

RECEIVED

15 JAN 2008



CITY OF YORK COUNCIL
Licensing Services, 9 St Leonard's Place, York, YO1 7ET

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

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure your answers are inside the boxes and written in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

~~We~~ NORTH YORKSHIRE FIRE & RESCUE..... (insert name(s) of applicant) apply for the review of a premises licence under section 51/apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or club premises, or if none, ordinance survey map reference or description

THE EVIL EYE
42 STONEGATE

Post town YORK

Post code YO1 8AS

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

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

Part 2 – Applicant details

I am

Please tick ✓ yes

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

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

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

Surname First names

Please tick ✓ Yes

I am 18 years old or over

Current postal address
if different from
premises address

Post Town

Postcode

Daytime contact telephone number

Email address (optional)

(B) DETAILS OF OTHER APPLICANT

Name
Address
Telephone number (if any)
E-mail (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name	STATION MANAGER ALAN BELL
Address	NORTH YORKSHIRE FIRE & RESCUE SERVICE THURSTON ROAD NORTHALLERTON DL6 2N3
Telephone number (if any)	01609 788570 MOBILE 07786 703054
E-mail (optional)	Alan.bell@northyorksfire.gov.uk

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

Please tick one or more boxes ✓

1. the prevention of crime and disorder
2. public safety
3. the prevention of public nuisance
4. the protection of children from harm
5.

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

NORTH YORKSHIRE FIRE & RESCUE SERVICE HAVE SERIOUS CONCERNS WITH REGARDS TO THE LACK OF FIRE PRECAUTIONS IN THE PREMISES.

THE MANAGEMENT HAVE BEEN NOTIFIED ON NUMEROUS OCCASIONS ABOUT THE SAFE RUNNING AND CAPACITY OF THE PREMISES, BUT HOWEVER SEEM TO HAVE A TOTAL DISREGARD FOR FIRE SAFETY AND PROTECTING THE PUBLIC FROM HARM IN THE EVENT OF A FIRE.

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

PLEASE SEE ALL ENCLOSED EVIDENCE WHICH INCLUDES:-

WITNESS STATEMENT FROM PC MICK WILKINSON

WITNESS STATEMENT FROM NIGEL WOODHEAD - LICENSING DEPT
CITY OF YORK COUNCIL

NOTE FOR CASE HILARY HUSTWICK 1 DEC 07

LETTER FROM LESLEY COOKE RE JOINT INSPECTION ON 19.10.07

ENFORCEMENT NOTICE DATED NOV 30 2006 NO. 01.30.11.06
00234.

LETTER TO IAN LOFTUS DATED NOV 17 2006

NOTE FOR CASE BY ~~HILARY~~ ^{ALAN} ~~HUSTWICK~~ ^{BELL} DATED 1.12.07

ENFORCEMENT NOTICE DATED 6.12.07 NO. 02.06.12.07.00131

PROHIBITION NOTICE DATED 2.12.07 NO. 0.02.12.07.00116

ACKNOWLEDGEMENT SIGNED BY IAN LOFTUS FOR RECEIPT OF
ENFORCEMENT NOTICE & PROHIBITION NOTICE

EMAIL FROM RAY BURTON SMOKE FREE DEPT CITY OF YORK
COUNCIL

COPY OF PHOTOGRAPHIC EVIDENCE BOOK A & BOOK B.

STATEMENT FROM NIGEL WOODHEAD CITY OF YORK COUNCIL

WITNESS STATEMENT FROM PC MICK WILKINSON

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

Please tick yes

If yes please state the date of that application

Day		Month		Year			

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

Please tick ✓ Yes

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



IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION.

Part 3 – Signatures (please read guidance note 3)

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

Signature *Alan Bell* (*Robert Alan Bell*)

Date *8th January 2007*

Capacity

Contact Name (where not previously given) and address for correspondence associated with this application (please read guidance note 5)	
Post town	Post code
Telephone number (if any)	
If you would prefer us to correspond with you by e-mail your e-mail address (optional)	

Notes for guidance

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

Note for Case for Evil Eye Lounge, 42 Stonegate, York, YO1 8AS

The following note for case is prepared by SM Alan Bell to provide a chronological record of my involvement with the ongoing enforcement of Fire Safety measures at the above address.

Saturday 1st December 2007

Whilst working at York Fire Safety office on Saturday 1st December I was approached by Hilary Hustwick, who asked for my views and advice on how to progress with a fire safety visit she had made to the Evil Eye Lounge bar the preceding evening, as part of a joint licensing inspection with NYP and COY licensing officer.

Hilary was concerned that the premises had over 160 people on the premises when she was under the impression that we (NYFRS) had restricted the premises to 100 by an Enforcement Notice that had been issued in November 2007 by SM Calpin

On checking the file, Hilary was correct and an Enforcement Notice had been issued in November 2006 by SM Calpin that effectively restricted the capacity to 100 persons for the Evil Eye.

After speaking with AM Bitcon I agreed with Hilary Hustwick to visit the Evil Eye again at approximately 2300 on Saturday evening of 1st December 2007.

At approximately 2145 I was called to a house fire in Snainton and did not expect to return to York on time for the meeting with Hilary so informed Hilary to request another Fire Safety Enforcement officer to attend and to ask for this via Control.

Hilary did this and arranged with Roy Ashman to meet at York FS office at approximately 2230, along with a member of NYP Licensing team.

Because I completed my tasks at Snainton sooner than expected I returned to the York FS office at approx 2300, with the FS file for the Evil eye and accompanied Hilary Hustwick, Roy Ashman and two members of NYP to the Evil Eye.

On arrival, both myself and Hilary did a head count of the upper floors and checked the means of escape. The capacity was found to be acceptable but the means of escape was impassable without great care through the kitchen area. The external means of escape was heavily congested with waste materials that were considered to be easily combustible. These included waste bags of rubbish, wheelie bins, cardboard boxes, wooden chairs and other items best described as commercial waste.

In my opinion the means of escape was not readily accessible or easy to use by anyone, but it was especially hazardous to untrained members of the public who would very probably be intoxicated due to the nature of the business carried out at the premises. Due to the low level of lighting on the external stair it was difficult to see most of the objects without paying close attention and would have presented significant trip hazards and a source of combustible materials for an accidental or deliberate fire.

Following some discussion between myself, Hilary, Roy Ashman and AM Bitcon (via telephone) it was decided the best course of action was to prohibit/restrict the use of the premises in such a way that the maximum occupancy would be 100, the waste would need to be removed before re-opening and the unauthorized method of securing the front door would have to be removed.

Continued....

Throughout the visit I was led to believe the responsible person at the premises was Michael Brown who described himself as the manager. We kept Mr. Brown fully informed and told him we were going back to the office to prepare a Prohibition Notice and would bring it back within 30 minutes and in any case before 0130.

I, Hilary and Roy returned to the York office to prepare a Prohibition Notice, where we were joined by AM Bitcon who agreed the notice and signed it.

Sunday 2nd December (early hours)

Myself and Roy Ashman returned to the Evil Eye where we sat down with Michael Brown and issued the Prohibition Notice. We discussed the implications of the notice and informed Mr. Brown that a further visit would be made during Sunday daytime to ensure the requirements of the notice had been adhered to, should he re-open the bar. Mr. Brown signed a copy of the Prohibition Notice and was issued with a copy for his own records.

Sunday 2nd December (approximately 1600 hours)

I visited the Evil Eye bar and carried out an inspection of the full means of escape to check that all reasonable obstructions had been removed and the conditions of the Prohibition Notice had been satisfied and confirmed they had been.

During the visit I spoke again with Mr. Brown and another gentleman who was described to me by Mr. Brown as "the other manager" (I now know this other gentleman to be the owner, Mr. Ian Loftus)

I explained to Mr. Brown and the "other manager" again the full implications of non-compliance with the Prohibition Notice and that a further visit would be made to determine what measures would be necessary to achieve a satisfactory standard of general fire safety precautions at the premises.

Wednesday 5th December

Following discussions with Jim Bowes and Hilary Hustwick, with regard to the FS measures now required at the Evil Eye, I went to York FS office at approximately 1530 hours.

I agreed to visit the Evil Eye again with both Jim and Hilary and on arrival was told we could inspect the property unaccompanied. On the top floor I discovered the upper floor was being used as an office and not simply storage. I also discovered what I considered to be an excessive fire loading. This was evident in the form of four fridges / freezers that were plugged in to the mains via no less than 2 extension leads and with all four appliances plugged in to a single extension reel (fully unwound).

