

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Thursday, 4th April, 2019, 10.00 am

Councillors: Les Kew (Chair), Rob Appleyard and Deirdre Horstmann

Officers in attendance: Terrill Wolyn (Senior Public Protection Officer) and Shaine Lewis (Team Leader Resources - Legal Team)

76 EMERGENCY EVACUATION PROCEDURE

The Democratic Services officer advised the meeting of the procedure.

77 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

78 DECLARATIONS OF INTEREST

There were none.

79 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

80 MINUTES: 17TH JANUARY 2019

These were approved as a correct record and signed by the Chair.

81 LICENSING PROCEDURE

82 APPLICATION FOR A PREMISES LICENCE FOR GARFUNKEL'S, ORANGE GROVE, BATH BA1 ILP

Applicant: The Restaurant Group (UK) Limited, represented by Clare Eames (Poppleston Allen) and Mary Wilcock (Managing Director, Brunning & Price Ltd)

Other Persons: Anne Robins (The Empire Owners' Association), Professor Stan Kolaczowski (Chairman of the Empire Owners' Association) and Ian Perkins (The Abbey Residents' Association)

The parties confirmed that they understood the procedure to be followed for the hearing.

The Senior Public Protection Officer presented the report. The application was for a new premises licence. There was an existing premises licence attached as Annex D to the report. Members noted that the premises were located in the Cumulative Impact Area, and that there was therefore a rebuttable presumption that the application should be refused unless the applicant could demonstrate that the application would not add to the cumulative impact of licensed premises in the Area. There had been eight representations from Other Persons, which collectively related

to the Prevention of Crime and Disorder, Public Safety and the Prevention of Public Nuisance Licensing Objectives. There had been no representations from the Responsible Authorities. Additional information from the applicant had been circulated since the publication of the agenda (attached as Appendix 1 to these minutes).

Ms Eames stated the case for the applicant. She said that the premises currently traded as Garfunkels and the licence was held by the Restaurant Group. The plan of the premises was not included within the premises licence in the agenda: it could be found in pages 10 and 11 of the additional information submitted by the applicant. The Restaurant Group operated over five hundred restaurants and had recently acquired Wagamama. Today's application had been made in the name of the Restaurant Group. The company wished to rebrand Garfunkels as a Brunning and Price business and to make a significant investment in Bath. As part of this investment the premises would be substantially upgraded. On pages 12 to 21 of the additional information there were photographs of Brunning and Price premises in Chelmsford and Beaconsfield, which gave a flavour of what was planned in Bath. A Brunning and Price brochure had been submitted with the application.

The current Garfunkels' licence came into force in November 2005 following its conversion from the old licensing regime. The current licence required the sale of alcohol to be ancillary to the sale of food, a condition inherited from the old licensing regime. She submitted that this condition was somewhat ambiguous and a hangover from legislation that had been repealed. She suggested that in general the conditions in the current licence were not very clear, and that the fifteen conditions offered as part of this application resulted in a more robust operating schedule more in keeping with present-day circumstances. The application actually proposed a slight reduction in trading hours with an earlier terminal hour on several nights, despite the fact that the proposed starting hour for licensable activities was 09:00, rather than 10:00 as at present. She submitted that a 09:00 start was common in the trade, and provided the operator with flexibility to serve customers who might want to have a glass of champagne for a celebration, for example. There was no evidence from any part of the country that beginning at this hour had led to problems.

She stated that the application had not been drawn up until the applicant had met local residents.

She said that another significant difference between the application and the current licence lay in the significant restrictions on the use of the external terrace that were proposed. At the moment there were no restrictions, but the new conditions proposed that the terrace had to be cleared of customers by 22:30, that customers using it had to be seated, and that it should be serviced by waiter/waitress service. In addition the applicant would accept a condition which limited the number of people on the terrace to 30. Residents had raised concerns relating to the use of the terrace as a smoking area; the applicant would be content with a condition prohibiting smoking there.

She drew attention to the lack of representations from the Responsible Authorities.

She noted concerns expressed by Other Persons that the premises might be converted to a pub. In fact in today's extremely competitive conditions the operators of licensed premises had to provide as comprehensive an offer to the public as they

could, and it was increasingly difficult to define what a “pub” or “restaurant” was. She submitted that the premises were well run and that there was no evidence that they were undermining the licensing objectives. Other Persons had raised concerns about vertical drinking, but this was something that the current licence did not prevent. The redesign actually slightly reduced the floor space. The applicant was not planning to create a “megabar”; the bar area remained much the same and the number of covers was nearly the same. About 170 covers were provided at the premises now, but the applicant would accept a condition limiting this to 150.

Other Persons had raised planning issues, which were not relevant to the Licensing Act regime, but the applicant wished to be open about these with residents. Listed Building Consent was required for the internal works at the premises, but change of use was not required.

Other Persons had expressed concerns about a possible future change of ownership of the premises. She could reassure them that Brunning and Price had no intention of moving, but nevertheless they would be happy to accept a licence that was limited to them. They would make a significant investment in the business, and wanted to find a modus operandi that allowed a harmonious relationship with the residents.

If residents wanted a condition requiring a quarterly meeting with the licence holder, the applicant would be pleased to accept this.

Mary Wilcock said that her desire was for a licence that worked in the interests of the applicant and the residents.

In response to question from Other Persons Miss Eames and Ms Wilcock stated:

- There had been no intention to mislead about the trading hours, which it was true would slightly increase. However it was the terminal hour that was the usual trigger for concerns about cumulative impact; she could not recall cumulative impact having been raised anywhere in relation to morning opening.
- As the Licensing and Planning regimes were separate, it would not have been appropriate to include any feedback received on the noise report submitted as part of the Listed Building Application with the licence application.
- The applicant did have other premises that had residential accommodation in the same building, but to the side and not above. The applicant always strove to be a responsible member of the community in which they were located. No complaint had ever been received from neighbouring residential premises.

In reply to questions from Members they stated:

- The problem of customers wishing to smoke was one that all licensed premises faced, but over time customers had become more reconciled to the fact that if they wished to smoke they had to go outside. This was the case in workplaces as well.

Replying to the Team Leader (Legal) Ms Eames confirmed that a condition prohibiting smoking on the terrace could include vaping.

The Chair asked whether the applicant wished specifically to address cumulative impact. Ms Eames submitted that there was an argument that as the premises was already licensed, cumulative impact was not engaged by this application. If however that was not the case, she drew attention to the fact that in the application licensable activities never ran past midnight and that a robust set of conditions had been proposed for the replacement licence, compared with the absence of restrictions on the existing licence. It was also noteworthy that the Responsible Authorities had made no representations to the application. The Team Leader (Legal) said that in his view cumulative impact was engaged by this application. The Council's policy was quite clear that cumulative impact applied to all applications within the Cumulative Impact Area and therefore to this application, regardless of the fact that the premises was already licensed.

Anne Robins stated her case. She said the first point she wished to make was demographic: the average age of residents of The Empire had been 79 for many years and five of the current residents were over 90. The potential impact of Public Nuisance had to be understood in that context. If the application was approved, a huge pub would be created in a building surrounded by elderly people's homes. The condition that the supply of alcohol should ancillary to the provision of food had been imposed over twenty years ago, to protect residents from drink-related nuisance. She begged the Sub-Committee not to remove this protection. Licence conditions should reflect the dominant use of the building, which was residential. There was the potential to create a large vertical drinking establishment operating till midnight in a city with a large student population. It is clear from their website that Brunning and Price regards itself as a pub operator. There were many licensed premises in the vicinity, and Grand Parade and Orange Grove area are always thronged with evening drinkers.

Professor Kolaczowski stated his case. He said that he was emeritus professor in chemical engineering of the University of Bath, and with his technical expertise had acted as an advisor to applicants and local authorities about the environmental impact of developments. He was here today in his capacity as an owner and Chairman of The Empire Residents' Association. He said that residents were very concerned about the proposed change of use, and feared that if allowed without additional conditions it would increase crime and disorder and public nuisance. He said that it was clear from the photograph on page 2 of the additional information submitted by the applicant that The Empire is a predominantly residential block with two restaurants at its base. It was entirely the wrong place to try to make money by a change of use from a restaurant. The applicant wished to replace the main eating area with a mega-bar, and they should be concerned about the consequences. The noise impact assessment had been submitted very late for this hearing and was very superficial and selective. The residents' own noise consultant had provided many helpful suggestions in his reply to the applicant's report and had fundamentally confirmed residents' concerns. Residents were not opposed to the granting of a premises licence, but wanted their welfare to be protected. After careful consideration of the problem in consultation with an independent noise expert, residents were suggesting a number of conditions that should be attached to the licence, and felt sure that the applicant would find them helpful. The first condition relates to internal noise: a noise level of 75dBA not to be exceeded within the

premises. The applicant had included a limit of 74dBA in the Listed Building Application, so 75dBA should be attainable. The noise limiter should be set so that there is no audible noise in apartments, the dining area or entrance hallway. The noise limiter level should be reviewed regularly. There should be an interlock of the noise limiter with the sound system and there should be an indication when background noise has been exceeded. The noise limiter should be kept in a locked cupboard with access only to the licensee. With regard to external noise, residents suggest that the number of seats on the terrace should be restricted and that the applicant should consider siting umbrellas with noise-reducing properties there, that there should be no queues outside the premises after 18:00, and that there should be controlled dispersal of customers after closing. The last proposed condition related to operating hours as detailed by other representors.

In reply to a question from a Member he suggested that in its proposals for noise control the applicant had just provided a wish list; what he had done was to provide specific numbers for noise levels which were generally accepted as appropriate.

Mr Perkins stated his case. He said that the premises were an important part of the night-time economy in Bath, but were in a very sensitive location. The applicant had failed to convince local residents that it had an adequate plan to mitigate nuisance. Residents were looking for reassurance through the imposition on the licence of robust and enforceable conditions. In the course of the hearing the applicant had made useful suggestions for additional conditions.

The parties were invited to sum up.

Summing up for the Other Persons, Anne Robins said that residents wanted assurance that the premises were not going to become a pub and that conditions should be imposed that prevented that.

Ms Eames said that it was important that to have a licence that worked for everybody. The operating schedule contained detailed conditions designed to promote the licensing objectives. The Sub-Committee had to base its determination on evidence. The fact that the Responsible Authorities had made no representations showed that they had no concerns about this application. Representations had referred to the risk of nuisance, for example, but no evidence had been presented that this was actually occurring under the existing licences. The applicant had offered additional enforceable conditions in the course of the hearing.

Following an adjournment the Sub-Committee **RESOLVED** to grant the application with conditions as detailed below.

Decision and reasons

Members have determined an application for a Premises Licence for Garfunkels, Orange Grove, Bath. In doing so, they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's Policy, Human Rights Act 1998 and case law.

Members are aware that the proper approach under the Licensing Act is to be reluctant to regulate in the absence of evidence and must only do what is appropriate and proportionate in the promotion of the licensing objectives based on

information before them. Members noted that applications must be considered on their merits and on this occasion the Cumulative Impact Policy is engaged.

The Applicant

The premises currently trades as Garfunkels. The applicant stated it operates in excess of 500 restaurants and gastro pubs across the UK and now wish to invest in these premises and rebrand them as Brunning and Price. Part of that process has included obtaining listed building approval for internal alterations and engagement with Resident Associations to tailor an application to specific concerns regarding the proposed changes. This process commenced in 2018 and the additional information provided gives a flavour of the type of business it proposes to operate. It was further stated that the new application includes 15 conditions relevant to 2019 dealing with how the premises will promote the licensing objectives and address any cumulative impact concerns.

The applicant stated they were committed to their responsibilities under the Licencing Act and associated legislation and confirmed the premises will be sympathetic to the community, continue to provide a strong food offer and be well run. To a certain extent the new application is a tidying up exercise and whilst an additional hour in the morning had been applied for the trading hours as a whole have been reduced and there is no suggestion nationally that additional hours in the morning have negative impacts on the licensing objectives. In terms of operation the restaurant covers remain similar to the existing, the bar size similar and the overall floor area is slightly reduced.

With regard to neighbours the applicant aims to continue working with them and the following additional realistic conditions are therefore offered.

There shall be no smoking or vaping on the terrace

The outside terrace area shall be limited to 30 persons seated

The number of covers limited at 150

The New Year's Eve terminal hour will be 01:00 am

The licence granted shall be limited to Brunning and Price &P only

Accordingly, it was considered that with no off sales, the premises implementing the Noise Impact Assessment recommendations and conditions consistent with the robust operating schedule the premises would be unlikely to add significantly to any cumulative impact being experienced, if the Policy applies, and the licence granted.

Other Persons

Eight written representations objecting to the application were received from "other persons" as defined in the Act. Whilst not necessarily against a licensed premises in this location the representations raised concerns that the proposals could undermine the prevention of crime and disorder, public safety (relating to the use of the terrace) and the prevention of public nuisance licensing objectives.

The objectors stated the removal of the linkage between food and alcohol service represents a shift in the business from food led to a huge alcohol led venue with resultant noise and anti-social behaviour associated with high volume vertical drinking establishments. Further, given the current level of nuisance and anti-social behaviour experienced from the outside terrace and surrounding area, in terms of noise, litter and rowdy behaviour, there is a potential that longer hours could attract customers from other premises in the area which could impact negatively on residents. The objectors also had concerns about the efficacy of the noise mitigation measures proposed and the number of people on the terrace could be problematic in terms of public safety.

The objectors were worried that with the watering down of the restrictions in terms of planning, the lease and licensing the basis upon which they bought apartments could be undermined. This could make life intolerable for those in the building particularly as staff will inevitably change and there will be no point of contact in the event they needed to complain.

Members

Members noted that the Licensing Act 2003 is a permissive regime intended to minimise the regulatory burden. Nevertheless, the regime encourages community involvement in the decision making process.

In terms of the premises Members noted they are in the Cumulative Impact area and as this is a new premises licence application there is a rebuttable presumption that the licence should be refused unless the applicant demonstrates they are unlikely to add significantly to cumulative impact being experienced.

Members noted all written and oral representations and were careful to balance their competing interests. Members, however, disregard irrelevant representations which on this occasion related to planning issues and leasehold matters. Members also noted that there were no representations from Responsible Authorities in particular the Police, Fire & Rescue and Public Protection Services.

With regard to opening and terminal hours Members reminded themselves of the general principal of staggered hours and that arbitrary restrictions would undermine the flexibility principal. Whilst noting the representations Members found no examples of anti-social behaviour directly attributed to the premises and did not consider there was a distinct possibility that migration would result in the licensing objectives being undermined as the hours were modest in extent particularly in the morning.

In terms of nuisance Members noted the premises had long been established in this location operating as a restaurant and bar. Whilst reference was made to a number of complaints to premises' management these were addressed and there was no history of complaint to Licensing or Environmental Protection services. In the circumstances, therefore, Members found that by implementing the recommendations in the Noise Impact Assessment, for example, plant and building modifications, operational adaptations and a suite of 15 new conditions, there would be greater protection for residents than under the existing licence.

In reaching their decision Members also reminded themselves that, whilst they should be mindful of other statutory controls, their decisions must not duplicate other statutory regimes. Moreover, conditions should not be overcomplicated as they must stand alone and be capable of enforcement by Licensing Officers. In terms of this application the issues raised were issues where duplication commonly occurs. For example, nuisance in the form of noise, smoke, and litter is governed by the Environmental Protection Act 1990, fire safety by the Fire Safety Reform Order 2010, planning and enforcement by the Town and County Planning Act 1990 and anti-social behaviour not directly attributable to the premises the police. In all the circumstances, therefore, Members found the application reasonable in extent and the conditions appropriate and proportionate to promote the licensing objectives without duplication or over complication.

Accordingly, Members found that with the imposition of conditions consistent with the operating schedule, Mandatory Conditions, additional conditions imposed by Members and those offered by the applicant that the premises would be unlikely to add significantly to any cumulative impact being experienced or undermine the licensing objectives. Members therefore resolve to grant the premises with the additional appropriate and proportionate conditions as follows:

- There shall be no smoking or vaping on the outside terrace
- The outside terrace area shall be limited to 30 persons seated
- The New Year's Eve terminal hour shall be 02:00 am

Authority is delegated to the Licensing Officer to issue the licence accordingly.

83 APPLICATION TO VARY THE PREMISES LICENCE FOR HOMEWOOD PARK HOTEL AND SPA, HOMEWOOD, HINTON CHARTERHOUSE, BATH BA2 7TB

83 APPLICATION TO VARY THE PREMISES LICENCE FOR HOMEWOOD PARK HOTEL AND SPA, HOMEWOOD, HINTON CHARTERHOUSE, BATH BA2 7TB

Applicant: Neil Glasspool (Managing Director)

Responsible Authority: Sara Chiffers (Senior Environmental Health Officer)(H&S)

The parties confirmed that they understood the procedure to be followed for the hearing.

The Senior Public Protection Officer presented the report. The applicant was seeking to vary hours and remove non-standard timings, add conditions agreed with the Police and revise the plan of the ground floor. In addition the variation sought to remove the Annex 2 condition:

No sale of alcohol is to take place in the spa area, or the champagne area. All drinks for the champagne bar to be purchased from the exiting hotel bar.

Environmental Health had made a representation objecting to the removal of this condition. No other representations had been received.

Mr Glasspool stated his case. He said that Homewood was part of the Kaleidoscope Collection, which owned three hotels in Bath, Homewood, 15 Great Pulteney and The Bird. Kaleidoscope had purchased Homewood from Longleat Enterprises in August 2018. Homewood had been very run down and required major investment. As part of that investment guest facilities were being improved including the Spa. There was a champagne bar in the spa, which he did not agree with. He felt that guests should usually go to the main bar to purchase drinks so that management could maintain control over the consumption of alcohol. He wanted to put a pop-up snack bar adjacent to the outside pool area to sell tea and coffee, snacks, soft drinks, wine and beer, but no spirits or fortified wine. Guests would be served in the existing patio area, where they can sit and drink already around the pool area. The snack bar would operate only in high season between May and September from 2pm to 6pm for guests and staff members. The applicant would wish to deter people from drinking excessively in the spa area. Guest safety is a primary concern. People can already purchase drinks from the main bar to take to the patio. The area will be staffed, giving management greater control over the consumption of alcohol by guests. The amount that guests can purchase from the pop-up bar during its four hours of opening will be controlled. The aim of the pop-up bar is not to make money, but to enhance the experience of guests by providing an additional service, and to allow the supervision of what goes on around the pool area. The champagne bar will be removed.

Ms Chiffers stated her case. She said that she had objected to the removal of the condition because of the well-documented risks of drinking alcohol before the use of spa facilities. How will management judge whether a guest has consumed too much from the pop-up bar? Having a bar near the spa facilities may encourage guests to indulge in unsafe behaviour.

Responding to questions from Members Mr Glasspool said:

- Staff serving from the pop-up bar would be skilled bar staff who would be able to decide from experience whether a customer had drunk too much.
- The pop-up bar would serve only wine and beer, but under the licence customers could buy spirits from the main bar and bring them to the pool area. The pop-up bar would limit the amount and types of drink immediately available to guests and would be open only for limited hours.
- There was CCTV monitoring on the premises.

Following an adjournment the Sub-Committee **RESOLVED** to grant the application as detailed below.

Decision and reasons

Members have determined an application to vary a Premises Licence for Homewood Park Hotel & Spa, Hinton Charterhouse, Bath. In doing so, they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's Policy, Human Rights Act 1998 and case law.

Members are aware that the proper approach under the Licensing Act is to be reluctant to regulate in the absence of evidence and must only do what is appropriate and proportionate in the promotion of the licensing objectives based on information put before them. Members noted that an application must be considered on its merits.

The Applicant

The applicant stated the company operate a number of venues in the district and have invested and refurbished these premises which included the spa area. The application was designed to provide the flexibility to operate a pop up shack adjacent to the pool where guests can buy soft drinks, beer, wine and snacks during peak times in the summer months. Moreover, guests entering the spa area must sign in and that any sale of alcohol within the spa would be through trained bar staff.

Responsible Authority

The objector stated the consumption of alcohol prior to spa treatments etc. causes dehydration, heat exhaustion and is ultimately a safety risk. Further, it would be a difficult judgement for spa staff to make whether people were intoxicated and a bar in direct view of the spa would have the effect of encouraging unsafe behaviours.

Members

Members noted that the Licensing Act 2003 is a permissive regime intended to minimise the regulatory burden. In terms of representations, Members noted the written and oral representations and were careful to balance their competing interests.

Members reminded themselves that consumption is not regulated activity and guests are able to consume their own or purchase and consume alcohol from other areas before attending the spa. Further, as guests entering the spa would sign into the spa and any sale of alcohol therein subject to the normal controls these are additional safeguards for guests. Accordingly, members grant the application as applied for with conditions consistent with the operating schedule, mandatory conditions and delegate authority to the Licensing Officer to issue the licence.

