If you wish to make that type of change to the premises licence, you should make a new premises licence application under section 17 of the Licensing Act 2003.

I/we, as named in section 1, being the premises licence holder, apply to vary a premises licence under section 34 of the Licensing Act 2003 for the premises described in section 2 below.

* Premises Licence Number

Are you able to provide a postal address, OS map reference or description of the premises?

☒ Address ☐ OS map reference ☐ Description

Postal Address Of Premises

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Premises Contact Details

Telephone number

Continued from previous page...

Non-domestic rateable
value of premises (£)

17,250

Section 3 of 17

VARIATION

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

☒ Yes

☐ No

Do you want the proposed variation to have effect in relation to the
introduction of the late night levy?

☐ Yes

☒ No

You do not have to pay a fee if the only
purpose of the variation for which you are
applying is to avoid becoming liable to the
late night levy.

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

Describe Briefly The Nature Of The Proposed Variation

Describe the premises. For example the type of premises, its general situation and layout and any other information which could be relevant to the licensing objectives. Where your application includes off-supplies of alcohol and you intend to provide a place for consumption of these off-supplies, you must include a description of where the place will be and its proximity to the premises.

Convenience store. The purpose of the application is to vary the hours when licensable activities may take place from Monday-Saturday 08:00-23:00 and Sundays 10:00-22:30, to Monday-Sunday 06:00-23:00. The licensable activity is the supply of alcohol for consumption off the premises. Further, the application is to remove any conflicting or embedded restrictions, in particular the embedded restrictions from the 1964 Act.

Section 4 of 17

PROVISION OF PLAYS

Will the schedule to provide plays be subject to change if this application to
vary is successful?

☐ Yes

☒ No

Section 5 of 17

PROVISION OF FILMS

Will the schedule to provide films be subject to change if this application to
vary is successful?

☐ Yes

☒ No

Section 6 of 17

PROVISION OF INDOOR SPORTING EVENTS

Will the schedule to provide indoor sporting events be subject to change if
this application to vary is successful?

Continued from previous page...

☐ Yes

☒ No

Section 7 of 17

PROVISION OF BOXING OR WRESTLING ENTERTAINMENTS

Will the schedule to provide boxing or wrestling entertainments be subject to change if this application to vary is successful?

☐ Yes

☒ No

Section 8 of 17

PROVISION OF LIVE MUSIC

Will the schedule to provide live music be subject to change if this application to vary is successful?

☐ Yes

☒ No

Section 9 of 17

PROVISION OF RECORDED MUSIC

Will the schedule to provide recorded music be subject to change if this application to vary is successful?

☐ Yes

☒ No

Section 10 of 17

PROVISION OF PERFORMANCES OF DANCE

Will the schedule to provide performances of dance be subject to change if this application to vary is successful?

☐ Yes

☒ No

Section 11 of 17

PROVISION OF ANYTHING OF A SIMILAR DESCRIPTION TO LIVE MUSIC, RECORDED MUSIC OR PERFORMANCES OF DANCE

Will the schedule to provide anything similar to live music, recorded music or performances of dance be subject to change if this application to vary is successful?

☐ Yes

☒ No

Section 12 of 17

PROVISION OF LATE NIGHT REFRESHMENT

Will the schedule to provide late night refreshment be subject to change if this application to vary is successful?

☐ Yes

☒ No

Section 13 of 17

SUPPLY OF ALCOHOL

Will the schedule to supply alcohol be subject to change if this application to vary is successful?

☒ Yes

☐ No

Continued from previous page...

Standard Days And Timings

MONDAY

Start

End

Start

End

Provide timings in 24 hour clock (e.g., 16:00) and only give details for the days of the week when you intend the premises to be used for the activity.

TUESDAY

Start

End

Start

End

WEDNESDAY

Start

End

Start

End

THURSDAY

Start

End

Start

End

FRIDAY

Start

End

Start

End

SATURDAY

Start

End

Start

End

SUNDAY

Start

End

Start

End

Will the sale of alcohol be for consumption?