I also discovered in the office at least two adaptors that had 6 plugs in one and 5 plugs in another. When I asked to speak with the owner (Mr. Loftus) I was surprised to see it was the same person I had spoken with on Sunday about Fire Safety measures.

When I started to query Mr. Loftus over his recollection of discussions that took place between myself and Mr. Loftus on the Sunday, Mr. Loftus claimed he know nothing about a Prohibition Notice and that Mr. Brown knew nothing either. I explained that I had spoken to them both about this issue and discussed in some depth both matters on the previous Sunday.

Continued....

At this point I lost faith in Mr. Loftus's ability to tell the truth and keep account of events. I asked Mr. Loftus if we could go somewhere more private where I issued a standard legal caution from the NYF&RS caution card. I asked Mr. Loftus to confirm that he understood the caution and repeated the caution in plain English, once again, from the card. I explained that Mr. Loftus would be well advised to seek the advice of a solicitor. I made notes of the meeting and asked Mr. Loftus to agree and sign my pocket notebook. Throughout this meeting I was accompanied by Hilary Hustwick.

Before leaving the Evil Eye I arranged with Mr. Loftus to attend the York FS office at 0930 the following morning to issue Mr. Loftus a copy of the Prohibition Notice and a revised Enforcement Notice. This was believed necessary as there was some doubt about the integrity of the existing notice due to material alterations at the premises, a change of use of the premises and the lack of a defined completion date.

Thursday 6th December (approx 0930 – 1030)

Mr. Loftus attended York FS office, as arranged, where we were accompanied by Hilary Hustwick.

I started the meeting by explaining to Mr. Loftus that I was going to re-issue the standard caution and the plain English caution which I again read from the NYF&RS card. I explained again to Mr. Loftus that he would be well advised to seek the legal advice of a solicitor, especially if he considered the actions of the Fire Authority to be unreasonable or over-zealous.

I re-iterated the conditions of the Prohibition Notice and asked Mr. Loftus to sign the acknowledgment receipt.

I issued the Enforcement Notice, having first discussed the full detail of the notice and the actions necessary to comply with the notice.

I explained that if Mr. Loftus was able to demonstrate a willingness to comply with the requirements of the notice that the Fire Authority would consider extending the deadline beyond 1st April 2008.

Mr. Loftus raised queries on the front door and alternative solutions to gain compliance to which I informed Mr. Loftus that the Fire Authority would consider any solution if it is submitted in writing and with sufficient time to look at. I also informed Mr. Loftus he should consult with Building Control if he needed to carry out any structural alterations to the property. I also told Mr. Loftus that copies of each notice would be forwarded to the building owners by recorded delivery.

At the end of the meeting I asked Mr. Loftus to sign my notebook in agreement at what had been done and said at the meeting.

Station Manager Alan Bell – *BSc, Dip (Phys), GFireE*

2-10

N M Hutchinson MSc; MA;BA(Hons); MI.Fire E.
Chief Fire Officer/Chief Executive

Your Reference:

My Reference:
0209579 ENF

When telephoning please ask for:
Temp Group Manager
Roy Ashman

York Fire Station
Clifford Street
York
YO1 9RD

Telephone: 01904 625272
Fax:

2 December 2007

Dear Sir,

By Hand

REGULATORY REFORM (FIRE SAFETY) ORDER 2005 ARTICLE 31

The Evil Eye
42 Stonegate
York

Please find herewith a Prohibition Notice in respect of the above premises.

Your attention is drawn to the notes which accompany this Notice.

Any queries concerning these matters may be directed to the inspector named above but all correspondence should be addressed to me.


Yours faithfully



for Chief Fire Officer/Chief Executive

Enc: Prohibition Notice
Notes to Accompany Prohibition Notice

Evil Eye
42 Stonegate
York


M. Blown

01.20.
02/12/07.

NORTH YORKSHIRE FIRE AND RESCUE AUTHORITY

PROHIBITION NOTICE

ARTICLE 31 OF THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005

- (a) Name Mr ~~Jonathan Smales~~ MICHAEL BROWN
- (b) Home Address 23 PRIORY STREET
MICKLEGATE
YORK YO1 6ET .
- (c) Occupier of Premises
42 Stonegate
York

Prohibition Notice Number: NYFRS.PRO.0.02.12.07.00116

I Temp Group Manager Roy Ashman on behalf of the North Yorkshire Fire and Rescue Authority, Thurston Road, Northallerton, North Yorkshire DL6 2ND hereby give you notice that the North Yorkshire Fire and Rescue Authority are of the opinion that the following use of the said premises as occupied by you, namely

- (d) A Licenced Premises trading as a Public House

involves, or will involve, a risk to persons on the premises in case of fire so serious that use of the premises ought to be restricted.

The North Yorkshire Fire and Rescue Authority are further of the opinion that the matter(s) which *give rise to the said risk are:

- (e) The Management of the premises are failing to control the numbers of members of the public within the premise to a safe limit, which can be accommodated by the available means of escape

and the North Yorkshire Fire and Rescue Authority hereby direct that the use of the premises to which this Notice relates is restricted as follows:

- (f) The maximum number of members of the public that can be safely accommodated is one hundred persons and the occupancy should be limited to this figure

The North Yorkshire Fire and Rescue Authority are of the opinion that the risk of injury is imminent and the restriction is to take effect *immediately

- (g) Date 2 December 2007 Time 01 05 HOURS

This notice continues in force until the specified matters have been remedied and the Fire and Rescue Authority withdraw it.

Date: 2-12-07 Signed: 

(Being a person authorised by North Yorkshire Fire and Rescue Authority under Section 101 of the Local Government Act 1972 to issue such a notice.)

- (a) to (g) see accompanying notes *delete as appropriate

NOTES FOR COMPLETION OF PROHIBITION NOTICE

- a) Name of person being served.
- b) Address of person being served.
- c) Address of premises in question.
- d) Insert type of premises, i.e. sleeping accommodation, institution providing treatment or care, place of entertainment or recreation, teaching establishment, place of public access or place of work.
- e) Insert statement of reasons and location, e.g., unsatisfactory means of escape from the basement/process involving flammable liquids in ground floor workshop/open stair discharging into the kitchen/removal of external stairs/absence of a means of giving warning in case of fire, and including the relevant article number of the Regulatory Reform (Fire Safety) Order 2005 applicable.
- f) Insert details of the prohibition/restriction, e.g., second floor not to be used for sleeping accommodation/the cellulose paint mixer is not to be used/use of all floors above the ground floor to cease/the use of the basement, etc.
- g) Insert time and date when the notice is to become effective.

NORTH YORKSHIRE FIRE AND RESCUE AUTHORITY

SCHEDULE REFERRED TO IN PROHIBITION NOTICE NO NYFRS.01.02.12.07. 0116
REQUIRING STEPS TO BE TAKEN UNDER
ARTICLE 31 OF THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005

Name: MR MICHEAL BROWN

Premises: Evil Eye

Address: 42 Stonegate
York
YO18AS

Date 02 December 2007

Where appropriate, a plan may form part of this Schedule to illustrate the steps (or equally effective measures) which, in the opinion of the North Yorkshire Fire and Rescue Authority, need to be taken in order to comply with The Regulatory Reform (Fire Safety) Order 2005.

Note Notwithstanding any consultation undertaken by the North Yorkshire Fire and Rescue Authority, **before** you make any alterations to the premises, **you** may need to apply for approval from either the Local Authority Building Control or an Approved Inspector and/or the approval of any other bodies having a statutory interest in the workplace.

SCHEDULE

The location and details of matters which are considered to be failures to comply with The Regulatory Reform (Fire Safety) Order 2005 are detailed below. The steps, or equally effective measures considered necessary, to remedy the failures are also detailed below

Means of Escape

1. Remove all obstruction hazards on the means of escape from the rear of the premises before the premises admits members of the public.
2. Remove all combustible materials from under and adjacent to the means of escape from the rear of the premises before the premises admits members of the public
3. Means of escape throughout the premises should be maintained and free for use whilst the premises are occupied.
4. The egress through the shop area at the front of the premises is to be available at all times when customers are admitted to the premises, even when the shop is closed.

