

# Licensing Sub-Committee

**Date: Thursday, 1st July, 2021**

**Time: 10.00 am**

**Venue: Banqueting Room - Guildhall, Bath**

**Councillors:** Rob Appleyard, Steve Hedges and Sally Davis

Chief Executive and other appropriate officers  
Press and Public

**A briefing session for Members will be held at 9.30am**

\*\* COVID alert: From the 6 May 2021 all formal Council meetings of whatever nature must take place physically. However, we are constrained by health & safety considerations and social distancing measures. This means that room capacities are significantly reduced, and the visiting public may be prevented from entering a meeting room if it is at capacity. \*\*



**Mark Durnford**

**Democratic Services**

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## NOTES:

1. **Inspection of Papers:** Papers are available for inspection as follows:

Council's website: <https://democracy.bathnes.gov.uk/ieDocHome.aspx?bcr=1>

2. **Details of decisions taken at this meeting** can be found in the minutes which will be circulated with the agenda for the next meeting. In the meantime, details can be obtained by contacting as above.

### 3. **Recording at Meetings:-**

The Openness of Local Government Bodies Regulations 2014 now allows filming and recording by anyone attending a meeting. This is not within the Council's control. Some of our meetings are webcast. At the start of the meeting, the Chair will confirm if all or part of the meeting is to be filmed. If you would prefer not to be filmed for the webcast, please make yourself known to the camera operators. We request that those filming/recording meetings avoid filming public seating areas, children, vulnerable people etc; however, the Council cannot guarantee this will happen.

The Council will broadcast the images and sounds live via the internet [www.bathnes.gov.uk/webcast](http://www.bathnes.gov.uk/webcast). The Council may also use the images/sound recordings on its social media site or share with other organisations, such as broadcasters.

### 4. **Public Speaking at Meetings**

The Council has a scheme to encourage the public to make their views known at meetings. They may make a statement relevant to what the meeting has power to do. They may also present a petition or a deputation on behalf of a group.

**Advance notice is required not less than two full working days before the meeting. This means that for meetings held on Thursdays notice must be received in Democratic Services by 5.00pm the previous Monday.**

\*\* COVID alert: From the 6 May 2021 all formal Council meetings of whatever nature must take place physically. However, we are constrained by health & safety considerations and social distancing measures. This means that room capacities are significantly reduced, and the visiting public may be prevented from entering a meeting room if it is at capacity. \*\*

Further details of the scheme can be found at:

<https://democracy.bathnes.gov.uk/ecCatDisplay.aspx?sch=doc&cat=12942>

### 5. **Emergency Evacuation Procedure**

When the continuous alarm sounds, you must evacuate the building by one of the designated exits and proceed to the named assembly point. The designated exits are signposted. Arrangements are in place for the safe evacuation of disabled people.

### 6. **Supplementary information for meetings**

Additional information and Protocols and procedures relating to meetings

<https://democracy.bathnes.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13505>

**Licensing Sub-Committee - Thursday, 1st July, 2021**

**at 10.00 am in the Banqueting Room - Guildhall, Bath**

**A G E N D A**

1. EMERGENCY EVACUATION PROCEDURE

The Chair will draw attention to the emergency evacuation procedure as set out under Note 5 on the previous page.

2. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

3. DECLARATIONS OF INTEREST

At this point in the meeting declarations of interest are received from Members in any of the agenda items under consideration at the meeting. Members are asked to indicate:

(a) The agenda item number in which they have an interest to declare.

(b) The nature of their interest.

(c) Whether their interest is **a disclosable pecuniary interest** *or* an **other interest**, (as defined in Part 2, A and B of the Code of Conduct and Rules for Registration of Interests)

Any Member who needs to clarify any matters relating to the declaration of interests is recommended to seek advice from the Council's Monitoring Officer or a member of his staff before the meeting to expedite dealing with the item during the meeting.

4. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

5. MINUTES OF PREVIOUS MEETING: 3RD JUNE 2021 (Pages 5 - 6)

6. LICENSING PROCEDURE (Pages 7 - 10)

The Chair will, if required, explain the licensing procedure.

7. APPLICATION: GARFUNKEL'S 2021 TRG LEISURE LTD NEW PREMISES LICENCE (Pages 11 - 58)

8. APPLICATION: 08 GARFUNKEL'S 2021- BRUNNING PRICE NEW APPLICATION (Pages 59 - 106)

The Committee Administrator for this meeting is Mark Durnford who can be contacted on 01225 394458.

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**BATH AND NORTH EAST SOMERSET COUNCIL**

**LICENSING SUB-COMMITTEE**

Thursday, 3rd June, 2021, 10.00 am

**Councillors:** Rob Appleyard (Chair), Steve Hedges and Karen Warrington

**Officers in attendance:** Shaine Lewis (Legal Services Manager) and Michael Dando (Lead Licensing Officer)

**1 EMERGENCY EVACUATION PROCEDURE**

The Legal Services Manager advised the meeting of the procedure.

**2 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

**3 DECLARATIONS OF INTEREST**

There were none.

**4 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN**

There was none.

**5 MINUTES OF PREVIOUS MEETINGS: 8TH APRIL 2021 & 22ND APRIL 2021**

These were approved as a correct record.

**6 LICENSING PROCEDURE**

The Chair explained the procedure to be followed for the meeting.

**7 NEW PREMISES LICENCE APPLICATION: CHICK O'LAND, 17A HIGH STREET, KEYNSHAM, BRISTOL BS31 1DP.**

Members have determined an application for a new Premises Licence and late-night refreshment at Chick – O'land, High Street Keynsham. In doing so they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's Policy, Human Rights Act and case law.

As the applicant had not attended the meeting Members had to first consider whether to continue in the applicant's absence. Whilst Members were disappointed not to have heard from the applicant regarding his absence, they nevertheless gave him the benefit of the doubt and after some debate resolved to proceed in absence.

In terms of the application Members noted the premises is a restaurant/takeaway selling Pizza and burgers. Members further heard that the police had suggested

several measures to mitigate concerns around the late night/early morning sale of alcohol and that the applicant had agreed to these measures.

In all the circumstances Members find the measures appropriate and proportionate and grant the application subject to conditions consistent with the Operating Schedule and those consistent with the agreement between the parties at Annex B and C of the report and remind the applicant that the licence is subject to review should there be any problems.

Authority is delegated to issue the licence.

The meeting ended at 10.20 am

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**

**LICENSING SUB-COMMITTEE  
LICENSING ACT 2003  
PROCEDURE FOR HEARING AN APPLICATION FOR A NEW PREMISES  
LICENCE OR FOR A VARIATION OF A PREMISES LICENCE**

*The Chair will allow the parties an equal maximum period of time in which to make representations that will not normally exceed **twenty minutes**. Where more than one party makes relevant representations this time will be split between the parties and where several parties make similar representations it is suggested one representative is appointed to avoid duplication.*

*The term “party” or “parties” will mean anyone to whom notice of this meeting has been given.*

1. The Chair will introduce Members of the Sub-Committee, the Officers present and explain the procedure to be followed.
2. The Licensing Officer will outline the nature of the matter to be considered by the Sub-Committee.
3. **(i)** The Applicant/Licence Holder , or representative, addresses the Sub-Committee who may be asked relevant questions by the other parties and Members.  
**(ii)** witnesses may be called in support of the application who may be asked relevant questions by the other parties and Members.
4. **(i)** Any party making relevant representations, or representative, will address the Sub-Committee who may be asked relevant questions by the Applicant, other parties and Members.  
**(ii)** witnesses may be called in support of such representations who may be asked relevant questions by the Applicant, other parties and Members.
5. Responsible Authorities making representation will address the Committee and may be asked relevant questions by the Applicant, other parties and Members.
6. The other parties will be invited in turn to summarise their representations.

Responsible Authorities will be invited to summarise their representations

The Applicant/ Licence Holder will be invited to summarise the application.

8. *The Chair will invite the Committee to move into private session to enable the Members to deliberate in private. The Committee will reconvene publicly if clarification of evidence is required and/or legal advice is required. The Committee may retire to a private room, or alternatively require vacation of the room by all other persons.*

*Whilst in deliberation the Committee will be accompanied by Legal and Democratic Service Officers for the purpose of assisting them in drafting their reasoning for the decision.*

The Committee will reconvene the meeting and the Chair will announce the Committee’s decision with reasons and advise that the decision will be released in writing within the statutory time limits or advise that the decision will be

released in writing with reasons within the statutory time limit, in this instance, 5 working days.

**PLEASE NOTE:**

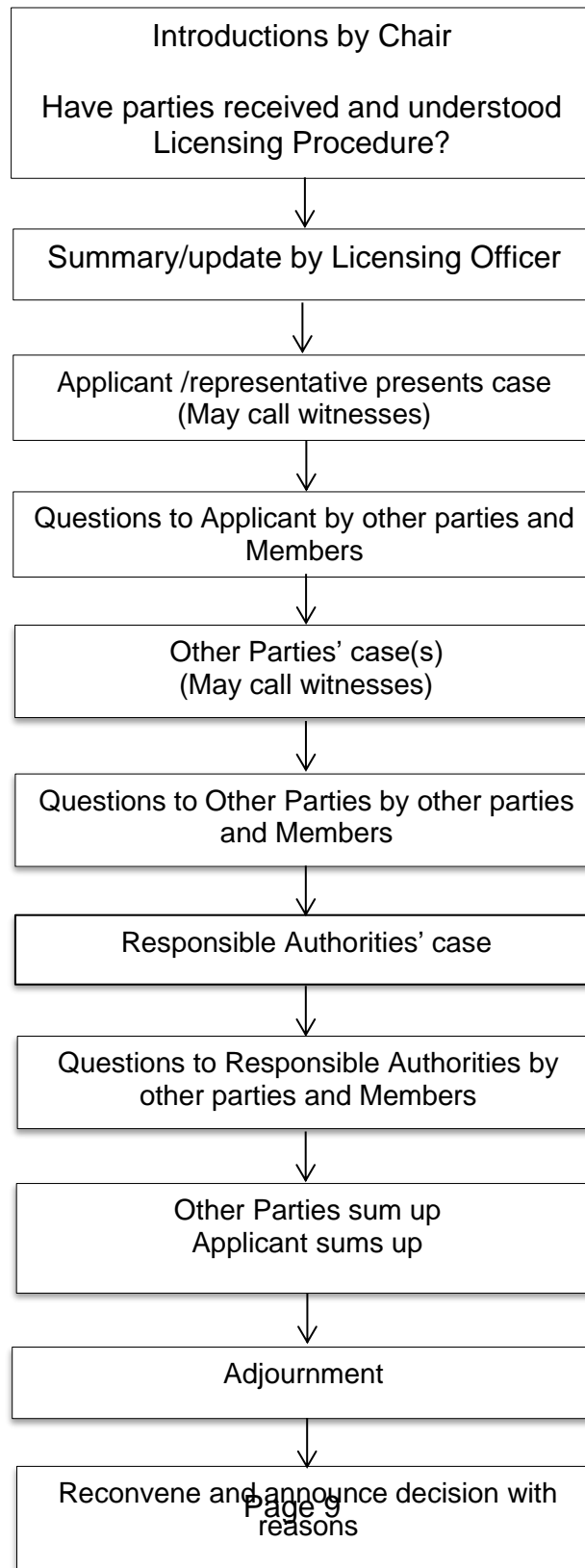
- Where the Sub-Committee considers it necessary to do so, it may vary this procedure.
- In circumstances where a party fails to attend the Committee will consider whether to proceed in absence. Should a matter be deferred the deferral notice will state that the matter may proceed in a party's absence on the next occasion. In deciding whether to proceed all notices, communications and representations will be considered.
- Only in **exceptional circumstances** will the Committee take into account any additional late documentary or other information produced by an existing party in support of their application/representation. This will be at the discretion of the Chair and with the agreement of all the other parties. No new representations will be allowed at the hearing.
- The hearing will take the form of a discussion and parties will be able to ask questions as set out above. However, formal cross examination will be discouraged.
- The Authority will disregard any information or representation given by a party which is not relevant to the Application and the Licensing Act 2003.
- Where there is more than one party making relevant representations the time allocated will be split between those parties.
- Where several parties are making the same or similar representations it is suggested that one representative is appointed to avoid duplication and make efficient use of the allocated time.
- Where an objection is made by an association or residents group, a duly authorised person – as notified to the Licensing Authority – may speak on behalf of that association or group.
- The Chair may request that persons behaving in a disruptive manner should leave the hearing and their return refused, or allowed subject to conditions. An excluded person is however, entitled to submit the information they would have been entitled to present had they not been excluded.

Bath & North East Somerset Council is committed to taking decisions in an honest, accountable and transparent fashion. On occasion however, it may be necessary to exclude members of the press and public pursuant to the Local Government Act 1972 Schedule 12 (a). In those circumstances reasons for such decisions will be given.



**LICENSING SUB-COMMITTEE  
LICENSING ACT 2003  
PROCEDURE FOR NEW APPLICATIONS AND VARIATIONS**

*The parties will be allowed an equal maximum period of time not normally exceeding **twenty minutes**. Where more than one party make representations the time should be split equally between them. Where several parties make similar representations one representative should be appointed avoiding duplication and making the best use of the available time*



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<b>Bath &amp; North East Somerset Council</b>		
MEETING:	Licensing Sub Committee	AGENDA ITEM NUMBER
MEETING DATE:	<b>Thursday 1 July 2021</b>	
TITLE:	Application for a Premises Licence for Garfunkel's, Orange Grove, Bath BA1 1LP	
WARD:	Abbey	
<b>AN OPEN PUBLIC ITEM</b>		
<p><b>List of attachments to this report:</b></p> <p><b>Annex A</b> Application for a new premises licence</p> <p><b>Annex B</b> Plan of premises and site plan</p> <p><b>Annex C</b> Lapsed premises licence 17/01351/LAPRE</p> <p><b>Annex D</b> Representations from "other persons"</p>		

## 1 THE ISSUE

- 1.1 An application has been made for a new premises licence under s.17 Licensing Act 2003 by TRG Leisure Limited in respect of Garfunkel's, Orange Grove, Bath BA1 1LP.

## 2 RECOMMENDATION

- 2.1 The Licensing Sub-Committee is asked to determine the application.

## 3 THE REPORT

- 3.1 An application has been received for a new Premises Licence (Annex A).

- 3.2 The application proposes the following licensable activities:

- 1) **The Sale of Alcohol by retail for consumption on the premises only between the following hours:**

Monday to Saturday 10:00 – 00:00

Sunday 12:00 – 23:00

**Non-standard timings:**

New Year's Eve:

From end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day;

Good Friday 12:00 – 23:30

Christmas Day 12:00 – 23:30

2) **The playing of Recorded Music, indoors only:**

Monday to Saturday 10:00 – 00:00

Sunday 12:00 – 23:30

3) **The provision of Late-Night Refreshment, indoors only:**

Monday to Saturday 23:00 – 00:00

Sunday 23:00 – 23:30

4) **Hours the premises are open to the public:**

Monday to Saturday 07:00 – 00:30

Sunday 07:00 – 00:00

Non-standard opening times for New Year's Eve:

From end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

5) The following **measures** have been offered by the applicant within the operating schedule to promote the licensing objectives:

- Any individual employed to carry out a security activity must be licensed by the Security Industry Authority;
- No off sales permitted;
- The premises are structurally adapted and bona fide used for or intended to be used for the purpose of habitually providing for the accommodation of persons frequenting the premises for substantial , to which the sale of alcohol and supply of intoxicating liquor is ancillary;
- Alcohol may be sold or supplied:-
  - a) On weekdays, other than Christmas Day, Good Friday or New Year's Eve from 11am to 12midnight;
  - b) On Sundays, , other then Christmas Day, or New Year's Eve, and on Good Friday: 12 noon to 11:30pm;
  - c) On Christmas Day: 12 noon until 11:20pm

- d) On New Year's Eve from the start of permitted hours on New Year's Eve to the start of permitted hours on the following day.

The above restrictions do not prohibit

- a) During the first twenty minutes after the above hours, the consumption of alcohol on the premises;
- b) During the first twenty minutes after the above hours, the taking of alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
- c) During the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking meals there if the alcohol was supplied for consumption as ancillary to the meals;
- d) Consumption of the alcohol on the premises or the taking or sale or supply of alcohol to any person residing in the premises.

3.3 Floor plans depicting the proposed premises (ground floor with customer area, external terrace, basement with customer toilets & back of house areas) and a site plan are attached at Annex B.

3.4 Premises licence 17/01351/LAPRE that had effect until an administrative error caused the licence to lapse in 2020, is attached at Annex C for completeness.

3.5 The Licensing Act 2003 (Section 4) states that it is the duty of all Licensing Authorities to carry out their functions under the Act with a view to promoting the licensing objectives. 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.

Each objective is of equal importance. As there are no other licensing objectives, these four are of paramount consideration at all times. When considering applications, representations or notifications, the Licensing Authority will have regard to these licensing objectives.

3.6 The Licensing Authority may grant the application with or without additional conditions.

3.7 Section 4(3) Licensing Act 2003 states that the Licensing Authority should also have regard to the Council's Licensing Policy, the Statutory Guidance issued under Section 182 of the Licensing Act 2003, and the Licensing Act itself, and in particular to:

- a) Paragraphs 3-6, 8-10, 13-14, 17-24, 29,33-36, 38-41 of the 2020 policy;
- b) Chapters 2, 8, 9 and 10 of the Statutory Guidance as revised April 2018;
- c) Sections 4, 9, 10, 11, 12, 13, 16, 17, 18, 23, 182, and 183 of the Act.

3.8 The Licensing Authority recognises that Licensing and Planning are separate regimes. Where an application is granted by the Licensing Authority which would require planning permission this would not relieve the applicant of the need to obtain that permission. It will still be necessary for the applicant to ensure that he/she has **ALL** the necessary permissions in place to enable them to run the business within the law.

3.9 If the application is refused the applicant may appeal within 21 days of the notification to the Magistrates' Court. If the application is granted the person making the relevant representation may appeal within 21 days of the notification to the Magistrates' Court. On appeal the court may either dismiss the appeal, substitute the decision appealed against for any other decision which could have been made by the Licensing Authority, or remit the case to the Licensing Authority to dispose of in accordance with the direction of the court. The court may make such order for costs as it thinks fit.

3.10 In accordance with the requirements of the Act, copies of the application were forwarded to the Police, the Fire Authority, Environmental Health, Development Control, Trading Standards, Health Authority and the Safeguarding Children and Young Persons' Team.

3.11 The applicant was required to place a notice at the premises for a period of 28 consecutive days starting the day after the application was submitted, and to place an advert in a local newspaper within 10 working days of submitting the application to the licensing authority.

3.12 Two representations of objection have been received within the statutory period from "other persons", namely Mrs Judith Rutherford, on behalf of the committee of the Empire Residents' Association, in her capacity as secretary of the Empire Owners' Association and also as an individual with her husband; and Professor Stan Kolaczowski, Chair of the Empire Owners' Association. The representations express concern that the applicant's proposals will undermine the Prevention of Public Nuisance Licensing Objective (Annex D). To mitigate these concerns the following conditions have been proposed by the representors:

- The premises will maintain an incident and refusals register. This will remain at the premises and made available to an authorised officer of the Police or Licensing Authority on request.
- The Premises Licence Holder shall ensure that a digital CCTV system will be installed at the premises. It shall be maintained in good working order and used at all times when the premises are open for licensable activities.

Any CCTV footage shall be kept for at least 28 days and shall be available to the Licensing Authority or Police on request.

- At all times the premises are open for licensable activities, waiter/waitress service shall be available.
- Substantial food shall be available to order in all parts of the premises where alcohol is sold or supplied for consumption on the premises until at least 9 pm daily.
- There shall be no emptying of bottle bins outside the buildings outside the following times, Monday to Sunday including bank holidays or public holidays, 08.00 to 22.00 hours.
- A direct telephone number shall be available at all times the premises are open. The telephone number is to be made available to residents and businesses in the vicinity.
- Noise Limiter: If officers of the Council witness noise at a level that causes unreasonable disturbance to the occupants of any properties in the vicinity then a noise limiting device shall be used in relation to all sound amplification equipment used in conjunction with the premises licence. The noise limiting device shall be installed and set at a level approved by the Council through an authorised officer of the Pollution Control Team within 1 month of notification, for its requirement, from the Licensing section. The noise limiting device shall be properly secured so that it cannot be tampered with. The noise limiting device shall only be reset by an authorised officer of the Pollution Control Team. If deemed necessary, the noise limiting device shall be reset to a level approved by the Council through an authorised officer of the Pollution Control Team within 14 days of notification.
- The outside area to be used for the supply of food and/or drink between 08.00 and 22.00 daily and shall be cleared of customers by 22.30.
- There shall be no smoking or vaping on the terrace.
- The outside terrace area shall be limited to 30 persons seated.
- Service to the outside area shall be restricted to customers who are seated at tables provided (no standing around drinking). This should be supported by signage outside the premises.
- The outside area shall be serviced by waiter/waitress service.
- 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.
- The premises will operate a Challenge 21 policy and will display a sign advertising this policy at all bar areas.