The meeting ended at 1.07 pm

Chair(person)

Date Confirmed and Signed

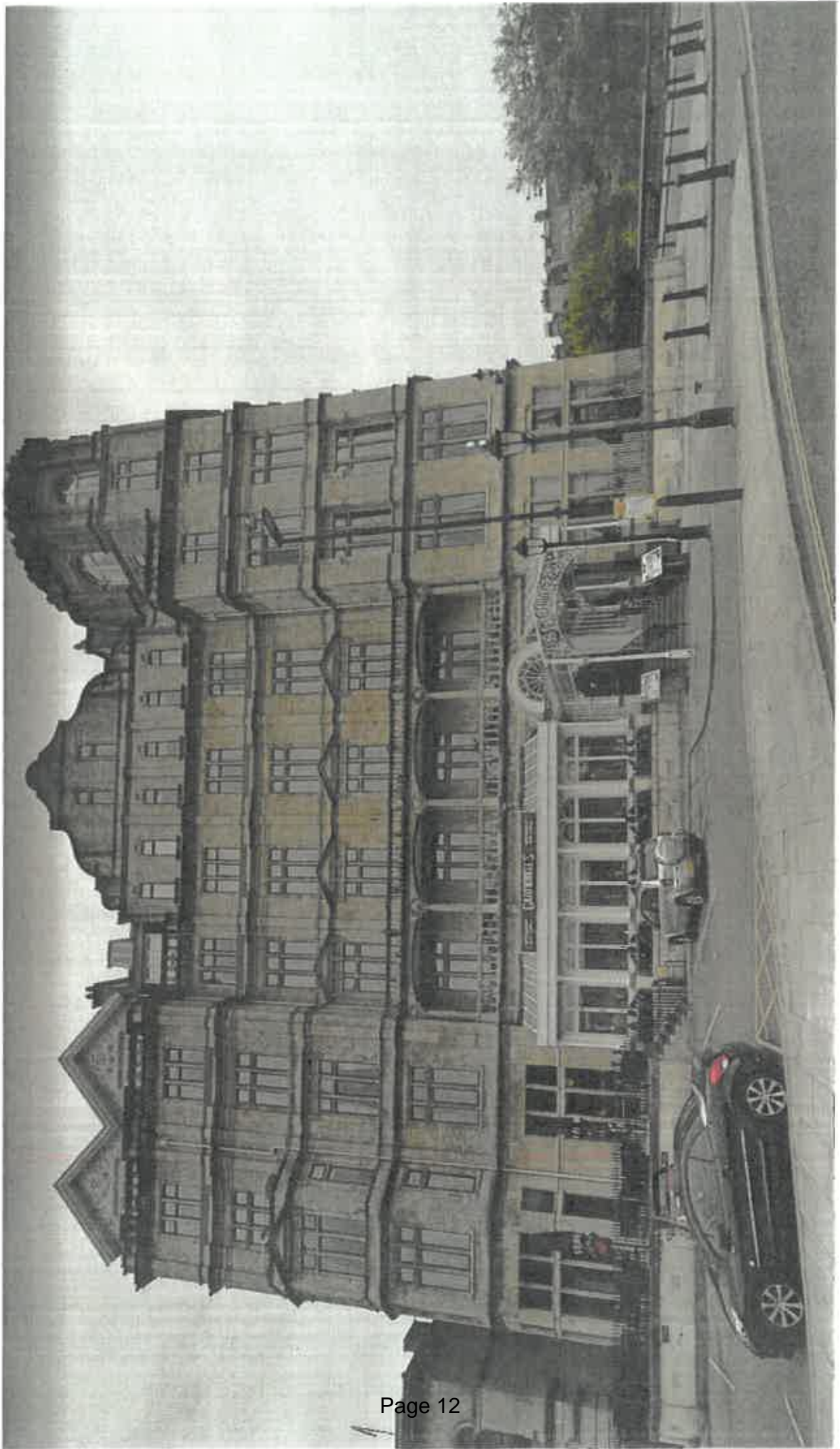
Prepared by Democratic Services

GARFUNKELS, ORANGE GROVE, BATH, BA1 1LP
New Premises Licence Application

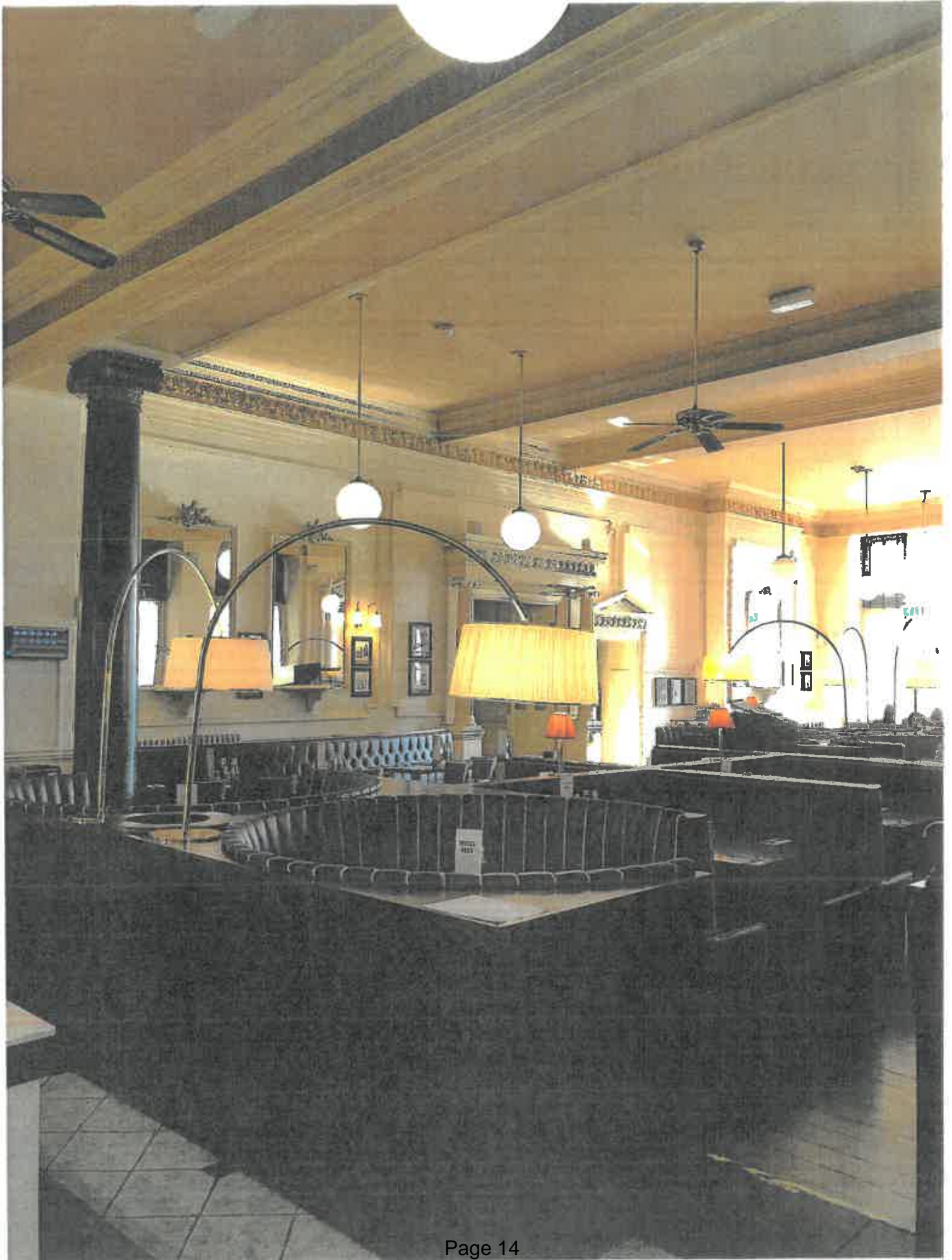
Licensing Sub Committee: Thursday 4th April 2019 – 10am
The Guildhall, High Street, Bath, BA1 5AW

Evidence Bundle

Document	Pages
Photographs of Garfunkels as existing.	2-9
Garfunkel's current approved licence plans.	10-11
Photographs of Brunning and Price premises; Cheltenham & Beaconsfield/Mood Boards for Brunning and Price, Bath.	12-21
Statement of Community Engagement.	22-23
Correspondence with Residents.	24-41
Correspondence with Geoff Cannon, Police Licensing Officer and Nigel Shire Environmental Health Officer.	42-43
Noise Management Plan.	44-45
Acoustic Report.	46-70
Planning Report.	71-72
Brown's Premises Licence.	73-84
Frampton's Licensable Activities and Conditions.	85-86
R (on application of Daniel Thwaites plc) v Wirral Magistrates' Court and Others (2008).	87-100













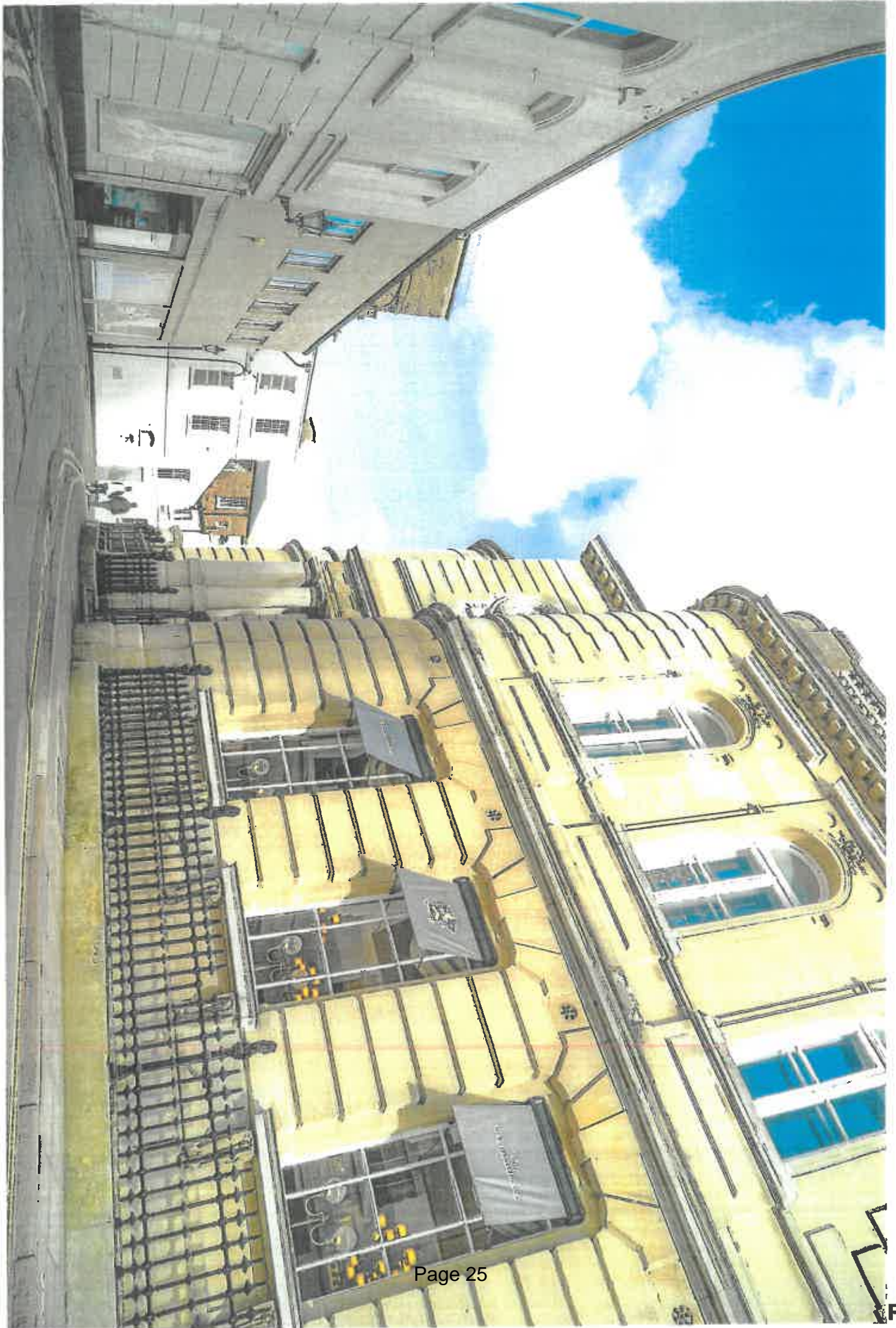


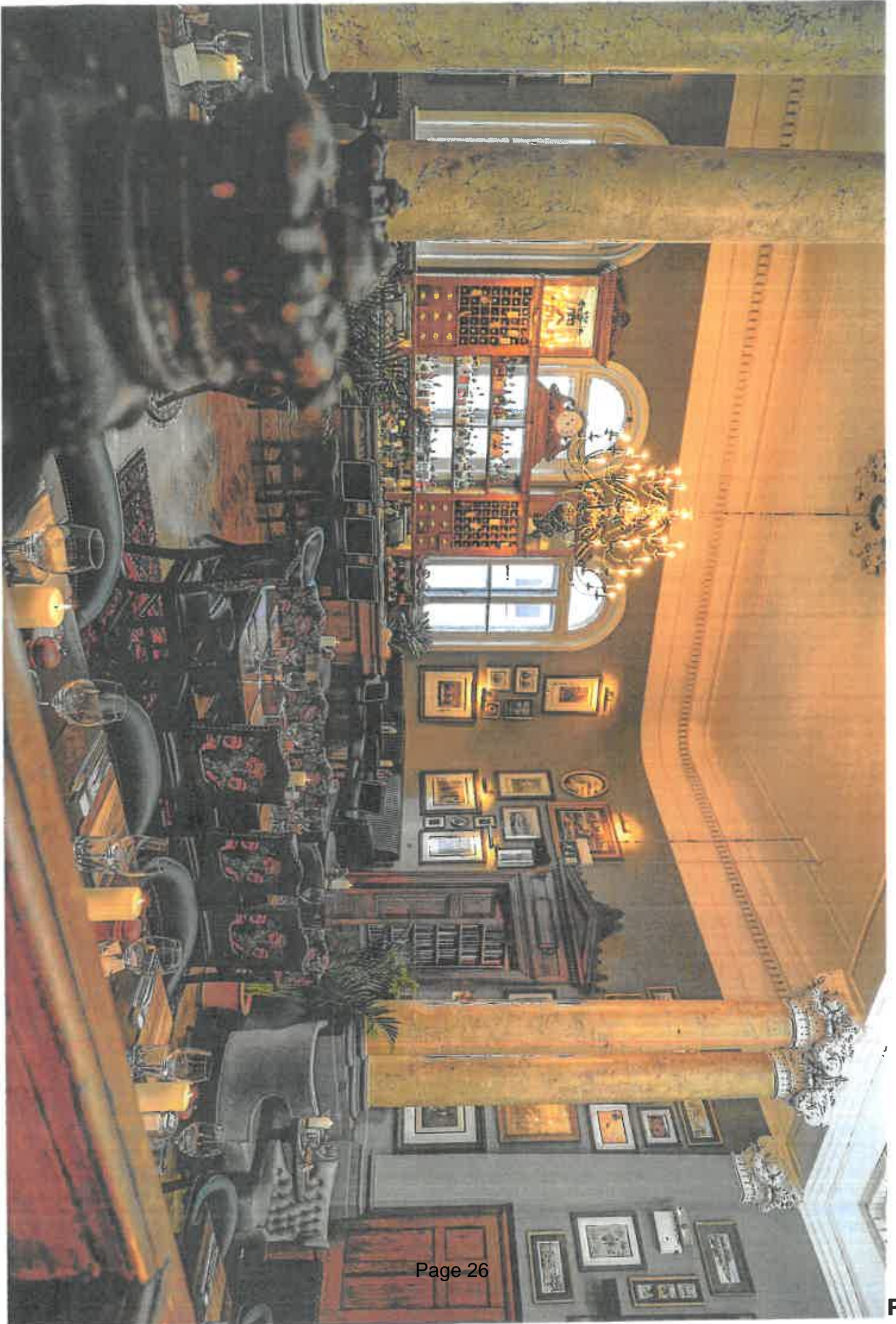






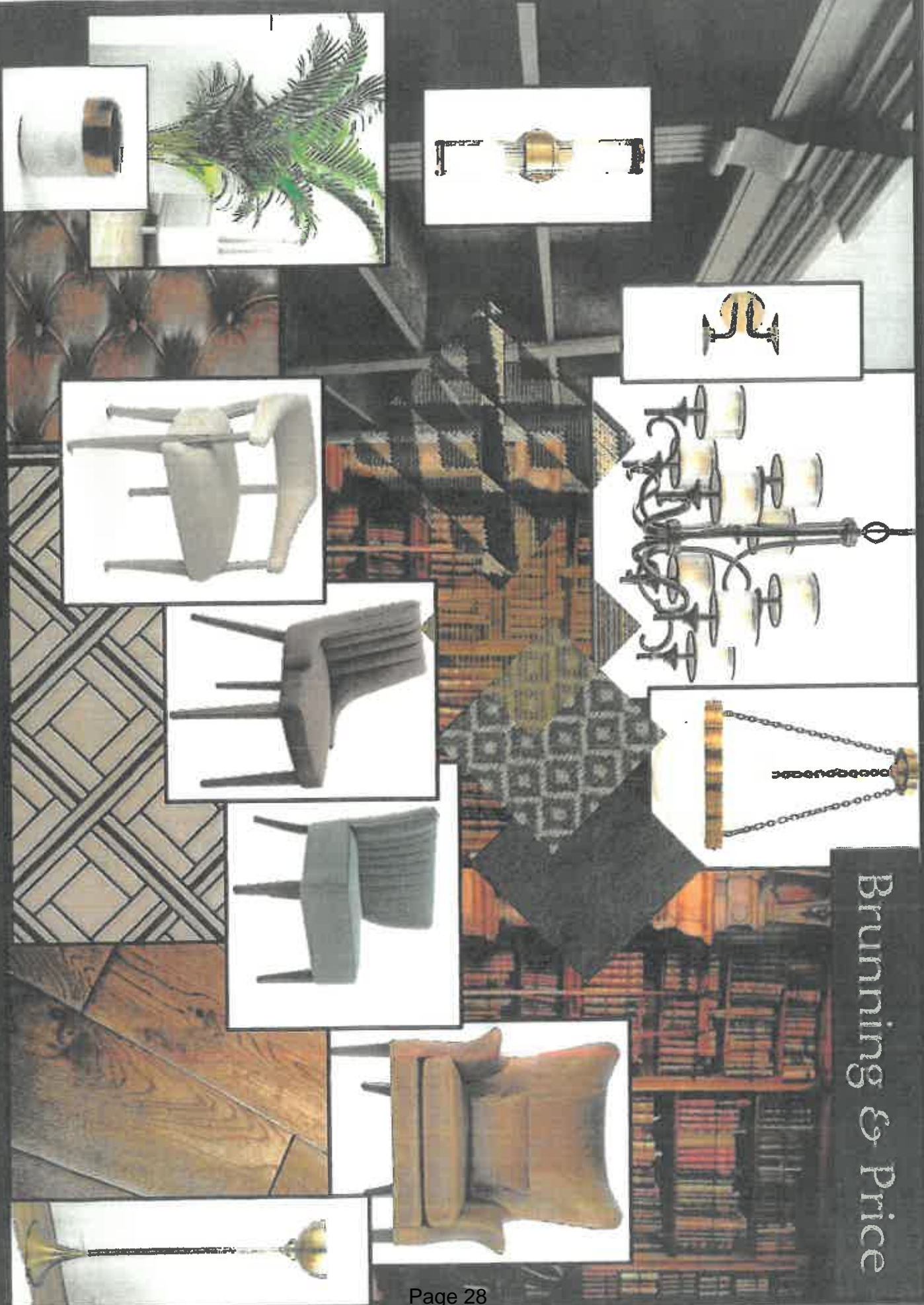








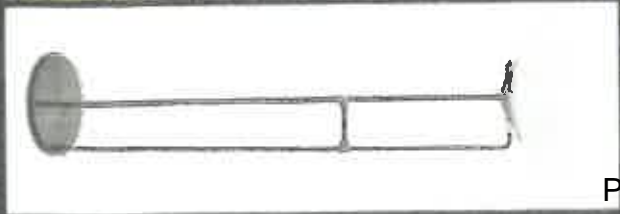
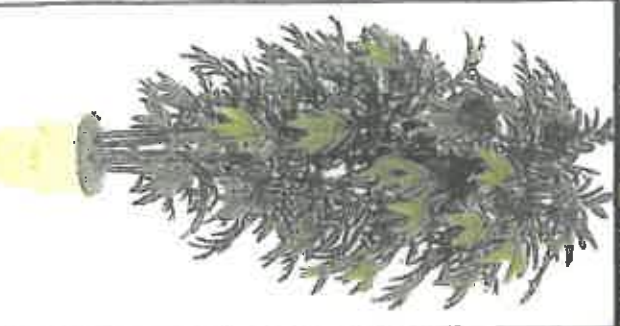
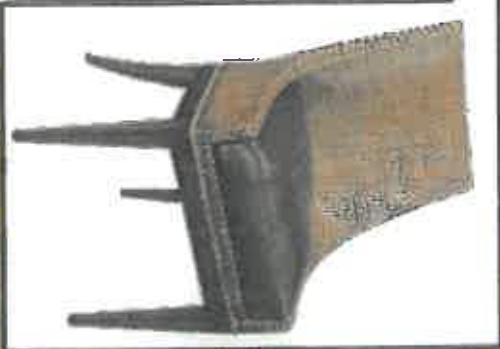
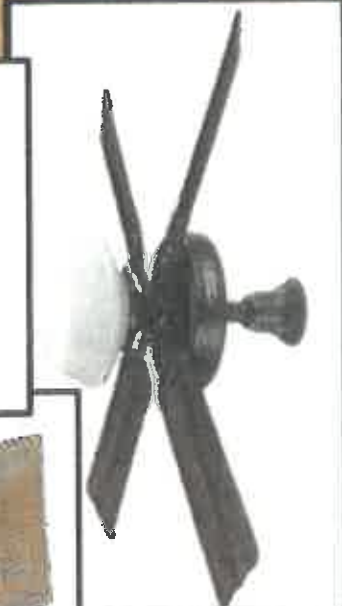
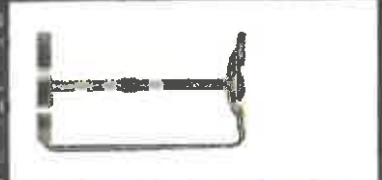
Brunning & Price