NORTH YORKSHIRE FIRE AND RESCUE AUTHORITY

NOTES TO ACCOMPANY PROHIBITION NOTICE SERVED UNDER ARTICLE 31 OF THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005

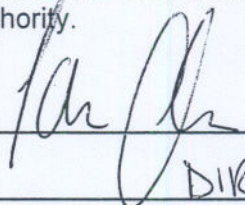
1	Under Article 32(2)(h) of this Order it is an offence for any person to fail to comply with any prohibition or restriction imposed by a Prohibition Notice and renders the offender liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or to both.
2	In any proceedings for an offence referred to in Note 1. Where the commission by any person of an offence under the Order, is due to the act or default of some other person, that person is guilty of the offence, and a person may be charged with and convicted of the offence whether or not proceedings are taken against the first mentioned person.
3	Nothing in the Order operates so as to afford an employer a defence in any criminal proceedings for a contravention of those provisions by reason of any act or default of an employee or person nominated to implement measures for fire-fighting and procedures for serious and imminent danger and for danger areas, and appointed to assist him/her in undertaking such preventive and protective measures as necessary.
4	Subject to Note 3, in any proceedings for an offence under the Order, except for a failure to comply with articles 8(a) (Duty to take general fire precautions) or 12 (Elimination or reduction of risks from dangerous substances), it is a defence for the person charged to prove that he/she took all reasonable precautions and exercised due diligence to avoid the commission of such an offence.
5	In any proceedings for an offence under the Order consisting of a failure to comply with a duty or requirement so far as is practicable or so far as is reasonably practicable, it is for the accused to prove that it was not practicable or reasonably practicable to do more than was in fact done to satisfy the duty or requirement.
6	A person on whom a Prohibition Notice is served may appeal under article 35 of the said Order to the magistrates' court, for the area in which the premises is situated, within 21 days from the date on which the prohibition notice is served. The bringing of an appeal does not have the effect of suspending this notice, unless on the application of the appellant, the court so directs (and then only from the giving of the direction).
7	It should be noted that in order to satisfy the "Environment and Safety Information Act 1988" the Fire and Rescue Authority is obliged to enter details of any prohibition notice into a register to which the public have access. If you feel that any such entry would disclose secret or confidential trade or manufacturing information then you should appeal in writing to the Authority within a period of fourteen days following the service of the notice.
8	The works or actions specified in the Notice are only intended to reduce the excessive risk to a more acceptable level. The Notice is issued without prejudice to any other enforcement action that may be taken by this or any other enforcement authority.

NORTH YORKSHIRE FIRE AND RESCUE AUTHORITY

ACKNOWLEDGEMENT OF PROHIBITION NOTICE
ARTICLE 31 OF THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005

Address of Premises The Evil Eye
42 Stonegate
York
YO1 8AS

I acknowledge receipt of the Prohibition Notice No NYFRS.PRO.0.02.12.00116 issued by North Yorkshire Fire and Rescue Authority.

Signed: 
Status in Organisation: DIRECTOR

Date: 6 / 12 / 07

NORTH YORKSHIRE FIRE AND RESCUE AUTHORITY

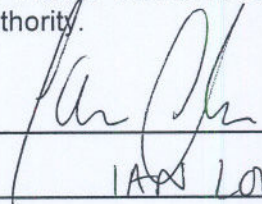
ACKNOWLEDGEMENT OF
ENFORCEMENT NOTICE No. NYFRS.ENF.02.06.12.07. 00131
ARTICLE 30 OF THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005

Address of Premises

The Evil
42 Stonegate
York
YO1 8AS

I acknowledge receipt of the Enforcement Notice No. NYFRS.ENF.02.06.12.07. 00131 issued by North Yorkshire Fire and Rescue Authority.

Signed:


IAN LOFTUS

Status in Organisation:

Date:

6/12/07

**N M Hutchinson MSc; MA;BA(Hons); MI.Fire E.
Chief Fire Officer/Chief Executive**

Your Reference:

My Reference: 0209579 RAB 01

When telephoning please ask for: Alan Bell

**NYF&RS – HQ
Thurston Road
Northallerton
DL6 2ND**

Telephone: 01609 788570

6th December 2007

By Hand

Dear Mr Ian Loftus

THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005

The Evil Eye
42 Stonegate
York
YO1 8AS

The North Yorkshire Fire and Rescue Authority are the enforcing authority, under Article 30 of the above legislation.

Following a fire safety audit of the above premises by one of my inspectors on 5th December 2007 I confirm that the matters and steps specified on the attached Schedule need to be carried out to remedy your failure to comply with the above legislation.

The attached Enforcement Notice is a legal requirement to which you have a right of appeal to a Magistrates' Court. Your attention is drawn to the notes that accompany this Notice.

If you are in any doubt as to the obligations placed upon you, or there is any relevant matter upon which you require clarification, you may write to me direct, or alternatively telephone your enquiry to the inspector named above.

Yours faithfully

Alan Bell - for Chief Fire Officer/Chief Executive

Enc:
Enforcement Notice
Notes to Accompany Enforcement Notice
Schedule to Enforcement Notice
Standard Terms and Definitions

p19

NORTH YORKSHIRE FIRE AND RESCUE AUTHORITY

**ENFORCEMENT NOTICE
NOTICE REQUIRING STEPS TO BE TAKEN UNDER
ARTICLE 30 OF THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005**

Name: Mr Ian Loftus
Premises: Evil Eye
Address: 42 Stonegate
York
YO1 8AS

Enforcement Notice Number NYFRS.ENF.02.06.12.07. 00131

I, Station Manager Alan Bell on behalf of the North Yorkshire Fire and Rescue Authority, hereby give you notice that the North Yorkshire Fire and Rescue Authority are of the opinion that, as a person being under an obligation to do so, you have failed to comply with the requirements placed upon you by The Regulatory Reform (Fire Safety) Order 2005 in respect of the above named premises and the persons who may be on the premises or who may be affected by a fire on the premises.

The matters which, in the opinion of the North Yorkshire Fire and Rescue Authority, constitute the failure(s) to comply with articles; 8, 9, 10, 11, 13 & 14 of The Regulatory Reform (Fire Safety) Order 2005 are specified in the schedule to this notice.

The North Yorkshire Fire and Rescue Authority are further of the opinion that the steps (or equally effective measures) identified in the schedule to this notice must be taken to remedy the specified failure(s) to comply with The Regulatory Reform (Fire Safety) Order 2005.

Unless the failures identified in the notice have been rectified by 1st April 2008, you will be deemed not to have complied with this notice and the North Yorkshire Fire and Rescue Authority may consider a prosecution against you. You may, however, apply for an extension to this time limit. (See notes).

You have the right to appeal against this notice (see notes), by way of complaint for an order, to the Clerk to the Court of the Magistrates' Court acting for the petty sessions area in which your premises is located. If you wish to bring an appeal, you must do so within 21 days of the date this notice is served on you. The Magistrates' Courts Act 1980 will apply to the proceedings. The bringing of an appeal shall have the effect of suspending the operation of this Enforcement Notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal.

Date: ...6th December 2007 Signed:
(On behalf of and duly authorised by the North Yorkshire Fire and Rescue Authority)

NORTH YORKSHIRE FIRE AND RESCUE AUTHORITY

SCHEDULE REFERRED TO IN: ENFORCEMENT NOTICE NO NYFRS.ENF.02.06.12.07. 00131 REQUIRING STEPS TO BE TAKEN UNDER ARTICLE 30 OF THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005

Name: Ian Loftus

Premises: Evil Eye

Address: 42 Stonegate
York
YO1 8AS

Date 06 December 2007

Where appropriate, a plan may form part of this Schedule to illustrate the steps which, in the opinion of the North Yorkshire Fire and Rescue Authority, need to be taken in order to comply with The Regulatory Reform (Fire Safety) Order 2005. Other equally effective measures may be utilised to remedy the failures however you should first consult the fire authority.

Note Notwithstanding any consultation undertaken by the North Yorkshire Fire and Rescue Authority, **before** you make any alterations to the premises, **you** may need to apply for approval from either the Local Authority Building Control or an Approved Inspector and/or the approval of any other bodies having a statutory interest in the workplace.

SCHEDULE

The location and details of matters which are considered to be failures to comply with The Regulatory Reform (Fire Safety) Order 2005 are detailed below. The steps, or equally effective measures considered necessary, to remedy the failures are also detailed below.

1.0 Duty to take General Fire Precautions

(Article 8 of the Regulatory Reform (Fire Safety) Order)

1.1 Failures

- To take such general fire precautions as will ensure the safety of employees
- To take such general fire precautions as will ensure the safety of persons who are not his employees

1.2 Legislation Applicable

- Article 8 (1) (a) of the Regulatory Reform (Fire Safety) Order 2005 supported by Article 4, which determines what is meant by general fire precautions
- Article 8 (1) (b) of the Regulatory Reform (Fire Safety) Order 2005 supported by Article 4, which determines what is meant by general fire precautions

1.3 Suggested Action to Remedy Failure

To comply in full with the requirements of this Enforcement Notice or, to apply other equally effective measures to the satisfaction of the Fire Authority that the general fire precautions are suitable and sufficient to ensure the safety of all relevant persons who may, or may not be employees, in relation to your business at the above address.