- The manager and staff shall be trained in the importance of their responsibilities in ensuring that customers who request alcohol are over 18.
- Records will be kept of staff training. The records are to be made available for inspection by officers of Responsible Authorities immediately on request and all such records to be retained at the premises for at least 12 months.
- The total capacity of the premises shall be 150 (as offered by Brunning & Price at the Licensing Hearing in 2019 and quoted in the Hearing Decision).
- There shall be no off sales permitted.
- The holder of the licence shall ensure that quarterly meetings are held with a representative (or representatives) of The Empire Owners' 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 the residents who live in the building and to discuss and seek to resolve any issues that might arise.
- A Noise Limiter shall be fitted as a requirement (and not seen as an option).

3.13 As representations have been received the Sub-Committee must determine the application in accordance with the Licensing Act 2003.

3.14 The premise is situated within Bath's Cumulative Impact Assessment Area. As relevant representations have been received, there is a rebuttable presumption that the application will be refused unless the applicant can demonstrate how the proposals within the application will not add to the cumulative impact already experienced in the area.

3.15 This report has not been sent to the Trades Union because they would have no involvement.

#### **4 STATUTORY CONSIDERATIONS**

4.1 An Equality Impact Assessment (EqIA) has been completed. No adverse or other significant issues were found.

4.2 Consideration must be given to the Human Rights Act 1998 and the "convention rights".

4.3 The Sub-Committee have been delegated authority to determine the application on behalf of the Licensing Authority in accordance with the Licensing Act 2003.



4.4 When reaching a decision, the Licensing Authority must carry out its functions with a view to promoting the four licensing objectives.

## **5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

5.1 The costs of processing licences are covered by the fees charged. The fee for this application is £635.00.

## **6 RISK MANAGEMENT**

6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision-making risk management guidance.

## **7 CLIMATE CHANGE**

7.1 The licensing objectives do not require the applicant to specify steps to mitigate the impact of climate emergency. However, the applicant is encouraged to consider locally sourced ingredients and to reduce single use plastic in the operation of their business.

## **8 OTHER OPTIONS CONSIDERED**

8.1 None.

## **9 CONSULTATION**

9.1 The Council's Monitoring Officer (Director - Legal & Democratic Services and Council Solicitor), section 151 Officer (Director of Finance) and Head of Building Control and Public Protection have had opportunity to input to this report and have cleared it for publication.

9.2 This report has not been sent to the Trades' Union as it would not have any involvement.

<b>Contact person</b>	Terrill Wolyn, Senior Licensing Officer 01225 396939
<b>Background papers</b>	Licensing Act 2003 Guidance issued under s.182 of the Licensing Act 2003 Licensing Act 2003 (Premises and Club Premises Certificates) Regulations 2005 B&NES Council's Statement of Licensing Policy
	<b>Please contact the report author if you need to access this report in an alternative format</b>

**Bath & North East Somerset District Council**

**Application for a premises licence to be granted  
under the Licensing Act 2003**

**PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST**

Before completing this form please read the guidance notes at the end of the form.

If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

**We** TRG Leisure Limited

**apply for a premises licence under section 17 of the Licensing Act 2003 for the premises described in Part 1 below (the premises) and I/we are making this application to you as the relevant licensing authority in accordance with section 12 of the Licensing Act 2003**

**Part 1 – Premises Details**

<b>Postal address of premises or, if none, ordnance survey map reference or description</b>			
Garfunkel's Orange Grove			
<b>Post town</b>	Bath	<b>Post code</b>	BA1 1LP

Telephone number at premises (if any)	
Non-domestic rateable value of premises	£166,000.00

**Part 2 - Applicant Details**

Please state whether you are applying for a premises licence as  
Please tick yes

- |   |                                     |                             |
|---|-------------------------------------|-----------------------------|
| a) an individual or individuals *   | <input type="checkbox"/>            | please complete section (A) |
| b) a person other than an individual *  |                                     |                             |
| i. as a limited company   | <input checked="" type="checkbox"/> | please complete section (B) |
| ii. as a partnership  | <input type="checkbox"/>            | please complete section (B) |
| iii. as an unincorporated association or  | <input type="checkbox"/>            | please complete section (B) |
| iv. other (for example a statutory corporation)   | <input type="checkbox"/>            | please complete section (B) |
| c) a recognised club  | <input type="checkbox"/>            | please complete section (B) |
| d) a charity  | <input type="checkbox"/>            | please complete section (B) |
| e) the proprietor of an educational establishment   | <input type="checkbox"/>            | please complete section (B) |
| f) a health service body  | <input type="checkbox"/>            | please complete section (B) |
| g) a person who is registered under Part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital   | <input type="checkbox"/>            | please complete section (B) |
| ga) a person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 (within the meaning of that Part) in an independent hospital in England | <input type="checkbox"/>            | please complete section (B) |

- h) the chief officer of police of a police force in England and Wales  please complete section (B)

\* If you are applying as a person described in (a) or (b) please confirm:

Please tick yes

- I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities; or
- I am making the application pursuant to a
  - statutory function or
  - a function discharged by virtue of Her Majesty's prerogative

**(A) INDIVIDUAL APPLICANTS** (fill in as applicable)

Mr <input type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title (for example, Rev)	
Surname			First names		
I am 18 years old or over					<input type="checkbox"/> Please tick yes
Current residential address if different from premises address					
Post Town				Postcode	
Daytime contact telephone number					
E-mail address (optional)					
Where applicable (if demonstrating a right to work via the Home Office online right to work checking service), the 9-digit 'share code' provided to the applicant by that service (please see note 15 for information)					

**SECOND INDIVIDUAL APPLICANT** (if applicable)

Mr <input type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title (for example, Rev)	
Surname			First names		
I am 18 years old or over					<input type="checkbox"/> Please tick yes
Current residential address if different from premises address					
Post Town				Postcode	
Daytime contact telephone number					
E-mail address (optional)					
Where applicable (if demonstrating a right to work via the Home Office online right to work					

**checking service), the 9-digit 'share code' provided to the applicant by that service (please see note 15 for information)**

**(B) OTHER APPLICANTS**

Please provide name and registered address of applicant in full. Where appropriate please give any registered number. In the case of a partnership or other joint venture (other than a body corporate), please give the name and address of each party concerned.

Name TRG Leisure Limited
Address 5-7 Marshalsea Road, London, SE1 1EP
Registered number (where applicable) 01337324
Description of applicant (for example, partnership, company, unincorporated association etc.) Limited Company
Telephone number (if any)
E-mail address (optional)

**Part 3 Operating Schedule**

When do you want the premises licence to start?

Day	Month	Year
A	S	A P

If you wish the licence to be valid only for a limited period, when do you want it to end?

Day	Month	Year

**A**

Please give a general description of the premises (please read guidance note 1)

The Premises is made up of a ground floor which contains the customer areas, and a basement with customer toilets and back of house areas. There is an external terrace to the front of the Premises.

If 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend.

N/A
-----

What licensable activities do you intend to carry on from the premises?

(Please see sections 1 and 14 of the Licensing Act 2003 and Schedules 1 and 2 to the Licensing Act 2003)

**Provision of regulated entertainment** (please read guidance note 2)

**Please tick all that apply**

- |  |                                     |
|--|-------------------------------------|
| a) plays (if ticking yes, fill in box A)                             | <input type="checkbox"/>            |
| b) films (if ticking yes, fill in box B)                             | <input type="checkbox"/>            |
| c) indoor sporting events (if ticking yes, fill in box C)            | <input type="checkbox"/>            |
| d) boxing or wrestling entertainment (if ticking yes, fill in box D) | <input type="checkbox"/>            |
| e) live music (if ticking yes, fill in box E)                        | <input type="checkbox"/>            |
| f) recorded music (if ticking yes, fill in box F)                    | <input checked="" type="checkbox"/> |
| g) performances of dance (if ticking yes, fill in box G)             | <input type="checkbox"/>            |

- h) anything of a similar description to that falling within (e), (f) or (g) (if ticking yes, fill in box H)

**Provision of late night refreshment** (if ticking yes, fill in box I)

**Supply of alcohol** (if ticking yes, fill in box J)

**In all cases complete boxes K, L and M**

### A

Plays Standard days and timings (please read guidance note 7)			Will the performance of a play take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon			Please give further details here (please read guidance note 4)	Both	<input type="checkbox"/>
Tue					
Wed			State any seasonal variations for performing plays (please read guidance note 5)		
Thur					
Fri			Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list (please read guidance note 6)		
Sat					
Sun					

### B

Films Standard days and timings (please read guidance note 7)			Will the exhibition of films take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon			Please give further details here (please read guidance note 4)	Both	<input type="checkbox"/>
Tue					
Wed			State any seasonal variations for the exhibition of films (please read guidance note 5)		
Thur					
Fri			Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list (please read guidance note 6)		
Sat					
Sun					



**E**

<b>Live music</b> Standard days and timings (please read guidance note 7)			<b>Will the performance of live music take place indoors or outdoors or both – please tick</b> (please read guidance note 3)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon				Both	<input type="checkbox"/>
Tue				<b>Please give further details here</b> (please read guidance note 4)	
Wed			<b>State any seasonal variations for the performance of live music</b> (please read guidance note 5)		
Thur					
Fri			<b>Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list</b> (please read guidance note 6)		
Sat					
Sun					

**F**

<b>Recorded music</b> Standard days and timings (please read guidance note 7)			<b>Will the playing of recorded music take place indoors or outdoors or both – please tick</b> (please read guidance note 3)	Indoors	<input checked="" type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon	10:00	00:00		Both	<input type="checkbox"/>
Tue	10:00	00:00		<b>Please give further details here</b> (please read guidance note 4)	
Wed	10:00	00:00	Amplified music played through an in house sound system		
Thur	10:00	00:00	<b>State any seasonal variations for the playing of recorded music</b> (please read guidance note 5)		
Fri	10:00	00:00	<b>Non standard timings. Where you intend to use the premises for the playing of recorded music at different times to those listed in the column on the left, please list</b> (please read guidance note 6)		
Sat	10:00	00:00			
Sun	12:00	23:30			



**G**

<b>Performances of dance</b> Standard days and timings (please read guidance note 7)			<b><u>Will the performance of dance take place indoors or outdoors or both – please tick</u></b> (please read guidance note 3)		Indoors	<input checked="" type="checkbox"/>
					Outdoors	<input type="checkbox"/>
					Both	<input type="checkbox"/>
Day	Start	Finish	<b><u>Please give further details here</u></b> (please read guidance note 4)			
Mon						
Tue						
Wed			<b><u>State any seasonal variations for the performance of dance</u></b> (please read guidance note 5)			
Thur						
Fri			<b><u>Non standard timings. Where you intend to use the premises for the performance of dance at different times to those listed in the column on the left, please list</u></b> (please read guidance note 6)			
Sat						
Sun						

**H**

<b>Anything of a similar description to that falling within (e), (f) or (g)</b> Standard days and timings (please read guidance note 7)			<b><u>Please give a description of the type of entertainment you will be providing</u></b>			
Day	Start	Finish	<b><u>Will this entertainment take place indoors or outdoors or both – please tick</u></b> (please read guidance note 3)		Indoors	<input type="checkbox"/>
Mon					Outdoors	<input type="checkbox"/>
					Both	<input type="checkbox"/>
Tue			<b><u>Please give further details here</u></b> (please read guidance note 4)			
Wed						
Thur			<b><u>State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g)</u></b> (please read guidance note 5)			
Fri						
Sat			<b><u>Non standard timings. Where you intend to use the premises for the entertainment of a similar description to that falling within (e), (f) or (g) at different times to those listed in the column on the left, please list</u></b> (please read guidance note 6)			
Sun						

I

Late night refreshment Standard days and timings (please read guidance note 7)			Will the provision of late night refreshment take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input checked="" type="checkbox"/>
Day				Outdoors	<input type="checkbox"/>
Start	Finish			Both	<input type="checkbox"/>
Mon	23:00	00:00		<b>Please give further details here</b> (please read guidance note 4)  Hot food and drink provided as and when required including functions or events	
Tue	23:00	00:00			
Wed	23:00	00:00	<b>State any seasonal variations for the provision of late night refreshment</b> (please read guidance note 5)		
Thur	23:00	00:00			
Fri	23:00	00:00	<b>Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list</b> (please read guidance note 6)		
Sat	23:00	00:00			
Sun	23:00	23:30			

J

Supply of alcohol Standard days and timings (please read guidance note 7)			Will the supply of alcohol be for consumption (Please tick box) (please read guidance note 8)	On the premises	<input checked="" type="checkbox"/>
Day				Off the premises	<input type="checkbox"/>
Start	Finish			Both	<input type="checkbox"/>
Mon	10:00	00:00		<b>State any seasonal variations for the supply of alcohol</b> (please read guidance note 5)	
Tue	10:00	00:00			
Wed	10:00	00:00			
Thur	10:00	00:00	<b>Non standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list</b> (please read guidance note 6)		
Fri	10:00	00:00			
Sat	10:00	00:00	New Year's Eve – from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.		
Sun	12:00	23:30	Good Friday 12:00 to 23:30 Christmas Day 12:00 to 23:30		

State the name and details of the individual whom you wish to specify on the licence as premises supervisor (Please see declaration about the entitlement to work in the checklist at the end of the form):

<b>Name</b> Stephen Butt	
<b>Date of birth</b>	
<b>Address</b>	
<b>Postcode</b>	
<b>Personal Licence number (if known)</b>	
<b>Issuing licensing authority (if known)</b>	

## K

**Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children** (please read guidance note 9)  
None

## L

<b>Hours premises are open to the public</b> Standard days and timings (please read guidance note 7)			<b>State any seasonal variations</b> (please read guidance note 5)
<b>Day</b>	<b>Start</b>	<b>Finish</b>	
Mon	07:00	00:30	
Tue	07:00	00:30	
Wed	07:00	00:30	
Thur	07:00	00:30	<b>Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list</b> (please read guidance note 6)  New Year's Eve – from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.
Fri	07:00	00:30	
Sat	07:00	00:30	
Sun	07:00	00:00	

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

**a) General – all four licensing objectives (b,c,d,e)** (please read guidance note 10)

*[The comments below are for information only.]*

Garfunkel's in Bath has operated for many years and its ownership falls within the subsidiary companies of The Restaurant Group Plc. The Premises had the benefit of a Premises Licence – 17/01351/LAPRE – which was held in the name of The Restaurant Group (UK) Limited. This was one of the subsidiary companies of The Restaurant Group Plc and a CVA was entered into by The Restaurant Group (UK) Limited on the 29 June 2020.

The Licence automatically lapsed as a result of the CVA however, due to an administrative error, no Applications were made within the requisite 28 days to preserve the Premises Licence. This Application therefore is in effect to reinstate the previous Licence. The hours licensable activities and all conditions are applied for on a mirrored basis.

The plan submitted with the Application numbered 71BATH-01 (ground floor) and 71ABTH-02 (basement) reflects the existing layout.

Pre-consultation has taken place with the Police and Licensing Authority and the Applicant explained the intention to mirror the existing Premises Licence. The Applicant is familiar with the residential properties in the Empire Building above Garfunkels and prior to submitting this Application has notified the Empire Owners' Association and TARA of the situation and intention to apply for this replica Licence.

Whilst the Premises are located in cumulative impact it would be the Applicant's submission that cumulative impact does not affect this Application as this is not a new addition to the Licensing landscape of Bath as it is a long established Licensed Premises. As such is the submission that the CIP either does not apply given the facts or, if it does, that this is an exception to the policy.

**b) The prevention of crime and disorder**

1. Any individual employed to carry out a security activity must be licensed by the Security Industry Authority.
2. No off sales permitted.
3. The premises are structurally adapted and bona fide used for or intended to be used for the purpose of habitually providing for the accommodation of persons frequenting the premises for substantial refreshment, to which the sale of alcohol and supply of intoxicating liquor is ancillary.
4. Alcohol may be sold or supplied:-
  - a) On weekdays, other than Christmas Day, Good Friday or New Years Eve from 11am to 12 midnight.
  - b) On Sundays, other than Christmas Day, or New Years Eve, and on Good Friday: 12 noon to 11.30pm
  - c) On Christmas Day: 12 noon to 11.20pm
  - d) On New Years Eve from the start of permitted hours on New Years Eve to the start of permitted hours on the following day.

The above restrictions do not prohibit

- a) During the first twenty minutes after the above hours the consumption of the alcohol on the premises;
- b) During the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
- c) During the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking meals there is the alcohol was supplied for consumption as

- ancillary to the meals;  
 d) Consumption of the alcohol on the premises or the taking of sale or supply of alcohol to any person residing in the premises

**c) Public safety**

See a) above

**d) The prevention of public nuisance**

See a) above

**e) The protection of children from harm**

See a) above

**Please tick yes**


- I have made or enclosed payment of the fee or
- I have not made or enclosed payment of the fee because the application has been made in relation to the introduction of the late night levy
- I have enclosed the plan of the premises
- I have sent copies of this application and the plan to responsible authorities and others where applicable
- I have enclosed the consent form completed by the individual I wish to be designated premises supervisor, if applicable
- I understand that I must now advertise my application
- I understand that if I do not comply with the above requirements my application will be rejected
- ***[Applicable to all individual applicants, including those in a partnership which is not a limited liability partnership, but not companies or limited liability partnerships]*** I have included documents demonstrating my entitlement to work in the United Kingdom or my share code issued by the Home Office online right to work checking service (please read note 15).

**IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.**

**IT IS AN OFFENCE UNDER SECTION 24B OF THE IMMIGRATION ACT 1971 FOR A PERSON TO WORK WHEN THEY KNOW, OR HAVE REASONABLE CAUSE TO BELIEVE, THAT THEY ARE DISQUALIFIED FROM DOING SO BY REASON OF THEIR IMMIGRATION STATUS. THOSE WHO EMPLOY AN ADULT WITHOUT LEAVE OR WHO IS SUBJECT TO CONDITIONS AS TO EMPLOYMENT WILL BE LIABLE TO A CIVIL PENALTY UNDER SECTION 15 OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 AND PURSUANT TO SECTION 21 OF THE SAME ACT, WILL BE COMMITTING AN OFFENCE WHERE THEY DO SO IN THE KNOWLEDGE, OR WITH REASONABLE CAUSE TO BELIEVE, THAT THE EMPLOYEE IS DISQUALIFIED.**

**Part 4 – Signatures** (please read guidance note 11)

**Signature of applicant or applicant's solicitor or other duly authorised agent** (See guidance note 11). **If signing on behalf of the applicant please state in what capacity.**

<b>Declaration</b>	<ul style="list-style-type: none"> <li>[Applicable to individual applicants only, including those in a partnership which is not a limited liability partnership] I understand I am not entitled to be issued with a licence if I do not have the entitlement to live and work in the UK (or if I am subject to a condition preventing me from doing work relating to the carrying on of a licensable activity) and that my licence will become invalid if I cease to be entitled to live and work in the UK (please read guidance note 14)</li> <li>The DPS named in this application form is entitled to work in the UK (and is not subject to conditions preventing him or her from doing work relating to a licensable activity) and I have seen a copy of his or her proof of entitlement to work, or have conducted an online right to work check using the Home Office online right to work checking service which confirmed their right to work (please see note 15)</li> </ul>
Signature	
Date	12 May 2021
Capacity	Poppleston Allen – Solicitors for and on behalf of the applicant

**For joint applications signature of 2<sup>nd</sup> applicant or 2<sup>nd</sup> applicant's solicitor or other authorised agent.** (please read guidance note 13). **If signing on behalf of the applicant please state in what capacity.**

Signature	
Date	
Capacity	

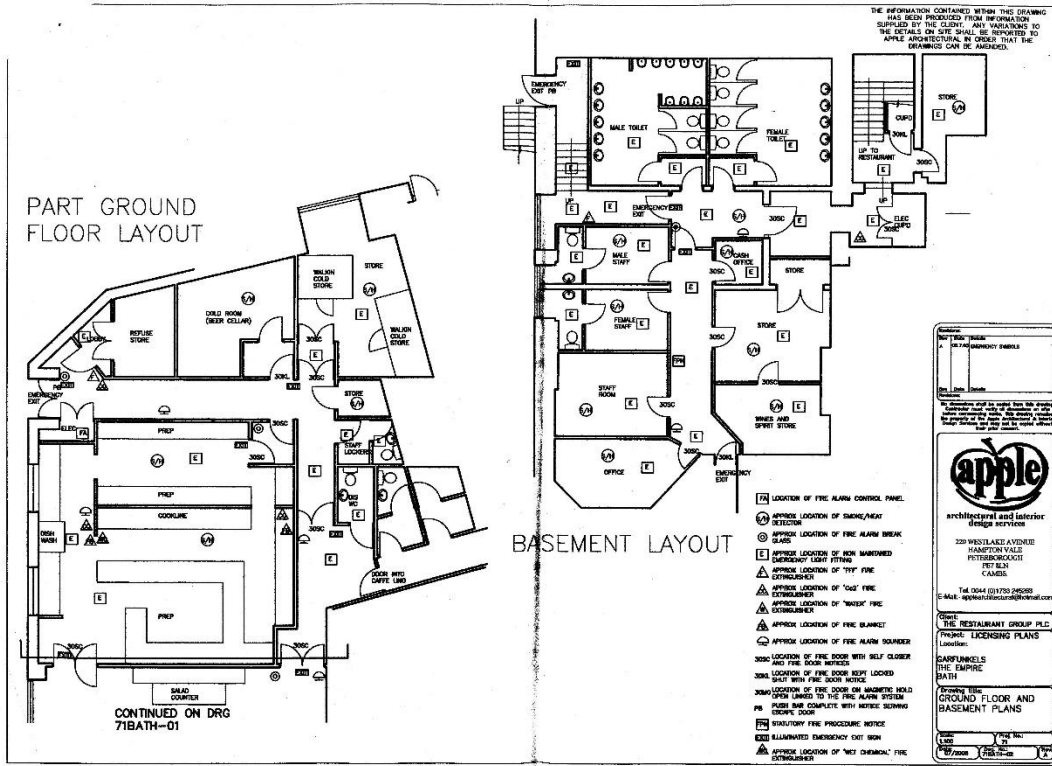
**Contact name (where not previously given) and postal address for correspondence associated with this application** (please read guidance note 14)

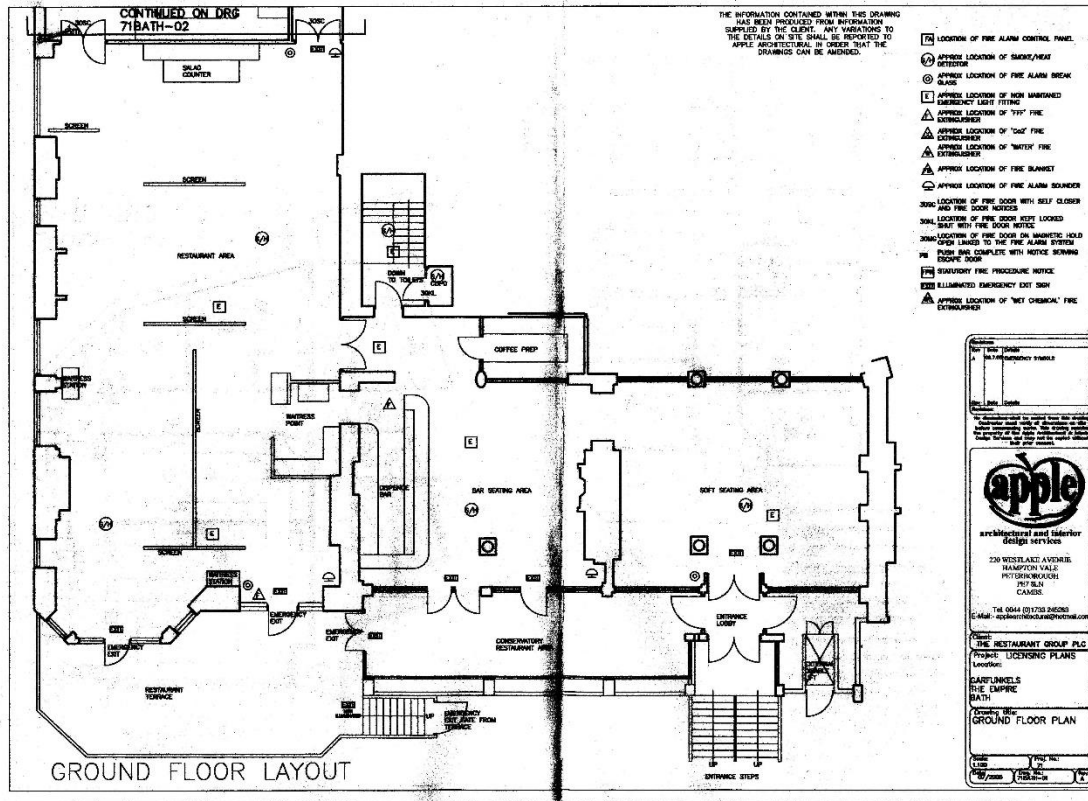
Michelle Peach  
Poppleston Allen Solicitors 37 Stoney Street  
The Lace Market

<b>Post town</b>	Nottingham	<b>Post code</b>	NG1 1LS
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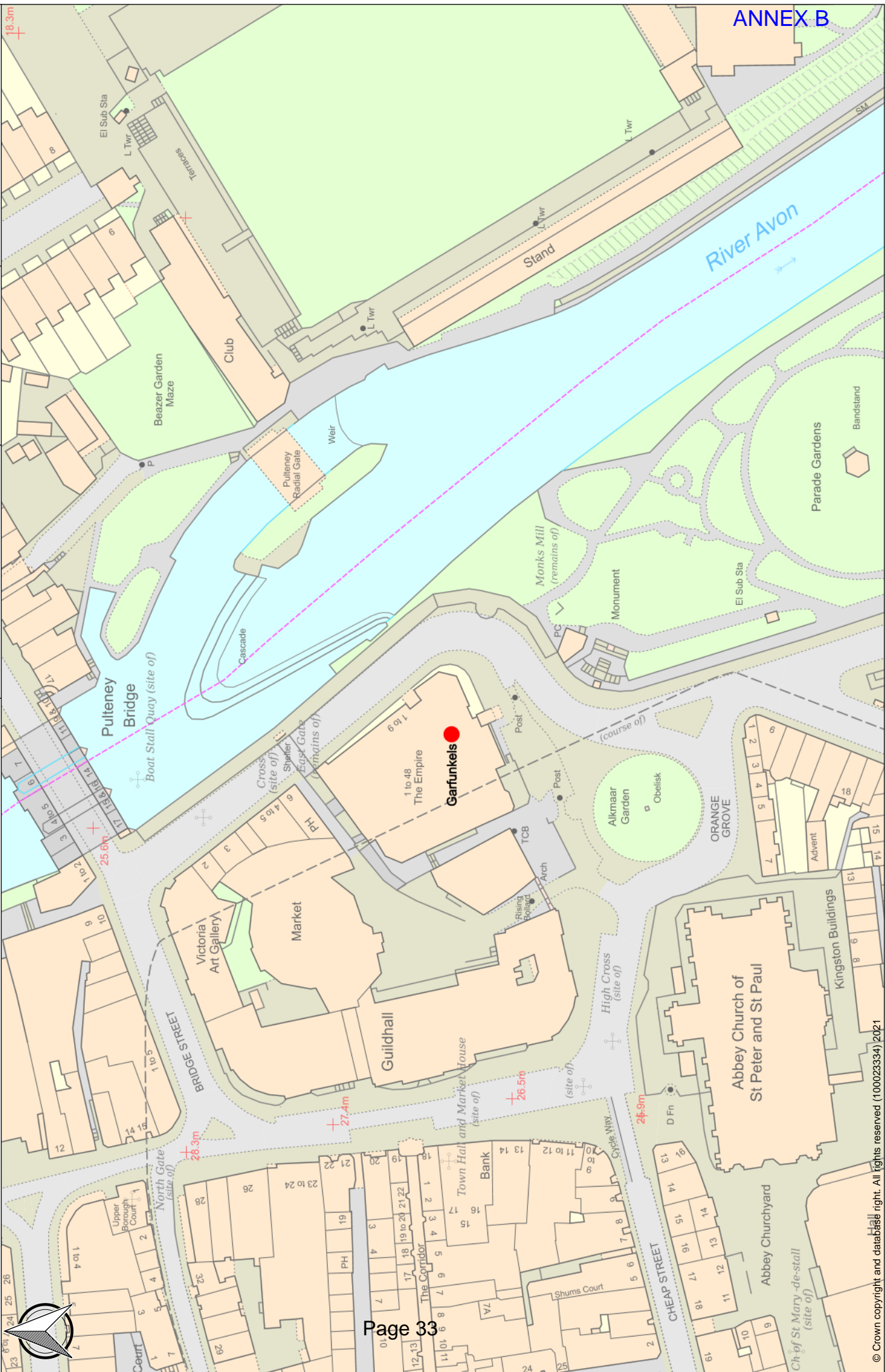
<b>Telephone number (if any)</b>	0115 953 8509
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**If you would prefer us to correspond with you by e-mail your e-mail address (optional)**









**Schedule 12  
Part A**

**Regulation 33, 34**

**Premises Licence**

<b>Premises Licence Number</b>	17/01351/LAPRE
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**Part 1 – Premises Details**

<b>Postal address of premises, or if none, ordnance survey map reference or description, including Post Town, Post Code</b>	
Garfunkels Orange Grove Bath BA1 1LP	
<b>Telephone number</b>	01225 461465

<b>Where the licence is time limited the dates</b>	Not applicable
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<b>Licensable activities authorised by the licence and the times the licence authorises the carrying out of licensable activities</b>	
<b>Sale of Alcohol</b>	
Monday to Saturday	10:00 - 00:00
Sunday	12:00 - 23:30
Good Friday	12:00 - 23:30
Christmas Day	12:00 - 23:30
<b>Performance of Recorded Music</b>	
Monday to Saturday	10:00 - 00:00
Sunday	12:00 - 23:30
<b>Late Night Refreshment</b>	
Monday to Saturday	23:00 - 00:00
Sunday	23:00 - 23:30
<b>Non Standard Timings:</b>	
From normal activity start time on New Year's Eve until normal activity finishing time on New Year's Day.	

<b>The opening hours of the premises</b>	
Monday to Saturday	07:00 - 00:30
Sunday	07:00 - 00:00

<b>Where the licence authorises supplies of alcohol whether these are on and/or off supplies</b>	
Alcohol is supplied for consumption on the premises	

**Part 2**

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

The Restaurant Group (UK) Limited  
5-7 Marshalsea Road  
London  
SE1 1EP

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

Registered Business Number - 894426

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

Ms Jessica Rose McKay

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

Bath & North East Somerset 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 14 June 2017

## Annex 1 – Mandatory conditions

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 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 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.

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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.  
 -----

No off sales permitted.  
 -----

The premises are structurally adapted and bona fide used for or intended to be used for the purpose of habitually providing for the accommodation of persons frequenting the premises for substantial refreshment, to which the sale and supply of intoxicating liquor is ancillary.  
 -----

The Licensing Act 2003 hours will be as:

Licensing Act 1964 - Section 95. Restaurant and Residential licences.

Alcohol may be sold or supplied:

- a) On weekdays, other than Christmas Day, Good Friday or New Year's Eve from 11 am to 12 midnight.
- b) On Sundays, other than Christmas Day or New Year's Eve, and on Good Friday: 12 noon to 11:30 pm
- c) On Christmas Day: 12 noon to 11:30 pm
- d) On New Year's Eve from the start of permitted hours on New Year's Eve to the start of permitted hours on the following day.

The above restrictions do not prohibit:

- a) during the first twenty minutes after the above hours the consumption of the alcohol on the premises;
  - b) during the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
  - c) during the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking meals there if the alcohol was supplied for consumption as ancillary to the meals;
  - d) consumption of the alcohol on the premises or the taking of sale or supply of alcohol to any person residing in the premises.
-

**Annex 2 – Conditions consistent with the Operating Schedule**



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

**Annex 4 – Plans**

As submitted with application.

## **REPRESENTATIONS OF OBJECTION**

**ANNEX D**

### **Mrs Judith Rutherford:**

Garfunkel's Restaurant, Orange Grove, Bath BA1 1LP

#### Premises Licence Applications:

21/00798/LAPRE in the name of Brunning & Price Ltd (mirroring 20/00623/LAPRE),  
and

21/00795/LAPRE in the name of TRG Leisure Ltd (mirroring 17/01351/LAPRE)

I would like to make the following representation on behalf of the Committee of the Empire Owners' Association, the Association which represents the forty-three residential apartments at The Empire, located in the same building as the former Garfunkel's Restaurant.

In addition to this which is sent in my capacity as Secretary of that Association, I also write in a personal capacity on behalf of my husband and myself. Our apartment is located directly over the restaurant and so we are very, very close neighbours.

#### **21/00798/LAPRE in the name of Brunning & Price Ltd (mirroring 20/00623/LAPRE)**

When the Brunning & Price Premises Licence (20/00623) was granted in 2020, it contained various statements in Annex 2 consistent with the applicant's Operating Schedule. These were in line with the licensing objectives, incorporated onto the licence and welcomed by our Association. In addition, two further conditions about the use of the outside terrace were imposed by the Licensing Sub-Committee at Annex 3. As near neighbours we were particularly pleased to have these as we felt they were essential to help control the disorder that had latterly crept into the use of the outside terrace. We are pleased that it is proposed to carry these conditions forward in their entirety to the new Brunning & Price licence under Application 21/00798.

However, we are still very concerned about the amount of noise and possible public nuisance that might be generated by the conversion of the premises from a family restaurant into a pub - especially given the intention to move the bar from the small room previously used by Garfunkel's into the centre of the cavernous and resonant main room, previously used as the restaurant. Our Association employed a noise expert to look at the Noise Assessment produced by Brunning & Price for the Hearing, but unfortunately this could not be taken into account because it was impossible to get it circulated and reviewed by all parties in time. I understand that our Chairman (Prof Stan Kolaczowski) will be making his own representation about this aspect of the present application.

Also, at the Licensing Hearing (which took place on 4 April 2019), Brunning & Price offered to limit the numbers using the premises to 150, but this offer was never incorporated into the subsequent Licence, although it was one of the points listed in the Hearing Decision and was presumably one of the points taken into account when the decision was made. In order to try and regulate any future noise and nuisance problems caused by switching the rooms to accommodate a larger bar, and the changed emphasis on drinking/dining, we ask that this number of 150 be incorporated into the new Licence.

## **REPRESENTATIONS OF OBJECTION**

## **ANNEX D**

To illustrate why we feel this is necessary, a perfect demonstration took place on 5 April 2019 (co-incidentally the day after the Hearing). Garfunkel's hosted a dinner for 180 members of the University Hockey Union and the noise and disturbance generated from this number was so bad that it drowned out our television in the apartment above - and in all the other apartments along the front of the building. When I telephoned the restaurant, the staff could not hear themselves speak, yet alone hear what I was saying. I went down to complain in person and found 'diners' spilling out onto the front steps with their drinks and also all across the pavement and some even lurching across the road in front of cars. In the end I telephoned the Council's emergency out-of-hours persistent noise number for advice as I was worried the event was out of control. Even the person who answered the call could hardly hear what I was saying because of all the noise. I subsequently had follow-up calls from the Council's Environmental Protection Officer, Nigel Shire. I appreciate this was a Garfunkel's event and **NOT** one organised by Brunning & Price, but it demonstrates that this was far too many people to control safely.

**Therefore it would be better to incorporate into the new Premises Licence the 150 capacity offered by Brunning & Price at the previous Licensing Hearing (and referred to in the Decision document) for the avoidance of any future public nuisance and disorder.**

### **21/00795/LAPRE in the name of TRG Leisure Ltd (mirroring 17/01351/LAPRE)**

In respect of the TRG Leisure Application 21/00795, although this does mirror the previous licence obtained under Application 17/01351 we still have concerns. Since the lapsed licence was granted, we feel strongly that circumstances surrounding the use of these premises have changed and so we make the following representation:

- As the old licence has lapsed it is as if it never existed, so the new one should not mirror the old, but improve upon it.
- It would be better if it mirrored the newer licence issued to Brunning & Price in 2020 so that the two licences intended for use at the same property by the same parent company should abide by the same conditions of use.
- The conditions accepted by Brunning & Price in respect of the licensing objectives in 2020 should also be accepted by TRG Leisure in any other business they wish to operate on the same premises - especially those in relation to the use of the outside terrace.
- At the moment there is no certainty which licence will be operational or who will be using the premises, so neighbours have no guarantees and it is difficult to make specific representations. But to cover as many eventualities as possible, we please ask that the Brunning & Price 2020 conditions be applied to both Premises Licences.

### **TO SUMMARISE (for BOTH Licences)**

**We please ask that the following offered on the Brunning & Price Licence Application 21/00798 be applied both to that Licence and also the TRG Leisure 21/00795 Licence in order to conform with the licensing objectives:**

**The prevention of crime and disorder**

1. The premises will maintain an incident and refusals register. This will remain at the premises and made available to an authorised officer of the Police or Licensing Authority on request.
2. The Premises Licence Holder shall ensure that a digital CCTV system will be installed at the premises. It shall be maintained in good working order and used at all times when the premises are open for licensable activities. Any CCTV footage shall be kept for at least 28 days and shall be available to the Licensing Authority or Police on request.
3. At all times the premises are open for licensable activities, waiter/waitress service shall be available.
4. Substantial food shall be available to order in all parts of the premises where alcohol is sold or supplied for consumption on the premises until at least 9 pm daily.'

**The prevention of public nuisance**

1. There shall be no emptying of bottle bins outside the buildings outside the following times, Monday to Sunday including bank holidays or public holidays, 08.00 to 22.00 hours.
2. A direct telephone number shall be available at all times the premises are open. The telephone number is to be made available to residents and businesses in the vicinity.
3. Noise Limiter: If officers of the Council witness noise at a level that causes unreasonable disturbance to the occupants of any properties in the vicinity then a noise limiting device shall be used in relation to all sound amplification equipment used in conjunction with the premises licence. The noise limiting device shall be installed and set at a level approved by the Council through an authorised officer of the Pollution Control Team within 1 month of notification, for its requirement, from the Licensing section. The noise limiting device shall be properly secured so that it cannot be tampered with. The noise limiting device shall only be reset by an authorised officer of the Pollution Control Team. If deemed necessary, the noise limiting device shall be reset to a level approved by the Council through an authorised officer of the Pollution Control Team within 14 days of notification.
4. The outside area to be used for the supply of food and/or drink between 08.00 and 22.00 daily and shall be cleared of customers by 22.30.
5. There shall be no smoking or vaping on the terrace.
6. The outside terrace shall be limited to 30 persons seated.
7. Service to outside area shall be restricted to customers who are seated at tables provided (no standing around drinking). This should be supported by signage outside the premises
8. The outside area shall be serviced by waiter/waitress service.
9. A notice advising customers to leave the premises quietly and respect the needs of the residents must be displayed at each of the exits of the premises.

**Protection of children from harm**

1. The premises will operate a Challenge 21 policy and will display a sign advertising this policy at all bar areas.

## **REPRESENTATIONS OF OBJECTION**

## **ANNEX D**

2. They will at all times ensure that the manager and staff are trained in the importance of their responsibilities in ensuring that customers who request alcohol are over 18.

3. Records will be kept of staff training. The records are to be made available for inspection by officers of Responsible Authorities immediately on request and all such record to be retained at the premises for at least 12 months.

**In addition, we request that the following be**

### **ADDED TO BOTH LICENCES**

#### **for the prevention of public nuisance and crime and disorder**

1. The total capacity of the premises shall be 150 as offered by Brunning & Price at the Licensing Hearing in 2019 and quoted in the Hearing Decision.

2. There shall be no off sales permitted.

3. The clause 'the premises are structurally adapted and bona fide used for or intended to be used for the purpose of habitually providing for the accommodation of persons frequenting the premises for substantial refreshment, to which the sale of alcohol and supply of intoxicating liquor is ancillary' which is offered for the TRG Leisure Licence be also applied to the Brunning & Price Licence.

4. The holder of the licence shall ensure that quarterly meetings are held with a representative (or representatives) of The Empire Owners' 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 the residents who live in the building and to discuss and seek to resolve any issues that might arise.

