

## **AGENDA SUPPLEMENT**

### **Licensing/Gambling Hearing**

**To:** Councillors Hook, Knight, and Nicholls

**Date:** Thursday, 30 May 2024

**Time:** 10.00 am

**Venue:** West Offices - Station Rise, York YO1 6GA

The Agenda for the above meeting was published on 22 May 2024. The attached additional documents are now available for the following agenda item:

**6. The Determination of an Application by York Racecourse Committee for the Variation of a Premises Licence [Section 35(3)(a)] in respect of York Racecourse, Knavesmire Road, York, YO23 1EX. (CYC-009168)**

- An update to Annex 5 of the report due to the withdrawal of the representation from Public Protection. (Pages 1 - 4)
- Additional Information submitted by the Applicant. (Pages 5 - 56)

This agenda supplement was published on **23 May 2024**

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**Williams, Reece**

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**From:** Williams, Reece  
**Sent:** 23 May 2024 13:28  
**To:** Williams, Reece  
**Subject:** York Racecourse PCX:000029000003847, premise variation

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**From:** Golightly, Michael <[michael.golightly@york.gov.uk](mailto:michael.golightly@york.gov.uk)>  
**Sent:** Tuesday, May 21, 2024 11:37 AM  
**To:** [licensing@york.gov.uk](mailto:licensing@york.gov.uk)  
**Cc:** Sefton, Helen <[Helen.Sefton@york.gov.uk](mailto:Helen.Sefton@york.gov.uk)>  
**Subject:** FW: York Racecourse PCX:000029000003847, premise variation

Hi All

Environmental Protection objected to the above variation of the premises licence for the York Race Course on the grounds of the prevention of public nuisance. The applicant has however, offered to amend the variation and so long as the following changes and condition about live music events are incorporated into the variation our objection is withdrawn:

- Amend the plans attached to the Premises Licence to take into account the development of the Southern end of the racecourse in respect of the facilities located in the Roberto Village Building and the Bustardthorpe Stand – this part of the variation, which we believe is not objected to, is to proceed as applied for.
- Staging of up to 4 indoor boxing or wrestling events between 10:00 and 04:00 per year – amend this to read: *“The staging of up to 4 indoor boxing or wrestling events between 10:00 and midnight per calendar year”*.
- Outdoor showing of films between 10:00 and 22:30 – *this part of the variation application is withdrawn.*
- Outdoor performance of dance between 10:00 and 22:30 – *this part of the variation application is withdrawn.*
- Outdoor performance of recorded music between 10:00 and 22:30 - *this part of the variation application is withdrawn.*
- Provision of late night refreshment outdoors between 23:00 and midnight – amend to read: *“The provision of late night refreshment outdoors between 23:00 and midnight on no more than 12 days per calendar year.”*
- To withdraw the request for permission for live/recorded music, performance of dance and late-night refreshment outdoors from the end of permitted hours on New Years Eve to the start of permitted hours on New Years Day but retaining the existing benefit on the premises licence for these activities to take place on New Years Eve into New Years Day as indoor licensable activities.

**Condition**

*“Live and recorded music and performance of dance outdoors, which meets the definition of Regulated Entertainment (inclusive of the music showcase events) shall only be permissible on a maximum of 4 days per calendar year between 17:00 and 22:30”.*

Regards

Michael Golightly  
**Technical Officer**

---

**From:** Jonathan Smith <>  
**Sent:** Tuesday, May 21, 2024 11:28 AM  
**To:** Golightly, Michael <[michael.golightly@york.gov.uk](mailto:michael.golightly@york.gov.uk)>  
**Cc:** Cooke, Lesley <[Lesley.Cooke@york.gov.uk](mailto:Lesley.Cooke@york.gov.uk)>; Sefton, Helen <[Helen.Sefton@york.gov.uk](mailto:Helen.Sefton@york.gov.uk)>  
**Subject:** RE: York Racecourse PCX:000029000003847

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Michael

I have now received instructions and we wish to withdraw the request for permission for live/recorded music, performance of dance and late-night refreshment outdoors from the end of permitted hours on New Years Eve to the start of permitted hours on New Years Day but retaining the existing benefit on the premises licence for these activities to take place on New Years Eve into New Years Day as indoor licensable activities.