SPATIALIZED

The Library Room-- Sample Board

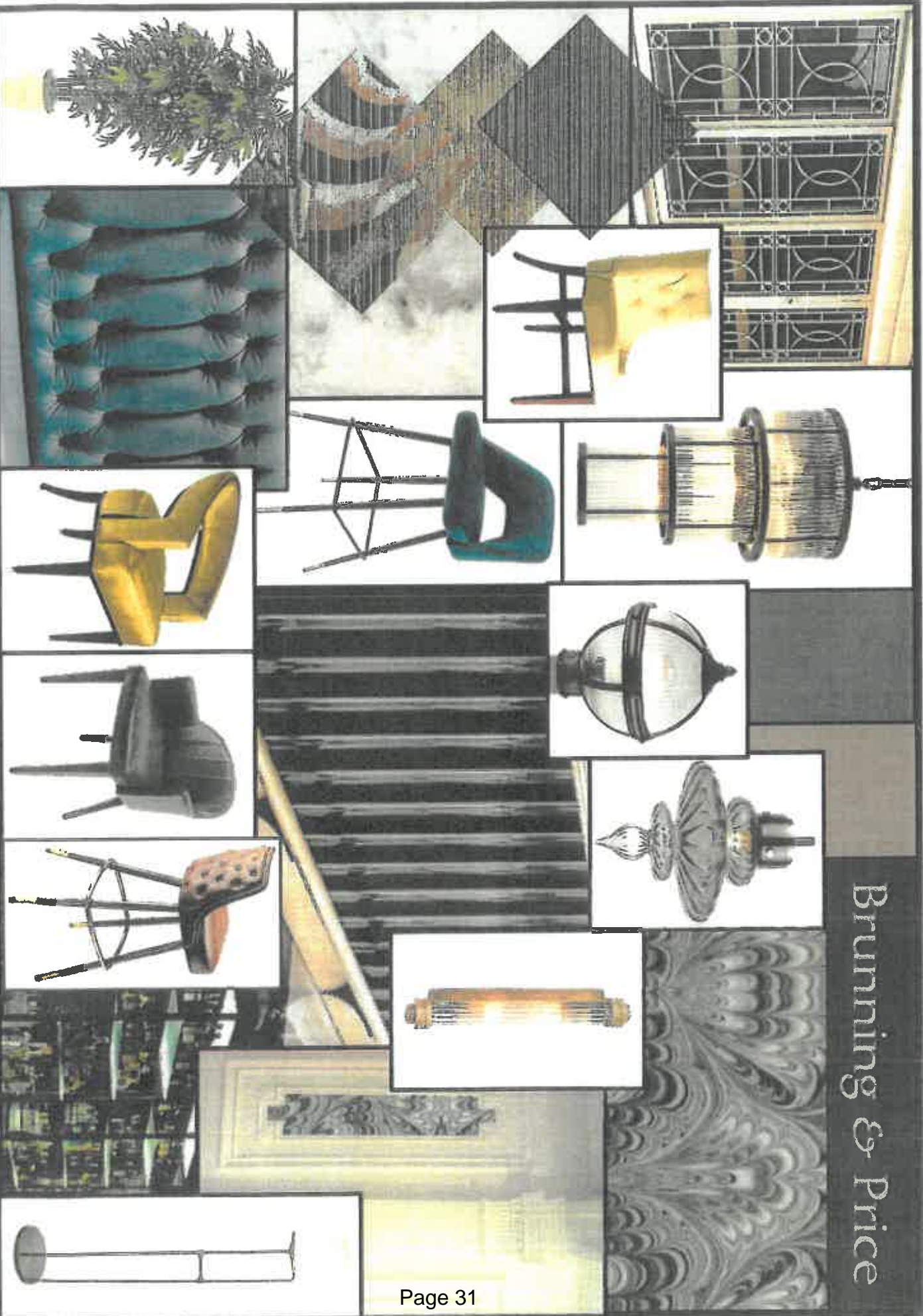
Brunning & Price



SPATIALIZED

The Veranda—Sample Board

Brunning & Price



Statement of Community Engagement

Proposed Brunning and Price at Garfunkel's, Orange Grove, Bath.

Introduction

Garfunkel's in Bath is operated by The Restaurant Group. The Restaurant Group operates over 500 restaurants and pubs across the UK which includes Frankie and Benny's, Chiquito, Coast to Coast, Garfunkels, Firejacks, Brunning and Price and Joe's Kitchen. Additionally, The Restaurant Group operate a concession group which trades over 60 outlets across more than 30 brands primarily at UK airports. Additionally TRG recently acquired wagamama which has 134 restaurants.

Within The Restaurant Group, the Brunning and Price business, which was created in 1989 has grown from a small collection of pubs in the North West of England to gastro pubs spanning the Country.

The Restaurant Group have been considering for sometime proposals to invest in Bath and re-brand the premises as Brunning and Price. The Company through its key senior management team including Keith Janes, Property Director of The Restaurant Group, Mary Wilcock, Managing Director and Dee Sturman Property Manager together with their key Planning, Licensing and Acoustic consultants as well as designer Lee Armstrong, have undertaken a programme of engagement with local residents to ensure the immediate neighbours are fully appraised of the proposed refurbishment at the premises and what this will mean in practice.

Overview of Engagement

Separate to licensing matters, applications are required in relation to listed building approval to deal with certain internal alterations and that has involved dialogue with the residents from 2016 onwards. During the course of 2018 it was determined that the investment would progress with the conversion of the premises to a Brunning and Price style of operation and as such invitations were sent to Ian XXX of The Abbey Residents Association and Anne XXX and Judith XXX of The Empire Owners Association.

A stakeholder meeting was held on the 2nd November 2018 at the premises which was attended by Ian XXX, Anne XXX, Judith XXX together with Mary Wilcock, Keith Janes, Dee Sturman, Lee Armstrong, Jonathan Phillips and Clare Eames.

The purpose of the meeting was to fully explain to the immediate neighbours the proposals and more importantly to understand the concerns of the neighbours which the Company were aware of following previous meetings and also licence applications.

In response to one of the resident's comments, a fresh acoustic survey was undertaken and then a subsequent meeting took place on the 8th January 2019. This meeting was attended by Ian XXX, Anne XXX, Judith XXX, Mary Wilcock, Keith Janes and Clare Eames.

These meetings have all been to progress the discussions so that the immediate neighbours were fully aware of the nature of the application and indeed to enable the licence application to be tailored to the specific concerns that were highlighted, which are now reflected in the operating schedule submitted with the application.

It is the Brunning and Price ethos and philosophy to continually engage with the local community given that the local community is at the heart of the business. Should the application be granted there will be a commitment to ongoing dialogue and meetings as required with the residents although the licence holder is confident that with the nature and extent of the community engagement to date and their robust operating policies and procedures and the nature and style of the operation that the Brunning and Price business will be able to operate harmoniously alongside its neighbours.

Poppleston Allen

Via the Licensing Authority

Date: 19 March 2019
Our ref: CE/RST/L12310-4
Doc Ref: 2146680146
Your ref:
E-mail:
Direct line:

Dear Sir/Madam

Garfunkels, Orange Grove, Bath
New Premises Licence

I act on behalf of The Restaurant Group (UK) Limited, in respect of their application for a new premises licence for Garfunkels, Orange Grove, Bath.

Thank you for taking the time to review and respond to my clients' premises licence application. Prior to submission of the application, my clients and I met with Anne Robins, on behalf of the Empire Owner's Association, to explain more about the proposed operation and the application.

I will be sending a little further information prior to the Licensing Sub Committee hearing of this matter. However, if I can assist any further in the meantime, please do not hesitate to contact me.

Yours sincerely



Clare Eames
Poppleston Allen

Rhian Todd

From: [REDACTED]
Sent: 20 March 2019 09:45
To: Helen Ward
Subject: Re: Re: Garfunkel's New premises

DOCID: 2146882805

Dear Helen
Yes they are all members of the Empire Owners Association, as are the [REDACTED] but wished to add their own submissions as well as supporting the wider EOA one from me.
Regards [REDACTED]

Sent from my iPhone

On 20 Mar 2019, at 09:31, Helen Ward <[REDACTED]> wrote:

Dear [REDACTED]

I am a solicitor at Poppleston Allen and I am assisting Clare in respect of the new premises licence application for Garfunkel's whilst she is away on annual leave.

I have reviewed the representations that we have received to the application and I note that the following residents of the Empire Grand have made objections. We have sent everyone a courtesy letter just to ensure that our details are available to them but if you could kindly let me know whether the following are also member of the Empire Owners Association that would be very helpful.

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

Clare will be back from annual leave next week but if I can assist with anything in the meantime then please do contact me.

Kind regards
Helen

Helen Ward | Solicitor
Poppleston Allen
E: [REDACTED] | T: [REDACTED] | M: [REDACTED] | W: www.popall.co.uk

London Office: The Stanley Building, 7 Pancras Square, London, N1C 4AG

Rhian Todd

From: Helen Ward
Sent: 20 March 2019 09:32
To: [REDACTED]
Subject: Re: Garfunkel's New premises

DOCID: 2146881899
SENTON: 20/03/2019 09:31:13

Dear [REDACTED]

I am a solicitor at Poppleston Allen and I am assisting Clare in respect of the new premises licence application for Garfunkel's whilst she is away on annual leave.

I have reviewed the representations that we have received to the application and I note that the following residents of the Empire Grand have made objections. We have sent everyone a courtesy letter just to ensure that our details are available to them but if you could kindly let me know whether the following are also member of the Empire Owners Association that would be very helpful.

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

Clare will be back from annual leave next week but if I can assist with anything in the meantime then please do contact me.

Kind regards

Helen

Rhian Todd

From: Clare Eames
Sent: 05 February 2019 11:18
To: [REDACTED]
Subject: RE: Garfunkels Bath- new premises licence application
Attachments: APPLICATION FORM.PDF; Licensing Brochure.pdf; 02-18-880 - Garfunkels, Bath - L1 Licensing.pdf

DOCID: 2146815461
SENTON: 05/02/2019 11:18:06

Dear [REDACTED]

Please find attached a copy of the final version of the premises licence application that we will be submitting later this week. I also attach a copy of the licence plan.

Please note prior to submission of the application we have pre-consulted with the Police Licensing Officer and Environmental Health regarding the application.

Kind regards

Clare

From: [REDACTED] [mailto:\[REDACTED\]](#)
Sent: 01 February 2019 17:49
To: Clare Eames; [REDACTED]
Subject: RE: Garfunkels Bath- new premises licence application

Dear Clare

Thank you for your email. We look forward to receiving the final version of your application for a new premises licence for Garfunkels at The Empire, Bath shortly.

Best wishes

From: Clare Eames [REDACTED] >
Sent: 31 January 2019 17:01
To: [REDACTED] >; [REDACTED] >; [REDACTED] >
Subject: Garfunkels Bath- new premises licence application

Dear All

I hope you are all well?

I will shortly be submitting the application for the new premises licence for Garfunkels at Bath.

Following our recent meetings my client and I have carefully considered the application that we would like to submit for a new premises licence to enable the premises to be refurbished and we hope you would agree revitalised.

Rhian Todd

From: Clare Eames
Sent: 05 February 2019 11:17
To:
Subject: RE: Garfunkels Bath- new premises licence application
Attachments: APPLICATION FORM.PDF; Licensing Brochure.pdf; 02-18-880 - Garfunkels, Bath - L1 Licensing.pdf

DOCID: 2146815449
SENTON: 05/02/2019 11:15:27

Dear _____

Please find attached a copy of the final version of the premises licence application that we will be submitting later this week. I also attach a copy of the licence plan.

Please note prior to submission of the application we have pre-consulted with the Police Licensing Officer and Environmental Health regarding the application.

Kind regards

Clare

From: _____
Sent: 01 February 2019 17:49
To: Clare Eames; _____
Subject: RE: Garfunkels Bath- new premises licence application

Dear Clare

Thank you for your email. We look forward to receiving the final version of your application for a new premises licence for Garfunkels at The Empire, Bath shortly.

Best wishes

From: Clare Eames <_____.>
Sent: 31 January 2019 17:01
To: _____
Subject: Garfunkels Bath- new premises licence application

Dear All

I hope you are all well?

I will shortly be submitting the application for the new premises licence for Garfunkels at Bath.

Following our recent meetings my client and I have carefully considered the application that we would like to submit for a new premises licence to enable the premises to be refurbished and we hope you would agree revitalised.

Rhian Todd

From: < >
Sent: 01 February 2019 17:49
To: Clare Eames;
Subject: RE: Garfunkels Bath- new premises licence application

DOCID: 2146812643

Dear Clare

Thank you for your email. We look forward to receiving the final version of your application for a new premises licence for Garfunkels at The Empire, Bath shortly.

Best wishes

From: Clare Eames < >
Sent: 31 January 2019 17:01
To: < >
Subject: Garfunkels Bath- new premises licence application

Dear All

I hope you are all well?

I will shortly be submitting the application for the new premises licence for Garfunkels at Bath.

Following our recent meetings my client and I have carefully considered the application that we would like to submit for a new premises licence to enable the premises to be refurbished and we hope you would agree revitalised.

Through the latest design of the premises and the hours and conditions that we have put together my client feels that they have dealt sensitively with the licensing issues in Bath and also the immediate concerns that you have raised.

I will be sending you a copy of the new premises licence application hopefully on Monday together in the application with the licence plan that will be submitted- I am just waiting for the designers to let me have the final version but you will be pleased to know as we discussed that the new premises licence application will seek less hours than are currently permitted by the premises licence and most notably we are introducing restrictions on the outside area that currently do not exist on the premises licence.

As we discussed when we met the opportunity for the new premises licence allows us to ensure that the conditions imposed are more relevant and meaningful in terms of the promotion of the licensing objectives than currently exists.

As such should you have any queries or questions once the application has been submitted then please do not hesitate to contact me and as we discussed my clients would hope that taking everything into the round you may feel open towards supporting the application.

Kind regards

Clare

Clare Eames | Partner

Rhian Todd

From: Clare Eames
Sent: 31 January 2019 17:01
To:
Subject: Garfunkels Bath- new premises licence application

DOCID: 2146810379
SENTON: 31/01/2019 17:00:34

Dear All

I hope you are all well?

I will shortly be submitting the application for the new premises licence for Garfunkels at Bath.

Following our recent meetings my client and I have carefully considered the application that we would like to submit for a new premises licence to enable the premises to be refurbished and we hope you would agree revitalised.

Through the latest design of the premises and the hours and conditions that we have put together my client feels that they have dealt sensitively with the licensing issues in Bath and also the immediate concerns that you have raised.

I will be sending you a copy of the new premises licence application hopefully on Monday together in the application with the licence plan that will be submitted- I am just waiting for the designers to let me have the final version but you will be pleased to know as we discussed that the new premises licence application will seek less hours than are currently permitted by the premises licence and most notably we are introducing restrictions on the outside area that currently do not exist on the premises licence.

As we discussed when we met the opportunity for the new premises licence allows us to ensure that the conditions imposed are more relevant and meaningful in terms of the promotion of the licensing objectives than currently exists.

As such should you have any queries or questions once the application has been submitted then please do not hesitate to contact me and as we discussed my clients would hope that taking everything into the round you may feel open towards supporting the application.

Kind regards

Clare

Rhian Todd

From: Clare Eames
Sent: 23 November 2018 10:22
To: [REDACTED]
Subject: Garfunkel's Bath – Proposed new meeting time, 9th January at 10am.
DOCID: 2146706233
SENTON: 23/11/2018 10:21:24

Dear all

As [REDACTED] is aware, my client is currently trying to arrange an acoustic report to be prepared which will involve access in to [REDACTED]'s property. The acoustician who has been chosen unfortunately is unable to attend until early December and therefore we will not have his report until late in December.

Mary and Keith, who you met before, along with myself would like to come and see you on Wednesday 9th January 2018 around 10am as that will allow us time to have undertaken the acoustic survey and have the results of the report.

At that point, we will be ready to submit the licensing and listed building applications and of course we will be able to discuss the final detail of those when we meet with you.

Kind regards

Clare

From: Clare Eames
Sent: 07 November 2018 10:54
To: [REDACTED]
Subject: RE: Garfunkel's Bath - Meeting tomorrow Friday 2nd November at 10am at Garfunkel's

Dear all

I just wanted to drop you a note to say thank you very much for meeting with myself and my clients last week.

I will be discussing the many things we spoke about with my clients further and we will be back in touch with you in due course.

Kind regards

Clare

From: Clare Eames
Sent: 01 November 2018 12:56
To: [REDACTED]
Subject: Garfunkel's Bath - Meeting tomorrow Friday 2nd November at 10am at Garfunkel's

Dear All,

Further to my email below, I look forward to seeing you all tomorrow together with my client's representatives.

Rhian Todd

From: Clare Eames
Sent: 15 November 2018 08:56
To: [REDACTED]
Subject: Garfunkel's, Bath – Meeting 10am 28th November 2018
DOCID: 2146690500
SENTON: 15/11/2018 08:56:06

Dear all

My client would be grateful if you could confirm that you would be available for the follow up meeting on Wednesday 28th November 2018 at around 10am? This meeting will be to update you with how matters are progressing from my client's side in relation to the licence application for the premises.

I look forward to hearing from you.

Kind regards

Clare

Rhian Todd

From: [REDACTED]
Sent: 07 November 2018 18:32
To: Clare Eames
Subject: RE: Garfunkel's Bath - Meeting tomorrow Friday 2nd November at 10am at Garfunkel's

DOCID: 2146680786

Dear Clare

Thank you for arranging for us to meet you all. It was so much easier to talk face to face. We hope for a happy outcome after your further deliberations.

Best wishes

From: Clare Eames <[REDACTED]>
Sent: 07 November 2018 10:54
To: [REDACTED]
Subject: RE: Garfunkel's Bath - Meeting tomorrow Friday 2nd November at 10am at Garfunkel's

Dear all

I just wanted to drop you a note to say thank you very much for meeting with myself and my clients last week.

I will be discussing the many things we spoke about with my clients further and we will be back in touch with you in due course.

Kind regards

Clare

Clare Eames | Partner

Poppleston Allen

London Office: The Stanley Building, 7 Pancras Square, London, N1C 4AG

We want your opinion...warts and all!

So keep a lookout for a short survey that you'll soon be receiving

From: Clare Eames
Sent: 01 November 2018 12:56
To: 'anne.robins@btopenworld.com'; 'ian.perkins60@talktalk.net'; 'mj.rutherford@btinternet.com'
Subject: Garfunkel's Bath - Meeting tomorrow Friday 2nd November at 10am at Garfunkel's

Rhian Todd

From: [redacted]
Sent: 07 November 2018 13:19
To: Clare Eames; [redacted]
Subject: Re: Garfunkel's Bath - Meeting tomorrow Friday 2nd November at 10am at Garfunkel's

DOCID: 2146680789

Dear Clare

I think we all found it very useful to air the issues, and it was good to put a face to names.

Regards, [redacted]

From: [Clare Eames](#)
Sent: Wednesday, November 07, 2018 10:53 AM
To: [redacted]
subject: RE: Garfunkel's Bath - meeting tomorrow Friday 2nd November at 10am at Garfunkel's

Dear all

I just wanted to drop you a note to say thank you very much for meeting with myself and my clients last week.

I will be discussing the many things we spoke about with my clients further and we will be back in touch with you in due course.

Kind regards

Clare

Clare Eames | Partner

Poppleston Allen

London Office: The Stanley Building, 7 Pancras Square, London, N1C 4AG

We want your opinion...warts and all!
So keep a lookout for a short survey that you'll soon be receiving

From: Clare Eames
Sent: 01 November 2018 12:56
To: [redacted]
Subject: Garfunkel's Bath - Meeting tomorrow Friday 2nd November at 10am at Garfunkel's

Rhian Todd

From: Clare Eames
Sent: 07 November 2018 10:54
To: [REDACTED]
Subject: RE: Garfunkel's Bath - Meeting tomorrow Friday 2nd November at 10am at Garfunkel's
DOCID: 2146676747
SENTON: 07/11/2018 10:53:17

Dear all

I just wanted to drop you a note to say thank you very much for meeting with myself and my clients last week.

I will be discussing the many things we spoke about with my clients further and we will be back in touch with you in due course.

Kind regards

Clare

From: Clare Eames
Sent: 01 November 2018 12:56
To: [REDACTED]
Subject: Garfunkel's Bath - Meeting tomorrow Friday 2nd November at 10am at Garfunkel's

Dear All,

Further to my email below, I look forward to seeing you all tomorrow together with my client's representatives.

We are also hopeful to have Dee Sturman from the Property Team whom I believe you have met before together with Jonathan Phillips who advises the company in relation to planning matters.

If you have any questions then please do not hesitate to contact me and as I will be away from the office today, the best number for me will be [REDACTED]

Many thanks,

Clare

From: Clare Eames
Sent: 23 October 2018 10:46
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Garfunkel's, Bath - Dates for Residents Meeting
Importance: High

Dear [REDACTED]

Many thanks for your email and I can confirm that my Client will arrange a quiet area in Garfunkel's which may be relevant if we need to discuss any proposed changes to layout.

My colleagues and I look forward to meeting with you on Friday 2nd November at 10am and should you have any questions in the meantime please do not hesitate to contact me.

Kind regards.

Clare

From: [Redacted]
Sent: 12 October 2018 16:26
To: Clare Eames
Cc: [Redacted]
Subject: Re: Garfunkel's, Bath - Dates for Residents Meeting

Dear Clare

Thank you for the confirmation.

I had meant to offer to host the meeting in our dining room but delayed emailing you when I knew you were away, and then simply forgot. If you feel it would be easier to meet in private at the Empire we would be happy to host it, but otherwise we shall come to Garfunkel's as you suggest.

Regards,

From: Clare Eames
Sent: Friday, October 12, 2018 4:17 PM
To: [Redacted]
Subject: Garfunkel's, Bath - Dates for Residents Meeting

Dear all

Further to previous correspondence, I just write to confirm our meeting with my client's representatives on Friday 2nd November 2018 at 10am.

I propose that the meeting takes place at Garfunkel's and if you have any queries or questions prior to the meeting then please do not hesitate to contact me.

Kind regards

Clare

Clare Eames | Partner

Poppleston Allen

E: [Redacted]

London Office: The Stanley Building, 7 Pancras Square, London, N1C 4AG



Date: 12th September 2018

Our ref:

Your ref:

E-mail:

Direct line:

The Abbey Residents Association
11 George Street
Bath
BA1 2EH

By email only - _____

Dear _____

Garfunkel's, Orange Grove, Bath
New Premises Licence

I act on behalf of The Restaurant Group (UK) Limited and Brunning and Price. On behalf of the Managing Director for Brunning and Price, Mary Wilcock, please see below a letter that I am sending on her behalf.