5. A Noise Limiter shall be fitted as a requirement and not seen as an option.

### **Notes**

**No 3** was on the original 2017 Garfunkel's Licence, requested for removal in 2018 under a Minor Variation Application, but refused, and we are pleased to see is now offered again for this Application 21/00795 at Section b) 3. Presumably Brunning & Price will also be happy to have it added to their licence if they wish to demonstrate that they are concentrating on the dining aspect of their business and not turning the premises into a 'Mega Pub' as promised in the local press and media.

**No 4** mirrors a condition on the Premises Licence of Framptons (the other restaurant under the apartments in our building) and has been found to be very useful.

**No 5** the Chairman of our Association (Prof Stan Kolaczowski) will be making a separate representation expanding on the noise aspect and why this should be set as a firm condition.

Judith Rutherford  
Secretary – Empire Owners' Association  
5 June 2021

**Professor Stan Kolaczowski:**

Garfunkel's Restaurant, Orange Grove, Bath BA1 1LP

Premises Licence Applications:

21/00795/LAPRE in the name of TRG Leisure Ltd (mirroring 17/01351/LAPRE), and  
21/00798/LAPRE in the name of Brunning & Price Ltd (mirroring 20/00623/LAPRE)

In my capacity as an Owner and also Chairman of the Empire Owners' Association (the Association which represents the forty-three residential apartments at The Empire, located in the same building as the former Garfunkel's Restaurant), I would like to make the following representation.

**Firstly: the representation from the Secretary of our Association, has my full support.**

**Secondly:** In this note I place emphasis on the need to ensure that the requirement for a **Noise Limiter** is a condition which we would like **to see inserted into both licences**, in order to **Prevent Public Nuisance**.

At the time of the Licensing Sub Committee hearing (4 April 2019), on the Restaurant Group's Premises Licence Application, I made a representation making a specific request for limits on Internal Noise to be inserted into their conditions and for a Noise Limiter to be installed.

Unfortunately:

- The Sub Committee did not have the time to consult with their own in-house Noise expert and that person was not even present at that hearing;
- The Applicant in the papers submitted for the hearing, provided a copy of the outcome of a judicial review (*'Daniel Thwaites plc versus Wirral Borough Magistrates' Court, 6 May 2008*), the purpose of which could have only been to put legal pressure on the Sub-Committee;
- The Applicant also presented just before the hearing, a Noise Impact Assessment Report. This had not been supplied with their original application, but in the large pack of papers just before the hearing. So, it is understandable that the Sub-Committee clearly did not have the time to consider properly the content, and to check if the recommendations in the Applicant's Report were actually being implemented, and if not, then why not? There was no discussion at all on that matter, except for the concern expressed in my representation at that hearing. However, the Applicant's legal adviser did caution the Sub-Committee not to make any decisions on noise levels, without having consulted with the Council's in-house noise expert – who was clearly not present.

And so, an opportunity was missed to insert some extra key condition into their licence, to prevent public nuisance, and to challenge the Applicant on why they had not followed their own Noise Consultant's recommendations.

We are not against the granting of a Premises Licence, but we want to see some extra conditions inserted:

- (a) To help the Applicant avoid creating Public Nuisance, and to avoid conflict with us as neighbours;

(b) To avoid the need for us to have to complain to the Council;  
(c) To reduce the burden on the Council in having to allocate resources in the future to deal with the complaints that will follow. And we both know that the Applicant will strive to generate revenue from drinking, which may lead to Public Nuisance. It is *'too late to shut the stable door after the horse has bolted'*, and it is also time/energy consuming and costly chasing that horse. And from reading a recent article (29 April 2021) in the Bath Chronicle, Bath is one of the noisiest cities in the UK. *"Local authorities' noise complaints received over a year found Bath in third place in terms of complaints per household."* So far, we have tried to work with the two restaurants beneath us, we have been sympathetic to their problems, and have given them plenty of opportunity to take corrective action.

However, we can see that both locations are endeavouring to make money from additional vertical drinkers attracted by noise, and that is already creating noise problems from Framptons. When Framptons modified the internal of their Premises, they neglected the need for noise suppression, and they made changes which had an adverse effect, and increased the transmission of noise upwards. We do not want to see that same mistake being made at Garfunkel's.

And so, we will become much less tolerant, if the Applicant at Garfunkel's does not take the need to control noise levels more seriously and install Noise Limiters.

**References used:**

**B&P Report 1:** Noise Impact Assessment, which the applicant submitted at the Hearing (4 April 2019), by Big Sky Acoustics Ltd.

**B&P Report 2:** Changes to Garfunkel's at The Empire, Noise Report for Planning, Acoustics Report A980 R01, 8 March 2017, by Ion Acoustics Ltd.

**Critique Report 3:** Empire, Bath – Noise Impact Assessment Review, 13 March 2019, by Acoustic Consultants Ltd.

**Abbreviations B&P:** Brunning & Price

**The reasons why a Noise Limiting Device should feature as a requirement of their conditions are as follows.**

Making use of information in the references above, and mainly from **B&P's** own Consultants' reports:

**[1] In B&P Report 1:** Their noise consultant makes a very clear recommendation in their

report to B&P that a Noise Limiting Device is fitted, e.g. on p.25, in their Appendix F ("**Suggested points for Noise Management Policy**") it states:

***"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."***

And on p. 20, in the main Recommendations

***"Recommendations for noise control – operation***



***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)."***

The above need to install a limiter is therefore **seen as a requirement** and not an option, and this is not surprising considering the results of the measurements which they made, which I will now comment on.

**[2] Noise measurements in B&P Report 1**, on p.17, the noise consultant describes the result of a test (with bass level noise reduced) and the sound set at a maximum level of 74dBA. They reported that music noise did not have an impact in the apartments upstairs. So, this indicates that B&P's intention is not to exceed this 74 dBA value, and therefore a limit of 75 dBA set as a condition below which the Limiter should be set based on a noise trial, is a very reasonable value. Once again, it will help to focus the applicant to manage noise levels, and not to have to respond to complaints.

**[3] Noise Measurements in B&P Report 2**, on p. 5, the results of measurements in The Architect (a B&P premises in Chester) are presented and in their busiest period, a noise level of around 75 dBa LAeq was reported (but without any background music).

In section 4.2, on p.7, they describe a measurement at Garfunkels, and when the sound system plays music at a low level this was measured at 60 dBa LAeq and the premises had no customers at point of measurement. Then when the music was turned up to 80 dBa LAeq this was very audible in the apartment above.

So this information once again supports the need for a noise limiter as we know that the sound system in Garfunkels can be easily turned up to a nuisance level, and this also tells us that a limit of 75 dBA must not be exceeded.

**[4] Remedial Works Required:** In B&P Report 1, on p.19 to 20, there was a long list of recommended Remedial Works to suppress noise on the premises, which will need to be implemented e.g. noise suppression to chimney, installation of sound insulation in doorway at ground floor level near the main entrance; installation of a suspended acoustic ceiling; ceiling speakers not to be installed (instead no greater than 3m above the ground); ceiling fans to be adjusted to avoid vibration on the floor above; use of soft furnishings to limit build-up of sound etc. Where is the evidence that the Applicant is planning to do them?

So, this is also another good reason why a Noise Limiter must be installed and used,

as this will help the Applicant to focus their mind on what needs to be done to control noise on these premises.

**[5] Critique Report 3:** And to help us and the Licencing Authority interpret B&P's noise reports, we paid for an independent Noise Expert to visit The Empire and to see the layout of the building, meet with us, look inside Garfunkel's, to read B&P Report 1, and to provide their critique. Not surprising, there were many areas where improvements could have been made to the **B&P Report 1**, and these are summarized in **Critique Report 3**, which is attached to this representation, and we request that this is read in detail and considered.

At the conclusion of that critique the noise expert states:

*As such there is valid concern that higher noise levels will result in significant disturbance and a detrimental impact on the residents at the Empire Building.*

*The assessment does not provide any clarity on three pertinent elements as follows:*

- *What is the acceptable criteria for noise impacting on the residential development from the application premises?*
- *What are the normally higher noise levels expected from the sources in the application premises, and the terrace?*
- *What are the resulting noise levels predicted to impact into the residential premises?*

*Without these issues addressed, it is not feasible to carry out a noise impact assessment.*

So, accepting that there are serious limitations with B&P's noise impact assessment, there must be a noise limiter installed as part of their conditions.

**[6] Serious Noise Incident at Garfunkel's:** In the presentation from the Secretary of our Association, a noise incident is described, which occurred on the day after the hearing. Had a Noise Limiter been in place and had it also triggered a signal of excessive noise at the bar, then management would have soon realized that they needed to regain control of the premises.

So, another good reason for fitting a Noise Limiter.

**[7] Base Level Noise at Garfunkel's:** In B&P Report 1, on p.17, the noise consultant performed a test with bass level noise reduced and operated the sound at a maximum level of 74dBA, and reported that music noise did not have an impact in the apartments upstairs. So, this provides clear evidence that after trying various options with the noise level control, that **base level had to be turned completely down**, to avoid problems. [As an aside, this test was very superficial and not properly executed]. And from the owners living above, we know that base level noise

from Garfunkel's is a cause of problems and nuisance.  
In any condition the Base Level Sound must be turned off and locked in that position.

**[8] Base Level Noise in Framptons:** This restaurant is beneath the other side of our building, and we know that base level noise disturbs the owners living above the property. Now at a local level, we have met with the manager many times, and they are aware of the problem, and when they turn the volume and base sound down on their control pad, we do not experience a problem above. However, on Friday and Saturday nights, the duty manager or servers, are often tempted to increase the noise and the base level to attract customers (or maybe this makes them drink more?) and then we have more complaints from owners that live above them. We will be talking shortly to the owner of Framptons and requesting that a proper Noise Limiter is installed – and if that is not done, then we will start to complain to the Council.

So, in any conditions which are to be set for the **Garfunkel's** premises, a noise Limiter must be installed, and base sound level must be turned off and locked in that position.

As a reminder, at the time of the conversion from a hotel, the two restaurants beneath the residential accommodation in The Empire, were only designed for use as Restaurants for the purpose of eating (with ancillary drink), and not for heavy vertical drinking and amplified music or large parties. There was a good clause in many a Premises Licence, which stated that '*..the premises are structurally adapted and bona fide used...*' which had a nice implication as to being fit for the purpose intended, and that means adequate noise suppression, especially if the premises are a part of a residential complex of apartments. So, who is performing a check on that aspect?

In summary, we feel that it would be **prudent, reasonable and proportionate** if the Licensing Officer could consider in consultation with their Noise Expert, a condition which at least has a numerical value as a starting point above which noise must not be generated within the premises. And that a Noise Limiter is installed. And even setting a number like 75dBA, could be seen as high, and that is why a limit would need to be set below that value based on an assessment of noise levels in the neighbouring residential apartments and communal areas, in accordance with Government Guidelines on what is acceptable noise. And Base Level Noise, which again is recognized as a major cause of Public Nuisance, is best controlled by having the base turned off (and locked in that position). Otherwise, when sales targets have not been met, experience tells us, that the manager will be tempted to ramp-up the volume and base level, to attract customers in order to achieve their income targets, which will lead to complaints to the Council.

Professor Stan Kolaczowski  
Chairman Empire Owners' Association  
The Empire, Grand Parade, Bath

Professor Stan Kolaczowski  
The Empire Owners' Association  
The Empire  
Grand Parade  
Bath  
BA2 4DF

Our reference: 7688/SP/BL  
Date: 13<sup>th</sup> March 2019

Dear Stan,

## **EMPIRE, BATH – NOISE IMPACT ASSESSMENT REVIEW**

We report as follows on the Big Sky Acoustics Ltd report entitled “Noise Impact assessment” reference 19010806 dated 7th Jan 2019.

### **1. Introduction**

We understand that this report was submitted in support of Listed Building Planning Application reference 19/00467/LBA at Garfunkels, Orange Grove, City Centre, Bath, Bath And North East Somerset, BA1 1LP

**The application is for “Internal alterations to facilitate general refurbishment including installation of new bar, acoustic work to fireplaces and original opening between reception and staircase, decoration and lighting and replacement of sign writing on entrance canopy with leaded glass to match existing”.**

The residential apartments in the Empire Building are located directly above the restaurant “Garfunkels”. **In these premises, which serve food and alcohol, and are located close to or below residential properties, there are four main issues of concern in relation to noise. These are as follows;**

1. Noise from music, generally amplified music. Unamplified music can also be of concern.
2. Noise from patrons inside the premises especially if there is loud speech or singing or cheering ( could be from watching sporting activity).
3. Noise from patrons in an outside space such as a terrace used for eating, drinking and smoking.
4. Noise from patrons departing the premises, especially later in the evening and noise from patrons arriving, especially if there is queuing involved. This can include arrivals and departures with cars involving slamming doors.

The author of this report is a Member of the Institute of Acoustics (MIOA) with a recognised acoustic qualification and 40 years’ experience in the field.



## 2. Blue Sky Report

We address the Blue Sky Acoustics Ltd report in terms of the potential noise impact of the application on the existing residents of the Empire building. The Garfunkel premises are located directly below the residential apartments of the Empire building. Currently they are run as a restaurant, Garfunkels.

The Garfunkels premises licence 17/0135/LAPRE contains the clause stating “the premises are structurally adapted and bona fide used for or intended to be used for the purpose of habitually providing for the accommodation of persons frequenting the premises for substantial refreshment to which the sale and supply of intoxicating liquor is ancillary”. The proposal aims to change the brand from Garfunkels to a Brunning & Price setup. I am informed that this has a greater emphasis on drinking rather than a purely dining establishment

In terms of other changes, the proposed licence includes on extended night time use, from 00:00 to the later time of 00:30 hours from Thursday's to Saturday's.

The following provides comments to the Big Sky Acoustics Ltd report and the numbering refers to the in their report.

3.4 The report notes the daytime climate, but the night time noise climate is also of concern and needs to be addressed.

3.7 The report provides no evidence of street drinkers, rough sleeping and crime in the area which creates noise. The proposal for good lighting and CCTV coverage is useful and could be considered further and added to any conditions of approval.

4.2 In order to ensure no detrimental impact on the residents in the vicinity, the proposals should consider the Institute of Acoustics document “Good Practice Guide on the Control of Noise from Pubs and Clubs” which was published in March 2003. The purpose of this Guide is to assist local authority officers and venue management and their staff in the prevention of noise disturbance and in the investigation and resolution of noise complaints. It is also intended to assist with the planning and licensing of proposed or existing premises.

7.4 The report notes low frequency bass emanating from Opa. There has been a history of complaints due to noise from music and queuing patrons at these premises.

8.8 The terrace noise prediction in this section is based on normal speech conversations. It does not address loud speech or potentially more boisterous activity. In addition the prediction is based on a point source for distance attenuation. Twenty persons do not represent a point source. The prediction ignores building reflections. As such the prediction does not reflect the site situation and as such underestimates the potential impact to the residential properties above.

8.9 The rooms to residential apartments on the façade above the application site depends on openable windows for ventilation. This includes bedrooms and I understand that these need to be open at night for ventilation and cooling purposes. As such this needs to be considered when assessing the noise impact from the terrace activity on the dwellings.



9.2 The report notes that “subsequent testing does indicate a satisfactory level of acoustic separators between commercial and residential uses”. It provides no such test data on the separation test of performance. In any event how satisfactory the performance is will depend on the noise levels at source in the commercial premises.

9.7 The reception area does need to be considered. The criteria for reception areas are different to residential areas. The report proposes that the doorway be reworked. However it appears as though the whole of the partition needs to be considered and addressed as necessary. It seems **as though the partition is not as robust as indicated on the Spatialized drawing “Proposed ground floor layout”, number 104.**

9.8 We understand that these tests were carried out in the daytime. Objective tests need to be carried out in the later evenings since these are the most sensitive times and when the ambient noise levels are lower. Lower ambient noise levels mean that incoming noise is more noticeable and potentially intrusive. Daytime assessments can provide misleading results. In any event, there is not objective measurement data provided, especially in relation to the wording “reduced bass level”.

9.9 The report states that “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”. The report does not provide any data of what was “anticipated” and more importantly does not provide any data on the actual floor sound transmission performance.

9.11 The residents are concerned about noise from the terrace. A canopy or screen may assist in mitigation of such noise. Data and predications are required to assess this are not provided.

10.0 The recommendations at the original entrance door do not consider the main partition which in our opinion does require addressing, as well as the door. The proposed investigations to the chimney are sensible.

However, it may be that further mitigation is required depending on the noise levels expected in the licence application premises. This may need to include a mass barrier ceiling and wall linings.

11.0 A noise management policy is a necessary element in noise mitigation. Comments on Appendix F are as follows:

The report states;

***“No music or amplified sound shall be generated in the premises so as to give rise to nuisance in any residential property.”***

This does not provide the management with any advice on how to achieve the required outcome.

The report states;

***“Except for access, maintenance and safety reasons, emergency exit and service doors will not be secured open when the premises are operating”.***

This should call for doors to be kept normally in the closed position.



The report states;

*“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.”*

This does not provide any information on how to achieve the required outcome.

The report states;

*“No queuing occurs outside our premises”.  
“The entrance doors and external terrace areas are monitored and numbers in the outside area will be controlled.”*

This does not provide the management with any advice on how to achieve the required outcome.

Noting these points, in our opinion a more comprehensive informative management policy is required in order to satisfactorily control noise emission. The policy should consider the Institute of Acoustics document **“Good Practice Guide on the Control of Noise from Pubs and Clubs”** was published in March 2003.

12.0 Any sound system (including that from screens) will need to be very selected and set up. This should include safeguards such as:  
Limits at different frequencies ( low frequency ,bass, is usually the problem ).  
Lockable controls with the Licensee as the sole key holder.  
Interlocks with doors and windows so that amplified music is cut of if any open.

13.0 The character and proposed use of the premises needs careful consideration. A restaurant with low levels of ambient music all carefully controlled has significantly lower noise source levels when compared to premises where drinking is a more primary use, perhaps with screens or parties.

### 3. Empire Owners' Association Questions

The Empire Owners' Association has requested that the following questions be addressed, as follows;

[Q1] Using your experience, and information in the literature, please provide an indication of what the level of noise could be inside the premises if the premises was used:

- (a) Predominantly as a restaurant with ancillary drink, with light quiet background music allowing discussion at normal voice.
- (b) The bar area and surrounding was filled with a large crowd of noisy drinkers (e.g. stag or hen party, or rugby crowd), and music was being played at a level which often occurs at such moments.
- (c) A big screen or TV was used to display a football or rugby match and the bar was filled with enthusiastic supporters.

In addressing this we would note that there is a significant increase, which could be at least 10 decibels, from a restaurant to a pub with music.



[Q2] Then, from reading the Big Sky Acoustics report is there any evidence as to which of these situations has been considered in their report? And if a situation has been considered, then has it been considered in an adequate manner and if not what else should they have considered and measured?

This is covered in my comments on the Big Sky report.

[Q3] In any of the situations in Q1, have they considered the impact of noise and nuisance outside the premises?

And if a situation has been considered, then which one and has it been considered in an adequate manner and if not what else should they have considered and measured, and what extra control should be put in place?

This is covered in my comments on the Big Sky report. The report does not provide or quantify the options for screens or canopies. This requires a proper assessment.

[Q4] From your experience of measurements in pubs and restaurants, would you say from looking at the proposed layout, in which there is a huge bar in the middle of what was a dining area, that this could easily accommodate a large crowd of drinkers, which would then generate significant noise? And that you would not be surprised by our concern over this?

This is outside my area of expertise. However a loud large crowd of drinkers has the capacity to generate significantly higher noise levels than ambient levels in a restaurant.

[Q5] From your experience of being involved with other noise and nuisance issues from Licenced Premises in Bath and outside of Bath, are noisy pubs a source of noise and nuisance for neighbours, and does it seem reasonable that residents in the apartments in The Empire should be concerned, if the use changed from restaurant to that of a pub?

In your opinion with 43 prestigious apartments above the two restaurants, is this a sensible location to even contemplate such a change of use from restaurant to a noisy pub? Would you agree, that this is predominately a building with apartments and not a commercial unit with ancillary apartments?

The Big Sky report does not provide any evidence that an increase in noise levels can be contained to acceptable limits in terms of the impact on the residents at the Empire Building. As such there is a valid concern that higher noise levels will result in significant disturbance and a detrimental impact.

[Q6] Looking at their report and our concerns, what aspects are missing, or wrong, or are presented in a too simplified manner, or have been ignored and need to be considered?

This is covered in my comments on the Big Sky report.

