

Licensing Sub-Committee Report

Item No:	
Date:	12 January 2017
Licensing Ref No:	16/11644/LIPN - New Premises Licence
Title of Report:	Duke of York 45 Harrowby Street London W1H 5HX
Report of:	Director of Public Protection and Licensing
Wards involved:	Bryanston And Dorset Square
Policy context:	City of Westminster Statement of Licensing Policy
Financial summary:	None
Report Author:	Miss Bina Patel Senior Licensing Officer
Contact details	Telephone: 020 7641 2125 Email: bpatel@westminster.gov.uk

1. Application

1A Applicant and premises			
Application Type:	New Premises Licence, Licensing Act 2003		
Application received date:	26 October 2016		
Applicant:	Max Barney Limited		
Premises:	Duke Of York		
Premises address:	45 Harrowby Street London W1H 5HX	Ward:	Bryanston and Dorset Square
		Cumulative Impact Area:	No
Premises description:	Public House		
Premises licence history:	These premises currently hold a premises licence which was granted by a Licensing Sub Committee on 13th October 2016		
Applicant submissions:	This is a shadow licence application submitted by the landlords Max Barney Limited. The application is for the same terms as per the existing licence.		

1B - Proposed licensable activities and hours

Recorded Music				Indoors, outdoors or both			Indoors
Day:	Mon	Tues	Wed	Thur	Fri	Sat	Sun
Start:	10:00	10:00	10:00	10:00	10:00	10:00	12:00
End:	23:00	23:00	23:00	23:00	23:00	23:00	22:30
Seasonal variations/ Non-standard timings:			From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.				

Late Night Refreshment:				Indoors, outdoors or both			Indoors
Day:	Mon	Tues	Wed	Thur	Fri	Sat	Sun
Start:	23:00	23:00	23:00	23:00	23:00	23:00	N/A
End:	23:30	23:30	23:30	23:30	23:30	23:30	N/A
Seasonal variations/ Non-standard timings:			From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.				

Sale by retail of alcohol				On or off sales or both:			Both
Day:	Mon	Tues	Wed	Thur	Fri	Sat	Sun
Start:	10:00	10:00	10:00	10:00	10:00	10:00	12:00
End:	23:00	23:00	23:00	23:00	23:00	23:00	22:30
Seasonal variations/ Non-standard timings:			From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.				

Hours premises are open to the public							
Day:	Mon	Tues	Wed	Thur	Fri	Sat	Sun
Start:	10:00	10:00	10:00	10:00	10:00	10:00	12:00
End:	23:30	23:30	23:30	23:30	23:30	23:30	23:00
Seasonal variations/ Non-standard timings:			From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.				
Adult Entertainment:			N/A				

2 – Representations

2-A Other Persons	
Name:	Mr Nicholas Bond
Address and/or Residents Association:	26 Molyneux Street London
Received:	5 th November 2016

The current occupiers of the premises @ 45 Harrowby St have held large parties in the pub, and spilling out into the street, over the past 3 weekends, including playing loud music past 1am. I would ask that, if the licence is granted, a condition is attached restricting patrons to the interior of the pub from 9pm, and that no drinks are allowed to be taken outside after that time. This would be in line with other local establishments and appropriate for a residential area with many young families.

Additionally, a second condition to be attached requiring the pub to remove the external seating at 9pm, to assist in enforcement of the first condition, and also prevent non-patrons from using them late at night, causing a disturbance.

In line with these conditions, a third condition should be added, requiring the pub to cease playing music past 11pm on weekdays, 10.30pm on Sundays. And that the volume of music be kept to a level such that it cannot be heard outside the premises, in consideration that this is a highly populated residential area.

Email exchanges between resident and applicants representatives

From: Angie Gardner
Sent: 02 December 2016 09:07
To: 'Nickebond@gmail.com'
Cc: 'Nelson, Nicholas: WCC'
Subject: Duke of York, Harrowby Road, London - New Premise Licence

Hi Nick

I have been provided your details by the Licensing Department in respect of your representation to the above application.

I act on behalf of the landlords of the above premises, H Company 2 Limited, who requested I submit an application for a "shadow" licence for this site. A "shadow" licence is a licence held by the landlords not currently used to permit licensable activities but merely to protect the landlords should the tenant at the premises have issues and his licence be revoked or surrendered.

I can confirm this application has been submitted in the same terms as the existing Premises Licence, namely, no sale of alcohol beyond 2300 and the premises to close at 2330 at the latest.

I note that your representation was sent to the Licensing Authority on 5th November 2016 but unfortunately it was only forwarded to us on 29th November 2016. We made our clients aware immediately. We apologise this was not passed to us earlier in order to speak to the caretakers sooner.