- ☐ On the premises ☒ Off the premises ☐ Both

If the sale of alcohol is for consumption on the premises select on, if the sale of alcohol is for consumption away from the premises select off. If the sale of alcohol is for consumption on the premises and away from the premises select both.

State any seasonal variations.

For example (but not exclusively) where the activity will occur on additional days during the summer months.

Continued from previous page...

Non-standard timings. Where the premises will be used for the supply of alcohol at different times from those listed above, list below.

For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.

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Section 14 of 17

ADULT ENTERTAINMENT

Highlight any adult entertainment or services, activities, or other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children.

Provide information about anything intended to occur at the premises or ancillary to the use of the premises which may give rise to concern in respect of children, regardless of whether you intend children to have access to the premises, for example (but not exclusively) nudity or semi-nudity, films for restricted age groups etc gambling machines etc.

NONE

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Section 15 of 17

HOURS PREMISES ARE OPEN TO THE PUBLIC

Standard Days And Timings

MONDAY

Start

End

Start

End

Provide timings in 24 hour clock (e.g., 16:00) and only give details for the days of the week when you intend the premises to be used for the activity.

TUESDAY

Start

End

Start

End

WEDNESDAY

Start

End

Start

End

THURSDAY

Start

End

Start

End

FRIDAY

Start

End

Start

End

Continued from previous page...

SATURDAY

Start

End

Start

End

SUNDAY

Start

End

Start

End

State any seasonal variations.

For example (but not exclusively) where the activity will occur on additional days during the summer months.

Non standard timings. Where you intend to use the premises to be open to the members and guests at different times from those listed above, list below.

For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.

At the discretion of the Premises Licence holder.

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

Embedded restrictions from the Licensing Act 1964, in particular those relating to Christmas Day and Good Friday and any conditions which conflict with the terms of this application.

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

Reasons why I have failed to enclose the premises licence or relevant part of premises licence.

Section 16 of 17

LICENSING OBJECTIVES

Describe the steps you intend to take to promote the four licensing objectives:

a) General – all four licensing objectives (b,c,d,e)

List here steps you will take to promote all four licensing objectives together.

Continued from previous page...

The applicant has given thought to the potential impact of the grant of this application on the four licensing objectives and, having regard to the locality, considers that the following conditions are appropriate, proportionate and necessary.

b) The prevention of crime and disorder

1. The Premises Licence Holder shall maintain a CCTV system which gives coverage of all entry and exit points. The system shall continually record whilst the premises are open and conducting licensable activities. All recordings shall be stored for a minimum period of 28 days and shall be capable of being easily downloaded. Recordings shall be made available upon the receipt of a request by an authorised Officer of the Police or the Local Authority.
2. There shall be "CCTV in Operation" signs prominently displayed at the premises.
3. An incident log (whether kept in a written or electronic form) shall be retained at the premises and made available to an authorised Officer of the Police or the Local Authority.
4. The Premises Licence Holder shall operate a proof of age scheme, such as a Challenge 25, whereby the only forms of acceptable identification shall be either a photographic driving licence, a valid passport, military identification or any other recognised form of photographic identification incorporating the PASS logo, or any other form of identification from time to time approved by the secretary of the state.
5. The premises shall be fitted with a burglar alarm system.
6. The premises shall be fitted with a panic button system for staff to utilise in the case of an emergency.

c) Public safety

The Premises Licence Holder shall ensure that the appropriate fire safety, and health and safety regulations are applied at the premises.

d) The prevention of public nuisance

A complaints procedure shall be maintained by the Premises Licence Holder, details of which shall be made available in store and upon request.

e) The protection of children from harm

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

Section 17 of 17

PAYMENT DETAILS

This fee must be paid to the authority. If you complete the application online, you must pay it by debit or credit card.