2.0 Risk Assessment (Article 9 of the Regulatory Reform (Fire Safety) Order)

2.1 Failures

- The Fire Safety Risk Assessment was not suitable and sufficient
- The Fire Safety Risk Assessment has not taken into account a significant change

2.2 Legislation Applicable

- Article 9 (1) of the Regulatory Reform (Fire Safety) Order 2005
- Article 9 (3) (b) of the Regulatory Reform (Fire Safety) Order 2005

2.3 Suggested Action to Remedy Failure

The risk assessment should reflect the true nature of the premises and the activities carried out, namely the premises are licensed for the sale of alcohol and the means of escape from the upper floors is via an internal stair which is considered non-compliant with current guidance on escape stairs.

The alternative exit is via an external stair which is considered non-compliant. The Fire Authority are able to take into account the age and nature of the building when assessing the means of escape although any departures from recognized standards should be fully reflected and embedded in the risk assessment and suitable compensation provided elsewhere, such as enhanced lighting, signage and management of the premises.

The fire safety risk assessment does not reflect the change in use of the following areas;

The top floor – This is evidently being used as an office and is frequented by staff more regularly than a casual or infrequent basis and as such should be considered in the fire safety risk assessment

The kitchen – It is not normal practice to allow a kitchen to form part of the means of escape and the Fire Authority have only accepted this in the past for this premises, on the understanding that the area designated as a kitchen was redundant for the purposes of cooking food. It is clear the kitchen is now being used for the preparation of hot food and this should be reflected in the fire safety risk assessment.

3.0 Principles of Prevention to be Applied (Article 10 of the Regulatory Reform (Fire Safety) Order

3.1 Failure

Preventative and protective measures have not been implemented in accordance with the principles of prevention as specified in Part 3 of Schedule 1 of the Regulatory Reform (Fire Safety) Order 2005

3.2 Legislation Applicable

Article 10 and as specified in Part 3 of Schedule 1 of the Regulatory Reform (Fire Safety) Order 2005

3.3 Suggested Action to Remedy Failure

You should identify all of your sources of combustion and all of your potential sources of ignition and heat sources and ensure the two are not able to combine to start a fire. Where this is unavoidable due to the processes that take place as part of the business you should ensure you have adequate control measures in place.

Fire risks should be identified in the fire safety risk assessment and dealt with in accordance to the following hierarchy (examples are given for illustration purposes only);

- Eliminate risks – *e.g. remove deep fat fryers from a kitchen and stop the preparation of all hot foods*
- Substitute risks – *e.g. remove deep fat fryers and gas hobs and replace with microwave ovens*
- Engineered solution – *e.g. provide cooker hood linked to automatic fire suppression system*
- Safe system of work – *e.g. deep fat fryers may only be used when minimum of two staff present with both staff trained in use of extinguishers and with appropriate extinguishers to hand.*

4.0 Fire Safety Arrangements (Article 11 of the Regulatory Reform (Fire Safety) Order)

4.1 Failure

A Fire Safety Policy Document was not available at the time of the visit

4.2 Legislation Applicable

Article 11 (1) and (2) of the Regulatory Reform (Fire Safety) Order 2005

4.3 Suggested Action to Remedy Failure

Your business should have a Fire Safety Policy available. This policy may form part of your wider Health & Safety policy and should be maintained in accordance with HSG 65 which is a document produced by the Health & Safety Executive that outlines the minimum requirements for the production of H&S policy and how to review, revise and audit your H&S / Fire Safety measures.

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5.0 Firefighting and Fire Detection (Article 13 of the Regulatory Reform (Fire Safety) Order)

5.1 Failure

- The fire detection system is inadequate
- The fire warning system is inadequate

5.2 Legislation Applicable

- Article 13 (1) (a) and 13 (2) of the Regulatory Reform (Fire Safety) Order 2005
- Article 13 (1) (a) and 13 (2) of the Regulatory Reform (Fire Safety) Order 2005

5.3 Suggested Action to Remedy Failure

Based on the current use of the property, the existing electrical fire alarm system should be extended, as detailed below. The system should be in accordance with the current British Standard, edition "Fire Detection and Alarm Systems For Buildings" or European equivalent standard.

All fire alarm sounders within the building should have similar sound characteristics.

The exact number and location of detectors etc. should be determined by the installation engineer having regard to the specification of the equipment and the nature of the building.

The fire alarm system should provide a minimum level of cover, as provided by an L3 system. (This is detection throughout the means of escape and all rooms/large spaces that have openings onto the means of escape). You should also provide detection to all spaces that are not fully separated from the means of escape by 30 minutes structural fire protection.

The audibility of the system should achieve a minimum of 65 dB(A) or 5 dB(A) above any normal noise in all areas.

The sounding of the fire alarm should automatically silence any music or other noise making equipment.

6.0 Emergency Routes and Exits (Article 14 of the Regulatory Reform (Fire Safety) Order)

6.1 Failures

- The escape routes were obstructed
- The escape routes did not lead, as directly as possible, to a place of safety.
- The escape routes and exits could not be used as quickly and as safely as possible
- The number, distribution and/or size of escape routes and exits is inadequate
- Emergency doors do not open in the direction of escape
- Fire exits and doors on escape routes could not be easily and immediately opened from the inside
- The escape routes were not provided with adequate signage
- The escape routes were not adequately lit
- The escape routes did not have adequate emergency lighting in case of failure of normal lighting circuits

6.2 Legislation Applicable

- Article 14 (1) of the Regulatory Reform (Fire Safety) Order 2005
- Article 14 (2) (a) of the Regulatory Reform (Fire Safety) Order 2005
- Article 14 (2) (b) of the Regulatory Reform (Fire Safety) Order 2005
- Article 14 (2) (c) of the Regulatory Reform (Fire Safety) Order 2005
- Article 14 (2) (d) of the Regulatory Reform (Fire Safety) Order 2005
- Article 14 (2) (f) of the Regulatory Reform (Fire Safety) Order 2005
- Article 14 (2) (g) of the Regulatory Reform (Fire Safety) Order 2005
- Article 14 (2) (h) of the Regulatory Reform (Fire Safety) Order 2005
- Article 14 (2) (h) of the Regulatory Reform (Fire Safety) Order 2005

6.3 Suggested Action to Remedy Failure

The escape routes and exits should be available for use at all material times for staff, members of the public and all other relevant persons. This may require you to have an effective waste management regime that deals with waste materials and obstructions that may accumulate throughout your periods of operation.

The escape routes should lead, as directly as possible to a place of safety

The number, distribution and size of exits should be sufficient for the intended capacity of the premises, as prescribed in: HM Government Guide to Fire Safety Risk Assessment for Small and Medium Places of Assembly (ISBN-13: 9781851128204)

Given the current number, distribution, size and management of exits at the premises the Fire Authority consider 100 persons to be the maximum safe allowable occupancy (including staff), with a maximum of 60 persons in total for the upper floors.

Emergency doors should open in the direction of escape, save for where doors are to be used by a maximum of 60 persons or the door is permanently held open during all material times without reducing the effective width of the exit.

All doors that may be required to be used to evacuate the premises must be easily openable and where security is an issue may have Panic Exit devices fitted that conform to the British Standard, or European equivalent, on Emergency Exit doors in the following circumstances:

- In public buildings, shops and areas of entertainment where the occupants do not have prior knowledge of the building layout and the exit door hardware.
- Where it is an Emergency Exit from an area in which fire may develop very rapidly.
- Where a panic situation may occur.
- Where the exit may be used at the time of a fire by more than 50 persons.

Such devices must not be secured with a padlock chain or other locking devices.

All exits and routes must be adequately signed in accordance with the current issue of the British Standard and incorporate a graphic symbol as required by the Health and Safety (Safety Signs and Signals) Regulations 1996.

Signs used to indicate Emergency Escape (ie Door Exits and Escape Routes) shall contain a pictogram of a figure moving through a doorway. The pictogram should be supplemented by a directional arrow, as necessary, to form the sign. A directional arrow is not acceptable on its own. To aid understanding, supplementary text (ie FIRE EXIT) may be included, however, text-only signs are not acceptable.

Whilst it is acceptable to use signs that conform to either the British Standard (Includes text) or the European equivalent (no text provided) you should not use a combination of both standards within the same premises.

Directional signs should be provided to avoid confusion and in general should indicate the quickest route out. Directional signs should be unambiguous and where confusion could occur it may be acceptable to only provide signs to indicate an alternative route rather than a route that people may already be familiar with.