My clients are disappointed to hear of the issues you have had recently with the premises. Our clients have instructed caretakers to oversee the premises at the moment, until such time as the new tenant takes possession of the site. This is to ensure no unauthorised personnel gain access, for example "squatters".

The tenant is due to take possession around 21st December 2016. In the meantime, our clients have investigated your concerns with the premises. It appears that there have been private parties at the premises, and nothing to do with the existing Premises Licence or the proposed "shadow" licence.

My clients have the power to remove the caretakers from the property if issues continue. ***The caretakers have now been informed of the above and instructed to hold no further parties. If they do they will be removed.***

We have provided conditions within our application to minimise noise disturbance for local residents, namely:-

1. Alcohol consumed outside the premises building shall only be consumed by patrons seated at tables
2. All outside tables and chairs shall be rendered unusable by 2200 each day;
3. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.

Our clients are confident that this issue has now been resolved and no further private parties will take place at the premises.

in light of the above I wonder whether you would be minded to withdraw your representation but contact me direct should you have any further issues that my client may not be aware of.

Many thanks

Angela

From: Nick Bond [mailto:nickebond@gmail.com]

Sent: 06 December 2016 11:05

To: Angie Gardner

Cc: Nelson, Nicholas: WCC

Subject: Re: Duke of York, Harrowby Road, London - New Premise Licence

Angie

I appreciate your response, and that you have dealt with the issue of the parties taking place at the premises.

While I have no overall objection to the pub, in a residential area the restrictions attached to a license are vitally important for there to be a good relationship between a pub and residents.

The standard locally for stopping patrons consuming drinks outside is **9pm**. All outside tables and chairs should be **removed** at that time. The picnic tables are currently 'unusable' stacked outside the pub, but that does not prevent people from sitting on/at them at 2am.

Practically, a condition of 9pm will mean by ~9.30pm, unless the pub is rigorous in enforcing that policy, and able to constantly guard against patrons (smokers in particular) returning outside.

Pushing the condition back to 10pm, means that it will be ~10.30pm, and later if patrons are uncooperative, which is especially likely during late summer evenings.

The control of off-sales by the pub, whether sealed or not, is not practically possible once a patron has left the building. Any container can and will be opened and consumed in the immediate vicinity, leading to noise and disturbance.

Any license for off-sales should end at the same time as that for consuming alcohol outside.

You do not address my concerns regarding noise from the pub being able to be heard outside. The volume of music should be kept to a level such that it can not be heard outside the premises at any time.

I am not minded to withdraw my objection.

Regards

Nick Bond

Morning Nick

Many thanks for your response and taking the time to read through my email.

I note your points below but would just clarify that there is already an existing licence in place for this premises in the exact same terms as the "shadow" licence I am applying for at the moment. The proposed tenant is hoping to move into the premises sooner rather than later, once works are complete to update the premises. Part of the works are to replace the tables and chairs outside to more suitable provisions which would be easily rendered unusable. I would also confirm that when the tenant does take possession of the premises he must adhere to the conditions attached to the existing licence at all times the premises is open for licensable activities.

The current licence was granted after a hearing at Committee on 13th October 2016 and the conditions contained in my application were those granted at that hearing (see attached the relevant pages).

The tables and chairs being rendered unusable after 2200 each day and sealed containers only being permitted off the premises are both conditions approved by the Committee at the

hearing.

The points you raise below are more onerous than was previously approved by the Committee.

In light of the fact that these conditions have been agreed with the Committee previously, and this application is merely a mirror of that licence are you happy to permit this application to proceed?

Many thanks
Angela

Name:	Mr Simon Hart
Address and/or Residents Association:	Not provided
Received:	18 th November 2016

I understand that you are the Licensing Officer dealing with the above matter. I am writing to object to the application on the grounds that the proposal is in clear breach of the licensing objectives.

I note from the revised plan submitted by the Applicants in support of their application that there will be a fire escape through the conservatory (shown on the left hand side of the plan). The conservatory doors are fire doors, marked in red on the plan with the symbols "S14" and "S22X". The key to the plan explains these symbols as follows:

- * S14 – Fire door keep locked shut.
- * S22X – Maintained illuminated fire escape sign.

It is therefore extremely concerning to see on the plan that the conservatory contains an inordinate number of tables and chairs and that a large table and four chairs are completely blocking the fire exit doors. I understand that the Council's HSE regulations provide that fire exits and escape routes must be unobstructed at all times.

One of the four licensing objectives is public safety. The applicants' intention to cram as many tables as possible into the conservatory and to completely block the fire exit is quite appalling, and extremely worrying. I consider this to be clear evidence of a breach of the public safety licensing objective.

For this reason, I consider that the application should be rejected.