Variation Fees are determined by the non-domestic rateable value of the premises.

To find out a premises non domestic rateable value go to the Valuation Office Agency site at <http://www.voa.gov.uk/>

Continued from previous page...

business_rates/index.htm

Band A - No RV to £4300 £100.00

Band B - £4301 to £33000 £190.00

Band C - £33001 to £8700 £315.00

Band D - £87001 to £12500 £450.00*

Band E - £125001 and over £635.00*

*If the premises rateable value is in Bands D or E and the premises is primarily used for the consumption of alcohol on the premises then you are required to pay a higher fee

Band D - £87001 to £12500 £900.00

Band E - £125001 and over £1,905.00

If you own a large premise you are subject to additional fees based upon the number in attendance at any one time

Capacity 5000-9999 £1,000.00

Capacity 10000 -14999 £2,000.00

Capacity 15000-19999 £4,000.00

Capacity 20000-29999 £8,000.00

Capacity 30000-39000 £16,000.00

Capacity 40000-49999 £24,000.00

Capacity 50000-59999 £32,000.00

Capacity 60000-69999 £40,000.00

Capacity 70000-79999 £48,000.00

Capacity 80000-89999 £56,000.00

Capacity 90000 and over £64,000.00

* Fee amount (£)

190.00

DECLARATION

* I/we understand 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.

☒ Ticking this box indicates you have read and understood the above declaration

This section should be completed by the applicant, unless you answered "Yes" to the question "Are you an agent acting on behalf of the applicant?"

* Full name

Ward Hadaway

* Capacity

Solicitors for the applicant

* Date

04

dd

/

05

mm

/

2017

yyyy

Add another signatory

Once you're finished you need to do the following:

1. Save this form to your computer by clicking file/save as...

2. Go back to <https://www.gov.uk/apply-for-a-licence/premises-licence/south-cambridgeshire/change-1> to upload this file and continue with your application.

Don't forget to make sure you have all your supporting documentation to hand.