I look forward to hearing from you.

I am writing to you to update you in relation to proposals to refurbish the current Garfunkel's and operate a new food led business.

As you may be aware, The Restaurant Group UK Ltd who owns Garfunkel's has a number of different styles of premises within the stable of businesses that they operate. They include, Frankie & Benny's, Coast to Coast, Chiquito, TRG concessions, Garfunkel's, Joes Kitchen and Brunning and Price, of which I am Managing Director.

One thing in common amongst all of our businesses is a commitment to operate fantastic premises with a strong food offer and premises that are sympathetic to the community within which they trade.

We take our responsibilities under the Licensing Act and related legislation extremely seriously and in relation to Bath, we are fully aware of the concerns that have been highlighted through the recent licensing minor variation licence process and the planning application regarding any changes to this business.

We are poised to invest in the region of over £1,000,000 to refurbish the premises in to a Brunning and Price style of operation.

I attach a brochure which details more the look and feel of a Brunning and Price premises. I would wish to assure you that in line with the existing premises licence, there is no intention to provide for off sales and indeed the existing premises licence does not permit off sales. Just as a point of clarification, the recent application for minor variation that was submitted to tidy up outdated conditions was not seeking to add off sales in, it was simply removing the narrative from a part of the premises licence. That is a matter that could be confirmed by the Licensing Authority and the Police who indeed highlighted the discrepancy on the licence. The Licensing Act 1964, as you know, has now been repealed and the structure of the Operating Schedule (which details) for a new premises licence is governed by the local Licensing Policy, Government Guidance and the Licensing Act 2003.

In addition, the proposed application for the new premises licence will not request regulated entertainment.

We are shortly going to be submitting a new premises licence and we would welcome the opportunity to meet with you again during the consultation period to discuss concerns that you may have.

As such, I am proposing to host a meeting at Garfunkel's between 4pm and 6pm on Tuesday 18th September 2018 together with Keith Janes who is the Group Property Director for The Restaurant Group and in addition our Licensing Solicitor will also be there to answer any questions that you may have on the licensing process.

Along with my colleagues, I look forward to meeting you then.

Yours sincerely

Mary Wilcock

Your sincerely



Clare Eames
Poppleston Allen

Date:

Our ref: 12 September 2018

Your ref:

E-mail:

Direct line:

Empire Owners' Association
31 The Empire
Grand Parade
Bath
BA2 4DF

By email only -

Dear

Garfunkels, Orange Grove, Bath
New Premises Licence

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Along with my colleagues, I look forward to meeting you then.

Yours sincerely

Mary Wilcock

Your sincerely



Clare Eames
Poppleston Allen

Rhian Todd

From: Geoff Cannon <Geoff.Cannon@avonandsomerset.police.uk>
Sent: 01 February 2019 10:56
To: Clare Eames; 'Terrill_Wolyn@BATHNES.GOV.UK'
Subject: RE: Garfunkels Bath

DOCID: 2146811011

Good morning Clare.

Thank you for continuing to liaise with us prior to submitting your final application.

I'm pleased to see that your meetings with the local residents associations appear to have gone well.

I have studied the proposed application form and the plans and I can advise you that there will be no representations made by the Police.

With kind regards,

Geoff Cannon

BANES Police Area Licensing Officer
Redbridge House
BATH BA2 3EW

☎ Ext: 01278 645524 Int: 45524

☎ Mob: 07889 655950

✉ Geoff.Cannon@avonandsomerset.pnn.police.uk

www.avonandsomerset.police.uk | Follow us on [Twitter](#) and [Facebook](#)

Avon and Somerset Police
SERVE. PROTECT. RESPECT.

Rhian Todd

From: Nigel Shire <Nigel_Shire@BATHNES.GOV.UK>
Sent: 01 February 2019 11:28
To: Terrill Wolyn; Clare Eames
Cc: 'Geoff Cannon (Geoff.Cannon@avonandsomerset.police.uk)'
Subject: RE: Garfunkels Bath - Proposed New Premises Licence Application

DOCID: 2146811394

Dear Clare,

Thank you for the advance notification of your application.

The wording re noise limiter is acceptable; however could I request that you also offer a condition relating to signage reminding patrons as they leave to respect the local environment re noise

Many thanks

Nigel Shire
Environmental Health Officer
Environmental Protection Team
Bath & North East Somerset Council
Telephone: 01225 396651
Fax: 01225 396142
Email: Nigel_shire@bathnes.gov.uk
www.bathnes.gov.uk
www.twitter.com/bathnes

Bath and North East Somerset – *The place to live, work and visit.*

Proposed Brunning and Price at Garfunkel's, Bath – Noise Management Plan

Brunning & Price Limited operate a number of licenced premises with strong links to their local communities. The Company manages their premises sensitively to ensure that neighbouring residents are not disturbed when in their homes. The management at site will offer regular meetings with neighbouring residents to allow any concerns to be discussed and addressed appropriately.

The Company will operate a site specific investigation and resolution procedure in relation to any complaints made in relation to the running of the premises.

The premises will ensure that any noise associated with the use of the premises will not cause significant adverse impact on the amenities of occupiers of the nearest residential properties.

In addition to the specific restrictions that will be adhered to as detailed below, it is important to note that the premises will operate under a premises licence. The premises licence is an ongoing regulatory control over certain activities associated with the premises. The legislation relating to licensing is underpinned by the four licensing objectives, including the prevention of public nuisance. Powers under the Licensing Act 2003 enable a premises licence to be revoked, suspended or amended at any time. Further specialist advice has been obtained from Big Sky Acoustics.

The points below detail more specifically the actions and processes which will be followed by the premises with regard to the management and control:

1. Refuse and bottle bins will be confined to an area demarcated for that purpose.
2. No customers will be permitted outside (on the premises) after 10pm daily (enforced by staff).
3. There should be no emptying of bottle bins outside the premises, outside the following times: Monday to Sunday including Bank Holidays or Public Holidays 08:00 to 22:00 hours. Deliveries and refuse collections will be managed so as to not cause a disturbance.
4. A direct telephone number should be made available at all times the premises is open. The telephone number is to be made available to residents and businesses in the vicinity.

5. The outside area shall be used for the supply of food and/or drink between the hours of 08:00 and 22:00 hours daily and should be cleared of customers by 22:30.
6. Service to the outside area should be restricted to customers who are seated at tables provided (no standing around drinking). This should be supported by signage outside the premises.
7. The outside area should be served by waiter/waitress service.
8. A notice advising customers to leave the premises quietly and respect the needs of residents must be displayed at each of the exits of the premises.
9. Additionally, a condition is proposed on the Premises Licence that indicates, should there be musical noise that results in disturbance to the occupants and properties within the vicinity, ultimately a noise limiter device would be installed.
10. Should a Licence be granted this NMP will be reviewed in light of any conditions imposed and hours granted and will be further reviewed in light of the recommendations in the acoustic report by Big Sky Acoustics.



**Noise impact assessment
Garfunkel's, The Empire, Orange Grove, Bath BA1 1LP**

**Prepared by: Richard Vivian, Principal Consultant at Big Sky Acoustics Ltd
On behalf of: Brunning & Price Limited
Document Ref: 19010806
Survey date: 12th - 13th December 2018**

Big Sky Acoustics document control sheet

Project title:	Noise Impact assessment Garfunkel's, The Empire, Orange Grove, Bath BA1 1LP
Technical report number:	19010806
Survey date:	12 th - 13 th December 2018
Submitted to:	Dee Sturman Bunning & Price Limited Yew Tree Farm Buildings Saighton Chester Cheshire CH3 6EG
Submitted by:	Richard Vivian Big Sky Acoustics Ltd 46 Frenze Road Diss IP22 4PA 020 7617 7069 info@bigskyacoustics.co.uk
Prepared by:	Richard Vivian BEng(Hons) MIET MIOA MAES MIOL Principal Acoustic Consultant

Document status and approval schedule

Revision	Description	Date	Approved
0	Approved for issue	07/01/2019	RV
1	Add premises name	01/04/2019	RV

DISCLAIMER

This report was completed by Big Sky Acoustics Ltd on the basis of a defined programme of work and terms and conditions agreed with the Client. The report has been prepared with all reasonable skill, care and diligence within the terms of the contract with the Client and taking into account the project objectives, the agreed scope of works, prevailing site conditions and the degree of manpower and resources allocated to the project. Big Sky Acoustics Ltd accepts no responsibility whatsoever, following the issue of the report, for any matters arising outside the agreed scope of the works. This report is issued in confidence to the Client and Big Sky Acoustics Ltd has no responsibility of whatsoever nature to third parties to whom this report or any part thereof is made known. Any such party relies upon the report at their own risk. Unless specifically assigned or transferred within the terms of the agreement, Big Sky Acoustics Ltd retains all copyright and other intellectual property rights, on and over the report and its contents.

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Executive summary

An assessment of the building and noise control measures currently in place at an existing restaurant and bar located in the ground floor of The Empire, Orange Grove, Bath has been carried out.

Initial concerns regarding noise from inside the restaurant affecting residents in the apartments above have been investigated. Minor remedial works to the chimney in the restaurant and changes to the sound insulation of a doorway at ground floor level near the main entrance are required. However the separating floor between ground and first floor appears to be of substantial and effective construction.

It would appear that the primary complaint from residents about noise from the restaurant relates to the use of the outside terrace to the front of the building. Control of noise in this area should be addressed through operational controls on numbers and hours of use, supervision of the area, and possibly some form of canopy to provide screening.

With these controls in place residents in the immediate area would be protected from noise from the normal commercial activity on the ground floor.

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1.0 Qualifications and experience

- 1.1 My name is Richard Vivian. I am the founder and Managing Director of Big Sky Acoustics Ltd. Big Sky Acoustics is an independent acoustic consultancy that is engaged by local authorities, private companies, public companies and individuals to provide advice on the assessment and control of noise.
- 1.2 I have a Bachelor of Engineering Degree with Honours from Kingston University, I am a Member of the Institution of Engineering & Technology, the Institute of Acoustics, the Audio Engineering Society and the Institute of Licensing.
- 1.3 I have over twenty-five years of experience in the acoustics industry and have been involved in acoustic measurement and assessment throughout my career. My professional experience has included the assessment of noise in connection with planning, licensing and environmental protection relating to sites throughout the UK. I have given expert evidence in the courts, at planning hearings, at licensing hearings, and at public inquiries on many occasions.

2.0 Introduction

- 2.1 Big Sky Acoustics Ltd was instructed by Dee Sturman of Brunning & Price Limited to carry out an assessment of the building and noise control measures in place at an existing restaurant and bar located in the ground floor of The Empire, Orange Grove, Bath BA1 1LP.
- 2.2 This report was prepared following my inspection of the building and continuous measurement of noise levels outside the premises. Additional noise measurement data and observations were made in the surrounding area during the survey.
- 2.3 A glossary of acoustical terms used in this report is provided in Appendix A.
- 2.4 All sound pressure levels in this report are given in dB re: 20 μ Pa.

3.0 Site and surrounding area

- 3.1 The location of the site is shown in Appendix B. The application site is on Orange Grove close to both Bath Abbey to the north-east of the city centre and next to Pulteney Weir on the River Avon.
- 3.2 The Empire building dates from 1901 and was originally an hotel before being used by the Admiralty from the Second World War until the late 1980s.
- 3.3 In 1996 the bulk of the building was refurbished into 43 flats and this residential complex includes a restaurant, lounge, dining room with bar, guest suites, library, fitness room and sauna, billiard room, hairdresser, and video cinema. Two restaurants (Garfunkel's and Framptons) occupy street level of the building on Orange Grove and Grand Parade.
- 3.4 The daytime noise climate in the vicinity of the site is dominated by road traffic, some pedestrian activity and continuous broadband noise from the Pulteney Weir.
- 3.5 There are parking bays (for residents) immediately in front of the building and a taxi rank which is currently split into two during the refurbishment works to The Abbey. Bus stops are on Grand Parade, and the rail station is 500m due south of the site.



Figure 1: Garfunkel's on Orange Grove. Note residential parking and taxi rank. Browns to left of image.

- 3.6 It is important when assessing the impact of noise from an individual premises in an area that the concept of additional noise associated with the specific activity at that premises is taken into account. The incremental change to noise levels caused by the normal commercial operation of a restaurant and bar in an area where there is already established noise and activity could be so small as to be undetectable at residential properties if it is masked by the existing noise in the area.
- 3.7 It is also a consideration that a bona-fide commercial premises in the area can reduce street drinkers, rough sleeping, litter and crime as the commercial operation seeks to eliminate this type of activity from the immediate area outside the premises for the benefit and safety of their own patrons and employees. This is achieved through good lighting, CCTV coverage, litter removal and a presence of professional personnel who will be able to observe and record all activity in the immediate area.

4.0 Criteria

NPPF

- 4.1 The revised National Planning Policy Framework (NPPF) was published by the Ministry of Housing, Communities and Local Government on 24 July 2018 and sets out the government's planning policies for England and how these are expected to be applied. This revised Framework replaces the previous NPPF published in March 2012.
- 4.2 References to noise can be found in Section 15 titled "Conserving and enhancing the natural environment". The NPPF states at Paragraph 170 sub-paragraph (e)

"Planning policies and decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans".

- 4.3 The NPPF states at Paragraph 180 that *"Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should: a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development - and avoid noise giving rise to significant adverse impacts on health and the quality of life; b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason".*
- 4.4 The comments about *adverse impacts on health and quality of life* are referenced (In the NPPF at footnote 60) to the Noise Policy Statement for England (NPSE) published by the Department for Environment, Food & Rural Affairs in 2010. The NPSE is intended to apply to all forms of noise, including environmental noise, neighbour noise and neighbourhood noise.
- 4.5 The NPSE sets out the Government's long-term vision to *'promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development'* which is supported by the following aims:
- *Avoid significant adverse impacts on health and quality of life;*
 - *Mitigate and minimise adverse impacts on health and quality of life.*
- 4.6 The NPSE defines the concept of 'significant observed adverse effect level' (SOAEL) as *'the level above which significant adverse effects on health and quality of life occur'*. The following guidance is provided within the NPSE: *'It is not possible to have a single objective noise-based measure that defines SOAEL that is applicable to all sources of noise in all situations. Consequently, the SOAEL is likely to be different for different noise sources, for different receptors and at different times. It is acknowledged that further research is required to increase our understanding of what may constitute a significant adverse impact on health and quality of life from noise. However, not having specific SOAEL values in the NPSE provides the necessary policy flexibility until further evidence and suitable guidance is available.'*
- 4.7 The Planning Practice Guidance (PPG) on Noise published by Ministry of Housing, Communities & Local Government in March 2014 is written to support the NPPF with more specific planning guidance on how planning can manage potential noise impacts in new development. [Note: At the time of writing this report the PPG had not been updated to reflect the July 2018 changes to the NPPF].
- 4.8 The PPG reflects the NPSE and states at Paragraph 001 that noise needs to be considered when new developments may create additional noise and when new developments would be sensitive to the prevailing acoustic environment. When preparing local or neighbourhood plans, or taking decisions about new development, there may also be opportunities to consider improvements to the acoustic environment.

- 4.9 The PPG clarifies at Paragraph 002 that neither the NPPF nor the NPSE expects noise to be considered in isolation, separately from the economic, social and other environmental dimensions of proposed development.
- 4.10 The PPG expands upon the concept of SOAEL (together with Lowest Observable Adverse Effect Level, LOAEL and No Observed Effect Level, NOEL) as introduced in the NPSE and provides a table of noise exposure hierarchy for use in noise impact assessments in the planning system.
- 4.11 Figure 2 is reproduced from PPG Paragraph 005 and summarises the noise exposure hierarchy, based on the likely average response.

Perception	Examples of Outcomes	Increasing Effect Level	Action
Not noticeable	No Effect	No Observed Effect	No specific measures required
Noticeable and not intrusive	Noise can be heard, but does not cause any change in behaviour or attitude. Can slightly affect the acoustic character of the area but not such that there is a perceived change in the quality of life	No Observed Adverse Effect	No specific measures required
Lowest Observable Adverse Effect Level (LOAEL)			
Noticeable and intrusive	Noise can be heard and causes small changes in behaviour and/ or attitude, e.g. turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a perceived change in the quality of life	Observed Adverse Effect	Mitigate and reduce to a minimum
Significant Observed Adverse Effect Level (SOAEL)			
Noticeable and disruptive	The noise causes a material change in behaviour and/ or attitude, e.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area.	Significant Observed Adverse Effect	Avoid
Noticeable and very disruptive	Extension and regular changes in behaviour and/ or an inability to mitigate effect of noise leading to psychological stress or physiological effects, e.g. regular sleep deprivation/awakening; loss of appetite, significant, medically definable harm, e.g. auditory and non auditory	Unacceptable Adverse Effect	Prevent

Figure 2: PPG Noise Exposure Hierarchy

- 4.12 The PPG at Paragraph 005 considers that a noise impact with an effects level which is lower than SOAEL is acceptable but that consideration needs to be given to mitigating and minimising those effects (taking account of the economic and social

benefits being derived from the activity causing the noise). When the significant observed adverse effect level boundary is crossed noise causes a material change in behaviour such as keeping windows closed for most of the time or avoiding certain activities during periods when the noise is present. If the exposure is above this level the planning process should be used to avoid this effect occurring, by use of appropriate mitigation such as by altering the design and layout. Such decisions must be made taking account of the economic and social benefit of the activity causing the noise, but it is undesirable for such exposure to be caused. At the highest extreme, noise exposure would cause extensive and sustained changes in behaviour without an ability to mitigate the effect of noise. The impacts on health and quality of life are such that regardless of the benefits of the activity causing the noise, this situation should be prevented from occurring.

Licensing Act 2003

- 4.13 Bath & North East Somerset Council has a duty under the Licensing Act 2003 to determine its policy with respect to the exercise of its licensing functions and publish a statement of that policy.
- 4.14 The Council fulfils its primary obligation under the Act to promote the four licensing objectives by having policies based on each:
- The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm
- 4.15 Licensable activities at the site are permitted under Premises Licence Number 17/01351/LAPRE.

Other relevant legislation

- 4.16 Separately to any grant of planning permission or premises licence members of the public are protected from noise that is a nuisance.
- 4.17 The Environmental Protection Act 1990 part III deals with statutory nuisance which includes noise. This Act allows steps to be taken to investigate any complaints which may then result in the issuing of an abatement notice and a subsequent prosecution of any breach of the notice. A statutory nuisance is a material interference that is prejudicial to health or a nuisance.
- 4.18 The Clean Neighbourhoods and Environment Act 2005 deals with many of the problems affecting the quality of the local environment and provides local authorities with powers to tackle poor environmental quality and anti-social behaviour in relation to litter, graffiti, waste and noise. A fixed penalty notice can be issued when noise exceeds the *permitted level* as prescribed under the Noise Act 1996 as amended by the Clean Neighbourhoods and Environment Act 2005. The permitted noise level using A-weighted decibels (the unit environmental noise is usually measured in) is 34dBA if the underlying level of noise is no more than 24dBA, or 10dBA above the underlying level of noise if this is more than 24dBA.

British Standard 8233

4.19 BS8233:2014 states that for steady external noise sources, it is desirable that the internal ambient noise level in dwellings does not exceed the guideline values of the standard as shown below.

Activity	Location	07:00 to 23:00	23:00 to 07:00
Resting	Living room	35 dB L _{Aeq,16hour}	-
Dining	Dining room/area	40 dB L _{Aeq,16hour}	-
Sleeping (daytime resting)	Bedroom	35 dB L _{Aeq,16hour}	30dB L _{Aeq,8hour}

Figure 3: Indoor ambient noise levels for dwellings (from BS8233 Table 4)

Operational objectives

4.20 The management team at Brunning & Price Limited are keen to promote good relationships with their neighbours. Therefore in addition to all statutory obligations it is a primary operational objective that noise from the normal operation of the premises does not have a detrimental impact on any neighbouring properties.

5.0 Balancing planning and licensing noise conditions

- 5.1 The guidance issued under Section 182 of the Licensing Act 2003 is clear in its general principles (Para 1.16) that "[licencing conditions] should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation". Therefore if the objective of the prevention of public nuisance is satisfactorily upheld because there already exist tests of nuisance through The Environmental Protection Act 1990; The Noise Act 1996; and The Clean Neighbourhoods and Environment Act 2005, then additional conditions on a premises licence that merely duplicates these statutory requirements should not be necessary according to Home Office guidance.
- 5.2 Similarly planning guidance has, for a long time, stated that additional planning conditions which duplicate the effect of other legislation should not be imposed, and current planning practice guidance is clear that conditions requiring compliance with other regulatory requirements will not meet the test of necessity and may not be relevant to planning.
- 5.3 The pragmatic approach to specifying relevant requirements for noise control conditions would be that more general noise criteria relating to the principle of use of the site are applied under the planning regime; these may include boundary noise conditions or plant operating level limits. More specific requirements relating to licensable activities such as hours of operation, the requirement for a sound system limiter or a noise management policy should be implemented through the licensing process.

6.0 Noise measurement procedure

- 6.1 To establish the noise levels in the area a static measurement position was set up on the front terrace of The Empire and left to record ambient noise levels from early evening until the following morning.

6.2 Additional noise measurements were made with a hand-held measurement system at other locations in the immediate area. Analysis shows good correlation between all the attended and unattended recorded noise data at the logging position.