3. Policy & Guidance

The following policies within the City Of Westminster Statement of Licensing Policy apply:

Policy PB/1 applies	Applications will only be granted if it can be demonstrated that the proposal meets the relevant criteria in Policies CD1, PS1, PN1 and CH1. Applications for hours within the core hours set out below in this policy will generally be granted, subject to not being
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Policy HRS/1 applies	contrary to other policies in the Statement of Licensing Policy.
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4. Appendices

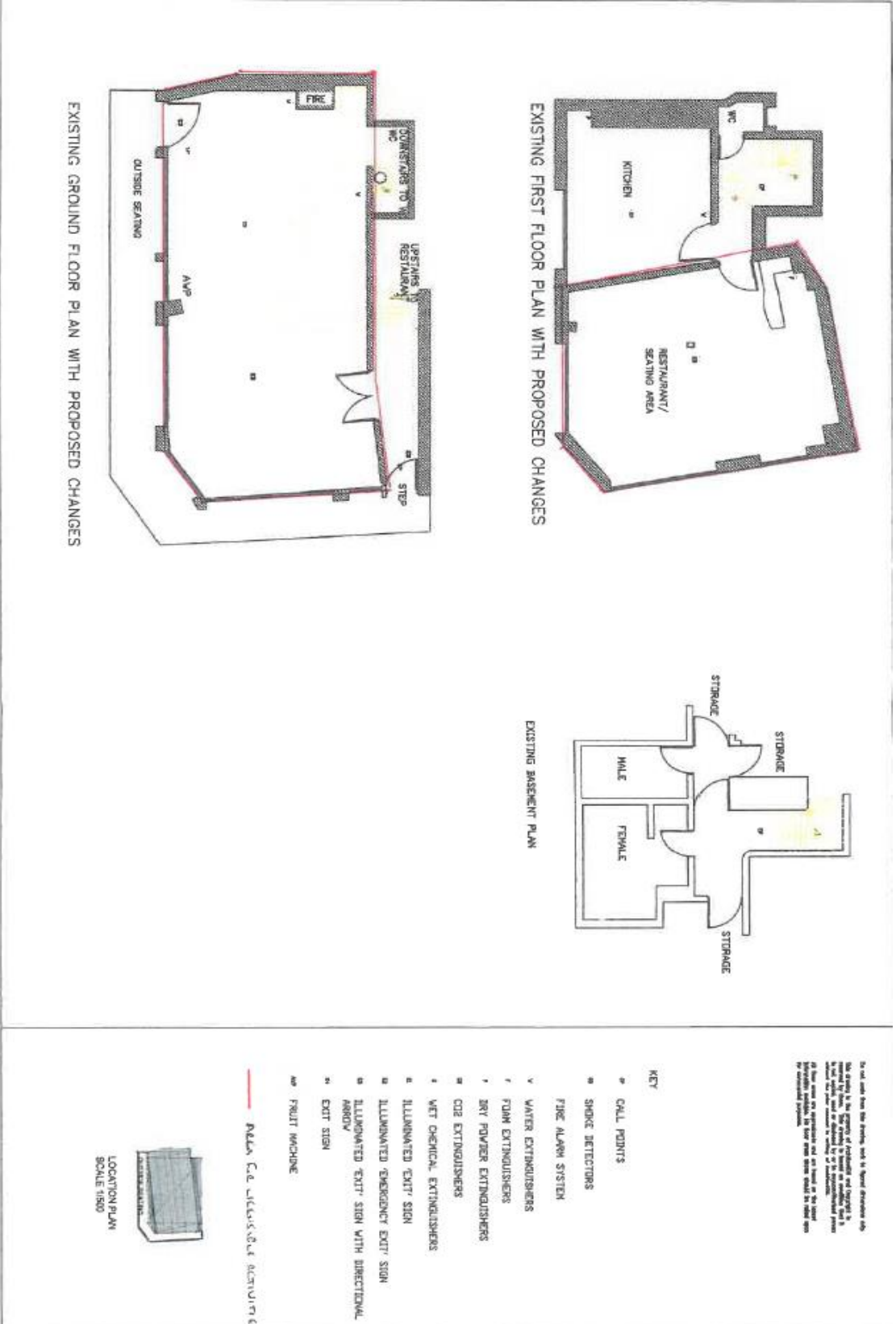
Appendix 1	Premises plans
Appendix 2	Premises history
Appendix 3	Proposed conditions
Appendix 4	Residential map and list of premises in the vicinity

Report author:	Miss Bina Patel Senior Licensing Officer
Contact:	Telephone: 020 7641 2125 Email: bpatel@westminster.gov.uk

If you have any queries about this report or wish to inspect one of the background papers please contact the report author.