#### 4. Conclusions on Big Sky Noise Report

The current use primarily as a restaurant, as I understand it, has only infrequently caused disturbance in the past. A use reflecting a busy bar, possibly with amplified music, tv screens and drinking parties has the capacity to result in significantly higher noise levels. This more likely to cause disturbance on a frequent basis.





The question is whether or not mitigation measures can successfully ascertain the increasing in source noise levels. The report has not addressed the potentially higher expected noise levels from a Brunning & Price setup. The Big Sky report does not provide evidence that an increase in noise levels can be contained to acceptable limits in terms of the impact on the residents at the Empire Building. It does not provide suitable evidence that the use of the terrace can be contained to satisfactory limits. In addition the report does not consider the means of ventilation required should the occupancy in the premises increase. Without a suitable attenuated ventilation system, the only option is to open windows and doors, thus increasing noise emission.

As such there is a valid concern that higher noise levels will result in significant disturbance and a detrimental impact on the residents at the Empire Building.

The assessment does not provide any clarity on three pertinent elements as follows:

- What is the acceptability criteria for noise impacting on the residential development from the application premises?
- What are the normally higher noise levels expected from the sources in the application premises, and the terrace?
- What are the resulting noise levels predicted to impact into the residential premises?

Without these issues addressed, it is not feasible to carry out a noise impact assessment.

Yours Sincerely,

**Stephen Peliza BSc (Bath), MSc (Bristol), CEng, MIOA, MCIBSE, Eur. Ing**  
**For Acoustic Consultants Limited**

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2) **The playing of Recorded Music, indoors only:**

Sunday to Wednesday 09:00 – 23:00

Thursday to Saturday 09:00 – 00:00

Non-standard timing for New Year's Eve:

From end of permitted hours on New Year's Eve until 02:00 hours on New Year's Day.

3) **The provision of Late-Night Refreshment, indoors only:**

Thursday to Saturday 23:00 – 00:00

Non-standard timing for New Year's Eve:

From 23:00 hours on New Year's Eve to 02:00 hours on New Year's Day.

4) **Hours the premises are open to the public:**

Sunday to Wednesday 08:00 – 23:30

Thursday to Saturday 08:00 – 00:30

Non-standard opening times for New Year's Eve:

From end of permitted hours on New Year's Eve to 02:00 hours on New Year's Day.

5) The following **measures** have been offered by the applicant within the operating schedule to promote the licensing objectives:

- The premises will maintain an incident and refusals register. This will remain at the premises and be made available to an authorised officer of the Police or Licensing Authority on request.
- The Premises Licence Holder shall ensure that a digital CCTV system shall be installed at the premises. It shall be maintained in good working order and used at all times when the premises are open for licensable activities. Any CCTV footage shall be kept for at least 28 days and shall be available to the Licensing Authority or Police on request.
- At all times the premises are open for licensable activities, waiter/ waitress service shall be available.
- Substantial food shall be available to order in all parts of the premises where alcohol is sold or supplied for consumption on the premises until at least 9pm daily.

- There shall be no emptying of bottle bins outside the buildings outside the following times: Monday to Sunday including Bank Holidays or public holidays 08:00 to 22:00 hours.
- A direct telephone number shall be available at all times the premises is open. The telephone number is to be made available to residents and businesses in the vicinity.
- Noise Limiter: If officers of the Council witness noise at a level that causes unreasonable disturbance to the occupants of any properties in the vicinity then a noise limiting device shall be used in relation to all sound amplification equipment used in conjunction with the premises licence. The noise limiting device shall be installed and set at a level approved by the Council through an authorised officer of the Pollution Control Team within 1 month of notification, for its requirement, from the Licensing section. The noise limiting device shall be properly secured so that it cannot be tampered with. The noise limiting device shall only be reset with the authority of the Council through an authorised officer of the Pollution Control Team. If deemed necessary, the noise limiting device shall be reset to a level approved by the Council through an authorised officer of the Pollution Control Team within 14 days of notification.
- 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 shall be cleared of customers by 22.30.
- There shall be no smoking or vaping on the terrace.
- The outside terrace area shall be limited to 30 persons seated.
- Service to the outside area shall be restricted to customers who are seated at tables provided (no standing around drinking). This should be supported by signage outside the premises.
- The outside area shall be serviced by waiter/waitress service.
- 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.
- The premises will operate a Challenge 21 policy and will display a sign advertising this policy at all bar areas.
- The manager and staff shall be trained in the importance of their responsibilities in ensuring that customers who request alcohol are over 18.
- Records will be kept of staff training. The records are to be made available for inspection by officers of Responsible Authorities

immediately on request and all such records to be retained at the premises for at least 12 months.

- 3.3 Floor plans depicting the proposed premises (ground floor with customer area, external terrace, basement with customer toilets & back of house areas) and a site plan are attached at Annex B.
- 3.4 Premises licence 20/00623/LAPRE that had effect until an administrative error caused the licence to lapse in 2020, is attached at Annex C for completeness.
- 3.5 The Licensing Act 2003 (Section 4) states that it is the duty of all Licensing Authorities to carry out their functions under the Act with a view to promoting the licensing objectives. 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.

Each objective is of equal importance. As there are no other licensing objectives, these four are of paramount consideration at all times. When considering applications, representations or notifications, the Licensing Authority will have regard to these licensing objectives.

- 3.6 The Licensing Authority may grant the application with or without additional conditions.
- 3.7 Section 4(3) Licensing Act 2003 states that the Licensing Authority should also have regard to the Council's Licensing Policy, the Statutory Guidance issued under Section 182 of the Licensing Act 2003, and the Licensing Act itself, and in particular to:
  - a) Paragraphs 3-6, 8-10, 13-14, 17-24, 29,33-36, 38-41 of the 2020 policy;
  - b) Chapters 2, 8, 9 and 10 of the Statutory Guidance as revised April 2018;
  - c) Sections 4, 9, 10, 11, 12, 13, 16, 17, 18, 23, 182, and 183 of the Act.
- 3.8 The Licensing Authority recognises that Licensing and Planning are separate regimes. Where an application is granted by the Licensing Authority which would require planning permission this would not relieve the applicant of the need to obtain that permission. It will still be necessary for the applicant to ensure that he/she has **ALL** the necessary permissions in place to enable them to run the business within the law.
- 3.9 If the application is refused the applicant may appeal within 21 days of the notification to the Magistrates' Court. If the application is granted the

person making the relevant representation may appeal within 21 days of the notification to the Magistrates' Court. On appeal the court may either dismiss the appeal, substitute the decision appealed against for any other decision which could have been made by the Licensing Authority, or remit the case to the Licensing Authority to dispose of in accordance with the direction of the court. The court may make such order for costs as it thinks fit.

- 3.10 In accordance with the requirements of the Act, copies of the application were forwarded to the Police, the Fire Authority, Environmental Health, Development Control, Trading Standards, Health Authority and the Safeguarding Children and Young Persons' Team.
- 3.11 The applicant is required to place a notice at the premises for a period of 28 consecutive days starting the day after the application is made, and to place an advert in a local newspaper within 10 working days of submitting the application to the licensing authority.
- 3.12 Two representations of objection have been received within the statutory period from "other persons", namely Mrs Judith Rutherford, on behalf of the committee of the Empire Residents' Association, in her capacity as secretary of the Empire Owners' Association and also as an individual with her husband; and Professor Stan Kolaczowski, Chair of the Empire Owners' Association. The representations express concern that the applicant's proposals will undermine the Prevention of Public Nuisance Licensing Objective (Annex D). To mitigate these concerns the following conditions have been proposed:
  1. The total capacity of the premises shall be 150 (as offered by Brunning & Price at the Licensing Hearing in 2019 and quoted in the Hearing Decision).
  2. There shall be no off sales permitted.
  3. The clause 'the premises are structurally adapted and bona fide used for or intended to be used for the purpose of habitually providing for the accommodation of persons frequenting the premises for substantial refreshment, to which the sale of alcohol and supply of intoxicating liquor is ancillary' which is offered for the TRG Leisure Licence be also applied to the Brunning & Price Licence.
  4. The holder of the licence shall ensure that quarterly meetings are held with a representative (or representatives) of The Empire Owners' 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 the residents who live in the building and to discuss and seek to resolve any issues that might arise.
  5. A Noise Limiter shall be fitted as a requirement and not seen as an option.

- 3.13 As representations have been received the Sub-Committee must determine the application in accordance with the Licensing Act 2003.
- 3.14 The premise is situated within Bath's Cumulative Impact Assessment Area. As relevant representations have been received, there is a rebuttable presumption that the application will be refused unless the applicant can demonstrate how the proposals within the application will not add to the cumulative impact already experienced in the area.
- 3.15 This report has not been sent to the Trades Union because they would have no involvement.

#### **4 STATUTORY CONSIDERATIONS**

- 4.1 An Equality Impact Assessment (EqIA) has been completed. No adverse or other significant issues were found.
- 4.2 Consideration must be given to the Human Rights Act 1998 and the "convention rights".
- 4.3 The Sub-Committee have been delegated authority to determine the application on behalf of the Licensing Authority in accordance with the Licensing Act 2003.
- 4.4 When reaching a decision, the Licensing Authority must carry out its functions with a view to promoting the four licensing objectives.

#### **5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

- 5.1 The costs of processing licences are covered by the fees charged. The fee for this application is £635.00.

#### **6 RISK MANAGEMENT**

- 6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision-making risk management guidance.

#### **7 CLIMATE CHANGE**

- 7.1 The licensing objectives do not require the applicant to specify steps to mitigate the impact of climate emergency. However, the applicant is encouraged to consider locally sourced ingredients and to reduce single use plastic in the operation of their business.

#### **8 OTHER OPTIONS CONSIDERED**

- 8.1 None.



## 9 CONSULTATION

9.1 The Council's Monitoring Officer (Director - Legal & Democratic Services and Council Solicitor), section 151 Officer (Director of Finance) and Head of Building Control and Public Protection have had opportunity to input to this report and have cleared it for publication.

9.2 This report has not been sent to the Trades' Union as it would not have any involvement.

<b>Contact person</b>	Terrill Wolyn, Senior Licensing Officer 01225 396939
<b>Background papers</b>	Licensing Act 2003 Guidance issued under s.182 of the Licensing Act 2003 Licensing Act 2003 (Premises and Club Premises Certificates) Regulations 2005 B&NES Council's Statement of Licensing Policy
	<b>Please contact the report author if you need to access this report in an alternative format</b>

**Bath & North East Somerset District Council**

**Application for a premises licence to be granted  
under the Licensing Act 2003**

**PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST**

Before completing this form please read the guidance notes at the end of the form.

If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

**We** Brunning & Price Limited

**apply for a premises licence under section 17 of the Licensing Act 2003 for the premises described in Part 1 below (the premises) and I/we are making this application to you as the relevant licensing authority in accordance with section 12 of the Licensing Act 2003**

**Part 1 – Premises Details**

<b>Postal address of premises or, if none, ordnance survey map reference or description</b>			
Garfunkel's Orange Grove			
<b>Post town</b>	Bath	<b>Post code</b>	BA1 1LP

Telephone number at premises (if any)	
Non-domestic rateable value of premises	£166,000.00

**Part 2 - Applicant Details**

Please state whether you are applying for a premises licence as  
Please tick yes

- |   |                                     |                             |
|---|-------------------------------------|-----------------------------|
| a) an individual or individuals *   | <input type="checkbox"/>            | please complete section (A) |
| b) a person other than an individual *  |                                     |                             |
| i. as a limited company   | <input checked="" type="checkbox"/> | please complete section (B) |
| ii. as a partnership  | <input type="checkbox"/>            | please complete section (B) |
| iii. as an unincorporated association or  | <input type="checkbox"/>            | please complete section (B) |
| iv. other (for example a statutory corporation)   | <input type="checkbox"/>            | please complete section (B) |
| c) a recognised club  | <input type="checkbox"/>            | please complete section (B) |
| d) a charity  | <input type="checkbox"/>            | please complete section (B) |
| e) the proprietor of an educational establishment   | <input type="checkbox"/>            | please complete section (B) |
| f) a health service body  | <input type="checkbox"/>            | please complete section (B) |
| g) a person who is registered under Part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital   | <input type="checkbox"/>            | please complete section (B) |
| ga) a person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 (within the meaning of that Part) in an independent hospital in England | <input type="checkbox"/>            | please complete section (B) |

- h) the chief officer of police of a police force in England and Wales  please complete section (B)

\* If you are applying as a person described in (a) or (b) please confirm:

Please tick yes

- I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities; or
- I am making the application pursuant to a
  - statutory function or
  - a function discharged by virtue of Her Majesty's prerogative

**(A) INDIVIDUAL APPLICANTS** (fill in as applicable)

Mr <input type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title (for example, Rev)	
Surname			First names		
I am 18 years old or over					<input type="checkbox"/> Please tick yes
Current residential address if different from premises address					
Post Town				Postcode	
Daytime contact telephone number					
E-mail address (optional)					
Where applicable (if demonstrating a right to work via the Home Office online right to work checking service), the 9-digit 'share code' provided to the applicant by that service (please see note 15 for information)					

**SECOND INDIVIDUAL APPLICANT** (if applicable)

Mr <input type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title (for example, Rev)	
Surname			First names		
I am 18 years old or over					<input type="checkbox"/> Please tick yes
Current residential address if different from premises address					
Post Town				Postcode	
Daytime contact telephone number					
E-mail address (optional)					
Where applicable (if demonstrating a right to work via the Home Office online right to work					

checking service), the 9-digit 'share code' provided to the applicant by that service (please see note 15 for information)

**(B) OTHER APPLICANTS**

Please provide name and registered address of applicant in full. Where appropriate please give any registered number. In the case of a partnership or other joint venture (other than a body corporate), please give the name and address of each party concerned.

Name	Brunning & Price Limited
Address	Yew Tree Farm Buildings, Saighton, Chester, CH3 6EG
Registered number (where applicable)	01543132
Description of applicant (for example, partnership, company, unincorporated association etc.)	Limited Company
Telephone number (if any)	
E-mail address (optional)	

**Part 3 Operating Schedule**

When do you want the premises licence to start?

Day	Month	Year
A	S	A P

If you wish the licence to be valid only for a limited period, when do you want it to end?

Day	Month	Year

**A**

Please give a general description of the premises (please read guidance note 1)

The Premises is made up of a ground floor which contains customer areas, and a basement with customer toilets and back of house areas. There is an external terrace to the front of the Premises.

If 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend.

N/A

What licensable activities do you intend to carry on from the premises?

(Please see sections 1 and 14 of the Licensing Act 2003 and Schedules 1 and 2 to the Licensing Act 2003)

**Provision of regulated entertainment** (please read guidance note 2)

**Please tick all that apply**

- |  |                          |
|--|--------------------------|
| a) plays (if ticking yes, fill in box A)                             | <input type="checkbox"/> |
| b) films (if ticking yes, fill in box B)                             | <input type="checkbox"/> |
| c) indoor sporting events (if ticking yes, fill in box C)            | <input type="checkbox"/> |
| d) boxing or wrestling entertainment (if ticking yes, fill in box D) | <input type="checkbox"/> |
| e) live music (if ticking yes, fill in box E)                        | <input type="checkbox"/> |

- f) recorded music (if ticking yes, fill in box F)
- g) performances of dance (if ticking yes, fill in box G)
- h) anything of a similar description to that falling within (e), (f) or (g) (if ticking yes, fill in box H)

**Provision of late night refreshment** (if ticking yes, fill in box I)

**Supply of alcohol** (if ticking yes, fill in box J)

**In all cases complete boxes K, L and M**

### A

Plays Standard days and timings (please read guidance note 7)			<b><u>Will the performance of a play take place indoors or outdoors or both – please tick</u></b> (please read guidance note 3)	Indoors	<input type="checkbox"/>	
Day	Start	Finish		Outdoors	<input type="checkbox"/>	
Mon			<b><u>Please give further details here</u></b> (please read guidance note 4)	Both	<input type="checkbox"/>	
Tue						
Wed				<b><u>State any seasonal variations for performing plays</u></b> (please read guidance note 5)		
Thur						
Fri				<b><u>Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list</u></b> (please read guidance note 6)		
Sat						
Sun						

### B

Films Standard days and timings (please read guidance note 7)			<b><u>Will the exhibition of films take place indoors or outdoors or both – please tick</u></b> (please read guidance note 3)	Indoors	<input type="checkbox"/>	
Day	Start	Finish		Outdoors	<input type="checkbox"/>	
Mon			<b><u>Please give further details here</u></b> (please read guidance note 4)	Both	<input type="checkbox"/>	
Tue						
Wed				<b><u>State any seasonal variations for the exhibition of films</u></b> (please read guidance note 5)		
Thur						
Fri				<b><u>Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list</u></b> (please read guidance note 6)		
Sat						
Sun						

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**C**

<b>Indoor sporting events</b> Standard days and timings (please read guidance note 7)			<b>Please give further details</b> (please read guidance note 4)
Day	Start	Finish	<b>State any seasonal variations for indoor sporting events</b> (please read guidance note 5)
Mon			
Tue			
Wed			
Thur			
Fri			
Sat			
Sun			
			<b>Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list</b> (please read guidance note 6)

**D**

<b>Boxing or wrestling entertainments</b> Standard days and timings (please read guidance note 7)			<b>Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick</b> (please read guidance note 3)	Indoors	<input checked="" type="checkbox"/>	
Day	Start	Finish	<b>Please give further details here</b> (please read guidance note 4)	Outdoors	<input type="checkbox"/>	
Mon				Both	<input type="checkbox"/>	
Tue				<b>State any seasonal variations for boxing or wrestling entertainment</b> (please read guidance note 5)		
Wed				<b>Non standard timings. Where you intend to use the premises for boxing or wrestling entertainment at different times to those listed in the column on the left, please list</b> (please read guidance note 6)		
Thur						
Fri						
Sat						
Sun						

**E**

<b>Live music</b> Standard days and timings (please read guidance note 7)			<b><u>Will the performance of live music take place indoors or outdoors or both – please tick</u></b> (please read guidance note 3)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon				Both	<input type="checkbox"/>
Tue				<b><u>Please give further details here</u></b> (please read guidance note 4)	
Wed			<b><u>State any seasonal variations for the performance of live music</u></b> (please read guidance note 5)		
Thur					
Fri			<b><u>Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list</u></b> (please read guidance note 6)		
Sat					
Sun					

**F**

<b>Recorded music</b> Standard days and timings (please read guidance note 7)			<b><u>Will the playing of recorded music take place indoors or outdoors or both – please tick</u></b> (please read guidance note 3)	Indoors	<input checked="" type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon	09:00	23:00		Both	<input type="checkbox"/>
Tue	09:00	23:00		<b><u>Please give further details here</u></b> (please read guidance note 4)  Amplified music played through an in house sound system	
Wed	09:00	23:00	<b><u>State any seasonal variations for the playing of recorded music</u></b> (please read guidance note 5)		
Thur	09:00	00:00			
Fri	09:00	00:00	<b><u>Non standard timings. Where you intend to use the premises for the playing of recorded music at different times to those listed in the column on the left, please list</u></b> (please read guidance note 6)		
Sat	09:00	00:00			
Sun	09:00	23:00	From end of permitted hours on New Years Eve until 02:00 hours on New Years Day		



**G**

Performances of dance Standard days and timings (please read guidance note 7)			<b>Will the performance of dance take place indoors or outdoors or both – please tick</b> (please read guidance note 3)	Indoors	<input checked="" type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon	.....	.....		Both	<input type="checkbox"/>
Tue	.....	.....		<b>Please give further details here</b> (please read guidance note 4)	
Wed	.....	.....	<b>State any seasonal variations for the performance of dance</b> (please read guidance note 5)		
Thur	.....	.....	<b>Non standard timings. Where you intend to use the premises for the performance of dance at different times to those listed in the column on the left, please list</b> (please read guidance note 6)		
Fri	.....	.....			
Sat	.....	.....			
Sun	.....	.....			

**H**

Anything of a similar description to that falling within (e), (f) or (g) Standard days and timings (please read guidance note 7)			<b>Please give a description of the type of entertainment you will be providing</b>		
Day	Start	Finish	<b>Will this entertainment take place indoors or outdoors or both – please tick</b> (please read guidance note 3)	Indoors	<input type="checkbox"/>
Mon	.....	.....		Outdoors	<input type="checkbox"/>
Tue	.....	.....		Both	<input type="checkbox"/>
Wed	.....	.....		<b>Please give further details here</b> (please read guidance note 4)	
Thur	.....	.....	<b>State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g)</b> (please read guidance note 5)		
Fri	.....	.....	<b>Non standard timings. Where you intend to use the premises for the entertainment of a similar description to that falling within (e), (f) or (g) at different times to those listed in the column on the left, please list</b> (please read guidance note 6)		
Sat	.....	.....			
Sun	.....	.....			
	.....	.....			