All exits must be adequately signed

The existing emergency lighting system should be extended to illuminate the external fire escape along its full length to the final exit.

Overall Comment on the means of escape and structural fire protection

Given the current use of the premises, as identified by the Fire Authority, this includes the following;

- **Top Floor** – Storage, Office and welfare facilities (staff toilet)
- **Second floor** – Fully working kitchen and public access for licensable activities
- **First floor** - public access for licensable activities
- **Ground floor** – Public access and bar area for licensable activities, including off sales
- **Basement area** – staff only access for storage

For the purposes of using the premises for the aforementioned activities, in the locations identified by the Fire Authority, the premises is not provided with suitable and sufficient structural fire protection, as detailed in current standards, which requires the following minimum standards;

- Lobby protection to be provided at the point of internal access to all floors, with the exception of the top floor and the basement.
- The top floor should be provided with a 30 minute fire door
- The basement requires a 60 minute fire door, or alternatively 2 x 30 minute fire doors; one door at the head and foot of the basement stair.
- All separating floors and walls to have appropriate fire separation (typically 30 minutes for walls and 60 minutes for floors) including the making good of breaches through fire resistant walls and floors.

The Fire Authority consider the following to be a suitable alternative as a minimum acceptable standard for the premises;

Alternative Solution:

The top floor be designated as storage only with only occasional staff access (no definition exists for occasional use but the Fire Authority consider a maximum of 5 minutes in the hour not to exceed the meaning of occasional use under these circumstances)

The second floor may not be used for any licensable activities

The second floor kitchen may continue to be used fully by staff and the second floor toilets may continue to be used by members of the public

The second floor may not be used for licensable activities or other general access by the public, such as unlicensed refreshments area or internet access

The first floor may be used for licensable activities with a maximum occupancy of 60 persons, which includes any persons working on the second floor or staff visiting the top floor.

Ground floor continues to be used for licensable activities with the caveat that the means of escape and alternative means of escape be maintained to the satisfaction of the Fire Authority, in accordance with recognized standards.

Basement to be used for storage and occasional access only. Access to the basement must not compromise the means of escape on the ground floor (e.g. the door must not be propped or wedged open)

All other relevant requirements in this notice must also be satisfied in relation to the extension of the fire alarm system, lighting, signage and risk assessment.

If all of the above conditions are satisfied the Fire Authority will continue to allow a maximum of 100 persons to use the premises, in total, including staff. - *Please also see Goodwill Advice*

NORTH YORKSHIRE FIRE AND RESCUE AUTHORITY

NOTES TO ACCOMPANY ENFORCEMENT NOTICE SERVED UNDER ARTICLE 30 OF THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005

1	Application to premises. The Regulatory Reform (Fire Safety) Order 2005, subject to paragraphs 6 (1) (a) to (g) below, applies to any premises
2	<p>The Order does not apply in relation to –</p> <ul style="list-style-type: none">a) domestic premises <p>Note: Where the premises are, or consist of, a house in multiple occupation this Order applies in relation to those parts of the premises which are not domestic premises;</p> <ul style="list-style-type: none">b) an offshore installation within the meaning of regulation 3 of the Offshore Installation and Pipeline Works (Management and Administration) Regulations 1995;c) a ship, in respect of the normal ship-board activities of a ship's crew which are carried out solely by the crew under the direction of the master;d) fields, woods or other land forming part of an agricultural or forestry undertaking but which is not inside a building and is situated away from the undertaking's main buildings;e) an aircraft, locomotive or rolling stock, trailer or semi-trailer used as a means of transport or a vehicle for which a licence is in force under the Vehicle Excise and Registration Act 1994 or a vehicle exempted from duty under that Act;f) a mine within the meaning of section 180 of the Mines and Quarries Act 1954, other than any building on the surface at a mine, andg) a borehole site to which the Borehole Sites and Regulations 1995 apply
3	<p>You may appeal (under Article 35 of the Order) against an enforcement notice served (under Article 30 of the Order). The appeal is made, within 21 days from the day on which the notice is served, to the magistrates' court for the area in which your premises is situated and may be brought on the grounds that you think that</p> <ul style="list-style-type: none">a) the service of an enforcement notice was based on an error of fact;b) the service of the enforcement notice was wrong in law, andc) the North Yorkshire Fire and Rescue Authority erred in the exercise of their discretion in serving the enforcement notice. <p>Without prejudice to the breadth of the grounds of appeal set out in paragraphs (a) to (c) above, examples of situations in which an appeal may lie are where,</p> <ul style="list-style-type: none">a) You dispute any of the facts in the notice which detail the steps which have to be taken in order to comply with any provision of the Order.b) You think that an unreasonable time period has been set for the taking of the steps set out in the notice.

4	The North Yorkshire Fire and Rescue Authority may grant, at their discretion, an extension (or further extension) of time specified for the steps to be taken if an appeal against the notice is not pending. Application for an extension of time should be addressed to: - The Chief Officer, North Yorkshire Fire and Rescue Authority, Thurston Road, Northallerton DL6 2ND.
5	<p>Failure to comply with the enforcement notice served under Article 30 of the Order within the time specified in the notice (or such further time as the North Yorkshire Fire and Rescue Authority may, at their discretion, grant) is a criminal offence under Article 32(d) of the Order. A person guilty of such an offence shall be liable,</p> <p>a) on summary conviction to a fine not exceeding the statutory maximum; or b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or both.</p>
6	In any proceedings for an offence referred to above, where the commission by any person of an offence under the Order, is due to the act or default of some other person, that person is guilty of the offence, and a person may be charged with and convicted of the offence whether or not proceedings are taken against the first mentioned person
7	Nothing in the Order operates so as to afford an employer a defence in any criminal proceedings for a contravention of those provisions by reason of any act or default of an employee or person nominated to implement measures for fire-fighting and procedures for serious and imminent danger and for danger areas, and appointed to assist him/her in undertaking such preventive and protective measures as necessary.
8	Subject to Note 9, in any proceedings for an offence under the Order, except for a failure to comply with articles 8 (1) (Duty to take general fire precautions) or 12 (Elimination or reduction of risks from dangerous substances), it is a defence for the person charged to prove that he/she took all reasonable precautions and exercised due diligence to avoid the commission of such an offence
9	If you are the responsible person you are under an obligation to comply with the provisions of the Order or of any regulations made under it. If you have failed to comply and you and the North Yorkshire Fire and Rescue Authority cannot agree on the measures which are necessary to remedy the failure(s), under article 36 of the Order you and the North Yorkshire Fire and Rescue Authority may agree to refer the question, as to what measures are necessary to remedy the failure(s), to the Secretary of State for a determination.
10	It should be noted that in order to satisfy the "Environment and Safety Information Act 1988" the North Yorkshire Fire and Rescue Authority is obliged to enter details of any enforcement notice into a register to which the public have access. If you feel that any such entry would disclose secret or confidential trade or manufacturing information then you should appeal in writing to the Authority within a period of fourteen days following the service of the notice.
11	To assist with administration procedures, it would be helpful if you could quote the reference number (at the top of the notice) when dealing with the North Yorkshire Fire and Rescue Authority.

NORTH YORKSHIRE FIRE AND RESCUE AUTHORITY

STANDARD TERMS AND DEFINITIONS

FIRE RESISTING (FIRE RESISTANCE): The ability of a component or construction of a building to satisfy, for a stated period of time, some or all of the appropriate criteria specified in the relevant British Standard.

INTUMESCENT STRIPS: A strip of material placed along the door edges (excluding the bottom edge), or frame, that will react to heat by expanding to form a seal to the passage of hot gases and flame.

SMOKE SEAL: A flexible strip of material (often used in conjunction with an intumescent strip) placed along the door edges or frame to limit the spread of cold smoke during the early stages of a fire.

SELF-CLOSING DEVICE: A device which is capable of closing the door from any angle and against any latch fitted to the door. Rising butt hinges are not acceptable.

AUTOMATIC DOOR RELEASE: A device, linked to (or operated by the sound of) the fire alarm system, that when fitted to a fire resisting self closing door, enables it to be held open during normal working conditions.

EMERGENCY ESCAPE LIGHTING: That part of the emergency lighting system provided for use when the electricity supply to the normal lighting fails so as to ensure that the means of escape can be safely and effectively used at all times.

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NORTH YORKSHIRE FIRE AND RESCUE SERVICE.

GOODWILL ADVICE

PREMISES: Evil Eye lounge, Stonegate, York

Possible increase in occupancy

If it is the desire to increase the current maximum occupancy above 100, this may be achieved by the following method and additional fire safety measures;

The conditions of the enforcement notice to be met in full

The two final exits are improved to provide two clear doors with a minimum effective width of 1050 mm each, with both doors being outward opening and free of any unauthorized security devices.