Jonathan Smith | Partner

**Poppleston Allen**

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**From:** Golightly, Michael <[michael.golightly@york.gov.uk](mailto:michael.golightly@york.gov.uk)>  
**Sent:** Tuesday, May 21, 2024 10:55 AM  
**To:** Jonathan Smith <>  
**Subject:** RE: York Racecourse

Hi Jonathan

Further to our telephone conversation today. As discussed, subject to live and recorded music and the performance of dance outdoors from the end of permitted hours on New years eve to the start of permitted hours on new years day also being withdrawn. I am happy with the proposed changes. Please reply to this email, as soon as possible with an amended proposal and I will then make a formal comment onto the licensing department.

Regards

Michael Golightly  
Technical Officer

---

**From:** Jonathan Smith <>  
**Sent:** Tuesday, May 21, 2024 8:46 AM  
**To:** Cooke, Lesley <[Lesley.Cooke@york.gov.uk](mailto:Lesley.Cooke@york.gov.uk)>; Sefton, Helen <[Helen.Sefton@york.gov.uk](mailto:Helen.Sefton@york.gov.uk)>  
**Cc:** Golightly, Michael <[michael.golightly@york.gov.uk](mailto:michael.golightly@york.gov.uk)>  
**Subject:** York Racecourse

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Dear Lesley and Helen,

As you know, I am instructed by York Racecourse in respect of the variation application which is proceeding to a hearing on 30<sup>th</sup> May 2024.

Having taken my client's instructions we do wish to amend the variation application where indicated in italics below:

- Amend the plans attached to the Premises Licence to take into account the development of the Southern end of the racecourse in respect of the facilities located in the Roberto Village Building and the Bustardthorpe Stand – this part of the variation, which we believe is not objected to, is to proceed as applied for.
- Staging of up to 4 indoor boxing or wrestling events between 10:00 and 04:00 per year – amend this to read: *“The staging of up to 4 indoor boxing or wrestling events between 10:00 and midnight per calendar year”*.
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  - Increase the number of permitted occasions for staging and outdoor performance of live music after racing on either a Friday or Saturday between 10:00 and 22:30 from 3 to 4 per year, to be amended to read as follows: *“Live and recorded music and performance of dance outdoors, which meets the*

*definition of Regulated Entertainment (inclusive of the music showcase events) shall only be permissible on a maximum of 4 days per calendar year between 17:00 and 22:30". [This is as the proposed condition put forward by Michael Golightly, but with the limiting hours 17:00 – 22:30].*

I would be grateful if you would ensure that the amendments to the application are brought to the attention of the Licensing Sub-Committee, and also to those persons who have objected. We have sent a copy of this email to Michael Golightly.

Yours sincerely

**Jonathan**



Jonathan Smith | Partner

**Poppleston Allen**

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**Licensing Hearing 30 May 2024**

**York Racecourse**

**Additional documents submitted by Applicant**

- Emails relating to an amendment to the variation application (Pages 7-8)
- Noise Management Plan 2023 (Pages 8-24)
- Email from Public Protection December 2022 (Pages 25-26)
- Schedule of Temporary Event Notices for previously run boxing events (Pages 27-28)
- Link to time lapse video for development work (short version):  
[https://link.edgepilot.com/s/81a65a99/hj\\_uRxos6Uus0YNFZnw-Tw?u=https://url.uk.m.mimecastprotect.com/s/R5qRCAmJBhnZG7CGRJcH?domain=instagram.com](https://link.edgepilot.com/s/81a65a99/hj_uRxos6Uus0YNFZnw-Tw?u=https://url.uk.m.mimecastprotect.com/s/R5qRCAmJBhnZG7CGRJcH?domain=instagram.com)
- Link to time lapse video for development work (long version):  
<https://link.edgepilot.com/s/5d3ce052/NtqGdLow-kqAOfo3kBlcFw?u=https://url.uk.m.mimecastprotect.com/s/KzmGCBnKDCMDzEI6Nrdf?domain=vimeo.com>
- Case of Matthew Taylor v Manchester City Council (Pages 29-56)

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**Nick Landells**

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**From:** Jonathan Smith  
**Sent:** 21 May 2024 11:28  
**To:** Golightly, Michael  
**Cc:** Cooke, Lesley; Sefton, Helen  
**Subject:** RE: York Racecourse PCX:000029000003847

Michael

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Michael Golightly  
Technical Officer