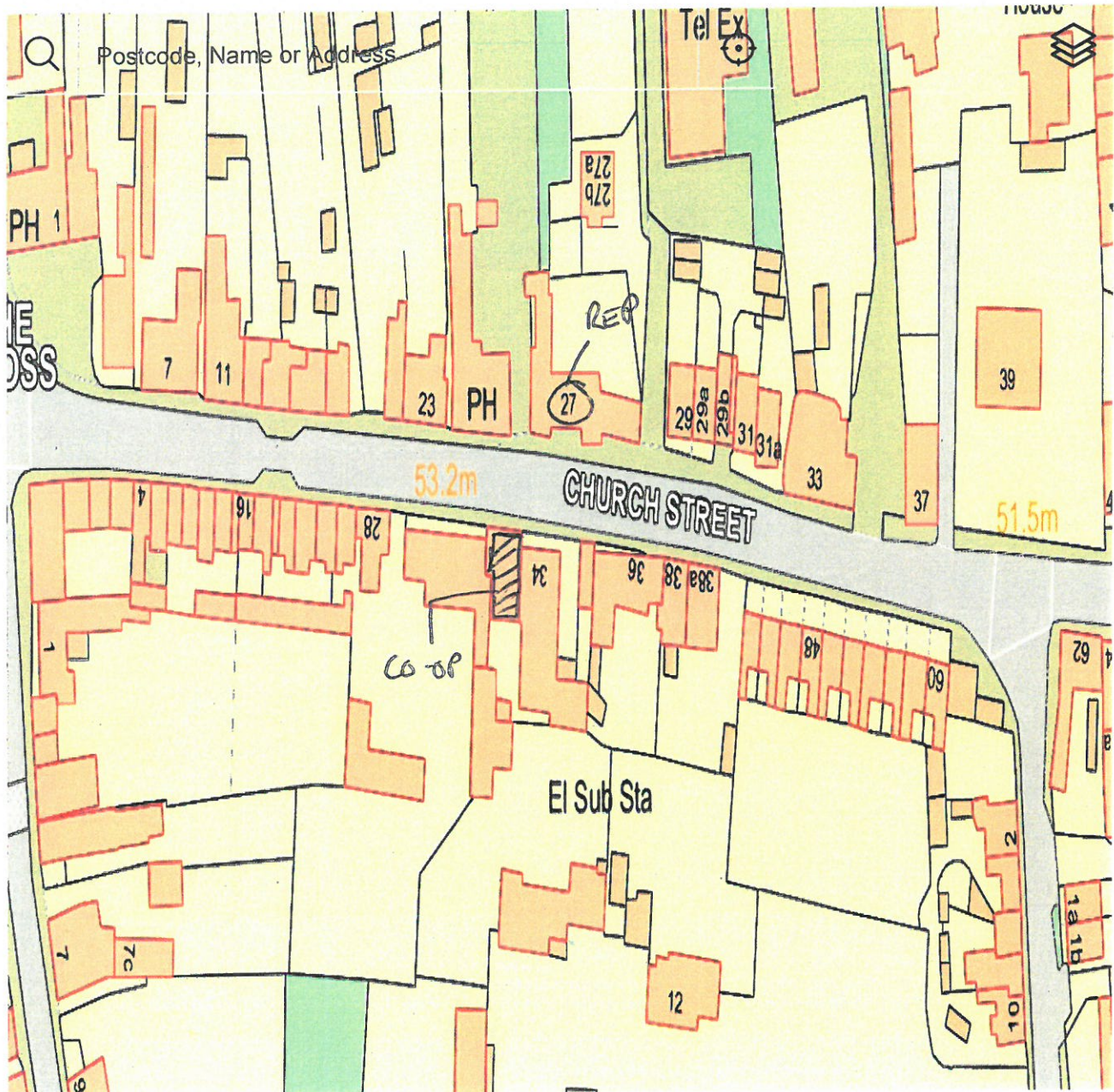
IT IS AN OFFENCE, LIABLE ON SUMMARY CONVICTION TO A FINE NOT EXCEEDING LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

OFFICE USE ONLY

Applicant reference number	(L)STG.CXSJQM.COO251.327
Fee paid	
Payment provider reference	
ELMS Payment Reference	
Payment status	
Payment authorisation code	
Payment authorisation date	
Date and time submitted	
Approval deadline	
Error message	
Is Digitally signed	<input type="checkbox"/>

< Previous 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 Next >

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Willard Kelsey

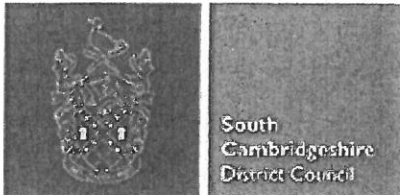
From: Reception
Sent: 02 June 2017 08:19
To: Licensing
Subject: FW: Subject: Ref Alcohol Sales License SCDCPL0086 - Cooperative Group Food Ltd
32 Church Street, Gamlingay

Good Morning,

Please see below.

Kind Regards,

Adam Harlock | Customer Contact Team Leader



South Cambridgeshire Hall | Cambourne Business Park | Cambourne | Cambridge | CB23 6EA
t: 01954 712980 | e: adam.harlock@scambs.gov.uk
www.scambs.gov.uk | facebook.com/south-cambridgeshire | twitter.com/SouthCambs

From:
Sent: 01 June 2017 19:31
To: SCDC <scdc@scambs.gov.uk>
Subject: Subject: Ref Alcohol Sales License SCDCPL0086 - Cooperative Group Food Ltd 32 Church Street, Gamlingay

Subject: Ref Alcohol Sales License SCDCPL0086 - Cooperative Group Food Ltd 32 Church Street, Gamlingay

I should like to register my huge concerns regarding the application for a change of licensing conditions for the Co-op in Gamlingay. I understand that the deadline for comments is today, 1st June 2017. I was not notified personally and had to read about this proposal from a notice on a lamp post which is also unacceptable.