If both of the above conditions are met in full the Fire Authority would give serious consideration to any application to increase the maximum occupancy to 120, assuming all other necessary measures were in place and there is evidence of an effective management regime to maintain those measures.

NOTE FOR CASE – EVIL EYE 42 STONEGATE YORK YO1 8AS

Date:- 1 December 2007

Name of Officer:- Miss Hilary Hustwick

On the 30th November 2007 at 22:25pm I attended the above premises with PC Mick Wilkinson Police Licensing Officer and Nigel Woodhead Enforcement Officer, Licensing Dept City of York Council.

After introducing ourselves to the member of door staff I asked her what her occupancy was at present she answered ' I think maybe 120 people' I then asked her if she knew what her occupancy for the premises was and she replied '150 I think' After informing her that it was 100 people myself and PC Wilkinson entered the premises to carry out a count using clicker counters. Ground floor had 102 persons and upstairs including 1st and 2nd floor and toilets was 48 persons

After meeting back on the ground floor it was found that the member of door staff was still letting people in, and had to be asked by myself to stop letting anymore persons into the premises until we had it to a safe capacity.

AT 22:35 I telephoned Group manager Graham Buckle to ask for further advice he informed me to reduce the capacity to 100 people and clear the external means of escape before leaving the premises.

After discussions with the duty Manager Jonathan Smales he agreed to ask the members of the public on the first and second floor to vacate the building.

I used the clickers to count people out.

I informed Jonathan that there was already an enforcement noticed served on the premises for over occupancy and blocking of means of escape, and had been also told 4 weeks ago by Station Manager Calpin about the same issues and clearly had total disregard for the safety of the public in the premises with regards to fire.

Once the occupancy was brought down to 80 persons we informed Jonathan that he could now start letting member of the public back into the premises as long as he did not go over 100 persons and that was to include staff.

I informed the member of door staff that in future it would be a good idea to use a clicker counter so that she has an exact record of how many she is letting into the premises, she replied 'she had one upstairs and would start using now'.

Once leaving the premise I telephone Group Manager Graham Buckle at 23:02 to update him with the outcome of the visit.

Signed

Date 1 December 2007

file 1228

Joint Licensing Visits 19-10-07

File

42

Evil Eye, Stonegate.

Means of Escape.

A number of serious concerns re the maintenance of the escape routes have arisen.

The egress through the shop area at the front of the premises is to be available at all times, even when the shop is closed.

The side entrance door (used when the shop is closed) is a fire resisting door and an integral part of the escape strategy. It requires new intumescent strips and cold smoke seals. It is never to be wedged open.

The exit from the kitchen onto the rear escape stair is cluttered. The full exit width is to be available at all times.

The cold smoke seals are missing from the fire resisting kitchen door and should be replaced.

Lighting in the first floor lobby leading onto the rear external escape is inadequate as is the lighting on the external escape at first floor level. Faulty bulbs and or lighting units are to be replaced.

The side passageway allowing emergency egress from the rear of the premises is being used as a store and dumping ground. A clear, unobstructed route is to be available at all times. Any storage at the wider points of that route is to be managed and contained so that there is no possibility of obstruction of the route.

Joe

Extn: 2512
Ask for: Lesley Cooke/Nigel Woodhead
Our ref: LJC/CYC010783
e-mail: licensing.unit@york.gov.uk

29 October 2007

Forever Changes Ltd
42 Stonegate
York
YO1 8AS

Dear Sir or Madam

Licensing Act 2003
Fire Precautions (Workplace) Regulations 1997
Evil Eye, 42 Stonegate, York

On the evening of Friday, 19 October 2007, officers from City of York Council Licensing Section, and North Yorkshire Fire and Rescue Service visited the above premise to undertake a during performance inspection.

Mr Ian Loftus is the Designated Premise Supervisor for this premise, Personal Licence Number CYC010708, Johnno Smales was present during the inspection.

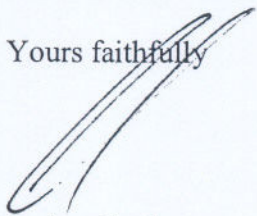
The Fire Officer has serious concerns regarding the maintenance of the escape routes, they are as follows:

1. The egress through the shop area at the front of the premises is to be available at all times when customers are admitted to the premises, even when the shop is closed.
2. The side entrance door (used when the shop is closed) is a fire-resisting door and an integral part of the escape strategy. It requires new intumescent strips and cold smoke seals. It must **not** be wedged open.
3. The exit from the kitchen onto the rear escape stair is cluttered. The full exit width is to be available at all times.
4. The cold smoke seals are missing from the fire resisting kitchen door and should be replaced.

5. Lighting in the first floor lobby leading onto the rear external escape is inadequate as is the lighting on the external escape at first floor level. Faulty bulbs and or lighting units must be replaced.
6. The side passageway allowing emergency egress from the rear of the premises is being used as a store and dumping ground. A clear, unobstructed route is to be available at all times. Any storage at the wider points of this route is to be managed and contained so that there is no possibility of obstruction of the route.

I trust these matters will be attended to. If you wish to discuss any of these points or any matters relating to your licence please contact this office on York (01904) 552512.

Yours faithfully



Lesley Cooke
Senior Licensing Officer

Cc: Joe Calpin, Station Manager, North Yorkshire Fire & Rescue Service ✓

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Signed for

Standard postal service with signature and barcode scanning on delivery. Ideal for items you might need to prove were received, like job applications or legal documents

Use Special Delivery for guaranteed next morning delivery with the security of barcode tracking throughout and compensation for loss or damage details of where your item is going

Name

Mr Ian Loftus

Building name or number, and street

The Evil Eye 42
Stonegate

Postcode, complete in full

YO 11 1 8AS

Reference

DH 6402 6398 7GB

barcode label to top left of package

N M Hutchinson MSc; MA;BA(Hon)
Chief Fire Officer/Chief Executive

Your Reference:

My Reference:
0209579 02 hah

When telephoning please ask for:
Station Manager Calpin

Recorded Delivery

Dear Mr Loftus

THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005

RE: ENFORCEMENT NOTICE NYFRS.ENF.01. 30.11.06. 00234

The Evil Eye
42 Stonegate
York
YO1 8AS

The North Yorkshire Fire and Rescue Authority are the enforcing authority, under Article 30 of the above legislation.

Following a fire safety audit of the above premises by one of my inspectors on 16 November 2006 I confirm that the matters and steps specified on the attached Schedule need to be carried out to remedy your failure to comply with the above legislation.

The attached Enforcement Notice is a legal requirement to which you have a right of appeal to a Magistrates' Court. Your attention is drawn to the notes that accompany this Notice.

If you are in any doubt as to the obligations placed upon you, or there is any relevant matter upon which you require clarification, you may write to me direct, or alternatively telephone your enquiry to the inspector named above.

Mr Ian Loftus
The Evil Eye
42 Stongate
York
YO1 8AS

ian@evil-eye.co.uk

mobile 07751 851143

Yours faithfully

for Chief Fire Officer/Chief Executive

Enc: Enforcement Notice
Notes to Accompany Enforcement Notice
Schedule to Enforcement Notice
Standard Terms and Definitions

NORTH YORKSHIRE FIRE AND RESCUE AUTHORITY
SCHEDULE REFERRED TO IN ENFORCEMENT NOTICE NO
NYFRS.ENF.01. 30.11.06. 00234
REQUIRING STEPS TO BE TAKEN UNDER ARTICLE 30 OF THE REGULATORY
REFORM (FIRE SAFETY) ORDER 2005

Name: Mr Ian Loftus

Premises: The Evil Eye

Address: 42 Stonegate York YO1 8AS

Date November 30 2006

Where appropriate, a plan may form part of this Schedule to illustrate the steps which, in the opinion of the North Yorkshire Fire and Rescue Authority, need to be taken in order to comply with The Regulatory Reform (Fire Safety) Order 2005. Other equally effective measures may be utilised to remedy the failures however you should first consult the fire authority.

Note Notwithstanding any consultation undertaken by the North Yorkshire Fire and Rescue Authority, **before** you make any alterations to the premises, **you** may need to apply for approval from either the Local Authority Building Control or an Approved Inspector and/or the approval of any other bodies having a statutory interest in the workplace.

SCHEDULE

The location and details of matters which are considered to be failures to comply with The Regulatory Reform (Fire Safety) Order 2005 are detailed below. The steps, or equally effective measures considered necessary, to remedy the failures are also detailed below.