I

Late night refreshment Standard days and timings (please read guidance note 7)			Will the provision of late night refreshment take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input checked="" type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Mon			<b>Please give further details here</b> (please read guidance note 4)  Hot food and drink provided as and when required including functions or events		
Tue					
Wed			<b>State any seasonal variations for the provision of late night refreshment</b> (please read guidance note 5)		
Thur	23:00	00:00			
Fri	23:00	00:00	<b>Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list</b> (please read guidance note 6)  New Year's Eve – 23:00 hours to 02:00 hours on New Years Day		
Sat	23:00	00:00			
Sun					

J

Supply of alcohol Standard days and timings (please read guidance note 7)			Will the supply of alcohol be for consumption (Please tick box) (please read guidance note 8)	On the premises	<input checked="" type="checkbox"/>
Day	Start	Finish		Off the premises	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Mon	09:00	23:00	<b>State any seasonal variations for the supply of alcohol</b> (please read guidance note 5)		
Tue	09:00	23:00			
Wed	09:00	23:00			
Thur	09:00	00:00	<b>Non standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list</b> (please read guidance note 6)  From end of permitted hours on New Years Eve until 02:00 hours on New Years Day		
Fri	09:00	00:00			
Sat	09:00	00:00			
Sun	09:00	23:00			

State the name and details of the individual whom you wish to specify on the licence as premises supervisor (Please see declaration about the entitlement to work in the checklist at the end of the form):

<b>Name</b> Stephen Butt	
<b>Date of birth</b>	
<b>Address</b>	
<b>Postcode</b>	
<b>Personal Licence number (if known)</b>	
<b>Issuing licensing authority (if known)</b>	

## K

Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children (please read guidance note 9)

None

## L

<b>Hours premises are open to the public</b> Standard days and timings (please read guidance note 7)			<b>State any seasonal variations</b> (please read guidance note 5)
<b>Day</b>	<b>Start</b>	<b>Finish</b>	
Mon	08:00	23:30	<p><b>Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list</b> (please read guidance note 6)</p> <p>From end of permitted hours on New Years Eve to 02:00 hours on New Years Day</p>
Tue	08:00	23:30	
Wed	08:00	23:30	
Thur	08:00	00:30	
Fri	08:00	00:30	
Sat	08:00	00:30	
Sun	08:00	23:30	

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

**a) General – all four licensing objectives (b,c,d,e)** (please read guidance note 10)

*[The comments in this box are for information only]*

Garfunkels in Bath has operated for many years and its ownership falls within the subsidiary companies of The Restaurant Group Plc. It had the benefit of 2 premises licences as detailed below:

Licence 1 - the existing Garfunkel's:

Premises Licence – 17/01351/LAPRE was held in the name of The Restaurant Group (UK) Limited. This Premises Licence was the existing Licence that had been used for a number of years and the plan attached to that Licence represents the current layout of Garfunkels.

As a result of the CVA of The Restaurant Group (UK) Limited on the 26 June 2020 the existing Garfunkels Licence lapsed and an Application for a replica Licence has been submitted simultaneously with this Application.

Licence 2 - the proposed Brunning and Price scheme:

This application relates to a second licence that was applied for on the 7 February 2019 as part of a planned refurbishment of the premises.

The application was submitted by The Restaurant Group (UK) Limited for a second Premises Licence which was as a result of the licence holder proposing a significant investment and resulting refurbishment of the premises which would see the introduction of a Brunning and Price style of operation. The intention was that it would not be traded until such time as the works were undertaken,

Brunning and Price is one of the brands within the larger Restaurant Group plc portfolio.

That Application was subsequently granted at a Licensing Committee Hearing on the 4 April 2019 date and a new Premises Licence was granted number 20/00623/LAPRE.

Prior the licence application being submitted the Applicants had met with local residents Associations including the Empire Owners' Association, TARA and some of the individual residents. Specialist acoustic advice had been obtained in relation to any potential impact of the refurbishment. A more robust and comprehensive set of conditions were submitted with the application, and a slightly earlier terminal hour was sought for the sale of alcohol and restrictions on the external terrace.

On the 6 March 2020 a subsequent Application was lodged and submitted for a minor variation to reflect the latest proposed layout plan and that plan number L1 Revision C is submitted in support of this application.

However as a result of the CVA of the licence holder that Licence has also lapsed.

The Brunning and Price scheme for which the Premises Licence had been applied for and is now re-applied for in the name of Brunning and Price has not yet commenced and as a result of the impact of Covid 19 there is no date yet for when the works will be undertaken.

However, the Applicant wishes to re-apply for this Licence as a mirror of the previous granted Licence so has to in effect put them back in the position they were in prior to the CVA.

Please note that prior to submitting this Application there has been pre-consultation with the Police Licensing Officer and the Licensing Authority. When this Application was granted the Applicant had carefully considered Bath's Licensing Policy and most notably the location and cumulative impact.

In relation to cumulative impact it would be the Applicant's submission that the cumulative impact does

not affect this Application as it is not a new addition to the Licensing landscape of Bath as it is in relation to a long established Licensed Premises. Additionally, the issue of cumulative impact was fully addressed at the time that the Licence was applied for in 2019 and this Licence has not yet been operated due to the fact that it would only be operational following an extensive refurbishment of the premises. It is therefore submitted that the CIP either does not apply given the facts of the current situation or if it does this remains an exception to policy

#### **b) The prevention of crime and disorder**

1. The premises will maintain an incident and refusals register. This will remain at the premises and be made available to an authorised officer of the Police or Licensing Authority on request.
2. The Premises Licence Holder shall ensure that a digital CCTV system shall be installed at the premises. It shall be maintained in good working order and used at all times when the premises are open for licensable activities. Any CCTV footage shall be kept for at least 28 days and shall be available to the Licensing Authority or Police on request.
3. At all times the premises are open for licensable activities, waiter/waitress service shall be available.
4. Substantial food shall be available to order in all parts of the premises where alcohol is sold or supplied for consumption on the premises until at least 9pm daily.

#### **c) Public safety**

We understand our obligations under existing legislation, and take our responsibility seriously.

#### **d) The prevention of public nuisance**

1. There shall be no emptying of bottle bins outside the buildings outside the following times, Monday to Sunday including bank holidays or public holidays 08:00 to 22:00 hours.
2. A direct telephone number shall be available at all times the premises is open. The telephone number is to be made available to residents and businesses in the vicinity.
3. Noise Limiter: If officers of the Council witness noise at a level that causes unreasonable disturbance to the occupants of any properties in the vicinity then a noise limiting device shall be used in relation to all sound amplification equipment used in conjunction with the premises licence. The noise limiting device shall be installed and set at a level approved by the Council through an authorised officer of the Pollution Control Team within 1 month of notification, for its requirement, from the Licensing section. The noise limiting device shall be properly secured so that it can not be tampered with. The noise limiting device shall only be reset with the authority of the Council through an authorised officer of the Pollution Control Team. If deemed necessary, the noise limiting device shall be reset to a level approved by the Council through an authorised officer of the Pollution Control Team within 14 days of notification.
4. 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 shall be cleared of customers by 22.30.
5. There shall be no smoking or vaping on the terrace.
6. The outside terrace area shall be limited to 30 persons seated.
7. Service to the outside area shall be restricted to customers who are seated at tables provided (no standing around drinking). This should be supported by signage outside the premises.

8. The outside area shall be serviced by waiter/waitress service.
9. 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.

#### e) The protection of children from harm

1. The premises will operate a Challenge 21 policy and will display a sign advertising this policy at all bar areas.
2. We will at all times ensure that the manager and staff are trained in the importance of their responsibilities in ensuring that customers who request alcohol are over 18.
3. Records will be kept of staff training. The records are to be made available for inspection by officers of Responsible Authorities immediately on request and all such records to be retained at the premises for at least 12 months.

**Please tick yes**


- I have made or enclosed payment of the fee or
- I have not made or enclosed payment of the fee because the application has been made in relation to the introduction of the late night levy
- I have enclosed the plan of the premises
- I have sent copies of this application and the plan to responsible authorities and others where applicable
- I have enclosed the consent form completed by the individual I wish to be designated premises supervisor, if applicable
- I understand that I must now advertise my application
- I understand that if I do not comply with the above requirements my application will be rejected
- ***[Applicable to all individual applicants, including those in a partnership which is not a limited liability partnership, but not companies or limited liability partnerships]*** I have included documents demonstrating my entitlement to work in the United Kingdom or my share code issued by the Home Office online right to work checking service (please read note 15).

**IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.**

**IT IS AN OFFENCE UNDER SECTION 24B OF THE IMMIGRATION ACT 1971 FOR A PERSON TO WORK WHEN THEY KNOW, OR HAVE REASONABLE CAUSE TO BELIEVE, THAT THEY ARE DISQUALIFIED FROM DOING SO BY REASON OF THEIR IMMIGRATION STATUS. THOSE WHO EMPLOY AN ADULT WITHOUT LEAVE OR WHO IS SUBJECT TO CONDITIONS AS TO EMPLOYMENT WILL BE LIABLE TO A CIVIL PENALTY UNDER SECTION 15 OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 AND PURSUANT TO SECTION 21 OF THE SAME ACT, WILL BE COMMITTING AN OFFENCE WHERE THEY DO SO IN THE KNOWLEDGE, OR WITH REASONABLE CAUSE TO BELIEVE, THAT THE EMPLOYEE IS DISQUALIFIED.**

**Part 4 – Signatures** (please read guidance note 11)

**Signature of applicant or applicant's solicitor or other duly authorised agent** (See guidance note 11). **If signing on behalf of the applicant please state in what capacity.**

<b>Declaration</b>	<ul style="list-style-type: none"> <li>[Applicable to individual applicants only, including those in a partnership which is not a limited liability partnership] I understand I am not entitled to be issued with a licence if I do not have the entitlement to live and work in the UK (or if I am subject to a condition preventing me from doing work relating to the carrying on of a licensable activity) and that my licence will become invalid if I cease to be entitled to live and work in the UK (please read guidance note 14)</li> <li>The DPS named in this application form is entitled to work in the UK (and is not subject to conditions preventing him or her from doing work relating to a licensable activity) and I have seen a copy of his or her proof of entitlement to work, or have conducted an online right to work check using the Home Office online right to work checking service which confirmed their right to work (please see note 15)</li> </ul>
Signature	
Date	12 May 2021
Capacity	Poppleston Allen – Solicitors for and on behalf of the applicant

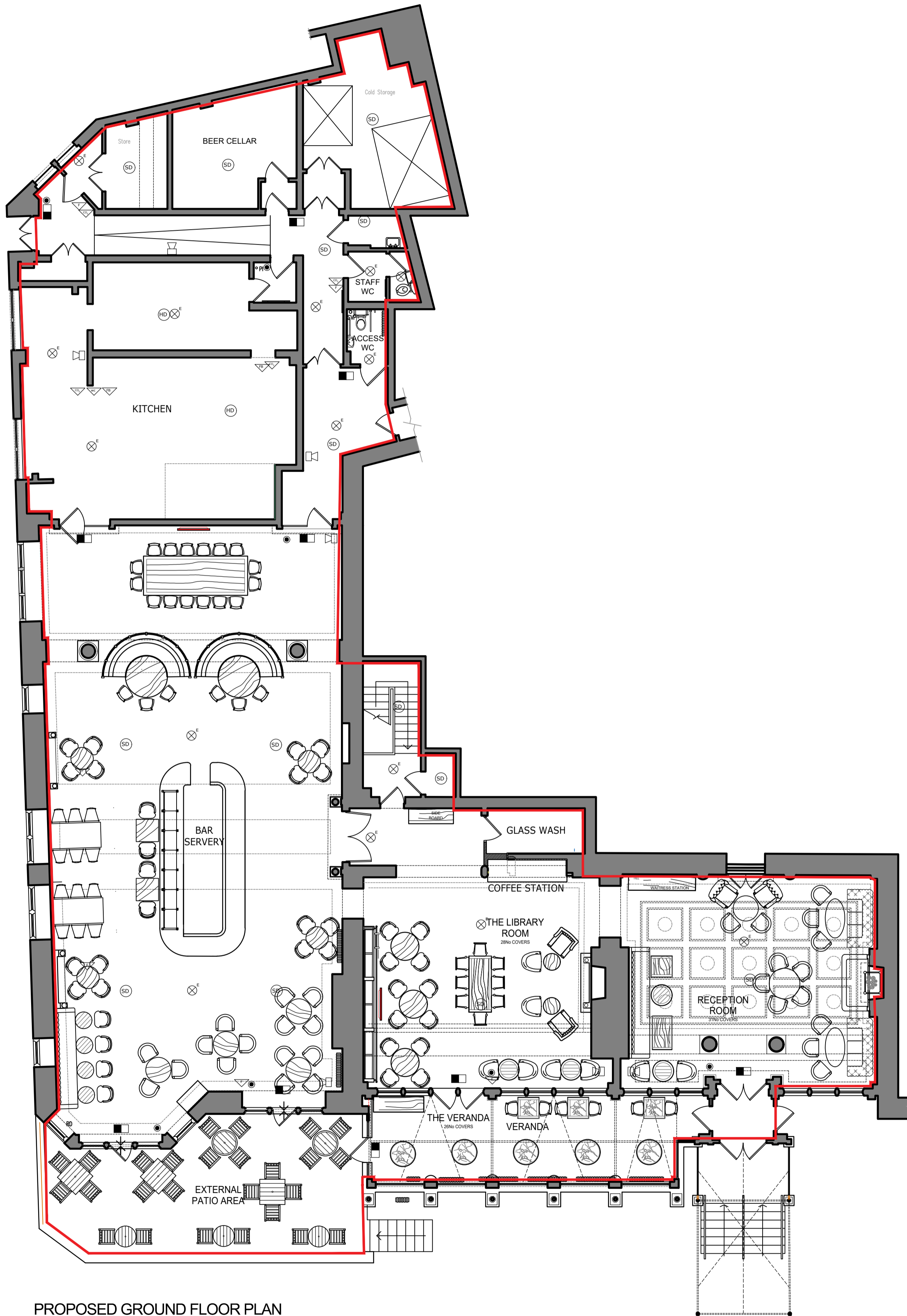
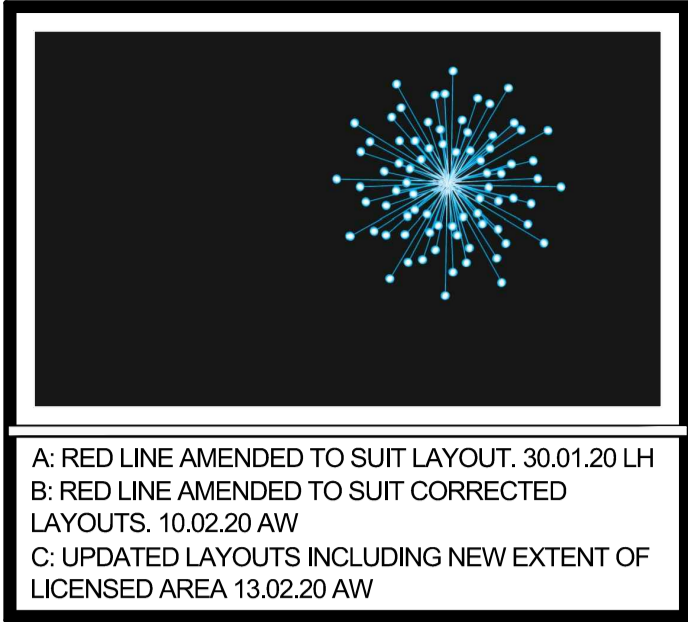
**For joint applications signature of 2<sup>nd</sup> applicant or 2<sup>nd</sup> applicant's solicitor or other authorised agent.** (please read guidance note 13). **If signing on behalf of the applicant please state in what capacity.**

Signature	
Date	
Capacity	

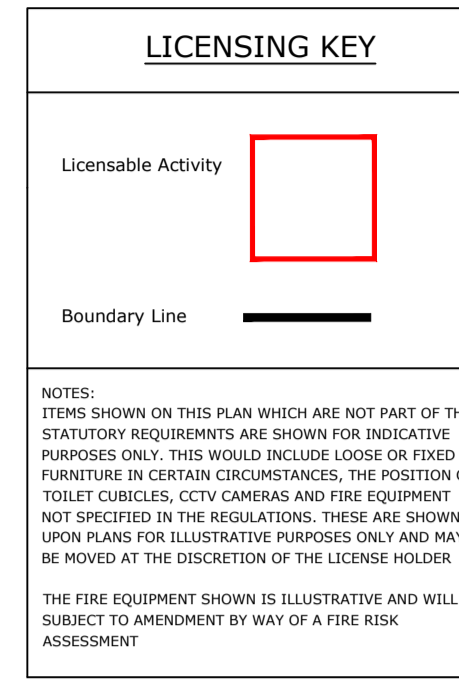
<b>Contact name (where not previously given) and postal address for correspondence associated with this application</b> (please read guidance note 14)			
Michelle Peach Poppleston Allen Solicitors 37 Stoney Street The Lace Market			
<b>Post town</b>	Nottingham	<b>Post code</b>	NG1 1LS
<b>Telephone number (if any)</b>	0115 953 8509		
<b>If you would prefer us to correspond with you by e-mail your e-mail address (optional)</b>			

**Notes for Guidance**

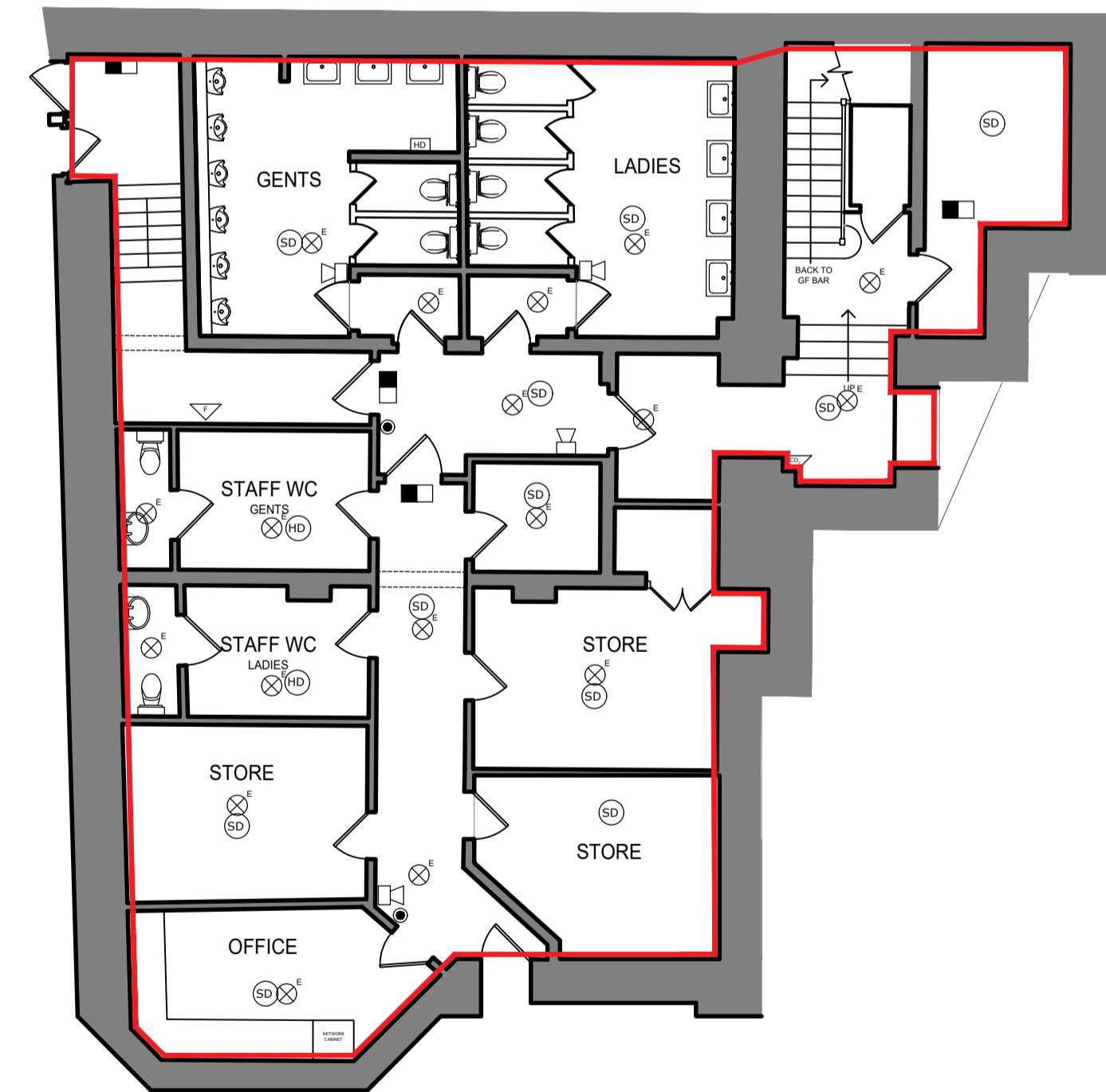
- Describe the premises, for example the type of premises, its general situation and layout and any other information which could be relevant to the licensing objectives. Where your application includes off-supplies of alcohol and you intend to provide a place for consumption of these off-