My house is one of a number of properties that lie very close to the premises. Whilst we all benefit from the convenience of the store, we also suffer from the noise of deliveries and customers coming and going. Parking on yellow lines is a problem, as well as the noise and pollution of engines left running. Finally, alcohol, drink and food sales result in littering on the street.

It now seems that the Coop wish to extend the hours of their alcohol license from Monday-Saturday 0800-2300 and Sunday 1000-22.30, to Monday-Sunday 0600-2300. I assume that this means they wish to extend their opening hours, otherwise why apply for longer licensing hours? I feel this is very anti social and totally unnecessary. The coop is in a conservation area and added hours will not have any benefits for the local community.

I feel that this would have a number of bad effects on the nearby residents. Currently we are woken at 0700 by delivery lorries and early shoppers. I assume that this license change will result in us being disturbed at 0600 seven days per week! The 30 minute Sunday evening extension eats into the quieter times still further. Considering that teenagers need 10 hours sleep, it seems unlikely that my children will be able to get their sleep needs met within the 7 hours that the Coop will be closed each night. Even adults require 8 hours and this would be harder to get with the shop remaining open for longer.

I feel that residents' needs for sleep and some peace and quiet should be respected and that the extension should be refused.

Regards,

Sue Kennedy

Sent from Mail for Windows 10

RE. THE CO-OP AND PREMISES
LICENCE
UNDER THE LICENSING ACT 2003

ADVICE

Ward Haddaway
Sandgate House
102 Quayside
Newcastle Upon Tyne
NE1 3DX

Telephone: 0191 204 4000
DX: 61265 Newcastle upon Tyne

Ref RXA.AS.COO229.4 Richard Arnot

RE. THE CO-OP AND PREMISES LICENCES
UNDER THE LICENSING ACT 2003

ADVICE

1. I am asked to advise the Co-Op about a condition which appears in several of its premises licences granted under the Licensing Act 2003, and as to the proper interpretation of this condition.

2. I have in front of me a typical example of such a premises licence, in this case granted by Knowsley Council, for a Co-Op situated in Fazakerley. The licence authorises the licensable activity of the sale by retail or the supply of alcohol. The licensee is the Co-Operative Group Food Limited. Attached to this licence are the mandatory conditions, and various other conditions under the headings of the licensing objectives i.e. the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm. Modifications were made to the conditions, following a hearing on 14th March 2013, which the Council considered “appropriate, proportionate and reasonable” to make “having regard to the promotion of the licensing objectives”.

3. Under the heading of “The Prevention of Public Nuisance” appears just one condition, (not modified earlier this year) which is:-

“No deliveries to take place between 10pm and 7am the following day.”

4. I understand that no deliveries of alcohol have taken place between 10pm and 7am, but it has been alleged that some deliveries of other goods which the shop sells have taken place within those hours. This condition, as I have mentioned, is typical of more than one Co-op premises licence and although the premises licence I have quoted is one granted by Knowsley Council, this Advice extends to other licences with a similar condition. Knowsley Council, I understand, have put forward the view that the condition means that no deliveries whatsoever may take place between 10pm and 7am, whereas the Co-Op and my Instructing Solicitor maintain that the condition can only refer to the deliveries of alcohol to the premises covered by the licence.

The Licensing Act 2003

5. The heading to the Act specifies that it is:-

“An Act to make provision about the regulation of the sale and supply of alcohol, the provision of entertainment and the provision of late night refreshment, about offences relating to alcohol and for connected purposes.”

6. Section 1 sets out the “licensable activities”, the first one of which is the sale by retail of alcohol.

7. By Section 2(1)(a), a licensable activity (in this case the sale by retail and supply of alcohol) may be carried on under and in accordance with a premises licence. By Section 136, a person commits an offence if he carries on a licensable activity from premises otherwise than under and in accordance with an authorisation, i.e. a licence in this case. There are various other offences relating to alcohol set out in the following

sections. Obviously, therefore, the licence is entirely concerned with making lawful, and controlling, the licensable activities.