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Yours sincerely

**Jonathan**



Jonathan Smith | Partner

**Poppleston Allen**



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YORK RACECOURSE SHOWCASE EVENTS  
NOISE MANAGEMENT PLAN - 2023

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## YORK RACECOURSE SHOWCASE EVENTS NOISE MANAGEMENT PLAN – 2023

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### QUALITY MANAGEMENT

**Document Ref:** 177/V06/2023  
**Prepared for:** York Racecourse

Revision	Prepared by	Issue Date
04 – 2021 Update	Matt Butler MIOA	15/07/2021
05 – 2022 Update	Matt Butler MIOA	05/07/2022
06 – 2023 Update	Matt Butler MIOA	17/07/2023

**Blue Sky Acoustics Ltd**  
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## 1. Introduction

1.1.1 Blue Sky Acoustics Ltd has been commissioned by York Racecourse to prepare a Noise Management Plan (NMP) for the control and management of noise from Music Showcase Events for the 2023 season.

1.1.2 The events will take place on Friday 28<sup>th</sup> and Saturday 29<sup>th</sup> July on land to the west of the Bustardthorpe Stand, York Racecourse. The events consist of both live and recorded music being played on an outdoor stage, typically for a duration no greater than two hours within the periods 20:30 to 22:30 on Friday and 17:30 to 19:30 on Saturday, in addition to daytime line and sound checks.

### 1.2 Purpose

1.2.1 The purpose of the NMP is to identify and implement strategies which will minimise the disturbance of residents from activities associated with the events, specifically music noise levels. Should complaints be received, the NMP provides strategies by which to mitigate and thereby facilitate a mutually acceptable outcome for both the complainant and the event organiser.

### 1.3 Contents

1.3.1 The NMP contains all pertinent information with regards to the management of music noise levels in accordance with the events licence. The following points are included:

- Nearest noise sensitive receptors and noise monitoring locations;
- Stage layout and orientation;
- Noise limits;
- Correspondence with local residents;
- Duty Holders and Chain of responsibility; and
- Complaints procedure.

## 2. Relevant Guidance

### 2.1 Code of Practice on Environmental Noise Control at Concerts (1995)

2.1.1 The Code of Practice (the Code) provides guidance for the assessment and control of noise at concerts and gives advice on how disturbance or annoyance can be minimised. The Code was written by the Noise Council, a group of professional bodies concerned with issues relating to noise and vibration in the community and industrial environments.

2.1.2 The scope of the Code is limited to environmental issues relating to noise from performance and sound checks only. It does not cover work related noise issues which are covered by the Control of Noise at Work Regulations 2005<sup>1</sup>, and the Health and Safety Executive's, *The Event Safety Guide*<sup>2</sup> - *A guide to the Health, safety and welfare at music and similar events*.

2.1.3 The Code provides guideline noise limits which should not be exceeded at 1 m from the facade of any noise sensitive property between the hours of 09:00 and 23:00. Appropriate noise limits should be discussed and agreed with the Local Authority prior to an event taking place. When applying noise limits to a specific event, the location of the venue and number of events held per year at the venue must be taken into consideration.

<sup>1</sup> Statutory Instrument 2005 No. 1643: The Control of Noise at Work Regulations, HMSO, 2005.

<sup>2</sup> Health and Safety Executive, *The Event Safety Guide* (Second Edition), 1999.



2.1.4 The document aims to minimise noise levels where possible however it is recognised that full compliance with the Code will not necessarily prevent all complaints. Local factors such as topography and atmospheric conditions may affect the likelihood of complaints being received. Compliance with the Code also does not in itself prevent action from being taken under the Environmental Protection Act 1990 (EPA). Action under the EPA is unlikely where the relevant departments within the Local Authority have been consulted prior to the event occurring, the event is well planned and managed and is limited to the specific times and duration agreed.

## 2.2 Low Frequency Noise

2.2.1 Two footnotes are included in The Code which indicate low frequency noise may be more of a problem at larger distances from the event where the frequency balance of music alters so that only low frequency bass beats remain. This is due to lower frequencies attenuating with distance at a lower rate than mid and high frequency content.

2.2.2 With regard to advice on low frequency levels, The Code states that no precise guidance was available at the time of publishing the document, however the following was included in the document as a guide:

*"A level of 70 dB in either the 63Hz or 125Hz octave frequency band is satisfactory, whereas a level of 80 dB or more in either of those octave frequency bands causes significant disturbance."*

2.2.3 This advice was based upon a study undertaken by J.E.T Griffiths et al. (1993)<sup>3</sup>, one of the authors of The Code, addressing low frequency sound from concerts and specifically relates to noise impacts at locations 2km and beyond from the venue. The distances at which these limits were intended to apply were further clarified in a paper by the same author: *Environmental Noise Guidelines and Sound Management for UK Concerts: 2004*.