Time	Location	LAeq	L2eq	LAFmax	LAF90	Leq63Hz	Leq125Hz	Comments
19:18	Logging position	59	86	67	54	69	61	2 taxis on taxi rank, large party in restaurant
21:00	Logging position	58	80	74	54	67	58	Wind died down. 3 cabs on rank nearest restaurant, further 5 opposite. Birdsong noticeable
21:34	Logging position	58	79	71	53	65	60	Last customers leaving restaurant. Staff preparing to close. 8 cabs on rank (4 & 4)
23:42	Logging position	58	85	71	51	69	66	3 cabs on rank. Browns is still open. Fairly quiet on streets
23:49	Entrance to Framptons	65	78	71	63	69	66	Premises closed but noise is predominantly from Pulteney Weir
23:50	At edge of river	78	84	79	77	75	73	Continuous broadband noise source!
0:29	Logging position	55	82	73	50	66	58	2 taxis on rank. Browns still open. General pedestrian activity in area picked up
10:47	Main dining area	74	78	82	63	58	72	Inside restaurant, sound system on maximum level
10:52	Apt 7	30	63	38	27	41	34	Inside apt 7 living room

Figure 4: Noise measurement data summary and notes

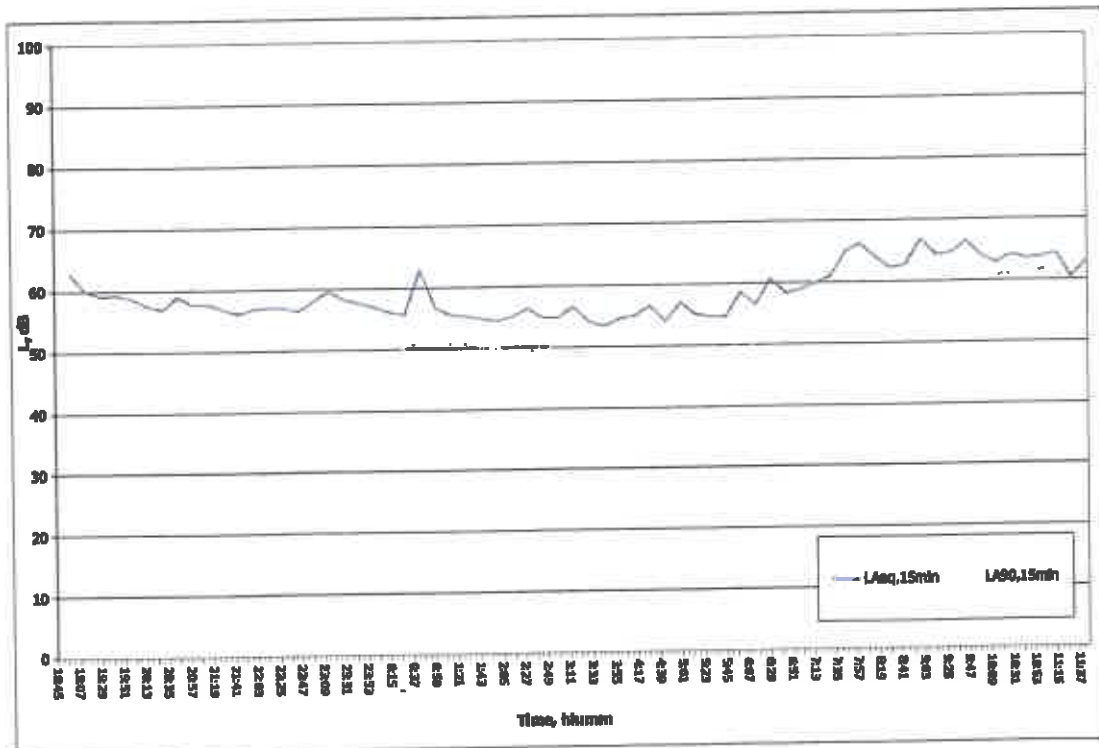


Figure 5: Logging position in front of The Empire building: 15-minute sample periods

6.3 Noise measurements were made in continuous samples of 1-second intervals. Measurements included the LAeq, LA90 and LAmx indices. Simultaneous octave and third octave frequency spectra were also obtained during the survey.

Measurements were taken at 1.5 m above first floor level. Measurement duration was typically 5-minutes per sample. When the L_{Aeq} level quickly stabilised, shorter duration measurements were taken although no measurement was shorter than 1-minute. Throughout the course of the survey an outdoor microphone wind-shield was used.

- 6.4 For the purposes of this assessment all attended measurements were paused for emergency service sirens, aircraft passes and other significant short-duration noises. (The unattended logging equipment operates continuously and therefore all noise incidents are recorded on that trace).
- 6.5 The instrumentation used to carry out the noise measurements is detailed in Appendix C. The calibration of the measuring equipment was checked prior to and immediately following the tests and no signal variation occurred. Calibration of equipment is traceable to national standards.
- 6.6 The weather conditions during the survey are reported in Appendix D.

7.0 Noise measurement analysis and observations

- 7.1 Continuously recorded noise measurement data on the front terrace is displayed in graphical form in Figure 5. This illustrates that average noise levels in the evening are in the mid-fifties dBA. They fall a little after 01:00hrs and the lowest average noise level is 53dBA at 03:46hrs. It is clear that from 06:00hrs noise levels rise again as the activity of a new day starts. Attended measurement data from the logging position (see Figure 4) correlates with logged data.



Figure 6: External area of licenced premises at southern end of Parade Gardens

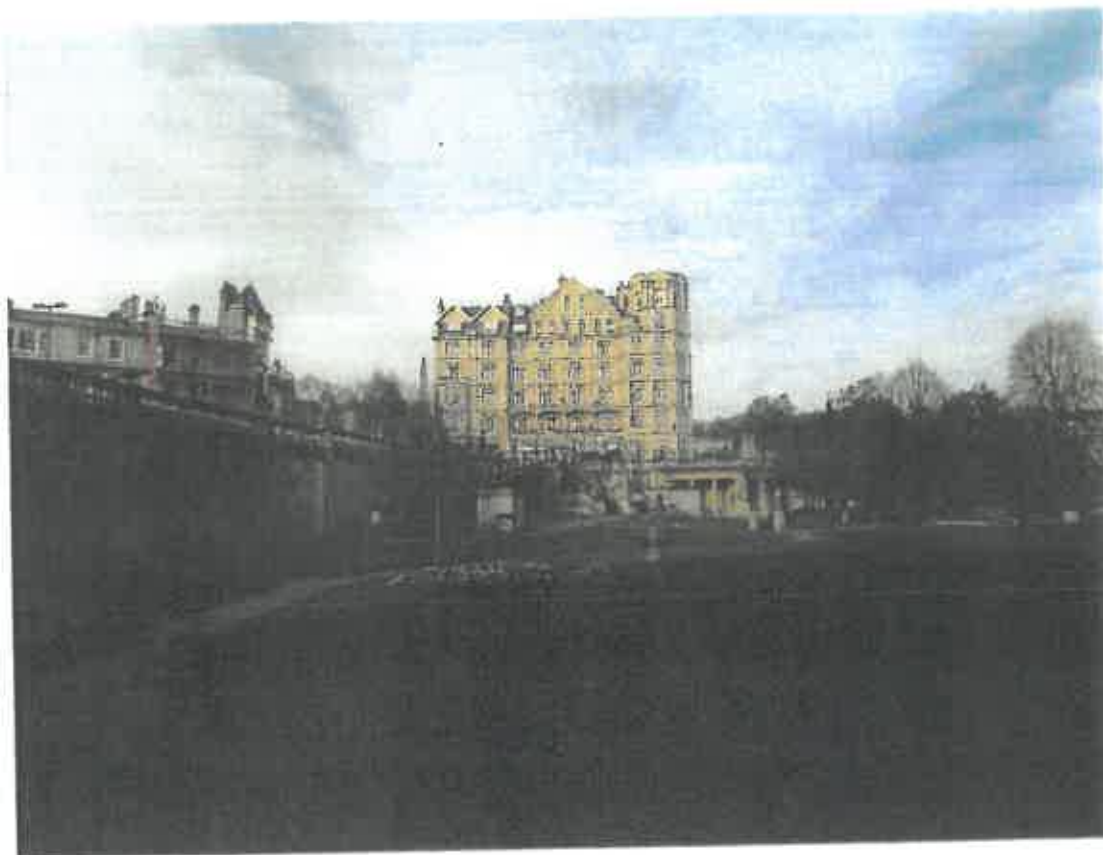


Figure 7: View from location in Figure 6 across Parade Gardens to The Empire building

- 7.2 The town centre was relatively quiet although taxis were using the taxi rank throughout most of the evening. I did notice an increase in pedestrian activity around midnight.
- 7.3 A handful of premises remained open when I finished the attended survey. In the immediate area the Alehouse on York Street was open as was Poo Na Na on North Parade Road (open until 03:00hrs) and Opa (open until 02:30hrs).
- 7.4 Towards the end of the survey some music noise, in particular low frequency (bass) noise was noticeable at the logging position and I traced this back to Opa which is a restaurant and features an underground bar area (see Figure 6). Noise breakout was evident from this area and there is clear line of sight from here across Parade Gardens to The Empire building.

8.0 Predicted noise of patrons leaving the site

- 8.1 The lowest recorded background noise measurement outside the premises, expressed as L_{A90} , was 50dB. Average noise levels expressed as L_{Aeq} were typically around 58dB.
- 8.2 Having established that the existing noise climate it is helpful to compare this existing noise with the predicted noise of a group of patrons in the area outside the premises.
- 8.3 In order to assist in the understanding of actual noise levels produced by people outdoors it is important to understand the effects of the noise source (i.e. people

talking) and how that noise level increases as the number of people talking increases.

- 8.4 Referring to data held in our own library; normal conversation is typically in the range of 55-60dBA when measured at 1 metre. In assessing for a worst-case condition then I have considered a group of 20 people are talking outside the premises.
- 8.5 In normal conversation no more than 50% of them would be talking (there will be at least one listener for each talker). If we now consider people to be talking at the upper end of the normal speaking range, and look at a worst case scenarios of half of the people talking concurrently at 60dBA then in order to calculate the total noise level we logarithmically sum 10 sources of 60dB as follows:

$$\Sigma = 10 \log \left(n \times 10^{\left(\frac{60}{10}\right)} \right)$$

where n is the number of people talking

- 8.6 The formula above gives a value for total sound pressure level for a group of 20 people to be 70dBA¹.
- 8.7 It is important to remember that this is a worst-case value, when 50% of the people are talking simultaneously and loudly. In reality general lulls in the conversation, smoking, or conversations where there are more than one listener to each talker mean that less than 50% of an average group will be talking simultaneously. I have also observed that groups in close proximity to each other talk with more hushed voices than groups of people spread out when, for example, seated at large tables in a pub beer garden.
- 8.8 70dBA is the predicted noise from a group of twenty people talking outside when measured at 1 metre. Sound is attenuated in air and this effect is noticeable as the listener moves away from the source. In calculating distance attenuation, the noise of people talking is assumed to be a number of discreet point sources and therefore is attenuated by 6dB with each doubling of distance. So if the noise source is 70dBA at 1 metre then at 2 metres it becomes 64dBA, at 4 metres 58dBA. Attenuation due to distance means that a separation distance of just over 4 metres from the noise source to the receiver position (i.e. a residential window above) will reduce the noise to approximately the existing ambient noise level in the street.
- 8.9 The residential development of The Empire building in 1996 would have been required to take into account the existing noise climate in the area and will therefore have provided suitable internal noise levels for normal living. Inside a residential property all external noise sources are attenuated by the glazing, by the distance from the noise source to the window, and by any physical obstruction of clear line of sight to the noise source. Furthermore the average person may wish to protect themselves from the sound of traffic and other activity in the city and so may choose to sleep away from windows on a façade to a busy street, or with their windows closed.

¹ Alternative calculation method according to Growcott, D (Consideration of Patron Noise from Entertainment Venues, Australian Association of Acoustical Consultants Guideline, Australia, 2009) using $L_{Aeq} = 21 * \log(N) + 43$ gives 70.3dBA and therefore shows very close correlation

9.0 Meeting with the residents

- 9.1 It was very helpful that during the survey I was able to meet with the residents of the apartment immediately above Garfunkel's. This allowed me to inspect the ground floor communal areas of the residential development as well as their apartment. It was also very helpful to hear the experience of these residents regarding historic noise from Garfunkel's and the other commercial premises in the immediate area. In addition this provided the opportunity to introduce the residents to the newly appointed manager of Garfunkel's.
- 9.2 I talked with the residents about the acoustic separation between the ground floor commercial uses and the first floor apartments. Due to the historic nature of the building and the ornate plaster ceilings in some areas of the ground floor there could be constraints on upgrading the sound insulation of the floor any further. However the initial refurbishment process and subsequent testing does indicate a satisfactory level of acoustic separation between commercial and residential uses.
- 9.3 The residents only experienced music noise intrusion at a time when live music acts performed in front of the fireplace in the restaurant. They explained the noise as being clearly audible and identified that this would be due to the route of the chimney through their apartment. I noted that the seating in the restaurant would not currently allow a band to play at this location and the restaurant staff confirmed that this would have happened some time ago. I recommend that some exploratory works are carried out to the chimney during any planned refurbishment and the chimney is correctly blocked off.
- 9.4 Complaints were also made about cleaners coming in early (before 07:00hrs) and dragging furniture across the floor. I explained that this should be addressed with operational procedures controlling cleaning times and also different feet on chairs and tables. The residents confirmed that this early morning noise happened some time ago and that the current cleaning regime is later in the day.
- 9.5 The residents explained that the ceiling fans in the restaurant can be felt vibrating in the floor of their living room. If ceiling fans are to be retained in the restaurant they should be balanced, properly mounted on resilient fixings, and operated at slow speed. They should be included in the building maintenance programme for periodic checking.
- 9.6 The residents explained that an external air-conditioning inverter (possibly the outdoor unit for the kitchen cold-store) to the side of the building below street level, vibrates and rattles. This should be addressed through maintenance as the thin pressed steel covers can vibrate as the units age. Additional screening may also be required which would be straightforward to install at this location and I do not envisage heritage issues as it is below pavement level and would helpfully screen the plant.
- 9.7 I tested the installed sound system at maximum level. There was immediately a complaint from the concierge in the flats but that is because her front desk is at ground floor level very close to the old main entrance doorway which has only been superficially, in acoustic terms, blocked up. Whilst there are no residents resting or sleeping at this location it is my experience that where residents can hear noise from a premises in the hallways and stairs as they enter their flats they are immediately reminded of the proximity of licensed premises and can show heightened sensitivity to noise. It also does affect the work environment for the building manager/concierge. I recommend this doorway is reworked to achieve a higher level of sound insulation.



Figure 8: Ceiling fans in main restaurant space



Figure 9: Outdoor unit on west side of building

- 9.8 The installed sound system is old and undocumented. I adjusted the zoning so that noise levels in the entrance are minimal. I also reduced the bass level. When operating at maximum level in the restaurant (74dBA) music noise did not have an impact in the apartment upstairs. The residents confirmed that they were not aware of noise travelling through the building but did have some concerns about airborne music sound breaking out of the open doors to the terrace and then being noticeable when their first floor windows directly above are open.
- 9.9 Sound system design and control following any refurbishment will be crucial. The site is not suitable for ceiling speakers but will require discreet cabinet loudspeakers mounted at no greater than 3m above floor level. However the general indication is that the separating floor is not as bad as anticipated which represents a very significant reduction in cost and complexity of any building works.

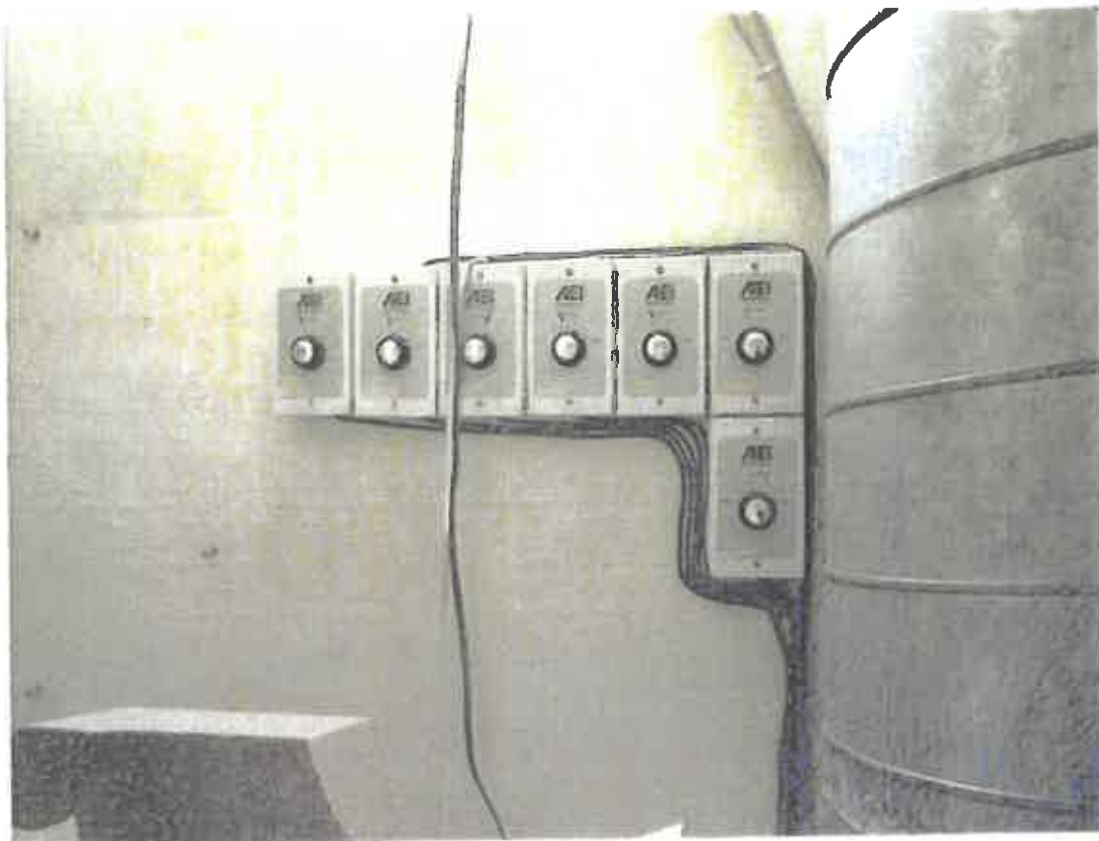


Figure 10: Sound system zoning controls

- 9.10 The primary concern voiced by the residents is control of patrons on the outside terrace: acoustically in terms of noise generated when it is busy and there are open windows in the apartment, and also the impact of cigarette smoke ingress through open windows.
- 9.11 This area needs to be supervised, with maximum numbers controlled. The residents agreed that a canopy or screen to obscure the terrace would be beneficial.



Figure 11: View from apartment above of Garfunkel's terrace area (and location of noise logging equipment)



Figure 12: View from same position as Figure 11 of Browns terrace area

10.0 Recommendations for noise control - remedial works

- 10.1 The building envelope provides a continuous barrier to contain sound generated inside the premises from breaking out.
- 10.2 An upgrade is required to the original entrance door from the restaurant lobby that previously led to the staircase. This was blocked up during the redevelopment but clearly it is an acoustic weak-point and requires upgrading.
- 10.3 It is recommended that the doorway is first filled with a masonry wall of dense aggregate blockwork or bricks laid frog up.
- 10.4 A suitable independent wall lining would consist of Gypframe 'I' studs constructed as a framework independent of the masonry wall ensuring a minimum distance between the framework and the wall of ideally 50mm or greater. Where space is at a premium a smaller void can be used but the rear of the I stud should clear the wall by no less than 10mm.
- 10.5 Load the cavity with 50mm Rockwool ProRox SL920 45kg/m³ mineral wool slabs and line the wall with two layers of British Gypsum 15mm SoundBloc fixed with staggered joints and skimmed. All edges should be sealed with flexible mastic.

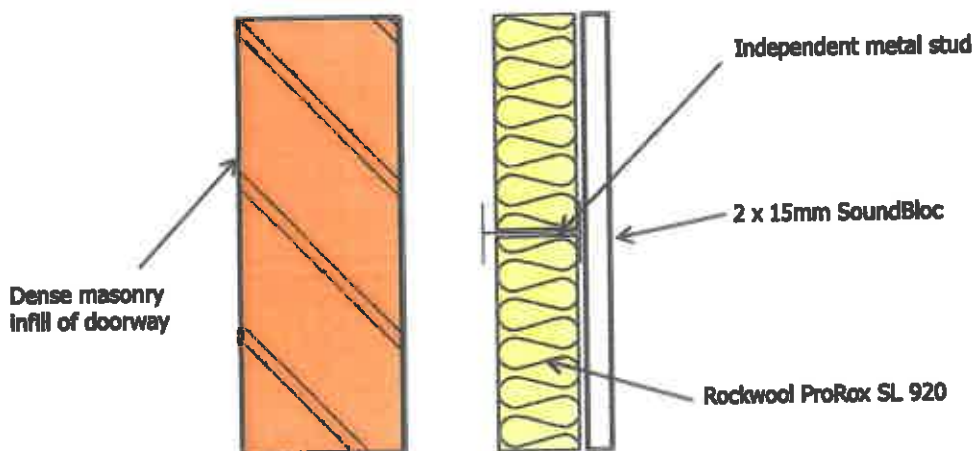


Figure 13: Independent wall lining

- 10.6 Any breaches of the wall by electrical cables, service pipes, etc should be minimised.
- 10.7 The essential feature of the wall lining is that it sits independently of the masonry infill and is only supported in perimeter channels fixed to the floor, ceiling and side walls. The metal frame structure itself must not be tied back to the masonry. The unlined metal frame structure will have some *give* in it but it will become rigid once lined with plasterboard.
- 10.8 Exploratory works should be carried out to the chimney in the restaurant and the chimney should be substantially blocked off to prevent noise breakout to upper floors. This work should be carried out using masonry or where that is impractical two independent layers of plasterboard. No works will be visible but the chimney will effectively be sealed off preventing sound transmission, airflow and potentially improving fire compartmentalisation.

- 10.9 Ceiling fans should be balanced, properly mounted on resilient fixings, and operated at slow speed. They should be in the building maintenance programme for periodic checking.
- 10.10 The outdoor unit on the west side of the building should be correctly mounted on resilient mounts and maintained to prevent rattles from the casing.