8. By Section 4(1) a licensing authority:-

“.....must carry out its functions under this Act (“licensing functions”) with a view to promoting the licensing objectives.

(2) The licensing objectives are:

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.”

9. By Section 11, a premises licence means a licence which “authorises the premises to be used for one or more licensable activities”. So, as may be seen, everything is tied to the licensable activity which in this case refers to the sale by retail of alcohol.

10. A licensing authority is given power to grant a premises licence subject to conditions (see Section 18). If no relevant representations are received, the authority’s power to impose conditions is limited, but if a relevant representation is received, the authority’s power is somewhat wider. However it is still constrained as the authority may only impose conditions (other than the mandatory conditions), “appropriate for the promotion of the licensing objectives”.

11. The Co-Op requires this licence solely to enable the sale of alcohol by retail. It does not require any premises licence to carry on the main bulk of its trade, which is that of selling food and other grocery products, presumably permitted under appropriate planning permission. Therefore, it can lawfully supply food and other grocery products other than alcohol without a premises licence. If there were no premises licence in force, the Co-Op can perfectly lawfully receive deliveries of food and other grocery products at any time.

12. A licensing authority may only impose a condition so far as it considers it appropriate for the promotion of the licensing objectives in relation to a licensable activity. It does not have carte blanche to impose any condition which it considers may be appropriate to the premises. To impose such a condition unrelated to a licensable activity would be ultra vires, unlawful and irrational. This was recently illustrated in a Scottish case, Bapu Properties Limited v. City of Glasgow Licensing Board 2012 WL 488659. This was an appeal to the Sheriff's Court under the Licensing (Scotland) Act 2005 where the Licensing Board had refused an application for a variation of a premises licence in relation to a licensed Indian restaurant. The restaurant wished to extend the ambit of the licence to include an external seating area along the pavement next to the glass frontage of the restaurant. One of the reasons given by the Board to support this refusal was that the granting of the application would be inconsistent with the licensing objective of preventing public nuisance. The Board considered that granting the application would limit the space on the footpath so as to cause congestion and inconvenience to pedestrians in a busy area of the city centre.

13. The Scottish Licensing Act is not identical in its terms to the Licensing Act 2003 but it has striking similarities. It refers to “premises licences,” and licensing objectives, one of which is “preventing public nuisance.” One of the grounds for refusal of a licence is that “the Board considers that the granting of the licence would be inconsistent with one or more of the licensing objectives.” In my view, it is right that the Scottish court and the Scottish law should provide authority and guidance for the English court.

14. The Court found:-

“45. The single function of a Licensing Board under the 2005 Act is that of the licensing of the sale of alcohol. The powers to licence (sic) the sale of alcohol cannot be deployed to effect objectives not related to the sale of alcohol, but which the Licensing Board might yet find desirable. The objectives listed in Section 4 of the 2005 Act” (which are the licensing objectives), “though striking in their apparent generality, are not “free-standing” objectives. They are “licensing” objectives. The objectives, if they are to be relied upon to refuse a licence, must be “linked to the sale of alcohol” (Brightcrew Limited v. The City of Glasgow Licensing Board [2011] CSIH 46 at paragraph 26).”

The court went on to describe how the supposed public nuisance arose from the apprehended pedestrian congestion on the footpath. However the court held that congestion was not directly or materially linked to the sale of alcohol on the premises. It did not flow directly or materially from the licensing of the sale of alcohol. If it existed at all it would be attributable to the physical presence of the tables and the chairs of the restaurant’s external operation, which was already sanctioned by, inter alia, planning consent. Of course, conditions imposed on licences in England should not duplicate other

statutory provisions either, and here the Coop is entitled to sell food and other grocery products by virtue of planning permission.