2.2.4 To underline the purpose of low frequency limits, J.E.T Griffiths<sup>4</sup> issued a letter addressed to Lambeth Council's Noise and Scrutiny Commission in a subsequent dispute clarifying that the low frequency limits referenced in The Code were intended for noise impact at measurement locations 2km and beyond from a venue, and that the use of the overall LAeq noise limit in closer proximity would therefore adequately take account of low frequency sound.

2.2.5 This is supported by research carried out for Defra (2006)<sup>5</sup> which reviewed various noise indices with community response to music sources. The research concluded that LAeq was the best descriptor for assessment of music noise without the need for additional low frequency limits. While this research was specifically based on music from pubs and clubs, late at night and on an infrequent basis, it does bear relevance to music noise from concerts which are also held on a similar basis.

## 2.3 Code of Practice and Guidance Notes on Noise Control for Concerts and Outdoors Events

2.3.1 The City of York Council's (CYC) Code of Practice sets out the Council's approach to the control of noise from outdoor events. The document aims to strike a balance between the production of a successful music noise event, the enjoyment of attendee's and the protection of the residents living within the City of York.

2.3.2 The Council's Code of Practice expands on the guidance written in the Noise Council's Code of Practice on Environmental Noise at Concerts and gives practical advice on the control of noise for specific noise events.

2.3.3 All duty holders<sup>6</sup> are expected to have read and understood this document in advance of an event taking place.

<sup>3</sup> A study of low frequency sound from pop concerts. J.E.T Griffiths, J.G Staunton & S.S Kamtha, Proceedings of the Institute of Acoustics, Vol15, Part 7, 1993.

<sup>4</sup> Letter addressed to the Noise Nuisance Scrutiny Commission, Lambeth Council, Public Submission by Lock N Load Events Limited in Relation to Noise at Events, J.E.T Griffiths, March 2011. <https://moderngov.lambeth.gov.uk/mgConvert2PDF.aspx?ID=7502&T=10>

<sup>5</sup> Noise from Pubs and Clubs (Phase II), Capita Symonds, Defra Contract NANR 163, May 2006.

<sup>6</sup> A Duty Holder is defined as a person or organisation with a level of responsibility required to control noise levels. Roles and responsibilities of duty holders are described in Section 6: Roles and Responsibilities.

### 3. Noise Limits

- 3.1.1 The noise limit for live showcase events is detailed in the licence as 65 dB(A),  $L_{Aeq}$  over a 15-minute period at the nearest residential properties.
- 3.1.2 Whilst the noise limits are stipulated as 65 dB(A), The Code of Practice on Environmental Noise Control at Concerts advocates that where circumstances require, a shorter measurement period of 1-minute  $L_{Aeq}$  can be used as an early warning mechanism to identify likely exceedances of the limit. This is most applicable in circumstances where there are several monitoring locations and the event is of a short duration; reflective of the scenario at live showcase events. Where a 1-minute measurement is undertaken the Code supports an additional control limit typically 2-3 dB(A) above the 15-minute  $L_{Aeq}$  noise limit (67/68 dB(A)). This is due to a shorter measurement period representing a higher music noise level without breaks or pauses and therefore a worst-case scenario.

### 4. Stage Layout

- 4.1.1 Each event will include one live stage on land to the south west of the Bustardthorpe Stand, oriented towards the north; therefore partially shielded from the closest residential area (The Residence) located to the north east. The location and orientation of the stage is detailed on Figure 1: *Event Monitoring Locations*.

### 5. Noise Monitoring Methodology

#### 5.1 Sensitive Receptors and Noise Monitoring Locations

- 5.1.1 The most appropriate locations for noise monitoring have been established through a previous consultation process with CYC representing all closest residential properties around the event site and additionally taking consideration of previous complaint locations.
- 5.1.2 Table 1 details the nine monitoring locations agreed with CYC to be representative of the closest noise-sensitive receptor areas around the event site. The monitoring locations are also detailed on Figure 1: *Event Monitoring Locations*.