PROPOSED GROUND FLOOR PLAN



- Fire Alarm Panel
- Smoke detector fitted with audible alarm
- Heat detector fitted with audible alarm
- Manual Call Point
- Sounder beacon
- Emergency light-fitting (Fluorescent Downlight or luminaire)
- Emergency Exit Light c/w legend (directional)
- 9-litre water fire extinguisher
- Dry powder fire extinguisher
- Carbon Dioxide fire extinguisher
- Foam fire extinguisher
- Wet chemical extinguisher
- Fire Blanket
- FD30S 30 Min fire resistant fire door
- FD60S 60 min fire resistant fire door
- \* Water Sprinkler



PROPOSED BASEMENT PLAN



**SPATIALIZED 3D**

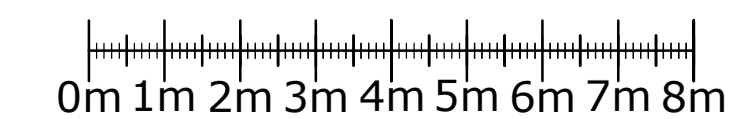
Tel: 01924 252 482 1 Navigation Court  
 Email: studio@spatialized.com Calder Park  
 Wakefield  
 Web: www.spatialized.com WF2 7BJ

Title: **GROUND FLOOR & BASEMENT LICENSING PLAN**

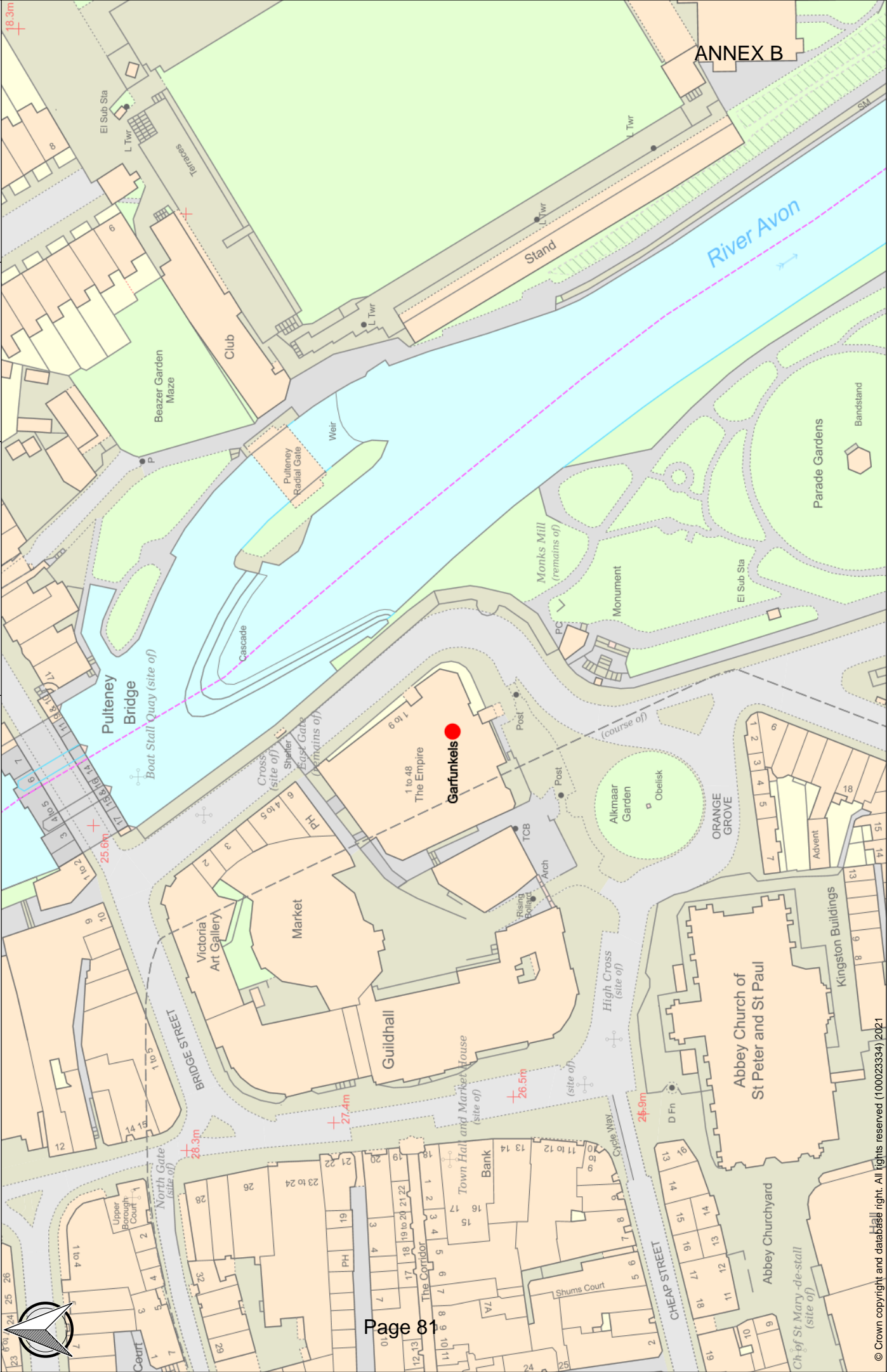
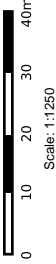
Address: **GARFUNKEL'S THE EMPIRE ORANGE GROVE, BATH, BA1 1LP**

Date: JUL'18	Revision: C
Drawn: JR	Job No: 02-18-887
Scale: 1:50@A0	Dwg No: L1

Copyright © This drawing is copyright and all the reproduction contained therein is the copyright of Spatialized Ltd - and reproduction in any form is forbidden unless permission is obtained in writing.  
 CONTRACTORS PLEASE NOTE:  
 1. Warning; no dimensions are to be scaled from this drawing. All Contractors must visit site and be responsible for taking & checking all dimensions relative to this work. The Designer must be advised of any discrepancies in writing.  
 2. Any discrepancies between drawings & specification should be reported to the Designer prior to any work commencing.  
 3. All fixtures and fittings should be fitted/installed in line with industry standards and comply with HSE, CDM, CSC and the regulations outlined by any other regulatory body applicable.







ANNEX B

**Schedule 12  
Part A**

**Regulation 33, 34**

**Premises Licence**

<b>Premises Licence Number</b>	20/00623/LAPRE
--------------------------------	----------------

**Part 1 – Premises Details**

<b>Postal address of premises, or if none, ordnance survey map reference or description, including Post Town, Post Code</b>	
Garfunkels Orange Grove Bath BA1 1LP	
<b>Telephone number</b>	Not Available

<b>Where the licence is time limited the dates</b>	Not applicable
--	----------------

<b>Licensable activities authorised by the licence and the times the licence authorises the carrying out of licensable activities</b>	
<b>Sale of Alcohol</b>	
Thursday to Saturday	09:00 - 00:00
Sunday to Wednesday	09:00 - 23:00
<b>Performance of Recorded Music (Indoors only)</b>	
Thursday to Saturday	09:00 - 00:00
Sunday to Wednesday	09:00 - 23:00
<b>Late Night Refreshment (Indoors only)</b>	
Thursday to Saturday	23:00 - 00:00
<b>Non Standard Timings:</b>	
Sale of Alcohol & Recorded Music - From normal activity start time on New Year's Eve until 02:00 hours on New Year's Day.	
Late Night Refreshment - From 23:00 hours on New Year's Eve to 02:00 hours on New Year's Day.	

<b>The opening hours of the premises</b>	
Thursday to Saturday	08:00 - 00:30
Sunday to Wednesday	08:00 - 23:30
<b>Non Standard Opening Times:</b>	
From normal opening time on New Year's Eve to 02:00 hours on New Year's Day.	

<b>Where the licence authorises supplies of alcohol whether these are on and/or off supplies</b>	
Alcohol is supplied for consumption on the premises	



## Annex 1 – Mandatory conditions

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 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.

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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.

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## **Annex 2 – Conditions consistent with the Operating Schedule**

The premises will maintain an incident and refusals register. This will remain at the premises and be made available to an authorised officer of the Police or Licensing Authority on request.

The Premises Licence Holder shall ensure that a digital CCTV system shall be installed at the premises. It shall be maintained in good working order and used at all times when the premises are open for licensable activities. Any CCTV footage shall be kept for at least 28 days and shall be available to the Licensing Authority or Police on request.

At all times the premises are open for licensable activities, waiter/waitress service shall be available.

Substantial food shall be available to order in all parts of the premises where alcohol is sold or supplied for consumption on the premises until at least 9pm daily.

There shall be no emptying of bottle bins outside the buildings outside the following times, Monday to Sunday including Bank Holidays or public holidays 08:00 to 22:00 hours.

A direct telephone number shall be available at all times the premises is open. The telephone number is to be made available to residents and businesses in the vicinity.

Noise Limiter: If officers of the Council witness noise at a level that causes unreasonable disturbance to the occupants of any properties in the vicinity the a noise limiting device shall be used in relation to all sound amplification equipment used in conjunction with the premises licence.

The noise limiting device shall be installed and set at a level approved by the Council through an authorised officer of the Pollution Control Team within 1 month of notification, for its requirement, from the Licensing section.

The noise limiting device shall be properly secured so that it can not be tampered with. The noise limiting device shall only be reset with the authority of the Council through an authorised officer of the Pollution Control Team.

If deemed necessary, the noise limiting device shall be reset to a level approved by the Council through an authorised officer of the Pollution Control Team within 14 days of notification.

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 shall be cleared of customers by 22.30.

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

The outside area shall be serviced by waiter/waitress service.

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.



The premises will operate a Challenge 21 policy and will display a sign advertising this policy at all bar areas.

We will at all times ensure that the manager and staff are trained in the importance of their responsibilities in ensuring that customers who request alcohol are over 18.

Records will be kept of staff training. The records are to be made available for inspection by officers of Responsible Authorities immediately on request and all such records to be retained at the premises for at least 12 months.

---

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

There shall be no smoking or vaping on the terrace;

The outside terrace area shall be limited to 30 persons seated;

---

**Annex 4 – Plans**

Drawing No: L1  
Job No: 02-18-887  
Revision C

**Mrs Judith Rutherford:**

Garfunkel's Restaurant, Orange Grove, Bath BA1 1LP

Premises Licence Applications:

21/00798/LAPRE in the name of Brunning & Price Ltd (mirroring 20/00623/LAPRE),  
and

21/00795/LAPRE in the name of TRG Leisure Ltd (mirroring 17/01351/LAPRE)

I would like to make the following representation on behalf of the Committee of the Empire Owners' Association, the Association which represents the forty-three residential apartments at The Empire, located in the same building as the former Garfunkel's Restaurant.

In addition to this which is sent in my capacity as Secretary of that Association, I also write in a personal capacity on behalf of my husband and myself. Our apartment is located directly over the restaurant and so we are very, very close neighbours.

**21/00798/LAPRE in the name of Brunning & Price Ltd (mirroring 20/00623/LAPRE)**

When the Brunning & Price Premises Licence (20/00623) was granted in 2020, it contained various statements in Annex 2 consistent with the applicant's Operating Schedule. These were in line with the licensing objectives, incorporated onto the licence and welcomed by our Association. In addition, two further conditions about the use of the outside terrace were imposed by the Licensing Sub-Committee at Annex 3. As near neighbours we were particularly pleased to have these as we felt they were essential to help control the disorder that had latterly crept into the use of the outside terrace. We are pleased that it is proposed to carry these conditions forward in their entirety to the new Brunning & Price licence under Application 21/00798.

However, we are still very concerned about the amount of noise and possible public nuisance that might be generated by the conversion of the premises from a family restaurant into a pub - especially given the intention to move the bar from the small room previously used by Garfunkel's into the centre of the cavernous and resonant main room, previously used as the restaurant. Our Association employed a noise expert to look at the Noise Assessment produced by Brunning & Price for the Hearing, but unfortunately this could not be taken into account because it was impossible to get it circulated and reviewed by all parties in time. I understand that our Chairman (Prof Stan Kolaczowski) will be making his own representation about this aspect of the present application.

Also, at the Licensing Hearing (which took place on 4 April 2019), Brunning & Price offered to limit the numbers using the premises to 150, but this offer was never incorporated into the subsequent Licence, although it was one of the points listed in the Hearing Decision and was presumably one of the points taken into account when the decision was made. In order to try and regulate any future noise and nuisance problems caused by switching the rooms to accommodate a larger bar, and the changed emphasis on drinking/dining, we ask that this number of 150 be incorporated into the new Licence.

## **REPRESENTATIONS OF OBJECTION**

## **ANNEX D**

To illustrate why we feel this is necessary, a perfect demonstration took place on 5 April 2019 (co-incidentally the day after the Hearing). Garfunkel's hosted a dinner for 180 members of the University Hockey Union and the noise and disturbance generated from this number was so bad that it drowned out our television in the apartment above - and in all the other apartments along the front of the building. When I telephoned the restaurant, the staff could not hear themselves speak, yet alone hear what I was saying. I went down to complain in person and found 'diners' spilling out onto the front steps with their drinks and also all across the pavement and some even lurching across the road in front of cars. In the end I telephoned the Council's emergency out-of-hours persistent noise number for advice as I was worried the event was out of control. Even the person who answered the call could hardly hear what I was saying because of all the noise. I subsequently had follow-up calls from the Council's Environmental Protection Officer, Nigel Shire. I appreciate this was a Garfunkel's event and **NOT** one organised by Brunning & Price, but it demonstrates that this was far too many people to control safely.

**Therefore it would be better to incorporate into the new Premises Licence the 150 capacity offered by Brunning & Price at the previous Licensing Hearing (and referred to in the Decision document) for the avoidance of any future public nuisance and disorder.**

### **21/00795/LAPRE in the name of TRG Leisure Ltd (mirroring 17/01351/LAPRE)**

In respect of the TRG Leisure Application 21/00795, although this does mirror the previous licence obtained under Application 17/01351 we still have concerns. Since the lapsed licence was granted, we feel strongly that circumstances surrounding the use of these premises have changed and so we make the following representation:

- As the old licence has lapsed it is as if it never existed, so the new one should not mirror the old, but improve upon it.
- It would be better if it mirrored the newer licence issued to Brunning & Price in 2020 so that the two licences intended for use at the same property by the same parent company should abide by the same conditions of use.
- The conditions accepted by Brunning & Price in respect of the licensing objectives in 2020 should also be accepted by TRG Leisure in any other business they wish to operate on the same premises - especially those in relation to the use of the outside terrace.
- At the moment there is no certainty which licence will be operational or who will be using the premises, so neighbours have no guarantees and it is difficult to make specific representations. But to cover as many eventualities as possible, we please ask that the Brunning & Price 2020 conditions be applied to both Premises Licences.

### **TO SUMMARISE (for BOTH Licences)**

**We please ask that the following offered on the Brunning & Price Licence Application 21/00798 be applied both to that Licence and also the TRG Leisure 21/00795 Licence in order to conform with the licensing objectives:**

**The prevention of crime and disorder**

1. The premises will maintain an incident and refusals register. This will remain at the premises and made available to an authorised officer of the Police or Licensing Authority on request.
2. The Premises Licence Holder shall ensure that a digital CCTV system will be installed at the premises. It shall be maintained in good working order and used at all times when the premises are open for licensable activities. Any CCTV footage shall be kept for at least 28 days and shall be available to the Licensing Authority or Police on request.
3. At all times the premises are open for licensable activities, waiter/waitress service shall be available.
4. Substantial food shall be available to order in all parts of the premises where alcohol is sold or supplied for consumption on the premises until at least 9 pm daily.'

**The prevention of public nuisance**

1. There shall be no emptying of bottle bins outside the buildings outside the following times, Monday to Sunday including bank holidays or public holidays, 08.00 to 22.00 hours.
2. A direct telephone number shall be available at all times the premises are open. The telephone number is to be made available to residents and businesses in the vicinity.
3. Noise Limiter: If officers of the Council witness noise at a level that causes unreasonable disturbance to the occupants of any properties in the vicinity then a noise limiting device shall be used in relation to all sound amplification equipment used in conjunction with the premises licence. The noise limiting device shall be installed and set at a level approved by the Council through an authorised officer of the Pollution Control Team within 1 month of notification, for its requirement, from the Licensing section. The noise limiting device shall be properly secured so that it cannot be tampered with. The noise limiting device shall only be reset by an authorised officer of the Pollution Control Team. If deemed necessary, the noise limiting device shall be reset to a level approved by the Council through an authorised officer of the Pollution Control Team within 14 days of notification.
4. The outside area to be used for the supply of food and/or drink between 08.00 and 22.00 daily and shall be cleared of customers by 22.30.
5. There shall be no smoking or vaping on the terrace.
6. The outside terrace shall be limited to 30 persons seated.
7. Service to outside area shall be restricted to customers who are seated at tables provided (no standing around drinking). This should be supported by signage outside the premises
8. The outside area shall be serviced by waiter/waitress service.
9. A notice advising customers to leave the premises quietly and respect the needs of the residents must be displayed at each of the exits of the premises.

**Protection of children from harm**

1. The premises will operate a Challenge 21 policy and will display a sign advertising this policy at all bar areas.

## **REPRESENTATIONS OF OBJECTION**

**ANNEX D**

2. They will at all times ensure that the manager and staff are trained in the importance of their responsibilities in ensuring that customers who request alcohol are over 18.

3. Records will be kept of staff training. The records are to be made available for inspection by officers of Responsible Authorities immediately on request and all such record to be retained at the premises for at least 12 months.

**In addition, we request that the following be**

### **ADDED TO BOTH LICENCES**

#### **for the prevention of public nuisance and crime and disorder**

1. The total capacity of the premises shall be 150 as offered by Brunning & Price at the Licensing Hearing in 2019 and quoted in the Hearing Decision.

2. There shall be no off sales permitted.

3. The clause 'the premises are structurally adapted and bona fide used for or intended to be used for the purpose of habitually providing for the accommodation of persons frequenting the premises for substantial refreshment, to which the sale of alcohol and supply of intoxicating liquor is ancillary' which is offered for the TRG Leisure Licence be also applied to the Brunning & Price Licence.

4. The holder of the licence shall ensure that quarterly meetings are held with a representative (or representatives) of The Empire Owners' 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 the residents who live in the building and to discuss and seek to resolve any issues that might arise.

5. A Noise Limiter shall be fitted as a requirement and not seen as an option.

### **Notes**

**No 3** was on the original 2017 Garfunkel's Licence, requested for removal in 2018 under a Minor Variation Application, but refused, and we are pleased to see is now offered again for this Application 21/00795 at Section b) 3. Presumably Brunning & Price will also be happy to have it added to their licence if they wish to demonstrate that they are concentrating on the dining aspect of their business and not turning the premises into a 'Mega Pub' as promised in the local press and media.

**No 4** mirrors a condition on the Premises Licence of Framptons (the other restaurant under the apartments in our building) and has been found to be very useful.

**No 5** the Chairman of our Association (Prof Stan Kolaczowski) will be making a separate representation expanding on the noise aspect and why this should be set as a firm condition.

Judith Rutherford  
Secretary – Empire Owners' Association  
5 June 2021

**Professor Stan Kolaczowski:**

Garfunkel's Restaurant, Orange Grove, Bath BA1 1LP

Premises Licence Applications:

21/00795/LAPRE in the name of TRG Leisure Ltd (mirroring 17/01351/LAPRE), and 21/00798/LAPRE in the name of Brunning & Price Ltd (mirroring 20/00623/LAPRE)

In my capacity as an Owner and also Chairman of the Empire Owners' Association (the Association which represents the forty-three residential apartments at The Empire, located in the same building as the former Garfunkel's Restaurant), I would like to make the following representation.