11.0 Recommendations for noise control - operational

- 11.1 Existing procedures should be reviewed and recommendations for a noise management policy are presented at Appendix F. These procedures should be periodically reviewed and updated.

12.0 Recommendations for noise control - sound system

- 12.1 Any new sound system must be professionally installed and provide adequate control of sound in different areas as well as overall maximum volume level control using a limiter. It is recommended that the sound system is periodically checked to ensure that the maximum operating level is not likely to cause a nuisance at the nearest noise sensitive property. Assessment should be carried out, wherever possible, from the nearest noise sensitive property itself at a time when ambient noise is at its lowest (but within normal operating hours of the premises).

13.0 Conclusions

- 13.1 Big Sky Acoustics Ltd was instructed by Dee Sturman of Brunning & Price Limited to carry out an assessment of the building and noise control measures in place at an existing restaurant and bar located in the ground floor of The Empire, Orange Grove, Bath BA1 1LP.
- 13.2 It is my conclusion that this is an established location for a restaurant with a bar but that some aspects of plant, building maintenance and operational procedures could be improved upon.
- 13.3 The building envelope effectively contains noise from all internal activity and upgrades to the blocked off door at the entrance, and also to any open chimney, are required. Mechanical plant should be correctly maintained to minimise noise levels. Any sound systems should include a limiter to control the maximum operating level.
- 13.4 Noise Management procedures must be implemented at the premises. These should be regularly reviewed and updated, preferably in consultation with other interested parties.



Richard Vivian BEng(Hons) MIET MIOA MAES MIOL
Principal Acoustic Consultant, Big Sky Acoustics Ltd

Appendix A - Terminology

Sound Pressure Level and the decibel (dB)

A sound wave is a small fluctuation of atmospheric pressure. The human ear responds to these variations in pressure, producing the sensation of hearing. The ear can detect a very wide range of pressure variations. In order to cope with this wide range of pressure variations, a logarithmic scale is used to convert the values into manageable numbers. Although it might seem unusual to use a logarithmic scale to measure a physical phenomenon, it has been found that human hearing also responds to sound in an approximately logarithmic fashion. The dB (decibel) is the logarithmic unit used to describe sound (or noise) levels. The usual range of sound pressure levels is from 0 dB (threshold of hearing) to 140 dB (threshold of pain).

Frequency and Hertz (Hz)

As well as the loudness of a sound, the frequency content of a sound is also very important. Frequency is a measure of the rate of fluctuation of a sound wave. The unit used is cycles per second, or hertz (Hz). Sometimes large frequency values are written as kilohertz (kHz), where 1 kHz = 1000 Hz. Young people with normal hearing can hear frequencies in the range 20 Hz to 20,000 Hz. However, the upper frequency limit gradually reduces as a person gets older.

A-weighting

The ear does not respond equally to sound at all frequencies. It is less sensitive to sound at low and very high frequencies, compared with the frequencies in between. Therefore, when measuring a sound made up of different frequencies, it is often useful to 'weight' each frequency appropriately, so that the measurement correlates better with what a person would actually hear. This is usually achieved by using an electronic filter called the 'A' weighting, which is built into sound level meters. Noise levels measured using the 'A' weighting are denoted dBA. A change of 3dBA is the minimum perceptible under normal everyday conditions, and a change of 10dBA corresponds roughly to doubling or halving the loudness of sound.

C-weighting

The C-weighting curve has a broader spectrum than the A-weighting curve and includes low frequencies (bass) so it can be a more useful indicator of changes to bass levels in amplified music systems.

Noise Indices

When a noise level is constant and does not fluctuate over time, it can be described adequately by measuring the dB level. However, when the noise level varies with time, the measured dB level will vary as well. In this case it is therefore not possible to represent the noise level with a simple dB value. In order to describe noise where the level is continuously varying, a number of other indices are used. The indices used in this report are described below.

- L_{eq}** The equivalent continuous sound pressure level which is normally used to measure intermittent noise. It is defined as the equivalent steady noise level that would contain the same acoustic energy as the varying noise. Because the averaging process used is logarithmic the L_{eq} is dominated by the higher noise levels measured.
- L_{Aeq}** The A-weighted equivalent continuous sound pressure level. This is increasingly being used as the preferred parameter for all forms of environmental noise.
- L_{Ceq}** The C-weighted equivalent continuous sound pressure level includes low frequencies and is used for assessment of amplified music systems.
- L_{Amax}** is the maximum A-weighted sound pressure level during the monitoring period. If fast-weighted it is averaged over 125 ms, and if slow-weighted it is averaged over 1 second. Fast weighted measurements are therefore higher for typical time-varying sources than slow-weighted measurements.
- L_{A90}** is the A-weighted sound pressure level exceeded for 90% of the time period. The L_{A90} is used as a measure of background noise.

Example noise levels:

Source/Activity	Indicative noise level dBA
Threshold of pain	140
Police siren at 1m	130
Chainsaw at 1m	110
Live music	96-108
Symphony orchestra, 3m	102
Nightclub	94-104
Lawnmower	90
Heavy traffic	82
Vacuum cleaner	75
Ordinary conversation	60
Car at 40 mph at 100m	55
Rural ambient	35
Quiet bedroom	30
Watch ticking	20

Appendix B - Site location



Appendix C - Instrumentation

All attended measurements were carried out using a Cirrus type CR:171B integrating-averaging sound level meter with real-time 1:1 & 1:3 Octave band filters and audio recording conforming to the following standards: IEC 61672-1:2002 Class 1, IEC 60651:2001 Type 1 I, IEC 60804:2000 Type 1, IEC 61252:1993 Personal Sound Exposure Meters, ANSI S1.4-1983 (R2006), ANSI S1.43-1997 (R2007), ANSI S1.25:1991. 1:1 & 1:3 Octave Band Filters to IEC 61260 & ANSI S1.11-2004.

Unattended measurements were carried out using a Svan type 971 integrating-averaging sound level meter with real-time 1:1 & 1:3 Octave band filters conforming to the following standards: IEC 61672-1:2002 Class 1. 1:1 & 1:3 Octave Band Filters to IEC 61260.

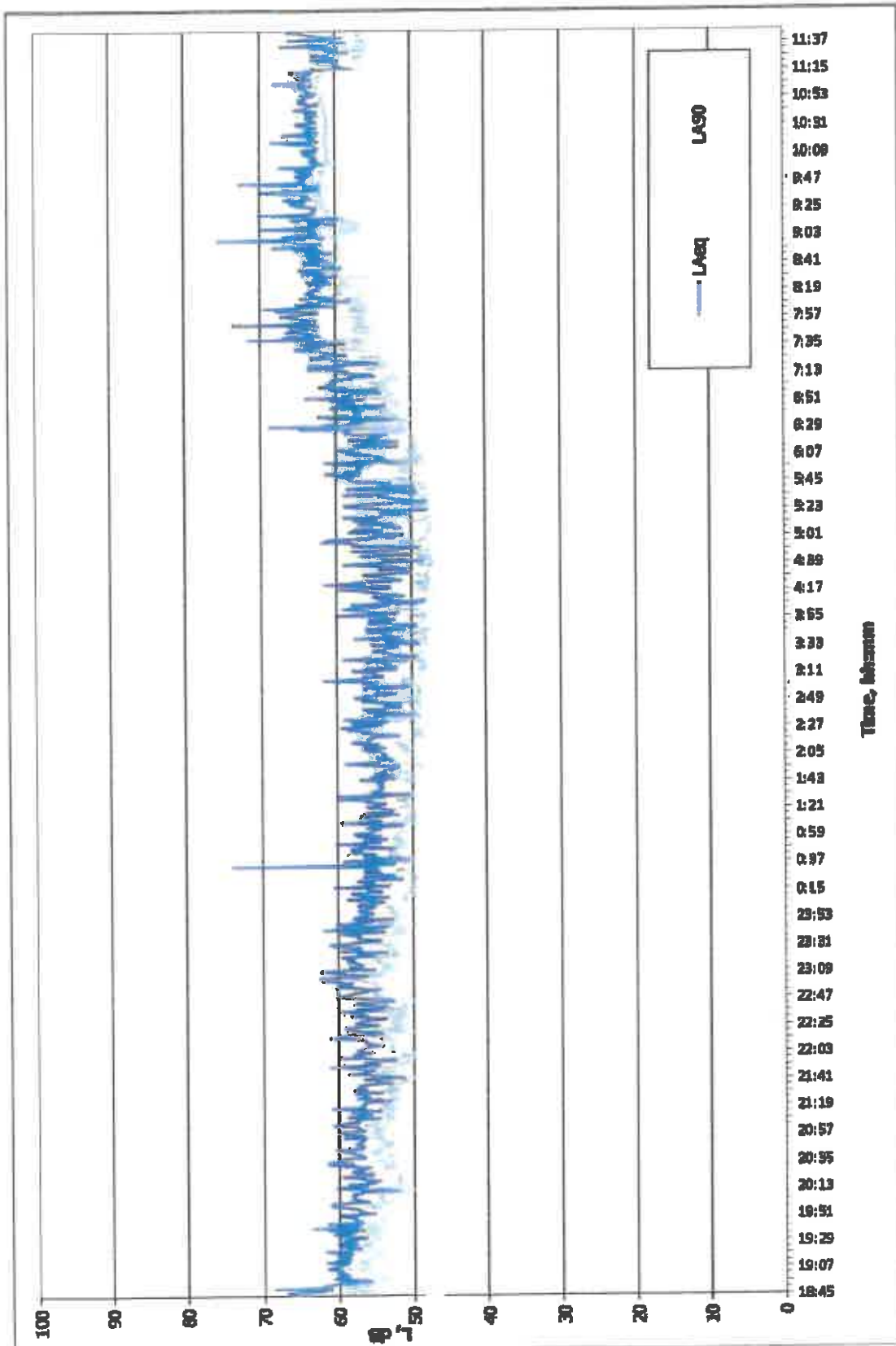
The calibration of the measuring equipment was checked prior to and immediately following the tests and no signal variation occurred. Calibration of equipment is traceable to national standards. The following instrumentation was used during the survey:

Description	
Cirrus sound level meter	type CR:171B
Cirrus pre-polarized free-field microphone	type MK:224
Cirrus microphone pre-amplifier	type MV:200E
Cirrus class 1 acoustic calibrator	type CR:515
Svan sound level meter	type 971
ACO pre-polarized free-field microphone	type 7052E
Svan microphone pre-amplifier	type SV18

Appendix D - Meteorology

12 -13 December 2018	Temperature	Wind speed	Precipitation
At start	6°C	3-4ms ⁻¹	None
During assessment	5°C	4ms ⁻¹	None
At finish	6°C	4-5ms ⁻¹	None
<i>Additional comments:</i> Wind chill making it feel cold. Wind picking up towards end of survey. Mostly cloudy at night.			

Appendix E - Measurement data



Logging position in front of The Empire building: 1-minute sample data

Appendix F – Suggested points for a Noise Management Policy

We operate a considerate business. We aim to manage all noise from our premises so that we do not disturb people resting and sleeping in their homes. We therefore have a comprehensive approach to managing noise from our premises. The following points are critical to our noise management policy:

- No music or amplified sound shall be generated in the premises so as to give rise to nuisance in any residential property.
- Except for access, maintenance and safety reasons, emergency exit and service doors will not be secured open when the premises are operating.
- No empty bottles will be tipped or thrown into outside storage receptacles at the premises between 21:00 and 07:00hrs.
- Refuse collections are made at the times allocated for the street. We will ensure that waste is correctly packaged and can be removed quickly and efficiently. There will be no on-street refuse storage.
- Our sound systems are fitted with a limiter which will be maintained and calibrated. The limiter operation may be checked at any time by a technical officer from the licensing authority.
- No queuing occurs outside our premises.
- Any glass or bottles in the entrance doorway will be cleared. Bottles and glasses do not originate from our premises as our patrons do not take drinks outside, but any glass will still be cleared away as we make every effort to keep the area around our building tidy and safe.
- We encourage all personnel to take pride in the area we work in. We will endeavour to keep the entrance area and outside terrace clean and attractive for our patrons and for our neighbours. This may mean dealing with debris that has nothing to do with us but in the interests of making this a better area we will still clear it up.
- A telephone contact number is provided on our website. If there is a complaint about noise it will be logged and appropriate action taken.
- Clearly legible notices are displayed at the exist from the premises requesting patrons to respect the needs of local residents and to leave the premises and the area quietly.
- The entrance doors and external terrace areas are monitored and numbers in the outside area will be controlled.
- We will attach the utmost importance to the careful investigation and prompt resolution of any complaint made in respect of the running of the premises. Particular emphasis is placed on building and maintaining close links with local residents including hosting meetings where necessary to allow our neighbours to raise any issues and for those issues to be quickly resolved.

Subject: Garfunkel's Restaurant and Bar, Orange Grove, Bath BA1
1LP
From: Jonathan Phillips BA (Hons) DipTP MA MRTPI
Head of Hospitality & Leisure, Planning
Date: 29/03/2019
To: Clare Eames, Partner, Poppleston Allen Licensing Solicitors



PLANNING STATUS REPORT

AUTHORISED USE

It appears that the current use as Garfunkel's restaurant and bar commenced in 1996 following the grant of planning permission for Class A3 (at that time "food and drink" use) on 15 February 1995. Details of the planning permission are not available on the Council's web site, although a copy of the decision notice has been formally requested. It appears that the original intended operator was Caffè Uno, but the planning history reveals an application for advertisement consent at the existing Garfunkel's unit that was consented on 28 May 1998. It is therefore reasonable to assume that the Garfunkel's operation has operated at the site since at least that time and has continued to do so until the present day.

The Statutory Instrument 2005/84, which amends the Town & Country Planning (Use Classes) Order 1987, came into force on 21 April 2005. Since reclassification of the Use Classes Order at that time, Class A3 has been defined as "use for the sale of food and drink for consumption on the premises". This is therefore the authorised use of the Garfunkel's premises.

IMPACT ON USE OF REFURBISHMENT TO BRUNNING AND PRICE STYLE OF OPERATION

The proposed building works are wholly cosmetic and have no impact upon the character of the use of the building. The operation will continue to sell food and drink for consumption on the premises and so the refurbishment will have no material impact in land use planning terms over the lawful restaurant and bar use, and particularly the current Garfunkel's use, therefore by definition the use does not constitute development requiring planning permission. The use remains as Class A3. A change of use to a drinking only establishment (Class A4) is not proposed or required.

The characteristics of the proposed food and drink operation clearly do not suggest that the primary use will change materially in character to that of a drinking establishment, despite the potential availability of a limited number of chairs for use by customers not choosing to purchase food.

In practice, the operators envisage from their other 66 operations around the country that a significant proportion of sales will come from food at a similar amount you would expect to see in any casual dining premises. The sale of drinks could not reasonably or lawfully be defined as the single primary purpose of the operation (with food sales merely incidental or ancillary). The commercial operation is clearly reliant on food sales to be viable. Furthermore, there is no physical or functional separation between food and drink uses and the site comprises a single planning unit. Consequently, by legal definition there is no change in the character and nature of the operation, material or otherwise. The single primary use of the land is to sell food and drink products for consumption on the premises and this is wholly aligned with the existing, authorised Class A3 use.

In terms of the definition of development that might trigger the need for planning permission, the proposed operation does not raise any different environmental issues, such as litter, longer opening hours, customer capacity, extra traffic and pedestrian activity, etc, from those generally raised by a Class A3 use. In the absence of a material change in the character of the use, planning permission is not required.

CURRENT APPLICATION

Listed building consent is required for alterations to the building that might affect its architectural and/or historical character. An application for listed building consent has been submitted (LPA Ref: 19/00467/LBA), which proposes internal alterations to the building, including new flooring, relocated servery and order point, new pendant fittings, acoustic attenuation works to chimneys and unused rear doorway, removal of faux column features and replacement


toilet facilities. These works are cosmetic in nature and no structural alterations are proposed. The determination due date is 12 April 2019.

In the absence of any alterations that materially affect the external appearance of the building, planning permission is not required for the proposed alterations to the building. Furthermore, the character of the use of the building is unaffected by the proposed alterations and so there are no other planning implications from the proposed building works.

Premises Licence

Premises Licence Number	15/02689/LAPRE
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Part 1 – Premises Details

<p>Postal address of premises, or if none, ordnance survey grid reference or description, including Post Town, Post Code Browns Restaurant Old Police Station Orange Grove Bath BA1 1LP</p>	<p><i>True copy</i>  Steve Burnett, Solicitor Poppleston Allen Solicitors Nottingham</p>
Telephone number	01225 481199

Where the licence is time limited the dates	Not applicable
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Licensable activities authorised by the licence and the times the licence authorises the carrying out of licensable activities	
Sale of Alcohol	
Monday to Wednesday	10:00 - 00:00
Thursday to Saturday	10:00 - 01:00
Sunday	10:00 - 22:30
Exhibition of a Film (Indoors only)	
Monday to Wednesday	10:00 - 00:00
Thursday to Saturday	10:00 - 01:00
Sunday	10:00 - 22:30
Performance of Recorded Music	
Every Day	00:00 - 00:00
Late Night Refreshment (Indoors and Outdoors)	
Monday to Wednesday	23:00 - 00:00
Thursday to Saturday	23:00 - 01:00
Seasonal Variations:	
Between 1st April and 31st October the licensable activities may begin at 09.00 hours.	
Non Standard Timings:	
Licensable activities are permitted from normal activity start time on New Year's Eve until normal activity finish time on New Year's Day.	
In the event of the transmission of any recognised international event which falls outside the current permitted hours on the premises licence to permit the activity commencing one hour before the start of the event and ending one hour after the end of the event, the details of the activity to be notified to the police 14 days beforehand. The event will not proceed if the police receive written notice on the DPS 7 days prior to the event.	

The opening hours of the premises

Monday to Wednesday	08:00 - 00:30
Thursday to Saturday	08:00 - 01:30
Sunday	08:00 - 23:00

From normal opening time on New Year's Eve until normal closing time on New Year's Day.

Seasonal Variations:

Between 1st April and 31st October the licensable activities may begin at 09.00 hours.

Non Standard Opening Times:

In the event of the transmission of any recognised international event which falls outside the current permitted hours on the premises licence to permit the activity commencing one hour before the start of the event and ending one hour after the end of the event, the details of the activity to be notified to the police 14 days beforehand. The event will not proceed if the police serve written notice on the DPS 7 days prior to the event.

Where the licence authorises supplies of alcohol whether these are on and/or off supplies

Alcohol is supplied for consumption both on and off the premises

Bath & North East Somerset Council

Part 2

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

Mitchells & Butlers Leisure Retail Ltd
27 Fleet Street
Birmingham
B3 1JP
0870 6093000
browns.bath@mbplc.com

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

Registered Business Number - 01001181

Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol

Mr Jonathan Blake
Manor Farm Cottage
Norton Malreward
Bristol
BS39 4EX

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

12/04104/LAPERS
Portsmouth City Council

This licence is issued by Bath & North East Somerset Council as licensing authority under Part 3 of the Licensing Act 2003 and regulations made thereunder.

Signed for and on behalf of
Bath & North East Somerset Council:



Dated 18 September 2015

Bath & North East Somerset Council

Annex 1 – Mandatory conditions

Admission of children is restricted in accordance with the recommendation by the British Board of Film Classification.

If the film has not been classified the restriction of children must be approved by the Licensing Authority.

("Children" means any person under 18 years).

Mandatory conditions in respect of premises supplying alcohol for consumption on the premises only, or both on and off the premises:

No supply of alcohol may be made under the premises licence:

- a) at a time when there is no designated premises supervisor in respect of the premises licence, or
- b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

From 28 May 2014:

The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014

1. 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.

2. For the purposes of the condition set out in paragraph 1:

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

(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 rate 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) "valued added tax" means value added tax charged in accordance with the Value Added Tax Act 1994(b)*.

3. Where the permitted price given by Paragraph (b) of paragraph 2 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.

4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 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.

(a)* 1979 c. 4. Section 1 was amended by regulation 2 of the Excise Duty (Amendment of the Alcoholic Liquor Duties Act 1979 and the Hydrocarbon Oil Duties Act 1979) Regulations 1992 (S.I. 1992/3158), section 162 of and Part 1 of Schedule 29 to the Finance Act 1995 (c. 4), section 7 of and paragraph 2(a) of Schedule 2 to the Finance Act 1991(c. 31), section 3 of the Finance Act 1993 (c. 34), section 227 of and paragraph 51 of Schedule 39 to the Finance Act 2012 (c. 14), section 1 of the Finance Act 1995, section 1 of and Part 2 of Schedule 1 to the Finance Act 1988 (c. 39), section 5 of the Finance Act 1997 (c. 16) and Article 2 of the Alcoholic Liquor Duties (Definition of Cider) Order 2010 (S.I. 2010/1914). Section 2 was amended by article 6 of the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979 (S.I. 1979/241), regulation 2 of S.I. 1992/3158, section 11 of and Part 2 of Schedule 8 to the Finance Act 1981 (c. 35), section 7 of and paragraph 3 of Schedule 2 to the Finance Act 1991 and section 5 of the Finance Act 1997. Section 3 was amended by article 7 of S.I. 1979/241. Section 4 was amended by article 8 of S.I. 1979/241, section 15 of and paragraphs 2 and 3 of Schedule 1 to the Finance Act 2011 (c. 11) and section 227 of and paragraphs 51 of Schedule 39 to the Finance Act 2012 (c. 14). Section 5 was amended by section 1 of the Finance Act 1982 (c. 39) and section 180 of the Finance Act 2013. Section 36 was amended by section 7 of the Finance Act 1991, section 4 of and

Bath & North East Somerset Council

paragraph 1 of Schedule 1 to the Finance Act 2002 (c. 23), sections 14 and 15 of paragraphs 2 and 4 of Schedule 1 to the Finance Act 2011, section 180 of the Finance Act 2013 and section 1 of and paragraph 9 of Schedule 1 to the Finance Act (No. 2) Act 1992 (c. 48). Section 37 was amended by section 15 of and paragraph 1 of Schedule 1 to the Finance Act 2011 and section 180 of the Finance Act 2013. Section 54 was amended by section 1 of and paragraph 12 of Schedule 1 to the Finance (No. 2) Act 1992 and section 5 of the Finance Act 1985 (c. 54). Section 55 was amended by section 1 of the Finance Act 1984 (c. 43) and section 1 of and paragraph 13 of Schedule 1 to the Finance (No. 2) Act 1992. Section 62 was amended by section 3 of the Finance Act 1996 (c. 8), section 10 of the Finance (No.2) Act 1997 (c. 58), section 180 of the Finance Act 2013, section 4 of the Finance Act 1998 (c. 36) and section 3 of the Finance Act 1997. There are other amendments which are not relevant to this Order.