Background Documents – Local Government (Access to Information) Act 1972

1	Licensing Act 2003	N/A
2	City of Westminster Statement of Licensing Policy	7 th January 2016
3	Amended Guidance issued under section 182 of the Licensing Act 2003	March 2015
4	Application for a New Premises Licence under the Licensing Act 2013	26 th October 2016
4	Resident comments.	5 November 2016
5	Resident comments	18 November 2016
6	Licensing Committee Decision	13 October 2016



LOLLAPALOOZA SQUARE
 One Commercial Street, London, SE1 1RF
 Tel: 020 7741 2121 and 0207 488 8888

PROJECT:
TITLE:
DATE:
DRAWING NO.:

City of York, 48 Harnsey Street, WY1 1BT
 Proposed changes
 20th April 2012
 1001-1001

SCALE:
REVISION:
STATUS:

1/100 @ A3
 A
 F



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Appendix 2

Premises History

Application	Details of Application	Date Determined	Decision
05/05720/LIPCV	Conversion from the old Act.	06.09.2005	Granted under delegated authority.
11/01667/LIPDPS	Vary Designated Premises Supervisor	10.03.2011	Granted under delegated authority
12/04092/LIPVM	Vary Designated Premises Supervisor	11.06.2012	Refused
14/00424/LIPDPS	Vary Designated Premises Supervisor	05.02.2014	Granted under delegated authority
15/09681/LIPT	Transfer	28.01.2016	Granted under delegated authority <i>Licence lapsed on 01.08.16 due to liquidation of licensee Max Barney (EC2) Ltd</i>
16/08637/LIPN	New application submitted by H Company 2 Limited	13.10.2016	Granted by a Licensing Sub Committee

CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE AND CONDITIONS PROPOSED BY A PARTY TO THE HEARING

When determining an application for a new premises licence under the provisions of the Licensing Act 2003, the licensing authority must, unless it decides to reject the application, grant the licence subject to the conditions which are indicated as mandatory in this schedule.

At a hearing the licensing authority may, in addition, and having regard to any representations received, grant the licence subject to such conditions which are consistent with the operating schedule submitted by the applicant as part of their application, or alter or omit these conditions, or add any new condition to such extent as the licensing authority considers necessary for the promotion of the licensing objectives.

This schedule lists those conditions which are consistent with the operating schedule, or proposed as necessary for the promotion of the licensing objectives by a responsible authority or an interested party as indicated. These conditions have not been submitted by the licensing service but reflect the positions of the applicant, responsible authority or interested party and have not necessarily been agreed

Mandatory Conditions

1. No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
4.
 - (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
 - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;

- (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
- (a) a holographic mark, or
 - (b) an ultraviolet feature.
7. The responsible person must ensure that—
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml;
 - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
 - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

A responsible person in relation to a licensed premises means the holder of the premise licence in respect of the premises, the designated premises supervisor (if any) or any individual aged 18 or over who is authorised by either the licence holder or designated premises supervisor.

For premises with a club premises certificate, any member or officer of the club present on the premises in a capacity that which enables him to prevent the supply of alcohol.

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

8(ii) For the purposes of the condition set out in paragraph 8(i) above -

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

(b) "permitted price" is the price found by applying the formula -

$$P = D + (D \times V)$$

Where -

(i) P is the permitted price,

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

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

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

(i) the holder of the premises licence,

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

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

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

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

8(iii). Where the permitted price given by Paragraph 8(ii)(b) above would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

8(iv). (1) Sub-paragraph 8(iv)(2) below applies where the permitted price given by Paragraph 8(ii)(b) above on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.

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

Conditions consistent with the operating schedule

9. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.
10. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
11. Alcohol consumed outside the premises building shall only be consumed by patrons seated at tables.
12. All outside tables and chairs shall be rendered unusable by 22.00 each day.
13. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
14. A risk assessment will be carried out to determine the maximum occupancy figure for the first floor in agreement with the Council's Environmental Health Officer. This risk assessment will be updated upon the granting of any works to this floor.
15. No licensable activities shall take place at the premises until the premises has been assessed satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the Licensing Authority
16. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police, which will record the following:
 - (a) all crimes reported to the venue
 - (b) all ejections of patrons
 - (c) any complaints received concerning crime and disorder
 - (d) any incidents of disorder
 - (e) all seizures of drugs or offensive weapons
 - (f) any faults in the CCTV system or searching equipment or scanning equipment
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service.
17. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
18. No waste or recyclable materials, including bottles, shall be moved, removed or placed in outside areas between 23.00 hours and 08.00 hours.
19. No deliveries to the premises shall take place between 23.00 hours and 08.00 hours
20. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be

swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.

21. A Challenge 21 or Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.

Please note the following condition relating to capacity has been omitted from the operating schedule which was determined by a Licensing Sub Committee on 13th October 2016

22. No licensable activities shall take at the premises until the capacity of the premises has been determined by the Environmental Health Consultation Team and the licensing authority has replaced this condition on the licence with a condition detailing the capacity so determined.