15. The Court further stated:-

“48. The Board is not concerned with preventing public nuisance generally. The Board is only concerned with prevention of public nuisance so far as referable to the sale of alcohol.”

16. In the Brightcrew case (supra), at para 26, in addition to what was quoted in the Bapu case, the Inner House, Court of Session stated that, although the licensing objectives were all desirable in a general sense, that did not empower a Licensing Board to insist on matters not linked to the sale of alcohol. The same is true in England.

17. Consequently, in my view, any condition imposed has to be able to be materially and directly related to a licensable activity, which in this case is the sale by retail of alcohol. The authority do not have power under the Licensing Act to impose a condition which relates to anything other than one of the licensable activities i.e. here the sale by retail of alcohol. As was said in the Bapu Properties case (following the Brightcrew case), the authority is not concerned with preventing public nuisance generally, only with the prevention of public nuisance so far as it is referable to the sale of alcohol. A condition which purports therefore to limit all deliveries of foodstuffs or other groceries would be an unlawful condition because the authority would not have the power to impose it. However, the condition can be construed, and, in my view, must be construed, perfectly lawfully, if construed only to refer to deliveries of alcohol to be sold in the shop.

When faced with two possible interpretations, one of which would be unlawful and the other of which is lawful, the lawful interpretation is the one to be followed.

18. In contract law, “where the words of a contract are capable of two meanings, one of which is lawful and the other unlawful, the former construction should be preferred.” This principle is based on the proposition that “the parties are unlikely to have intended to agree to something unlawful.” (See Lewison “The Interpretation of Contracts,” 5th Edition at 7.1). The same can be said here: the authority is unlikely to have intended to impose a condition that was ultra vires and unlawful. Indeed, one must work on the basis that the authority intended to act lawfully and within its powers, and therefore, the condition can only refer to deliveries of alcohol.

19. I have in front of me a letter from Mrs Jane Miller in Croydon written to the local council in relation to a variation application put in by the Co-Op in respect of premises in Featherbed Lane, complaining that deliveries of bread to the Co-Op have taken place before 7am. The letter is the only representation received in respect of the application. The Licensing officer is suggesting that it is a relevant representation and therefore there needs to be a hearing. However, as I have set out above, when the authority are carrying out its duties under the Licensing Act, under section 4 (see para 8 above), the authority are concerned with matters relevant to the licensable activity in question and not public nuisance generally. Mrs Miller’s letter deals only with alleged deliveries of grocery products and has nothing to do with the retail sale of alcohol, and therefore has nothing to do with the likely effect of the grant of the application on the promotion of the licensing objectives. It therefore cannot be a relevant representation (see section 35(5)). Therefore

the application must be granted administratively without the need for a hearing (see section 35(2)).

SUSANNA FITZGERALD Q.C.

One Essex Court
Temple
London
EC4Y 9AR.

29 April 2013

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England and Wales High Court (Administrative Court) Decisions

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Neutral Citation Number: [2012] EWHC 3467 (Admin)

Case No: CO/5736/2012

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

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

Before:

MR JUSTICE HICKINBOTTOM

Between:

MATTHEW TAYLOR

Appellant

- and -

**MANCHESTER CITY COUNCIL
TCG BARS LIMITED**

Respondents

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

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

HTML VERSION OF JUDGMENT

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Mr Justice Hickinbottom:

Introduction

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

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

The Licensing Act 2003

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

"...

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

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

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

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

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

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

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

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

(d) the protection of children from harm.

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

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

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

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

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

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

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

" ...

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

24. The relevant period for representations in a case such as this is "28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant" (regulation 22 of the Premises Regulations).
25. Where no "relevant representations" are made, the licensing authority is bound to grant the application subject only to specified conditions derived from the operating schedule (section 18(2)). Where such representations are made, a decision making power arises in the licensing authority, because the requirement that the authority is bound to grant the application is subject not only to those same conditions but also to section 18(3) and (4), which provides that, where relevant representations are made:

"(3) ... the authority must –

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

(4) The steps are –

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

(b) to exclude from the scope of the licence any licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application."