(b)* 1994 c. 23. Section 2 was amended by section 3 of the Finance (No.2) Act 2010 (c.31). Section 7 was amended by section 76 of and Part 1 of Schedule 36 to the Finance Act 2009 (c. 10) and section 203 of and paragraphs 2 and 3 of Schedule 28 to the Finance Act 2012 (c. 14). Section 24 was amended by section 19 of and paragraph 1 of Schedule 8 to the Finance (No.3) Act 2010 (c.33). There are other amendments which are not relevant to this Order.

From 1 October 2014:

The Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014

1. (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 disability).

2. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

3. (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 under 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.

4. 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 whiskey: 25ml or 35ml; and iii) still wine in a glass: 125ml; 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.

Any individual employed to carry out a security activity must be licensed by the Security Industry Authority.

Annex 2 – Conditions consistent with the Operating Schedule

There shall be no promotions that encourage illegal, irresponsible or immoderate consumption.

Toughened glass to be used.

No adult entertainment (paid for by the company of a nude physical nature) is permitted at these premises.

Children under the age of 16 are to be accompanied by an adult at all times.

Planters will surround the outside area to prevent customers repositioning tables and/or chairs outside the designated area.

There shall be a maximum of 14 tables and 56 covers in the outside area.

The outside area shall be used for the supply of food and/or drink between the hours of 10:00 and 22:00 hours and shall be cleared of customers by 22:30 hours.

Service to the outside area shall be restricted to customers who are seated at the tables provided (no standing around drinking). This shall be supported by signage outside the premises.

The outside area shall be serviced by waiter/waitresses and where the area is in use by customers during the Summer (June, July and August) then a designated member of staff shall be stationed outside to meet and greet customers and to supervise the outside area from 12:00 noon.

Annex 3 – Conditions attached after a hearing by the licensing authority

Music both recorded and produced by the piano proposed at the premises is not to be audible to the nearest noise sensitive premises.

Supervision to be enhanced by a CCTV system to be installed in liaison with the police which shall be maintained in working order and provided with recording facilities with tapes to retain for fourteen days and made available to the police for evidential purposes as required.

The additional hours beyond 00.00 are not to be used until planning permission has been granted.

Bath & North East Somerset Council

Annex 4 – Plans

Plan Refs:

1719 Drawing No: 05A

1719 Drawing No: 05

Part B

Premises Licence Summary

Premises Licence Number

15/02689/LAPRE

Premises Details

Postal address of premises, or if none, ordnance survey map reference or description, including Post Town, Post Code

Browns Restaurant
Old Police Station
Orange Grove
Bath
BA1 1LP

Certified as a true copy



Steve Burnett, Solicitor

~~Poppleton Allen Solicitors~~

Nottingham

Telephone number 01225 481199

Where the licence is time limited the dates Not applicable

Licensable activities authorised by the licence and the times the licence authorises the carrying out of licensable activities

Sale of Alcohol

Monday to Wednesday 10:00 - 00:00
Thursday to Saturday 10:00 - 01:00
Sunday 10:00 - 22:30

Exhibition of a Film (Indoors only)

Monday to Wednesday 10:00 - 00:00
Thursday to Saturday 10:00 - 01:00
Sunday 10:00 - 22:30

Performance of Recorded Music

Every Day 00:00 - 00:00

Late Night Refreshment (Indoors and Outdoors)

Monday to Wednesday 23:00 - 00:00
Thursday to Saturday 23:00 - 01:00

Seasonal Variations:

Between 1st April and 31st October the licensable activities may begin at 09.00 hours.

Non Standard Timings:

Licensable activities are permitted from normal activity start time on New Year's Eve until normal activity finish time on New Year's Day. In the event of the transmission of any recognised international event which falls outside the current permitted hours on the premises licence to permit the activity commencing one hour before the start of the event and ending one hour after the end of the event, the details of the activity to be notified to the police 14 days beforehand. The event will not proceed if the police serve written notice on the DPS 7 days prior to the event.

Bath & North East Somerset Council

The opening hours of the premises

Monday to Wednesday 08:00 - 00:30
Thursday to Saturday 08:00 - 01:30
Sunday 08:00 - 23:00

From normal opening time on New Year's Eve until normal closing time on New Year's Day.

Seasonal Variations:

Between 1st April and 31st October the licensable activities may begin at 09.00 hours.

Non Standard Opening Times:

In the event of the transmission of any recognised international event which falls outside the current permitted hours on the premises licence to permit the activity commencing one hour before the start of the event and ending one hour after the end of the event, the details of the activity to be notified to the police 14 days beforehand. The event will not proceed if the police serve written notice on the DPS 7 days prior to the event.

Where the licence authorises supplies of alcohol whether these are on and/or off supplies

Alcohol is supplied for consumption both on and off the premises

Name, (registered) address of holder of premises licence

Mitchells & Butlers Leisure Retail Ltd
27 Fleet Street
Birmingham
B3 1JP

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

Registered Business Number - 01001181

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

Mr Jonathan Blake

State whether access to the premises by children is restricted or prohibited

As per Operating Schedule at Annex 2.

Frampton's

Licensable Activities and Conditions

Licensable Activities

- **Sale of Alcohol (for consumption in and off the premises)**
Every Day 08:00 - 23:30
- **Exhibition of a Film (Indoors only)**
Every Day 08:00 - 00:00
- **Late Night Refreshment (Indoors only)**
Every Day 23:00 - 00:00
- **Non Standard Timings:**
Supply of Alcohol – From 08:00 on New Year's Eve until 03:00 on New Year's Day.
Late Night Refreshment – From 23:00 on New Year's Eve until 03:30 on New Year's Day.

Opening Hours

- **Every Day 07:00 - 00:00**
- **Non Standard Opening Times**
From 07:00 on New Year's Eve until 03:30 on New Year's Day.

Conditions

Aside from the mandatory conditions, the following Annex 2 conditions have effect:

- **A waiter/waitress service will be provided at all times.**
- **Between the opening time of the premises and until 22:00 hours (or 30 minutes before the premises close if earlier), a minimum of 40 covers will be provided for the use of diners and substantial food in the form of table meals will be available, appropriate to the time of day.**
- **All staff involved in the sale or service of alcohol shall receive training concerning the sale of alcohol and their requisite responsibilities. This will include training on the terms and conditions of the premises licence. A record of all such training shall be maintained on the premises and made available for inspection by police and other authorised officers on request. Refresher training which will take place at least once every 6 months.**
- **A CCTV system shall be installed and thereafter maintained in good working order providing coverage of all public parts of the premises (other than lavatories). Images will be of evidential quality and maintained for a minimum of 31 days.**
- **Facilities will be made available for police and other authorised officers to view recordings on request and to be provided with copies in playable format as soon as reasonably practicable following a request from the police or another authorised officer, provided that the requests are compliant with data protection legislation.**

- Any malfunction of the CCTV system shall be notified promptly to the licensing authority and rectified as soon as reasonably possible.
- The premises shall maintain an incident book and refusals register and use the same to record any occasion when a criminal offence or suspected offence takes place at the premises and any and all occasions when a customer is refused service of alcohol (and the reason for that refusal) and/or required to leave the premises. The incident book and refusals register shall be kept on the premises and made available for inspection by the police and other authorised officers.
- Where there is a risk assessment by the DPS and/or at the written request of the police or licensing authority, SIA registered door staff will be on duty to supervise all patrons entering and leaving to ensure the good order of the premises.
- All alcohol supplied for consumption off the premises will be sold in sealed containers.
- Notices shall be displayed at or close to all exits (other than exits designated only as Fire Escapes) asking customers to leave quietly and respect neighbours.
- Arrangements shall be made to ensure that deliveries of consumables and the removal of waste from the premises does not take place other than between 07:00 and 22:00 hours every day.
- The use of the outside area for the sale or consumption of alcohol shall only be permitted when a valid Tables and Chairs Licence issued by the Bath and North East Somerset Council (or its successor) is in force and in any event, not beyond 19:00 hours on Sundays to Thursdays inclusive and not beyond 21:00 hours on Fridays and Saturdays and New Year's Eve.
- The holder of the licence will ensure that the frontage is regularly swept and kept clean, this to include the entrance way, railings and pavements adjacent to the frontage of the premises.
- The holder of the licence shall ensure that quarterly meetings are held with a representative (or representatives) of The Empire Residents' Association unless the said Association agrees that such meetings are unnecessary. The purpose of the meetings will be to maintain good relations between the premises and local residents and to discuss and seek to resolve any issues that might arise.
- The premises will operate a "Challenge 25" age verification scheme and all staff will be trained in the implementation of the scheme.

There are no Annex 3 conditions.

**Daniel Thwaites plc v
Wirral Borough Magistrates' Court
The Saughall Massie Conservation Society (First Interested Party)
Wirral Metropolitan Borough Council (Second Interested Party)**

**QUEEN'S BENCH DIVISION
6 May 2008**

The Hon Mrs Justice Black

XXXXXXXX / XXXXXXXX

**David MW Pickup (instructed by Napthens plc) for the Claimant
The Defendant did not appear and was not represented
David Flood (instructed by Messrs Kirwans) for the First Interested Party
Matthew Copeland (instructed by Wirral MBC) for the Second Interested Party**

Mrs Justice Black:

1. This is an application by Daniel Thwaites Plc ("the Claimant") for judicial review of a licensing decision made by the Wirral Magistrates' Court ("the Magistrates' Court") on 5 April 2006 and that court's decision on 21 April 2006 concerning the costs of the proceedings. The Claimant seeks an order quashing both decisions. Permission to apply for judicial review was granted by Mr Justice Pitchford on 2 November 2006.

The factual background

2. The Claimant owns the Saughall Hotel in Saughall Massie, Wirral which it operates as licensed premises ("the premises"). It originally held a licence under the Licensing Act 1964. In June 2005, it commenced an application to the Licensing Sub-Committee of the Metropolitan Borough of Wirral ("the licensing authority") for the existing licence to be converted to a premises licence under the Licensing Act 2003 and for the licence to be varied simultaneously.

3. In essence, the Claimant was seeking to conduct business at the premises for longer hours than were permitted under the original licence. The police did not support the extension of the hours to the extent that the Claimant initially proposed. The Claimant agreed to restrict the hours to those that were acceptable to the police. Accordingly, the licensing authority was asked to grant a licence that would permit music and dancing to 11 p.m. and alcohol sales until midnight on all nights except Friday and Saturday and, on Friday and Saturday nights, music and dancing to midnight and alcohol sales until 1 a.m., with the doors closing one hour after the last alcohol sale every night.

4. The police withdrew their representations against the modified proposals and did not appear before the licensing authority when the matter was heard on 23 August 2005. No representations were made by the Wirral Environmental Health Services either. However, there was opposition to the proposals at the hearing from the Saughall Massie Conservation Society ("the First Interested Party") and other Saughall Massie residents.

5. The Claimant told the licensing authority at the hearing that the hours of operation at the premises would not vary significantly from the existing hours of operation and that the application for extended hours was to allow flexibility to open later "on special occasions".

This was a matter of which the licensing authority took note as is recorded in the minutes of their determination.

6. The licence was granted in the modified terms requested together with an additional hour for licensable activities and an extra 30 minutes for the hours the premises were to be open to the public over Christmas and at the major bank holidays. Special arrangements were also permitted for New Year's Eve. The licensing authority removed certain conditions that had been imposed on the old licence (requiring all alcohol to be consumed within 20 minutes of the last alcohol sale and banning children under 14 from the bar) and imposed other conditions which were obviously aimed at controlling noise, namely that the area outside must be cleared by 11 p.m., that the premises must promote the use of taxi firms which use a call-back system, that all doors and windows must be kept closed when regulated entertainment was provided and that prominent notices should be placed on the premises requiring customers to leave quietly.

7. The Saughall Massie Conservation Society and "others" appealed against the licensing decision to the Magistrates' Court on the ground that the licensing authority's decision "was not made with a view to promotion of and in accordance with the licensing objectives pursuant to Section 4, Part 2 of the Licensing Act 2003".

8. The appeal occupied the Magistrates' Court from 3 - 5 April 2006. The respondents to the appeal were the licensing authority and the Claimant which both defended the licensing authority's decision. Witnesses were called including Saughall Massie residents, Police Sergeant Yehya who dealt with the stance of the Merseyside police, and Mr Miller, the manager of the premises.

9. The justices granted the appeal. Their Reasons run to 3 pages of typescript, one page of which is entirely taken up with setting out the new hours of operation they imposed. These permitted entertainment until 11 p.m. and alcohol sales until 11.30 p.m. on all nights except Friday and Saturday when entertainment would be permitted until 11.30 p.m. and alcohol sales until midnight. The premises could remain open to the public until midnight on all nights except Friday and Saturday when they could close at 1 a.m.. Similar provisions were imposed to those imposed by the licensing authority in relation to later opening at Christmas and major bank holidays and the provisions relating to New Year's Eve and the conditions of the licence remained unaltered.

10. The new licence had come into effect on 24 November 2005 so the new arrangements had been running for several months by the time of the hearing before the Magistrates' Court. There had been no formal or recorded complaints against the premises under the old or the new regime as the justices acknowledged in their Reasons. The residents who gave evidence were fearful of problems if the extended hours were allowed in the summer. The Chairman of the Conservation Society, who gave oral evidence, spoke of people urinating in the gardens and a problem with litter. It appears from the statement filed by the Chairman of the Bench for these judicial review proceedings that evidence was also given of interference with machinery on nearby Diamond Farm. The justices' Reasons make no reference at all to these matters. As to the statements of the "Witnesses of the Appellant", they say simply that they have read and considered them but attached little or no weight to them.

11. The justices and their legal advisor have filed a considerable amount of material in response to the judicial review proceedings, in all 31 closely typed pages. These comprise their Response to the Claim, statements from Alistair Beere (who was the chairman of the bench), Mary Woodhouse (another of the bench) and Stephen Pickstock (the legal advisor), and what is said in the index to be a document by Mr Beere from which he prepared his statement. There was limited argument before me as to the status of these documents and the weight that I should give to them. It was not submitted that I should decline to have any regard to them although I think it is fair to say that it was common ground between the

parties, rightly in my view, that I should concentrate principally on the Reasons. It is established by authorities such as *R v Westminster City Council ex parte Ermakov* [1996] 2 All ER 302 that the court can admit evidence to elucidate or, exceptionally, correct or add to the reasons given by the decision maker at the time of the decision but that it should be very cautious about doing so. The function of such evidence should generally be elucidation not fundamental alteration, confirmation not contradiction. In the circumstances, I have read carefully what the magistrates have provided but approached its role in the judicial review proceedings cautiously.

The broad nature of the claim in relation to the licensing decision

12. The Claimant argues that the Magistrates' Court decision is unlawful for a number of reasons. It is argued that the decision was not in line with the philosophy of the Licensing Act 2003 ("the Act") and imposed restrictions on the Claimant's operation which were not necessary to promote the licensing objectives set out in that Act, that it was based on speculation rather than evidence, that it took into account irrelevant considerations and failed to take into account proper considerations, and that it was a decision to which no properly directed magistrates' court could have come on the evidence. In so far as the court imposed conditions as to the time at which the premises must close, it is submitted that this was not a matter which can be regulated under the Act. It is further argued that the magistrates failed to give adequate reasons for their decision.

The legal background

13. The Licensing Act 2003 was intended to provide a "more efficient" "more responsive" and "flexible" system of licensing which did not interfere unnecessarily. It aimed to give business greater freedom and flexibility to meet the expectations of customers and to provide greater choice for consumers whilst protecting local residents from disturbance and anti-social behaviour.

14. Note 12 of the explanatory notes to the Act gives an indication of the approach to be taken under the Act. It reads:

"12. In contrast to the existing law, the Act does not prescribe the days or the opening hours when alcohol may be sold by retail for consumption on or off premises. Nor does it specify when other licensable activities may be carried on. Instead, the applicant for a premises licence or a club premises certificate will be able to choose the days and the hours during which they wish to be authorised to carry on licensable activities at the premises for which a licence is sought. The licence will be granted on those terms unless, following the making of representations to the licensing authority, the authority considers it necessary to reject the application or vary those terms for the purpose of promoting the licensing objectives."

15. Section 1 of the Act provides:

"S 1 (1) For the purposes of this Act the following are licensable activities

- (a) the sale by retail of alcohol,
- (b) [clubs]
- (c) the provision of regulated entertainment, and
- (d) the provision of late night refreshment."

16. To carry on a licensable activity, a premises licence granted under Part 3 of the Act is generally required, section 2. Application for a premises licence must be made to the relevant licensing authority, section 17(1).

17. By virtue of section 4, the licensing authority must carry out all its functions under the Act (including its functions in relation to determining an application for a premises licence or

an application for a variation of a premises licence) with a view to promoting the "licensing objectives". These are set out in section 4 as follows:

"S4(2) The licensing objectives are –

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

18. In carrying out its licensing functions, by virtue of section 4(3) the licensing authority must also have regard to its licensing statement published under section 5 and any guidance issued by the Secretary of State under section 182.

19. Section 182 obliges the Secretary of State to issue guidance to licensing authorities on the discharge of their functions under the Act. Guidance was issued in July 2004 ("the Guidance"). It was updated in June 2007 but it is the original guidance that is relevant in this case. In any event, none of the changes made are material to the issues I have to determine.

20. The Foreword says that the Guidance

"is intended to aid licensing authorities in carrying out their functions under the 2003 Act and to ensure the spread of best practice and greater consistency of approach. This does not mean we are intent on eroding local discretion. On the contrary, the legislation is fundamentally based on local decision-making informed by local knowledge and local people. Our intention is to encourage and improve good operating practice, promote partnership and to drive out unjustified inconsistencies and poor practice."

21. As the Guidance says in paragraph 1.7, it does not replace the statutory provisions of the Act or add to its scope. Paragraph 2.3 says:

"Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken."

22. An application to the licensing authority for a premises licence must be accompanied by an operating schedule in the prescribed form including a statement of the matters set out in section 17(4) which are as follows:

- "(a) the relevant licensable activities,
- (b) the times during which it is proposed that the relevant licensable activities are to take place,
- (c) any other times during which it is proposed that the premises are to be open to the public,
- (d) where the applicant wishes the licence to have effect for a limited period, that period,
- (e) where the relevant licensable activities include the supply of alcohol, prescribed information in respect of the individual whom the applicant wishes to have specified in the premises licence as the premises supervisor,
- (f) where the relevant licensable activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or off the premises, or both,
- (g) the steps which it is proposed to take to promote the licensing objectives,
- (h) such other matters as may be prescribed."

23. Section 18 deals with the determination of an application for a premises licence. Section 35 deals in very similar terms with the determination of an application to vary a premises licence. It will be sufficient only to set out here the provisions of s18.

24. Section 18(2) provides that, subject to subsection (3), the authority must grant the licence in accordance with the application subject only to:

"(a) such conditions as are consistent with the operating schedule accompanying the application, and

(b) any conditions which must under section 19, 20 or 21 be included in the licence."

25. Section 19 deals with premises licences which authorise the supply of alcohol. Such licences must include certain conditions ensuring that every supply of alcohol is made or authorised by a person who holds a personal licence and that no supply of alcohol is made when there is no properly licensed designated premises supervisor. Sections 20 and 21 are not relevant to this claim.

26. Section 18(3) provides that where relevant representations are made, the authority has certain specified obligations. In so far as is relevant to this appeal "relevant representations" are defined in section 18(6) as follows:

"(6) For the purposes of this section, "relevant representations" means representations which -

(a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives,

(b) meet the requirements of subsection (7),

(c) ... "

27. Subsection (7) provides:

(7) The requirements of this subsection are -

(a) that the representations were made by an interested party or responsible authority within the period prescribed under section 17(5)(c),

(b) that they have not been withdrawn, and

(c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

28. Where relevant representations are made, the authority must hold a hearing to consider them unless the authority, the applicant and each person who has made representations agrees that a hearing is unnecessary. By virtue of section 18(3)(b), the authority must also:

"(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives."

29. Section 18(4) provides:

"(4) The steps are

(a) to grant the licence subject to -

(i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and

(ii) any condition which must under section 19, 20 or 21 be included in the licence;

(b) to exclude from the scope of the licence any of the 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."

30. Conditions are modified for the purposes of subsection (4)(a)(1) if any of them is altered or omitted or any new condition is added.

31. During the currency of a premises licence, by virtue of section 51, an interested party (broadly speaking, a local resident or business) or a responsible authority (police, fire, environmental health etc.) may apply to the relevant licensing authority for a review of the licence on a ground which is relevant to one or more of the licensing objectives. By virtue of

section 52, a hearing must be held to consider the application and any relevant representations and the authority must take such steps from a specified list as it considers necessary for the promotion of the licensing objective. The steps range from modifying the conditions of the licence to suspending it or revoking it completely.

32. The Act makes provision in Part 5 for "permitted temporary activity" which, loosely speaking, is a form of ad hoc licensing to cover licensable activities which are not covered by a more general licence. The system involves proper notification of an event to the licensing authority and the police. Provided the applicable number of temporary event notices has not been exceeded and the police do not intervene, the event is automatically permitted.

Temporary event notices can only be given in respect of any particular premises 12 times in a calendar year and the period for which each event lasts must not exceed 96 hours.

33. Section 181 provides for appeals to be made against decisions of the licensing authority to a magistrates' court which is, of course, how the decisions in relation to which judicial review is sought in this case came to be made.