Means of Escape (Article 14)

At the time of the inspection the fire escape from the first floor was completely blocked with tables and chairs and the external escape stair was completely blocked with rubbish and storage.

You have been notified on:-

October 21 2003

June 2 2004

September 17 2004

August 22 2005

November 21 2005

November 17 2006

that all fire exits from the premises should be kept clear at all times. The basement door was wedged open and as previously discussed with yourself it is paramount for fire safety reasons that this door be kept closed at all times should you want members of the public on the upper floors.

Emergency Lighting (Article 14(2)h)

The emergency lighting on the 1st floor fire exit should be on a maintained system. This means the lighting should be on at all times. Both lights on the 1st floor exit (internally and externally) were not in operation at the time of the inspection.

Occupancy

As you are aware the Fire Authority recommended an occupancy of 100 person for the whole premises. At the time of the inspection a head count was taken and including staff this figure was nearer 150 persons. The premises does not have sufficient exits for this amount of people to escape safety in the event of fire and the duty manager was unaware of the exact occupancy figure on your licence.

Fire Risk Assessment Article 9 (1)

You were required in a letter dated November 17 2006 to provide the Fire Authority with a copy of your risk assessment, this has still not been received. The Fire Authority have serious concerns with the management of these premises with regards to overcrowding and blocked exits and under Article 9 (1) require that a copy of your Fire safety risk assessment be forwarded to the above office.

Fire Alarm System (Article 13(1)a & 13 (2))

It was noted at the time of the inspection that the Fire Alarm System has not been extended into the kitchen area which was originally requested in a report dated 21 October 2003. It is imperative that this work be carried out should you still require members of the public to be on the upper floors.

NORTH YORKSHIRE FIRE AND RESCUE AUTHORITY

ENFORCEMENT NOTICE
NOTICE REQUIRING STEPS TO BE TAKEN UNDER
ARTICLE 30 OF THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005

Name: Mr Ian Loftus

Premises: The Evil Eye

Address: 42 Stonegate York YO1 8AS

Enforcement Notice Number **NYFRS.ENF.01. 30.11.06. 00234**

I Station Manager Joe Calpin on behalf of the North Yorkshire Fire and Rescue Authority, hereby give you notice that the North Yorkshire Fire and Rescue Authority are of the opinion that, as a person being under an obligation to do so, you have failed to comply with the requirements placed upon you by The Regulatory Reform (Fire Safety) Order 2005 in respect of the above named premises and the persons who may be on the premises or who may be affected by a fire on the premises.

The matters which, in the opinion of the North Yorkshire Fire and Rescue Authority, constitute the failure(s) to comply with articles 14 , 14(2)h articles 9(1) and article 13(1)a 13 (2 of The Regulatory Reform (Fire Safety) Order 2005 are specified in the schedule to this notice.

The North Yorkshire Fire and Rescue Authority are further of the opinion that the steps (or equally effective measures) identified in the schedule to this notice must be taken to remedy the specified failure(s) to comply with The Regulatory Reform (Fire Safety) Order 2005.

Unless the failures identified in the notice have been rectified within the given time limit, you will be deemed not to have complied with this notice and the North Yorkshire Fire and Rescue Authority may consider a prosecution against you. You may, however, apply for an extension to this time limit. (See notes).

You have the right to appeal against this notice (see notes), by way of complaint for an order, to the Clerk to the Court of the Magistrates' Court acting for the petty sessions area in which your premises is located. If you wish to bring an appeal, you must do so within 21 days of the date this notice is served on you. The Magistrates' Courts Act 1980 will apply to the proceedings. The bringing of an appeal shall have the effect of suspending the operation of this Enforcement Notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal.

Date: Signed:

.....
(On behalf of and duly authorised by the North Yorkshire Fire and Rescue Authority)

NORTH YORKSHIRE FIRE AND RESCUE AUTHORITY

NOTES TO ACCOMPANY ENFORCEMENT NOTICE SERVED UNDER ARTICLE
30 OF
THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005

1	Application to premises. The Regulatory Reform (Fire Safety) Order 2005, subject to paragraphs 6 (1) (a) to (g) below, applies to any premises
2	<p>The Order does not apply in relation to –</p> <ul style="list-style-type: none">a) domestic premises <p>Note: Where the premises are, or consist of, a house in multiple occupation this Order applies in relation to those parts of the premises which are not domestic premises;</p> <ul style="list-style-type: none">b) an offshore installation within the meaning of regulation 3 of the Offshore Installation and Pipeline Works (Management and Administration) Regulations 1995;c) a ship, in respect of the normal ship-board activities of a ship's crew which are carried out solely by the crew under the direction of the master;d) fields, woods or other land forming part of an agricultural or forestry undertaking but which is not inside a building and is situated away from the undertaking's main buildings;e) an aircraft, locomotive or rolling stock, trailer or semi-trailer used as a means of transport or a vehicle for which a licence is in force under the Vehicle Excise and Registration Act 1994 or a vehicle exempted from duty under that Act;f) a mine within the meaning of section 180 of the Mines and Quarries Act 1954, other than any building on the surface at a mine, andg) a borehole site to which the Borehole Sites and Regulations 1995 apply
3	<p>You may appeal (under Article 35 of the Order) against an enforcement notice served (under Article 30 of the Order). The appeal is made, within 21 days from the day on which the notice is served, to the magistrates' court for the area in which your premises is situated and may be brought on the grounds that you think that</p> <ul style="list-style-type: none">a) the service of an enforcement notice was based on an error of fact;b) the service of the enforcement notice was wrong in law, andc) the North Yorkshire Fire and Rescue Authority erred in the exercise of their discretion in serving the enforcement notice. <p>Without prejudice to the breadth of the grounds of appeal set out in paragraphs (a) to (c) above, examples of situations in which an appeal may lie are where,</p> <ul style="list-style-type: none">a) You dispute any of the facts in the notice which detail the steps which have to be taken in order to comply with any provision of the Order.b) You think that an unreasonable time period has been set for the taking of the steps set out in the notice.

4	The North Yorkshire Fire and Rescue Authority may grant, at their discretion, an extension (or further extension) of time specified for the steps to be taken if an appeal against the notice is not pending. Application for an extension of time should be addressed to: - The Chief Officer, North Yorkshire Fire and Rescue Authority, Thurston Road, Northallerton DL6 2ND.
5	<p>Failure to comply with the enforcement notice served under Article 30 of the Order within the time specified in the notice (or such further time as the North Yorkshire Fire and Rescue Authority may, at their discretion, grant) is a criminal offence under Article 32(d) of the Order. A person guilty of such an offence shall be liable,</p> <p>a) on summary conviction to a fine not exceeding the statutory maximum; or b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or both.</p>
6	In any proceedings for an offence referred to above, where the commission by any person of an offence under the Order, is due to the act or default of some other person, that person is guilty of the offence, and a person may be charged with and convicted of the offence whether or not proceedings are taken against the first mentioned person
7	Nothing in the Order operates so as to afford an employer a defence in any criminal proceedings for a contravention of those provisions by reason of any act or default of an employee or person nominated to implement measures for fire-fighting and procedures for serious and imminent danger and for danger areas, and appointed to assist him/her in undertaking such preventive and protective measures as necessary.
8	Subject to Note 9, in any proceedings for an offence under the Order, except for a failure to comply with articles 8 (1) (Duty to take general fire precautions) or 12 (Elimination or reduction of risks from dangerous substances), it is a defence for the person charged to prove that he/she took all reasonable precautions and exercised due diligence to avoid the commission of such an offence
9	If you are the responsible person you are under an obligation to comply with the provisions of the Order or of any regulations made under it. If you have failed to comply and you and the North Yorkshire Fire and Rescue Authority cannot agree on the measures which are necessary to remedy the failures(s), under article 36 of the Order you and the North Yorkshire Fire and Rescue Authority may agree to refer the question, as to what measures are necessary to remedy the failure(s), to the Secretary of State for a determination.
10	It should be noted that in order to satisfy the "Environment and Safety Information Act 1988" the North Yorkshire Fire and Rescue Authority is obliged to enter details of any enforcement notice into a register to which the public have access. If you feel that any such entry would disclose secret or confidential trade or manufacturing information then you should appeal in writing to the Authority within a period of fourteen days following the service of the notice.
11	To assist with administration procedures, it would be helpful if you could quote the reference number (at the top of the notice) when dealing with the North Yorkshire Fire and Rescue Authority.

file

**N M Hutchinson MSc; MA;BA(Hons); MI.Fire E.
Chief Fire Officer/Chief Executive**

Your Reference:

My Reference:
0209579 01 hah

When telephoning please ask for:
Miss Hilary Hustwick

**York Fire Station
Clifford Street
York
YO1 9RD**

Telephone: 01904 625272
Fax:

November 17, 2006

For the Attention of Mr Ian Loftus

Dear Mr Loftus

RE: THE EVIL EYE 42 STONEGATE YORK YO1 8AS

Regulatory Reform (Fire Safety Order) 2005

With reference to a Fire Officer's recent "During Performance Inspection" carried out at the above premises. The inspection revealed matters of serious concern in relation to the disregard of fire safety measures provided for the safety of persons resorting to the premises.