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

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

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

27. Whilst the provisions of section 18(3) and (4) are written in mandatory terms ("... the authority *must*..."), a discretion arises as the result of the words "take such steps ... *as it considers necessary* ..." (emphases added). However, in determining a licence application, the discretion that an authority has is limited in two ways: (i) that authority can only take one or more of the steps listed in section 18(4), and (ii) it is empowered (although also obliged) to take only such of those steps it "considers necessary for the promotion of the licensing objectives". The statutory provisions consequently both define and limit an authority's powers in determining an application for a new licence.

28. Once a licence has been granted, if it is proposed to change the relevant business or premises such that the carrying out of licensable activities will fall outside the licence which has been granted, then the licence holder can change the licence in one of three ways.

29. First, if it is proposed to extend the period for which the licence has effect or to vary substantially the premises to which it relates, then a new application under section 17 has to be made (section 36(6), and paragraph 8.73 of the section 182 Guidance). That requires, not only advertisement and a period for the making of relevant representations to be made, but also the licensing authority to reconsider and review the entire licence afresh.

30. Second, at the other end of the scale, if the proposal is of a very limited nature, which is incapable of having an adverse impact on the promotion of any of the licensing objectives, then a simplified procedure involving restricted publicity can be adopted (sections 41A-41D, introduced by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 (SI 2009 No 1772)). Paragraphs 8.59 and 8.60 of the section 182 Guidance provide:

"8.59. Many small variations to layout will have no adverse impact on the licensing objectives. However, changes to layout should be referred to the full variation process if they could potentially have an adverse impact on the promotion of the licensing objectives, for example by... affecting access between the public part of the premises and the rest of the premises or the street or public way, e.g. block emergency exits or routes to emergency exits....

8.60. Licensing authorities will also need to consider the combined effect of a series of applications for successive small layout changes (for example, as part of a rolling refurbishment of a premises) which in themselves may not be significant, but which cumulatively may impact on the licensing objectives. This emphasises the importance of having an up to date copy of the premises plan available."

31. It is not suggested by any party that the changes proposed in this case, to which I shall come shortly, warranted a new section 17 application for a new licence, or could properly have been the subject of the minor variation procedure. It is common ground that it was appropriate for those proposed changes to be the subject of the third procedure, namely an application for a variation of the licence under

section 34.

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

"(4) The steps are –

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

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added."

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

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

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

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

The Facts

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

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

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

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

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

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

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

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

"...

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

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

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

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

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

"The application is made up of three parts –

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

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

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

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

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

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

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

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

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

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

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

My objection has been based around noise...

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

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

55. Mrs Seymour, having first withdrawn her representation, reinstated it on 7 October, having been contacted by Mr Taylor who pointed out the intention to use the V2 doorway as the sole means of public access to the basement. Mr Welford, the same day (7 October) also objected to the revision, on that same basis. The Environmental Health Department appears to have withdrawn its objection on the basis that the hours were not to be extended and Richmond Street would not be used for public access.
56. The hearing before the Council's Licensing Sub-Committee was held that day, 7 October 2011. Mr Taylor was the only interested party to attend, and he pressed for a number of conditions. In the event, the Sub-Committee granted the application, but included two further conditions on the licence, as follows:

1. Exit from the premises onto Richmond Street is to be used as a fire exit only.

2. A barrier to ensure queue forms in front of Via is to be operational from 20.00 daily. The barriers to be removed at the same time as the barriers which define the smoking area.

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

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

neighbours including those who live in 10 Canal Street.

The Parties' Contentions

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

Discussion

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

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

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

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

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

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

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

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

Application of the Principles to this Appeal

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

application for review under section 51.

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

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

Conclusion

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

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