**Table 1: Noise Monitoring Locations**

Location	Approximate Distance to Stage, m
The Residence	235
The Chocolate Works	440
Knavesmire Crescent	470
Nelsons Lane	810
Albermale Road	815
Pulleyn Drive	1055
Coggan Close	1125
Trentholme Drive	1150
Corner of Tadcaster/Racecourse Road	1170

- 5.1.3 Properties further from the event site will experience a lower music noise level than those measured at the monitoring locations identified above; it will therefore be considered that compliance is naturally achieved at all other locations if measured music noise levels at the closest receptors detailed in Table 1 are within the limits.
- 5.1.4 During noise monitoring, measurements will be undertaken at the closest monitoring location and will move progressively further away from the stage position. In order to progress around the locations in the available time, short-term 5-minute measurements will be taken to demonstrate compliance.



- 
- 5.1.5 It is expected that during the course of the monitoring process, properties which are found to experience the greatest noise impact will be prioritised for more regular monitoring and those which experience lower noise levels will be subject to less frequent measurement.
  - 5.1.6 All noise measurement results will be recorded in the format of noise survey record sheets and a copy of the results provided to CYC upon request. A copy of the noise survey record sheet to be used is presented in Appendix A.

## **6. Roles and Responsibilities**

6.1.1 A key aspect to a successful event is the identification of key 'Duty Holders'; specifically, their roles and responsibilities. Those involved in the production and control of music noise are responsible for being clearly aware of both their own specific roles and responsibilities and those of others. Clarity between Duty Holders is essential to ensure issues are addressed effectively and in a timely manner.

### **6.2 Event Organiser (Racecourse Management Team)**

6.2.1 The Racecourse Management Team as Event Organiser holds overall responsibility for the management of the event and the appointment of a competent production management company and acoustic consultant.

6.2.2 The Event Organiser will ensure that:

- All relevant information relating to the production and control of noise is provided to other duty holders;
- Appropriate communication with neighbouring residents is undertaken including a point of contact; and
- The production management company and noise consultant communicate and carry out their duties.

### **6.3 Production Management Company**

6.3.1 The Production Management Company are responsible for the installation of the stage and operation of a sound system which is suitable for the event site. The Production Management Company will assume overall responsibility and control of the sound desk and speakers throughout the event.

6.3.2 The Production Management Company will ensure:

- Correct orientation of the stage;
- Correct installation and operation of the sound system and any associated delay towers;
- A propagation test will be scheduled prior to the start of the event;
- All sound engineers, including guests are aware of the music noise limit and associated front of house (FOH) target level; and
- Compliance with the music noise limit.

### **6.4 Sound Engineer**

6.4.1 The Sound Engineer is solely responsible for the quality and control of music noise levels at the mixing desk and on stage. The Sound Engineer will be responsible for the control of noise emanating from the speaker systems and all ancillary equipment for the duration of the event and will be the first point of contact for the Acoustic Consultant should noise levels need to be reduced. Prior to the opening of the event, the Sound Engineer will ensure a propagation test is undertaken to calibrate off-site noise limits with an equivalent FOH reference limit. The Sound Engineer will seek to comply with FOH noise limits at all times and will be briefed on the chain of responsibility.

### **6.5 Acoustic Consultants**

6.5.1 Two Acoustic Consultants will be present during each event and will be responsible for off-site short-term noise monitoring, FOH noise monitoring and direct communication with the Sound Engineer and the handling and investigation of complaints where appropriate. Key duties will include liaising with the event organiser and other duty holders.

6.5.2 The Acoustic Consultants will ensure:

- Consultation with CYC is undertaken before each event to discuss key monitoring areas and a means of direct communication during the event where required;
- A sound propagation test is undertaken prior to the start of the event and FOH limits established;

- 
- Continuous attended FOH noise monitoring is undertaken at each event;
  - Off-site short-term noise monitoring of music noise levels is undertaken at the most sensitive noise receptors, particularly at the start of the event;
  - That the Sound Engineer is directly informed of any required actions to reduce noise levels;
  - All complaints directly received are recorded and investigated through attended measurements at the complainant's property where considered valid in the time available; and
  - Compliance with the music noise limit.