**Firstly: the representation from the Secretary of our Association, has my full support.**

**Secondly:** In this note I place emphasis on the need to ensure that the requirement for a **Noise Limiter** is a condition which we would like **to see inserted into both licences**, in order to **Prevent Public Nuisance**.

At the time of the Licensing Sub Committee hearing (4 April 2019), on the Restaurant Group's Premises Licence Application, I made a representation making a specific request for limits on Internal Noise to be inserted into their conditions and for a Noise Limiter to be installed.

Unfortunately:

- The Sub Committee did not have the time to consult with their own in-house Noise expert and that person was not even present at that hearing;
- The Applicant in the papers submitted for the hearing, provided a copy of the outcome of a judicial review (*Daniel Thwaites plc versus Wirral Borough Magistrates' Court, 6 May 2008*), the purpose of which could have only been to put legal pressure on the Sub-Committee;
- The Applicant also presented just before the hearing, a Noise Impact Assessment Report. This had not been supplied with their original application, but in the large pack of papers just before the hearing. So, it is understandable that the Sub-Committee clearly did not have the time to consider properly the content, and to check if the recommendations in the Applicant's Report were actually being implemented, and if not, then why not? There was no discussion at all on that matter, except for the concern expressed in my representation at that hearing. However, the Applicant's legal adviser did caution the Sub-Committee not to make any decisions on noise levels, without having consulted with the Council's in-house noise expert – who was clearly not present.

And so, an opportunity was missed to insert some extra key condition into their licence, to prevent public nuisance, and to challenge the Applicant on why they had not followed their own Noise Consultant's recommendations.

We are not against the granting of a Premises Licence, but we want to see some extra conditions inserted:

- (a) To help the Applicant avoid creating Public Nuisance, and to avoid conflict with us as neighbours;



(b) To avoid the need for us to have to complain to the Council;  
(c) To reduce the burden on the Council in having to allocate resources in the future to deal with the complaints that will follow. And we both know that the Applicant will strive to generate revenue from drinking, which may lead to Public Nuisance. It is *'too late to shut the stable door after the horse has bolted'*, and it is also time/energy consuming and costly chasing that horse. And from reading a recent article (29 April 2021) in the Bath Chronicle, Bath is one of the noisiest cities in the UK. *"Local authorities' noise complaints received over a year found Bath in third place in terms of complaints per household."* So far, we have tried to work with the two restaurants beneath us, we have been sympathetic to their problems, and have given them plenty of opportunity to take corrective action.

However, we can see that both locations are endeavouring to make money from additional vertical drinkers attracted by noise, and that is already creating noise problems from Framptons. When Framptons modified the internal of their Premises, they neglected the need for noise suppression, and they made changes which had an adverse effect, and increased the transmission of noise upwards. We do not want to see that same mistake being made at Garfunkel's.

And so, we will become much less tolerant, if the Applicant at Garfunkel's does not take the need to control noise levels more seriously and install Noise Limiters.

**References used:**

**B&P Report 1:** Noise Impact Assessment, which the applicant submitted at the Hearing (4 April 2019), by Big Sky Acoustics Ltd.

**B&P Report 2:** Changes to Garfunkel's at The Empire, Noise Report for Planning, Acoustics Report A980 R01, 8 March 2017, by Ion Acoustics Ltd.

**Critique Report 3:** Empire, Bath – Noise Impact Assessment Review, 13 March 2019, by Acoustic Consultants Ltd.

**Abbreviations B&P:** Brunning & Price

**The reasons why a Noise Limiting Device should feature as a requirement of their conditions are as follows.**

Making use of information in the references above, and mainly from **B&P's** own Consultants' reports:

**[1] In B&P Report 1:** Their noise consultant makes a very clear recommendation in their

report to B&P that a Noise Limiting Device is fitted, e.g. on p.25, in their Appendix F (**"Suggested points for Noise Management Policy"**) it states:

***"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."***

And on p. 20, in the main Recommendations

***"Recommendations for noise control – operation"***

***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)."***

The above need to install a limiter is therefore **seen as a requirement** and not an option, and this is not surprising considering the results of the measurements which they made, which I will now comment on.

**[2] Noise measurements in B&P Report 1**, on p.17, the noise consultant describes the result of a test (with bass level noise reduced) and the sound set at a maximum level of 74dBA. They reported that music noise did not have an impact in the apartments upstairs. So, this indicates that B&P's intention is not to exceed this 74 dBA value, and therefore a limit of 75 dBA set as a condition below which the Limiter should be set based on a noise trial, is a very reasonable value. Once again, it will help to focus the applicant to manage noise levels, and not to have to respond to complaints.

**[3] Noise Measurements in B&P Report 2**, on p. 5, the results of measurements in The Architect (a B&P premises in Chester) are presented and in their busiest period, a noise level of around 75 dBa LAeq was reported (but without any background music).

In section 4.2, on p.7, they describe a measurement at Garfunkels, and when the sound system plays music at a low level this was measured at 60 dBa LAeq and the premises had no customers at point of measurement. Then when the music was turned up to 80 dBa LAeq this was very audible in the apartment above.

So this information once again supports the need for a noise limiter as we know that the sound system in Garfunkels can be easily turned up to a nuisance level, and this also tells us that a limit of 75 dBA must not be exceeded.

**[4] Remedial Works Required:** In B&P Report 1, on p.19 to 20, there was a long list of recommended Remedial Works to suppress noise on the premises, which will need to be implemented e.g. noise suppression to chimney, installation of sound insulation in doorway at ground floor level near the main entrance; installation of a suspended acoustic ceiling; ceiling speakers not to be installed (instead no greater than 3m above the ground); ceiling fans to be adjusted to avoid vibration on the floor above; use of soft furnishings to limit build-up of sound etc. Where is the evidence that the Applicant is planning to do them?

So, this is also another good reason why a Noise Limiter must be installed and used,

as this will help the Applicant to focus their mind on what needs to be done to control noise on these premises.

**[5] Critique Report 3:** And to help us and the Licencing Authority interpret B&P's noise reports, we paid for an independent Noise Expert to visit The Empire and to see the layout of the building, meet with us, look inside Garfunkel's, to read B&P Report 1, and to provide their critique. Not surprising, there were many areas where improvements could have been made to the **B&P Report 1**, and these are summarized in **Critique Report 3**, which is attached to this representation, and we request that this is read in detail and considered.

At the conclusion of that critique the noise expert states:

*As such there is valid concern that higher noise levels will result in significant disturbance and a detrimental impact on the residents at the Empire Building.*

*The assessment does not provide any clarity on three pertinent elements as follows:*

- *What is the acceptable criteria for noise impacting on the residential development from the application premises?*
- *What are the normally higher noise levels expected from the sources in the application premises, and the terrace?*
- *What are the resulting noise levels predicted to impact into the residential premises?*

*Without these issues addressed, it is not feasible to carry out a noise impact assessment.*

So, accepting that there are serious limitations with B&P's noise impact assessment, there must be a noise limiter installed as part of their conditions.

**[6] Serious Noise Incident at Garfunkel's:** In the presentation from the Secretary of our Association, a noise incident is described, which occurred on the day after the hearing. Had a Noise Limiter been in place and had it also triggered a signal of excessive noise at the bar, then management would have soon realized that they needed to regain control of the premises.

So, another good reason for fitting a Noise Limiter.

**[7] Base Level Noise at Garfunkel's:** In B&P Report 1, on p.17, the noise consultant performed a test with bass level noise reduced and operated the sound at a maximum level of 74dBA, and reported that music noise did not have an impact in the apartments upstairs. So, this provides clear evidence that after trying various options with the noise level control, that **base level had to be turned completely down**, to avoid problems. [As an aside, this test was very superficial and not properly executed]. And from the owners living above, we know that base level noise

from Garfunkel's is a cause of problems and nuisance.  
In any condition the Base Level Sound must be turned off and locked in that position.

**[8] Base Level Noise in Framptons:** This restaurant is beneath the other side of our building, and we know that base level noise disturbs the owners living above the property. Now at a local level, we have met with the manager many times, and they are aware of the problem, and when they turn the volume and base sound down on their control pad, we do not experience a problem above. However, on Friday and Saturday nights, the duty manager or servers, are often tempted to increase the noise and the base level to attract customers (or maybe this makes them drink more?) and then we have more complaints from owners that live above them. We will be talking shortly to the owner of Framptons and requesting that a proper Noise Limiter is installed – and if that is not done, then we will start to complain to the Council.

So, in any conditions which are to be set for the **Garfunkel's** premises, a noise Limiter must be installed, and base sound level must be turned off and locked in that position.

As a reminder, at the time of the conversion from a hotel, the two restaurants beneath the residential accommodation in The Empire, were only designed for use as Restaurants for the purpose of eating (with ancillary drink), and not for heavy vertical drinking and amplified music or large parties. There was a good clause in many a Premises Licence, which stated that '*..the premises are structurally adapted and bona fide used...*' which had a nice implication as to being fit for the purpose intended, and that means adequate noise suppression, especially if the premises are a part of a residential complex of apartments. So, who is performing a check on that aspect?

In summary, we feel that it would be **prudent, reasonable and proportionate** if the Licensing Officer could consider in consultation with their Noise Expert, a condition which at least has a numerical value as a starting point above which noise must not be generated within the premises. And that a Noise Limiter is installed. And even setting a number like 75dBA, could be seen as high, and that is why a limit would need to be set below that value based on an assessment of noise levels in the neighbouring residential apartments and communal areas, in accordance with Government Guidelines on what is acceptable noise. And Base Level Noise, which again is recognized as a major cause of Public Nuisance, is best controlled by having the base turned off (and locked in that position). Otherwise, when sales targets have not been met, experience tells us, that the manager will be tempted to ramp-up the volume and base level, to attract customers in order to achieve their income targets, which will lead to complaints to the Council.

Professor Stan Kolaczowski  
Chairman Empire Owners' Association  
The Empire, Grand Parade, Bath

Professor Stan Kolaczowski  
The Empire Owners' Association  
The Empire  
Grand Parade  
Bath  
BA2 4DF

Our reference: 7688/SP/BL  
Date: 13<sup>th</sup> March 2019

Dear Stan,

## **EMPIRE, BATH – NOISE IMPACT ASSESSMENT REVIEW**

We report as follows on the Big Sky Acoustics Ltd report entitled “Noise Impact assessment” reference 19010806 dated 7th Jan 2019.

### **1. Introduction**

We understand that this report was submitted in support of Listed Building Planning Application reference 19/00467/LBA at Garfunkels, Orange Grove, City Centre, Bath, Bath And North East Somerset, BA1 1LP

**The application is for “Internal alterations to facilitate general refurbishment including installation of new bar, acoustic work to fireplaces and original opening between reception and staircase, decoration and lighting and replacement of sign writing on entrance canopy with leaded glass to match existing”.**

The residential apartments in the Empire Building are located directly above the restaurant “Garfunkels”. **In these premises, which serve food and alcohol, and are located close to or below residential properties, there are four main issues of concern in relation to noise. These are as follows;**

1. Noise from music, generally amplified music. Unamplified music can also be of concern.
2. Noise from patrons inside the premises especially if there is loud speech or singing or cheering ( could be from watching sporting activity).
3. Noise from patrons in an outside space such as a terrace used for eating, drinking and smoking.
4. Noise from patrons departing the premises, especially later in the evening and noise from patrons arriving, especially if there is queuing involved. This can include arrivals and departures with cars involving slamming doors.

The author of this report is a Member of the Institute of Acoustics (MIOA) with a recognised acoustic qualification and 40 years’ experience in the field.



## 2. Blue Sky Report

We address the Blue Sky Acoustics Ltd report in terms of the potential noise impact of the application on the existing residents of the Empire building. The Garfunkel premises are located directly below the residential apartments of the Empire building. Currently they are run as a restaurant, Garfunkels.

The Garfunkels premises licence 17/0135/LAPRE contains the clause stating “the premises are structurally adapted and bona fide used for or intended to be used for the purpose of habitually providing for the accommodation of persons frequenting the premises for substantial **refreshment to which the sale and supply of intoxicating liquor is ancillary**”. The proposal aims to change the brand from Garfunkels to a Brunning & Price setup. I am informed that this has a greater emphasis on drinking rather than a purely dining establishment

In terms of other changes, the proposed licence includes on extended night time use, from **00:00 to the later time of 00:30 hours from Thursday's to Saturday's**.

The following provides comments to the Big Sky Acoustics Ltd report and the numbering refers to the in their report.

3.4 The report notes the daytime climate, but the night time noise climate is also of concern and needs to be addressed.

3.7 The report provides no evidence of street drinkers, rough sleeping and crime in the area which creates noise. The proposal for good lighting and CCTV coverage is useful and could be considered further and added to any conditions of approval.

4.2 In order to ensure no detrimental impact on the residents in the vicinity, the proposals **should consider the Institute of Acoustics document “Good Practice Guide on the Control of Noise from Pubs and Clubs” which was published in March 2003. The purpose of this Guide** is to assist local authority officers and venue management and their staff in the prevention of noise disturbance and in the investigation and resolution of noise complaints. It is also intended to assist with the planning and licensing of proposed or existing premises.

7.4 The report notes low frequency bass emanating from Opa. There has been a history of complaints due to noise from music and queuing patrons at these premises.

8.8 The terrace noise prediction in this section is based on normal speech conversations. It does not address loud speech or potentially more boisterous activity. In addition the prediction is based on a point source for distance attenuation. Twenty persons do not represent a point source. The prediction ignores building reflections. As such the prediction does not reflect the site situation and as such underestimates the potential impact to the residential properties above.

8.9 The rooms to residential apartments on the façade above the application site depends on openable windows for ventilation. This includes bedrooms and I understand that these need to be open at night for ventilation and cooling purposes. As such this needs to be considered when assessing the noise impact from the terrace activity on the dwellings.



9.2 The report notes that “subsequent testing does indicate a satisfactory level of acoustic separators between commercial and residential uses”. It provides no such test data on the separation test of performance. In any event how satisfactory the performance is will depend on the noise levels at source in the commercial premises.

9.7 The reception area does need to be considered. The criteria for reception areas are different to residential areas. The report proposes that the doorway be reworked. However it appears as though the whole of the partition needs to be considered and addressed as necessary. It seems **as though the partition is not as robust as indicated on the Spatialized drawing “Proposed ground floor layout”, number 104.**

9.8 We understand that these tests were carried out in the daytime. Objective tests need to be carried out in the later evenings since these are the most sensitive times and when the ambient noise levels are lower. Lower ambient noise levels mean that incoming noise is more noticeable and potentially intrusive. Daytime assessments can provide misleading results. In any event, there is not objective measurement data provided, especially in relation to the wording “reduced bass level”.

9.9 The report states that “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”. The report does not provide any data of what was “anticipated” and more importantly does not provide any data on the actual floor sound transmission performance.

9.11 The residents are concerned about noise from the terrace. A canopy or screen may assist in mitigation of such noise. Data and predications are required to assess this are not provided.

10.0 The recommendations at the original entrance door do not consider the main partition which in our opinion does require addressing, as well as the door. The proposed investigations to the chimney are sensible.

However, it may be that further mitigation is required depending on the noise levels expected in the licence application premises. This may need to include a mass barrier ceiling and wall linings.

11.0 A noise management policy is a necessary element in noise mitigation. Comments on Appendix F are as follows:

The report states;

***“No music or amplified sound shall be generated in the premises so as to give rise to nuisance in any residential property.”***

This does not provide the management with any advice on how to achieve the required outcome.

The report states;

***“Except for access, maintenance and safety reasons, emergency exit and service doors will not be secured open when the premises are operating”.***

This should call for doors to be kept normally in the closed position.



The report states;

*“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.”*

This does not provide any information on how to achieve the required outcome.

The report states;

*“No queuing occurs outside our premises”.  
“The entrance doors and external terrace areas are monitored and numbers in the outside area will be controlled.”*

This does not provide the management with any advice on how to achieve the required outcome.

Noting these points, in our opinion a more comprehensive informative management policy is required in order to satisfactorily control noise emission. The policy should consider the Institute of Acoustics document **“Good Practice Guide on the Control of Noise from Pubs and Clubs”** was published in March 2003.

12.0 Any sound system (including that from screens) will need to be very selected and set up. This should include safeguards such as:  
Limits at different frequencies ( low frequency ,bass, is usually the problem ).  
Lockable controls with the Licensee as the sole key holder.  
Interlocks with doors and windows so that amplified music is cut of if any open.

13.0 The character and proposed use of the premises needs careful consideration. A restaurant with low levels of ambient music all carefully controlled has significantly lower noise source levels when compared to premises where drinking is a more primary use, perhaps with screens or parties.

### 3. Empire Owners' Association Questions

The Empire Owners' Association has requested that the following questions be addressed, as follows;

[Q1] Using your experience, and information in the literature, please provide an indication of what the level of noise could be inside the premises if the premises was used:

- (a) Predominantly as a restaurant with ancillary drink, with light quiet background music allowing discussion at normal voice.
- (b) The bar area and surrounding was filled with a large crowd of noisy drinkers (e.g. stag or hen party, or rugby crowd), and music was being played at a level which often occurs at such moments.
- (c) A big screen or TV was used to display a football or rugby match and the bar was filled with enthusiastic supporters.

In addressing this we would note that there is a significant increase, which could be at least 10 decibels, from a restaurant to a pub with music.





[Q2] Then, from reading the Big Sky Acoustics report is there any evidence as to which of these situations has been considered in their report? And if a situation has been considered, then has it been considered in an adequate manner and if not what else should they have considered and measured?

This is covered in my comments on the Big Sky report.

[Q3] In any of the situations in Q1, have they considered the impact of noise and nuisance outside the premises?

And if a situation has been considered, then which one and has it been considered in an adequate manner and if not what else should they have considered and measured, and what extra control should be put in place?

This is covered in my comments on the Big Sky report. The report does not provide or quantify the options for screens or canopies. This requires a proper assessment.

[Q4] From your experience of measurements in pubs and restaurants, would you say from looking at the proposed layout, in which there is a huge bar in the middle of what was a dining area, that this could easily accommodate a large crowd of drinkers, which would then generate significant noise? And that you would not be surprised by our concern over this?

This is outside my area of expertise. However a loud large crowd of drinkers has the capacity to generate significantly higher noise levels than ambient levels in a restaurant.

[Q5] From your experience of being involved with other noise and nuisance issues from Licenced Premises in Bath and outside of Bath, are noisy pubs a source of noise and nuisance for neighbours, and does it seem reasonable that residents in the apartments in The Empire should be concerned, if the use changed from restaurant to that of a pub?

In your opinion with 43 prestigious apartments above the two restaurants, is this a sensible location to even contemplate such a change of use from restaurant to a noisy pub? Would you agree, that this is predominately a building with apartments and not a commercial unit with ancillary apartments?

The Big Sky report does not provide any evidence that an increase in noise levels can be contained to acceptable limits in terms of the impact on the residents at the Empire Building. As such there is a valid concern that higher noise levels will result in significant disturbance and a detrimental impact.

[Q6] Looking at their report and our concerns, what aspects are missing, or wrong, or are presented in a too simplified manner, or have been ignored and need to be considered?

This is covered in my comments on the Big Sky report.

#### **4. Conclusions on Big Sky Noise Report**

The current use primarily as a restaurant, as I understand it, has only infrequently caused disturbance in the past. A use reflecting a busy bar, possibly with amplified music, tv screens and drinking parties has the capacity to result in significantly higher noise levels. This more likely to cause disturbance on a frequent basis.



The question is whether or not mitigation measures can successfully ascertain the increasing in source noise levels. The report has not addressed the potentially higher expected noise levels from a Brunning & Price setup. The Big Sky report does not provide evidence that an increase in noise levels can be contained to acceptable limits in terms of the impact on the residents at the Empire Building. It does not provide suitable evidence that the use of the terrace can be contained to satisfactory limits. In addition the report does not consider the means of ventilation required should the occupancy in the premises increase. Without a suitable attenuated ventilation system, the only option is to open windows and doors, thus increasing noise emission.

As such there is a valid concern that higher noise levels will result in significant disturbance and a detrimental impact on the residents at the Empire Building.

The assessment does not provide any clarity on three pertinent elements as follows:

- What is the acceptability criteria for noise impacting on the residential development from the application premises?
- What are the normally higher noise levels expected from the sources in the application premises, and the terrace?
- What are the resulting noise levels predicted to impact into the residential premises?

Without these issues addressed, it is not feasible to carry out a noise impact assessment.

Yours Sincerely,

**Stephen Peliza BSc (Bath), MSc (Bristol), CEng, MIOA, MCIBSE, Eur. Ing**  
**For Acoustic Consultants Limited**