The detail of the claim

34. The Claimant submits that in making its decision to allow the appeal in relation to the premises licence, the Magistrates' Court failed in a number of respects to take account of the changes that the new licensing regime has made and failed to adopt the approach required by the Act. It is further submitted that the magistrates failed properly to consider and take into account the Guidance.

35. There is no doubt that the Guidance is relevant in the magistrates' decision making. As I have set out above, section 4(3) requires the licensing authority to "have regard" to the Guidance. By extension, so must a magistrates' court dealing with an appeal from a decision of the licensing authority. The Guidance says:

"10.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court concerned will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it is justified to do so because of the individual circumstances of any case."

36. Mr Pickup submits that although the Guidance is not binding and local variation is expressly permitted, it should not be departed from unless there is good reason to do so.

37. Mr Flood for the First Interested Party submits that the Guidance simply serves to provide information for the magistrates and provided that they have had regard to it, that is sufficient. He also points out that, in some respects (as is clear from the wording of the Guidance), the Guidance is a statement of Government belief rather than proved fact. Inviting attention to the judgment of Beatson J in *J. D. Wetherspoon plc v Guildford Borough Council* [2006] EWHC 815 (Admin), he identifies that different policy elements in the Guidance may pull in different directions in a particular case, flexibility and customer choice potentially conflicting with the need to prevent crime and disorder. He submits that provided that the magistrates consult the Guidance, they do not need to use it as "a decision making matrix that the deciding Court has to sequentially address in making its decision in the manner it would if considering a section of a statute".

38. There is no doubt that regard must be had to the Guidance by the magistrates but that its force is less than that of a statute. That is common ground between the parties. The Guidance contains advice of varying degrees of specificity. At one end of the spectrum, it reinforces the general philosophy and approach of the Act. However, it also provides firm advice on particular issues, an example being what could almost be described as a prohibition on local authorities seeking to engineer staggered closing times by setting quotas for particular closing

times. I accept that any individual licensing decision may give rise to a need to balance conflicting factors which are included in the Guidance and that in resolving this conflict, a licensing authority or magistrates' court may justifiably give less weight to some parts of the Guidance and more to others. As the Guidance itself says, it may also depart from the Guidance if particular features of the individual case require that. What a licensing authority or magistrates' court is not entitled to do is simply to *ignore* the Guidance or fail to give it any weight, whether because it does not agree with the Government's policy or its methods of regulating licensable activities or for any other reason. Furthermore, when a magistrates' court is entitled to depart from the Guidance and justifiably does so, it must, in my view, give proper reasons for so doing. As paragraph 2.3 of the Guidance says in relation to the need for licensing authorities to give reasons:

"When [departing from the Guidance], licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken."

This is a theme to which the Guidance returns repeatedly and is a principle which must be applicable to a magistrates' court hearing an appeal as it is to a licensing authority dealing with an application in the first instance. I agree with Mr Flood for the First Interested Party that the magistrates did not need to work slavishly through the Guidance in articulating their decision but they did need to give full reasons for their decision overall and full reasons for departing from the Guidance if they considered it proper so to do.

39. In this case, Mr Pickup submits that proper attention to the Guidance would have helped the magistrates to come to a correct and reasonable decision and that they have failed to adhere to it without proper reason and failed to carry out their licensing function in accordance with the Act.

40. The foundation of the Claimant's argument is that the Act expects licensable activities to be restricted only where that is necessary to promote the four licensing objectives set out in section 4(2). There can be no debate about that. It is clearly established by the Act and confirmed in the Guidance. For example, in the Act, section 18(3)(b), dealing with the determination of an application for a premises licence, provides that where relevant representations are made the licensing authority must "take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives" (the steps in subsection (4) include the grant of the licence subject to conditions). Section 34(3)(b), dealing with the determination of an application to vary a premises licence, is in similar terms. The Guidance repeatedly refers, in a number of different contexts, to the principle that regulatory action should only be taken where it is necessary to promote the licensing objectives. In particular, it clearly indicates that conditions should not be attached to premises licences unless they are necessary to promote the licensing objectives, see for example paragraph 7.5 and also paragraph 7.17 which includes this passage:

"Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose."

41. The Guidance also refers a number of times to the need for regulation to be "proportionate". This is not a term contained in the Act but if a regulatory provision is to satisfy the hurdle of being "necessary", it must in my view be confined to that which is "proportionate" and one can understand why the Guidance spells this out.

42. Mr Pickup submits, and I accept, that the Act anticipates that a "light touch bureaucracy" (a phrase used in paragraph 5.99 of the Guidance) will be applied to the grant and variation of premises licences. He submits that this means that unless there is evidence that extended hours will adversely affect one of the licensing objectives, the hours should be granted. A

prime example of this arises when an application for a premises licence is made and there are no relevant representations made about it. In those circumstances, s18(2) obliges the licensing authority to grant the licence and it can only impose conditions which are consistent with the operating schedule submitted by the applicant. Mr Pickup says that such a light touch is made possible, as the Guidance itself says, by providing a review mechanism under the Act by which to deal with concerns relating to the licensing objectives which arise following the grant of a licence in respect of individual premises. He invites attention also to the existence of other provisions outside the ambit of the Act which provide remedies for noise, for example the issue of a noise abatement notice or the closure of noisy premises under the Anti-Social Behaviour Act 2003. The Guidance makes clear that the existence of other legislative provisions is relevant and may, in some cases, obviate the need for any further conditions to be imposed on a licence. Paragraph 7.18 from the section of the Guidance dealing with attaching conditions to licences is an illustration of this approach:

"7.18 It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives."

43. The Guidance includes a section dealing with hours of trading which the Claimant submits further exemplifies the philosophy of the Act. It begins with paragraph 6.1 which reads:

"This Chapter provides guidance on good practice in respect of any condition imposed on a premises licence or club premises certificate in respect of hours of trading or supply."

44. It continues:

"6.5 The Government strongly believes that fixed and artificially early closing times promote, in the case of the sale or supply of alcohol for consumption on the premises, rapid binge drinking close to closing times; and are a key cause of disorder and disturbance when large numbers of customers are required to leave premises simultaneously. This creates excessive pressures at places where fast food is sold or public or private transport is provided. This in turn produces friction and gives rise to disorder and peaks of noise and other nuisance behaviour. It is therefore important that licensing authorities recognise these problems when addressing issues such as the hours at which premises should be used to carry on the provision of licensable activities to the public.

6.6 The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through longer opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided. We will monitor the impact of the 2003 Act on crime and disorder and the other licensing objectives. If necessary in the light of these findings, we will introduce further legislation with the consent of Parliament to strengthen or alter any provisions."

45. The Claimant submits that in imposing shorter hours than it requested for the supply of alcohol and for entertainment, the magistrates went beyond that which was necessary for these premises and failed to take into account that, as the Guidance explains, longer opening times would in fact reduce the potential for problems arising from licensed premises whereas curtailing operations could run counter to the licensing objectives.

46. The magistrates' Reasons record their acceptance that there had been no reported complaint in regard to public nuisance and that the extended hours had operated without any incidents. The magistrates also record in the Reasons, as I have already said, that they had attached little or no weight to the statements from witnesses of the appellant. Nothing is said about difficulties mentioned in evidence by the witnesses. As it was clearly incumbent on the magistrates at least to advert in broad terms to those matters that they took into account, it is fair to conclude in the circumstances that they proceeded upon the basis that there was no

reliable evidence of actual problems linked to the premises either under the old licence or under the new revised licence. This was in line with the oral evidence of Police Sergeant Yehya (as recorded in the rather truncated notes of the legal advisor):

"1 reported incident for the site. No other incidents or complaints have been received. There are none in my file. There are no incidents we can directly link to the Saughall Hotel since previously open. There have been incidents locally but not linked to these premises."

47. To judge by the Reasons therefore, what led the magistrates to impose restricted hours of operation was their forecast as to what would occur in the future in association with the premises, notwithstanding the absence of reliable evidence of past problems. The First Interested Party observes that the manager of the premises had given evidence that he intended in the summer to "make hay while the sun shines" and submits, correctly in my view, that the magistrates were entitled to take this apparent change of emphasis into account. However, Mr Flood further submits that the evidence of what had happened in the winter months was therefore of "little evidential value" in determining what was likely to happen in the future and I cannot wholly agree with him about this. Undoubtedly the fact that the Claimant intended in future to make more use of the extended hours reduced the value of the premises' past record as a predictor of the future but it could not, in my view, be completely discarded by the magistrates. They still had to take into account that there had been extended hours for some months without apparent problems.

48. It is plain that the magistrates' particular concern was "migration" rather than problems generated by those coming directly to the premises for their evening out. Under the heading "The Four Licensing Objectives", they say that they accept that there have been no formal or recorded complaints against the premises "but feel that because of the concept of migration that public nuisance and crime and disorder would be an inevitable consequence of leaving the hours as granted by the Local Authority". Under the heading "Migration/Zoning" they begin:

"The Saughall Hotel due to its location and the fact that a number of license premises in the surrounding area have reduced hours to that of the Saughall Hotel we believe that as a consequence of this would be that customers would migrate from these premises to the Saughall Hotel. [sic]"

and end:

"We appreciate that the extended hours have been in operation for several months without any incidents but have taken into consideration this was during the Winter months and inevitable numbers will increase in the Summer causing nuisance/criminality."

49. They reiterate their concern under the heading "Nuisance (Existing/Anticipated)" saying that they "feel that public nuisance will be inevitable".

50. The Claimant complains that the magistrates' treatment of the issue of "migration" was fundamentally flawed on a number of grounds.

51. Firstly, it submits that there was no evidence on which the magistrates could find that customers *would* come to the premises when other premises in the vicinity closed or cause trouble and their concerns were no more than inappropriate speculation. The Claimant's position was that there was no evidence of migration to their premises. There were no recorded complaints of any kind about the premises let alone specifically about migration. Ms Lesley Spencer who lives opposite the premises and is the Secretary of the Saughall Massie Conservation Society gave evidence of her fear that customers would migrate but said that she did not think there had been any migration.

52. Apart from their own local knowledge, the only material on which the magistrates could possibly have formed their views about migration was what Police Sergeant Yehya said in evidence. According to the legal advisor's notes, whilst being cross-examined by Mr Kirwan, the sergeant gave evidence about the other licensed premises operating in the vicinity (which

I have seen marked on a local map and which were within walking distance of the premises) and their closing hours and said that there were three assaults each week at one of the premises. The legal advisor records that he also said,

"We have staggered closing. This could cause problems it has the potential to cause difficulties in the area. I have a list of considerations but none would rank as high as crime, not even noise. No complaints have been made to me even regarding noise. One concern was dispersal. We gave people one hour to disperse and therefore reduced from 2.00 a.m. to 1.00 a.m. 1.00 a.m. closing at 2. 280 people leaving premises. Other premises subject to high levels of crime *migration not an issue.*" [my italics]

53. I appreciate that this evidence acknowledged that staggered closing *could* cause problems but, had migration been a significant issue as opposed to a mere possibility, one can, I think, assume that the police would have made representations on that score, particularly given that they had plainly considered the impact of trading hours specifically and *had* initially objected to the even longer hours originally proposed by the Claimant. It is noteworthy that even when they were in opposition to the plans, it was never on the basis of migration of disruptive characters from other licensed premises and always simply on the basis of late noise from ordinary customers of the premises dispersing. The absence of police objections before either the licensing authority or the Magistrates' Court seems to have surprised the magistrates who said so in their Reasons, commenting:

"We were surprised that the Police originally objected to the application but withdrew that objection after a slight variation of the terms."

In so saying, they convey, in my view, not only their surprise about the Police approach but also their disagreement with it.

54. It was not open to the magistrates, in my view, to elevate what Sergeant Yehya said in the witness box to evidence that a problem with migration could reasonably be expected, nor do they say anything in their reasons which suggests that they did rely on his evidence in this way. The only concerns about migration were therefore the magistrates' own with perhaps some fears expressed by local residents though not on the basis of firm historical examples of migration to the premises.

55. It is clear from the Guidance that drawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act's approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence will require them to adjust their own impression. This is particularly likely to be so where it is given by a responsible authority such as the police. They must also scrutinise their own anxieties about matters such as noise and other types of public nuisance particularly carefully if the responsible authorities raise no objections on these grounds. These magistrates did recognise the absence of police objections which caused them surprise and they chose to differ from the police in reliance on their own views. The Claimant submits that in so doing they departed into the realms of impermissible speculation not only in concluding that there would be migration but also in concluding that in this case it would generate nuisance and disorder. The First Interested Party is correct in submitting that the Guidance accepts a link between migration and a potential breach of the licensing objectives but it is also clear from the Guidance that each case must be decided on its individual facts so the magistrates could not simply assume that if people came from other premises, there would be trouble.

56. The Claimant complains that the magistrates' treatment of the migration issue also flies in the face of the Guidance because firstly it was an improper attempt to implement zoning and secondly it ignored the general principle of longer opening hours.

57. Zoning is the setting of fixed trading hours within a designated area so that all the pubs in a given area have similar trading hours. The problem created by it, as demonstrated by experience in Scotland, is that people move across zoning boundaries in search of pubs opening later and that causes disorder and disturbance. The Guidance says, at paragraph 6.8: "The licensing authority should consider restricting the hours of trading only where this is necessary because of the potential impact on the promotion of the licensing objectives from fixed and artificially-early closing times."

It stresses that above all, licensing authorities should not fix predetermined closing times for particular areas.

58. I am not convinced that the magistrates' limiting of the Claimant's operational hours can properly be described as implementing zoning which, in my view, is a term that is more appropriate to describe a general policy imposed by a licensing authority for a defined area than an individual decision of this type, albeit made with reference to the opening hours of other premises in the vicinity and having the effect of imposing the same hours as those premises.

59. What has more weight, however, is the Claimant's submission that the magistrates failed to give proper weight to the general principle of later opening hours and to the intention that the approach to licensing under the Act would be to grant the hours sought for the premises unless it was necessary to modify them in pursuit of the licensing objectives. The Reasons include a heading "Flexibility" under which the magistrates say simply:

"We have considered the concept of Flexibility."

In so saying, they may be referring to the sort of flexibility to which reference is made, for example, in paragraph 6.6 of the Guidance (see above) but their shorthand does not enable one to know to what conclusions their consideration of the concept led them in this case nor whether they had reliably in mind that the starting point should be that limitations should not be imposed upon the licence sought unless necessary to promote the licensing objectives rather than that the licensing authority or the court should form its own view of what was necessary for the premises and only grant that.

60. The Claimant was seeking to have the freedom to open later on certain occasions when the trade justified it or, as the magistrates put it, "the application for extended hours was to allow flexibility to open later on certain occasions". As the First Interested Party would submit, the magistrates may have inferred from Mr Miller's comment about making hay that the premises would *often* be open late rather than this happening only infrequently in accordance with the picture presented to the licensing authority. If this was their inference, however, it is odd that they considered that the Claimant could deal with the position by applying for a temporary certificate because this would have allowed the premises to open later on only a limited number of occasions. They make no express finding in their Reasons as to the frequency on which they considered the Claimant intended to keep the premises open late. This was material not only to the degree of disturbance that might be caused generally by late opening but also specifically to the issue of whether there would be migration. It would seem unlikely that customers from nearby pubs would bother to walk or even drive to the Saughall Hotel in search of another drink at the end of their evenings unless the Saughall Hotel was open late sufficiently frequently to lead them to a reasonable expectation that their journey would be worthwhile.

61. The magistrates' comment about the temporary certificate also seems to me to be an example of a failure by them to adopt the lighter approach that the Act dictated and to allow flexibility to those operating licensed premises unless the licensing objectives required otherwise. Temporary certificates would be a cumbersome and restricted means of achieving flexibility, not responsive to the day to day fluctuations in business, only available a limited number of times, and not in line with the philosophy of the Act.

62. There is no consideration in the magistrates' decision of whether the imposition of conditions to control noise or other nuisance which were going to be imposed would be sufficient to promote the licensing objectives without reducing the operating hours of the premises. Given that the Act dictates that only such steps as are necessary should be taken with regard to the variation of the terms of operation sought, such consideration was required.

My overall conclusions

63. It would be wrong, in my judgment, to say that the magistrates failed to take account of the licensing objectives. At the outset of their Reasons, they correctly identify those which are relevant. Similarly, as the First Interested Party submits, whilst they did not *articulate* that the curtailment of the hours sought was "necessary" to promote those objectives, it is implied in their decision that they did take this view and it can also be inferred from their comment that because of the concept of migration, public nuisance and crime and disorder would be "an inevitable consequence" of leaving the hours as granted by the local authority. However, in my view their approach to what was "necessary" was coloured by a failure to take proper account of the changed approach to licensing introduced by the Act. Had they had proper regard to the Act and the Guidance, they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstances of the case. Their conclusion that it was so required on the basis of a risk of migration from other premises in the vicinity was not one to which a properly directed bench could have come. The fact that the police did not oppose the hours sought on this basis should have weighed very heavily with them whereas, in fact, they appear to have dismissed the police view because it did not agree with their own. They should also have considered specifically the question of precisely how frequently the premises would be likely to be open late and made findings about it. They would then have been able to compare this to the winter opening pattern in relation to which they accepted there had been no complaints and draw proper conclusions as to the extent to which the summer months would be likely to differ from the winter picture. Having formed a clear view of how frequently late opening could be anticipated, they would also have been able to draw more reliable conclusions about the willingness of customers from further afield to migrate to Saughall Massie. They proceeded without proper evidence and gave their own views excessive weight and their resulting decision limited the hours of operation of the premises without it having been established that it was necessary to do so to promote the licensing objectives. In all the circumstances, their decision was unlawful and it must be quashed.

64. I have said little so far about what appears in the magistrates' response for the judicial review proceedings. The various documents comprising the response did nothing to allay my concerns about the magistrates' decision. Indeed quite a lot of what was said reinforced my view that the magistrates had largely ignored the evidence and imposed their own views. They refer in their response to incidents about which the residents had given evidence and to the residents not having complained formally for various reasons, for example because it was Christmas or because there was thought to be no point. If the magistrates considered these matters to be relevant, it was incumbent on them to say so clearly in their reasons whereas they there recorded their acceptance that there had been no formal or recorded complaints, that the extended hours had been in operation for several months without incidents and that they had attached little or no weight to the statements of the witnesses of the appellant. They also refer extensively in their response to their thoughts on migration, including that people may come from further afield than the pubs in the vicinity in cars. Particularly concerning is that they refer repeatedly to a perceived issue over police resources which is not something that, as far as I can see, had been raised by Sergeant Yehya or explored with him in evidence.

Mr Beere says in his statement for example, '... there is also the question of Police resources and their ability to effectively police this area especially at weekends with already stretched resources being deployed in Hoylake'.

65. Reference is made in the response documents to the court feeling that the Brewery's proposed opening hours contradicted the acceptable activities of a family pub and that the Saughall Hotel is "a village pub and not a night spot in the centre of town". For the court to take matters such as this into account seems to me to be an interference with the commercial freedom of the premises of a type that was not permissible under the Act unless it was necessary to promote the licensing objectives. I appreciate that the magistrates' response seems to suggest that they feared that a different type of customer was being courted or would invite themselves once it got too late for families but this does not seem to have been founded on anything that was given in evidence so was really not much more than speculation.

66. Mr Beere's statement ends with a reference to the Brewery wanting to make hay while the sun shines, of which he says, "I believe that this statement was indicative of the Brewery's attitude to local residents and to the general management of the premises." Given that problems with or in the vicinity of the premises had been almost non-existent and that the magistrates had not seen fit to make reference in their Reasons to any difficulties caused by the Hotel, it is hard to see how this belief could be justified but it does perhaps exemplify the approach of the magistrates.

67. I have considered quite separately the argument as to whether the hours of opening can be regulated as part of the licensing of premises as opposed to the hours during which licensable activities take place. It was suggested during argument that there was no power to regulate the time by which people must leave the premises. I cannot agree with this. Clearly keeping premises open (as opposed to providing entertainment or supplying alcohol there) is not a licensable activity as such. However, the operating schedule which must be supplied with an application for a premises licence must include a statement of the matters set out in section 17(4) and these include not only the times when it is proposed that the licensable activities are to take place but also "any other times during which it is proposed that the premises are to be open to the public". On a new grant of a premises licence, where there are no representations the licensing authority has to grant the application subject only to such conditions as are consistent with the operating schedule. I see no reason why, if it is necessary to promote the licensing objectives, these conditions should not include a provision requiring the premises to be shut by the time that is specified in the operating schedule. If representations are made and the licensing authority ultimately grants the application, it can depart from the terms set out in the operating schedule when imposing conditions in so far as this is necessary for the promotion of the licensing objectives. It must follow that it can impose an earlier time for the premises to be locked up than the applicant wished and specified in its operating schedule. It is important to keep in mind in this regard that the role of the licensing authority and, if there is an appeal, the court, has two dimensions: the fundamental task is to license activities which require a licence and the associated task is to consider what, if any, conditions are imposed on the applicant to ensure the promotion of the licensing objectives. A requirement that the premises close at a particular time seems to me to be a condition just like any other, such as keeping doors and windows closed to prevent noise. I see no reason why a condition of closing up the premises at a particular time should not therefore be imposed where controlling the hours of the licensable activities on the premises (and such other conditions as may be imposed) is not sufficient to promote the licensing objectives.

The costs argument

68. In the light of my conclusion that the magistrates' decision is unlawful and therefore must be quashed, it is not appropriate for me to consider the arguments in relation to their costs order further. The appellants had given an undertaking to the Licensing Authority that they would not seek costs against the Licensing Authority and they sought the entirety of their costs of the appeal from the Claimant. The magistrates granted that order and the Claimant submits that that was not an order that was open to them. Whatever the merits of that argument, the magistrates' order in relation to costs cannot now stand. The basic foundation for the order for costs was that the appeal had succeeded and the Claimant had lost. That position has now been overturned and the costs order must go along with the magistrates' main decision. The magistrates would have had no reason to grant costs against the Claimant if the appeal had been dismissed.