## **7. Complaints Procedure**

- 7.1.1 All complaints received directly by the racecourse on event days will be passed immediately to the Acoustic Consultant via two-way radio or mobile telephone.
- 7.1.2 All contact received from CYC by the Event Organiser in relation to noise should also be directed to the Acoustic Consultant. However, prior to each event the Acoustic Consultant will contact CYC to provide a mobile telephone number for direct liaison during the event in order to investigate complaints promptly or provide immediate updates on the measured noise levels where required.
- 7.1.3 Upon the receipt of a complaint, details will be recorded including the caller's name, address and contact telephone number. The response to the complaint will be based upon the professional judgement of the Acoustic Consultant which will take into consideration the current level of music noise measured around the site at the time of the call.
- 7.1.4 Where an issue is identified, attended noise monitoring will be undertaken at the earliest opportunity at or near to the complainant's residence to determine the specific level of music noise. Where the measured music noise level is compliant with the music noise limit this will be explained to the complainant. If the music noise level is over the agreed noise limit, the FOH Acoustic Consultant will inform the Sound Engineer and request that music noise levels are reduced by the desired amount. A subsequent measurement will be taken to ensure that any action has taken effect.
- 7.1.5 The complainant will be given information on the progress of the investigation and any actions taken as appropriate.
- 7.1.6 Every effort will be made to ensure that the concerns of residents are addressed in a manner that facilitates a mutually acceptable outcome for both the complainant and the Event Organiser. Any actions taken will be recorded and documented within a post event noise report which will be submitted to CYC's Environmental Protection Unit upon request.

## **8. Noise Control Strategy**

### **8.1 Prior to the Event**

- 8.1.1 A propagation test will be undertaken prior to the start of the event using recorded music at “show level”, in order to quantify the maximum permissible noise level at the front of house position relative to the noise limit at the closest monitoring locations. Sufficient headroom will be included in the FOH reference noise limit to help avoid a breach of the noise limits at nearby receptors.
- 8.1.2 A short meeting will be scheduled to occur prior to the start of the event between all Duty Holders in order to review the responsibilities, monitoring process, complaints procedure, methods of communication and noise control strategy. Any queries or uncertainties with the process will be raised and clarified at this time.

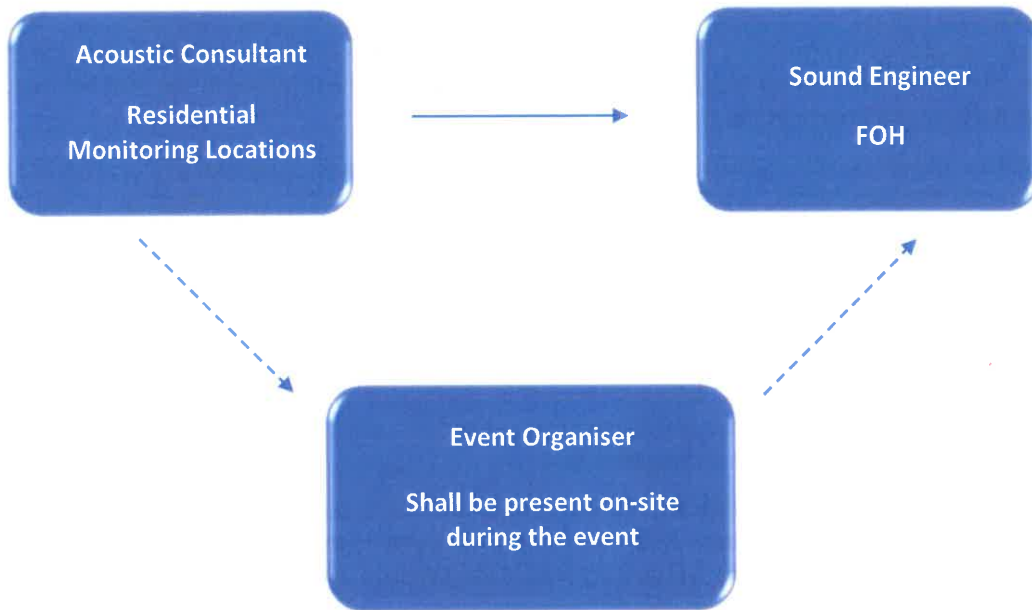
### **8.2 During the Event – FOH Location**

- 8.2.1 An Acoustic Consultant will be designated to the FOH position for the duration of the event equipped with a Class 1 sound level meter and a Class 1, 10Eazy monitoring system configured with a monitor to help visually guide the Sound Engineer. Both systems will be configured to continuously measure the short term 5-minute  $L_{Aeq}$  to provide a guide for the sound engineer and this will be compared directly to the reference noise limit established during the propagation test.
- 8.2.2 Where the music noise level reaches the FOH reference noise limit, the 10Eazy system will visually indicate the required action to the engineer. The FOH Acoustic Consultant will also instruct the sound engineer to closely monitor the level and make a reduction should an exceedance occur.