Means of Escape (Article 14)

At the time of the inspection the fire escape from the first floor was completely blocked with tables and chairs and the external escape stair was blocked with rubbish and storage. You have been notified on numerous occasions that all fire exits from the premises should be kept clear at all times. The basement door was wedged open and as previously discussed with yourself it is paramount for fire safety reasons that this door be kept closed at all times should you want members of the public on the upper floors.

Emergency Lighting (Article 14(2)h

The emergency lighting on the 1st floor fire exit should be on a maintained system. This means the lighting should be on at all times. Both lights on the 1st floor exit (internally and externally) were not in operation at the time of the inspection.

Mr Ian Loftus
42 Stonegate
York
YO1 8AS

Occupancy

As you are aware the Fire Authority recommended an occupancy of 100 person for the whole premises. At the time of the inspection a head count was taken and including staff this figure was nearer 150 persons. The premises does not have sufficient exits for this amount of people and the duty manager was unaware of the exact occupancy figure on your licence.

Fire Risk Assessment Article 9 (1)

As you will appreciate with overcrowding and exits blocked the Fire Authority have serious concerns with the management of these premises and under Article 9 (1) require that a copy of your Fire safety risk assessment be forwarded to the above office within the next 7 days.

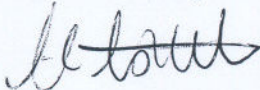
Fire Alarm System (Article 13(1)a & 13 (2))

It was noted at the time of the inspection that the Fire Alarm System has not been extended into the kitchen area which was originally requested in a report dated 21 October 2003. It is imperative that this work be carried out **immediately**.

A copy of this report has been forwarded to the Licensing Department at the City of York Council and the police licensing department.

Should you wish to discuss any item in this report please contact myself at the above.

Yours faithfully



Fire Safety Officer

Cc Lesley Cooke Licensing City of York Council
Cc Mick Wilkinson Police Licensing Officer

WITNESS STATEMENT

(CJ Act 1967, s.9; MC Act 1980, ss.5A(3) (a) and 5B; MC Rules 1981, r.70)

URN

Statement of: Michael Leslie Wilkinson

Age if under 18: Over 18yrs (if over 18 insert 'over 18') Occupation: Police Officer

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

Signature: ll O'Brien 952 Date: 19th Dec 2007

I am Police Constable 952 of the North Yorkshire Police presently stationed at York.

At 2225hrs on Friday 30th November 2007 I was on duty in full uniform in company with Hilary Hustwick (Fire Service) and Nigel Woodhead (Licensing Department, City of York Council) when, as a result of information received we attended the Evil Eye Lounge, Stonegate, YORK.

Whilst at the premises I liaised with Lynne Ward who was performing door supervisory duties on the main Stonegate entrance and asked her how many persons there were on premises. Ward was unable to give me an exact figure but intimated that she was under the impression that the capacity of the venue was 150 persons. Ward did not have any "clickers" in her possession.

In company with Hilary Hustwick I then undertook a head count of persons in the premises. Including staff, I ascertained that there were 48 persons on the first floor and 102 persons on the ground floor. A total of 150 persons.

Whilst undertaking this head count I also noted that the fire exits were blocked by refuge bins and there appeared to be a large amount of combustable rubbish stored directly beneath the main means of escape. This was a cause of concern from a Public Safety point of view – Public Safety being one of the four Licensing Objectives contained in the Licensing Act 2003.

These facts were then pointed out to the duty manager, Jonno Smales, who was also told that the premises had an occupancy figure of 100 people. Following a brief discussion between Hilary Hustwick, Jonno Smales and myself it was agreed that the venue would voluntarily close to allow the capacity to be reduced to below 100.

I then assisted Lynne Ward in safely assiting people to leave the venue until there were about 80 persons left on site before the venue re-opened.

Prior to resuming it was pointed out to Smales about the concerns that the Fire Service had in relation to the blocked means of escape and he intimated that this would be rectified.

ll O'Brien 952

Signature: ll O'Brien 952 Signature witnessed by:

Hilary Hustwick

From: Burton, Ray [Ray.Burton@york.gov.uk]
Sent: 11 December 2007 11:54
To: Hilary Hustwick
Subject: {Clean} Evil Eye. Stnegate, York

Hello Hilary

I carried out an inspection at the subject address on the 25/10/07. I followed this up with a letter to the manager, Steve Atkinson, on the 29/10/07. The matter discussed concerned the extent of the deployment of the canopy at the rear of the premises. I do not recall discussing waste bins on the 25th nor was the matter referred to in my letter dated 29th Nov.

Hope this is useful

Ray Burton
Smoke-free

* * * * *

Help protect the environment - please don't print this email unless you really need to.

* * * * *

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Statement of Witness

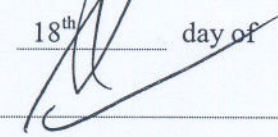
*(Criminal Procedure Rules 2005, r 27.1(1);
Criminal Justice Act 1967, s. 9, Magistrates' Courts Act 1980, s.5B)*

Statement of Nigel Philip Woodhead

Age if under 18 Over 18 (if over 18 insert 'over 18') Occupation Licence Enforcement Officer

This statement (consisting of 1 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe it to be true.

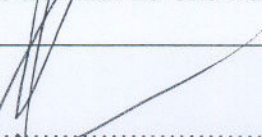
Dated the 18th day of December 2007

Signature 

I am employed by the City of York Council as a Licensing Enforcement Officer within the Directorate of the Neighbourhood Services.

During the evening of Friday 30th November 2007 I was engaged in enforcement checks on various licensed premises within the City of York Council area. I was in company with Pc 952 Mick Wilkinson from North Yorkshire Police and Hilary Hustwick from the North Yorkshire Fire and Rescue Service.

About 22.20hrs that evening we attended at the Evil Eye situated on Stonegate, York. On arrival we asked the female door supervisor how many were in the premise and she told us she thought there were about 120. Due to previous problems with occupancy at the premise a head count was conducted and found to be 150 persons over the three floors. This was 50 persons over the prescribed legal number. After liaison with the Fire Service it was agreed with the management at the Evil Eye to clear 50 persons from the premises. Pc Wilkinson along with the female door supervisor then commenced to get these persons from the premises whilst I and Hilary Hustwick stood outside the premises informing people that the premise were temporarily closed until further notice and that no-one was allowed in.

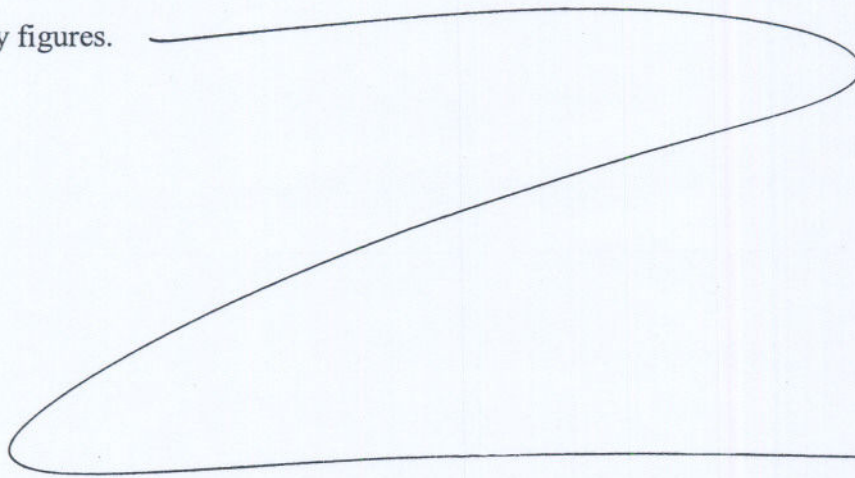
Signature  Signature witnessed by.....Page 1


Continuation statement of NIGEL PHILIP WOODHEAD

It was apparent that the door supervisor was not counting persons in and out prior to our arrival her 'count clicker' was behind the bar.

About 22.50hrs we left the premises having ensured that the correct number of persons were left within the premises.

During my visit I did not speak to any of the staff at the premises with regard to the legal occupancy figures.



Signature..... Signature witnessed byPage 2