### **8.3 During the Event – Off-site Monitoring Locations**

- 8.3.1 Where music noise levels are found to be within 3 dB of the licensed noise limits by the off-site Acoustic Consultant, the Sound Engineer will be informed.
- 8.3.2 Should the measured noise levels exceed the agreed noise limits the following noise control strategy will be implemented:
- Following the conclusion of a 5-minute measurement whereby an exceedance has been recorded, the Sound Engineer will be immediately informed;
  - The level of exceedance and the advised reduction will be communicated and the levels immediately reduced by the Sound Engineer;
  - A consecutive 15-minute measurement will be undertaken in the location of the measured exceedance to confirm compliance with the noise limit.
- 8.3.3 Where the noise limits are still exceeded following the above process, the noise control strategy shall be escalated as follows:
- The level of exceedance and the advised reduction will be communicated and the levels immediately reduced by the Sound Engineer;
  - A 15-minute measurement will be undertaken at the location of the measured exceedance to confirm compliance with the noise limit;
  - Where compliance with the limit is not achieved the Event Organiser will be informed and advised to immediately reduce levels to comply with the event license.
- 8.3.4 Communication between the Acoustic Consultants, Sound Engineer and Event Organiser will take place by two-way radio or mobile telephone. The communication and escalation path for the control of music noise levels is detailed overleaf.

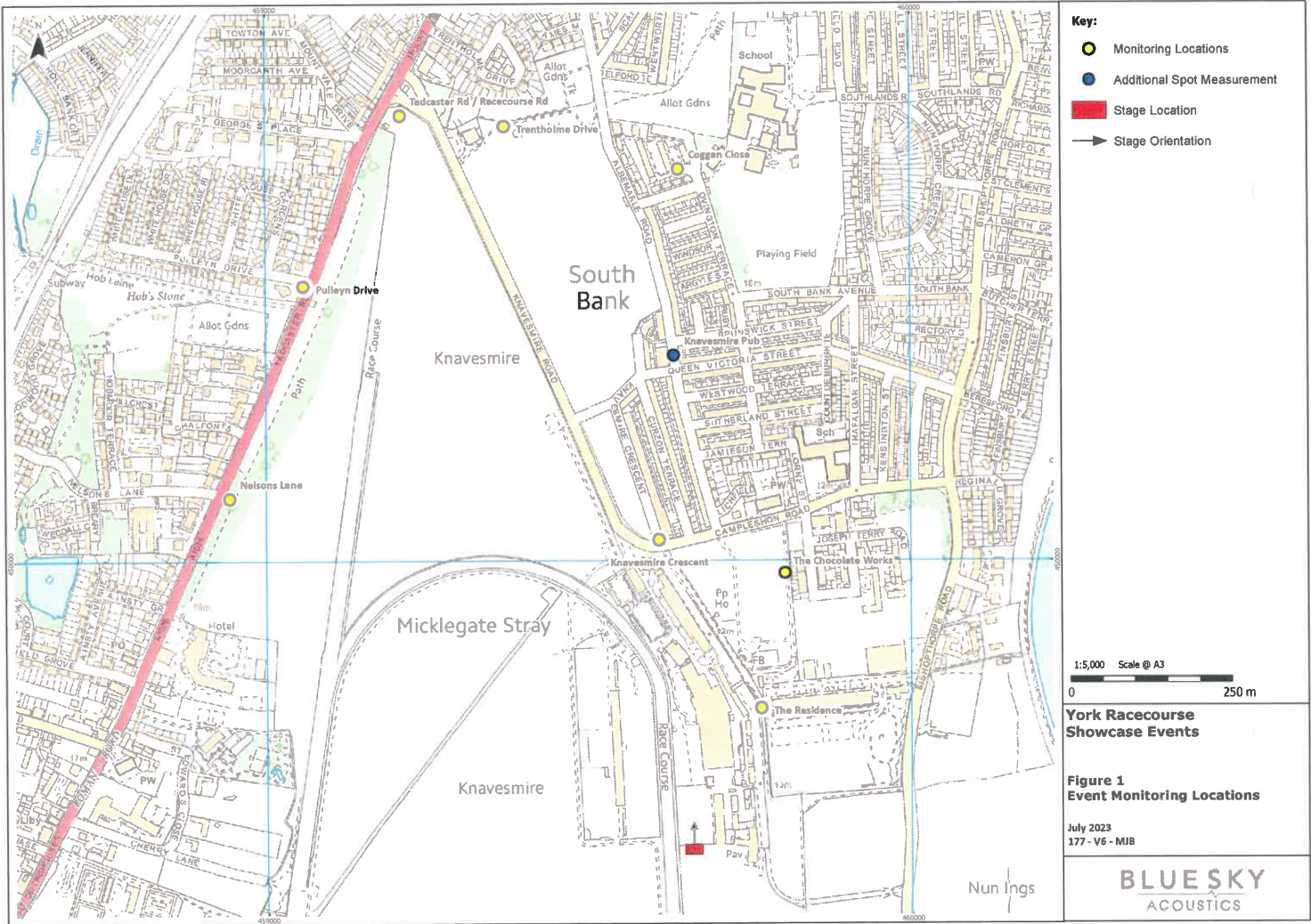
**Flow Chart 1: Communication and Escalation Path for Noise Control**



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**Figure 1: Noise Monitoring Locations**





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**Appendix A – Noise Survey Record Sheet**

York Racecourse Showcase  
 Noise Measurement Record Sheet  
 Artist:  
 Date:



Location	Time	Measurement Duration	Wind Speed m/s	Wind Direction	Weather Conditions	FOH, LAeq dB	LAeq, dB	Noise Limit	Margin	Action / Comments
The Residence								65	65	
Knavesmire Crescent								65	65	
Pulleyn Drive								65	65	
Nelsons Lane								65	65	
Tadcaster/Racecourse road								65	65	
Trentholme Drive								65	65	
Coggans Close								65	65	
Knavesmire Pub								65	65	
Curzon Terrace								65	65	
Chocolate Works								65	65	
The Residence								65	65	
Knavesmire Crescent								65	65	
Pulleyn Drive								65	65	
Nelsons Lane								65	65	
Tadcaster/Racecourse road								65	65	
Trentholme Drive								65	65	
Coggans Close								65	65	
Knavesmire Pub								65	65	
Curzon Terrace								65	65	
Chocolate Works								65	65	

**Nick Landells**

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**From:** Golightly, Michael <  
**Sent:** 19 December 2022 11:24  
**To:** Phil Atkinson  
**Subject:** Advice on events at the Knavesmire

Hi Phil

I hope you are well. Further to our discussion last week about the events at the race course in relation to noise control.

As mentioned the two smaller events with the tribute bands were well below your target noise levels and we received no complaints about these events. We did receive complaints about the show case events, however, some of these were about the sound checks which must take place and we checked at one complainant's property during the event where the noise levels were actually well below the target level. There was a technical breach of the noise limits at the end of the Madness concert, however, this was only for a short period of time and all in all these two events were well managed.

In terms of information about other events ran on separate premises licences, you will have to make a request for information through a freedom of information (FOI) request. In order to do this please contact our FOI team via City of York Council's web page:

<https://www.york.gov.uk/FOI>

I hope this has been helpful.

Regards

Michael Golightly  
**Technical Officer**

\*\*\*\*\*

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\*\*\*\*\*

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<b>Date</b>	<b>Hours</b>	<b>Number of people</b>	<b>Nature of event</b>	<b>Location</b>
5 Nov 2022	2000 - 2245	370	Amateur boxing	Ebor Stand
26 Nov 2022	1730-2200	350	Amateur boxing	Ebor Stand
15 Feb 2023	1930 - midnight	499	Amateur boxing	Ebor Stand
24 Feb 2023	1800-2300	499	Amateur boxing	Ebor Stand
15 April 2023	1700-2200	450	Amateur boxing	Ebor Stand
28 April 2023	1900-2330	450	Amateur boxing	Ebor Stand
27 Sept 2023	1900-2330	499	Amateur boxing	Ebor Stand
25 Nov 2023	1930-2300	250	Amateur boxing	Ebor Stand

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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

Date: 07/12/2012

Before :

**MR JUSTICE HICKINBOTTOM**

Between:

**MATTHEW TAYLOR**

**Appellant**

- and -

**(1) MANCHESTER CITY COUNCIL**  
**(2) TCG BARS LIMITED**

**Respondents**

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**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

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HON MR JUSTICE HICKINBOTTOM



**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):

“... ”

- Accountability: we strongly believe that the licensing authority should be accountable to local residents whose lives are fundamentally affected by the decisions taken.
- 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.
- 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:

“...

- In accordance with [the definition of ‘relevant representation’], you should demonstrate how your representation affects the promotion of the licensing objectives.
  - 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 applicationand 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):

“ ...

- An extension of hours [for both sale of alcohol and provision of entertainment by one hour per day, ending one hour later each day].
- Internal works to the ground floor premises.
- 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.
- 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 a 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 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 be 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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