



City of Westminster

Licensing Sub-Committee Report

Item No:	
Licensing Ref No:	14/07378/LIPV
Date:	30 October 2014
Classification:	For General Release
Title of Report:	Co-operative Food 18-22 Park Road London NW1 4SH
Report of:	Operational Director of Premises Management
Policy context:	City of Westminster Statement of Licensing Policy
Financial summary:	None
Report Author:	Sam Eaton, Environmental Health Case Officer (Licensing)
Contact Details:	Telephone: 020 7641 1868 E-mail: seaton1@westminster.gov.uk

1. APPLICATION DETAILS

Application Type:	Vary the premises licence under the Licensing Act 2003.		
Applicant:	Co-operative Group Food Limited	Date Application Received:	1 September 2014
Premises Name and Address:	Co-operative Food 18-22 Park Road London NW1 4SH		
Ward Name:	Regent's Park	Stress Area:	No
Description of Premises:	The premises operate as a convenience retail store which sells alcohol for consumption off the premises.		
Summary of Variation	<p>To vary the Premises Licence as follows:</p> <ul style="list-style-type: none"> To remove condition 26 which relates to deliveries To amend conditions 28 relating to refuse collections and 30 relating to delivery vehicles 		
<p>Note: Where the committee is minded to grant the application it will be granted subject to the mandatory conditions and conditions consistent with the operating schedule modified to such extent as the authority considers appropriate for the promotion of the licensing objectives detailed in Appendix D to this report.</p>			
Proposed Licensable Activities, Proposed Hours:			References / Notes
1.	To remove the following condition 26 from the licence:		
	<i>All deliveries and collections to take place at the rear of the property marked 'x' on the plan.</i>		
	Relevant representations and policies applicable:		
1A	The Environmental Health Service have made a representation against the application as the removal and amendment of conditions 26, 28 and 30 regarding deliveries and collections from the rear area will have the likely effect of causing an increase in Public Nuisance. Please refer to Appendix B1 for further information.		Environmental Health Service Representation
1B	The Metropolitan Police Service has no representation against this application. Please refer to Appendix B2 for further information.		Metropolitan Police Service Comments
1C	The St Marylebone Society makes a representation against the application as the removal of the conditions will have a negative impact on the local residents in the matter of noise, fumes and obstruction. Please refer to Appendix B3 or further information.		St Marylebone Society Representation
1D	Four residents have made adverse representations against this application on the grounds of the Prevention of Public Nuisance and the Protection of Public Safety. Concerns have also been raised about the Protection of Children from harm relating to delivery vehicles on the pavement. Please refer to Appendices B4 – B7 for further information		Resident Representations & Conditions
1E	Two local residents have made comments supporting the application as they request that the designated lorry bay at 18 –		Resident Supporting Comments

	<ul style="list-style-type: none"> • prevention of public nuisance, • prevention of crime & disorder, • public safety and • protection of children from harm
Current Licensing Position	<p>The premises are currently licensed, under reference 14/03669/LIPN please refer to the licence at Appendix A3.</p> <p>Full licence history is provided at Appendix C.</p>
Current Planning Position:	Planning comments will be provided for the hearing.
Residential Density:	139 of the 168 units within a 75m radius of the premises are residential, proposed residential and residential under construction (83%), refer to Appendix E
List of Appendices:	<p>A1 – Application Form A2 – Current Licence 14/03669/LIPN A3 - Applicant Submissions – Transport and Infrastructure document A4 – Applicant Submissions – Advice from S Fitzgerald QC A5 – Applicant Submissions – Taylor v Manchester City Council B1 – Environmental Health Service representation B2 – Metropolitan Police Service Comments B3 – Resident Association Group B4 – B7 Resident Representations B8 – B9 – Resident Supporting Comments C – Premises Licence History D – Conditions E – Residential Map and list of premises in the vicinity F – Photo of premises</p>
Relevant Representations:	<p>1 x Environmental Health Service 1 x Resident Association 4 x Residents (Opposing) 2 x Residents (Supporting)</p>

1. APPLICANT SUBMISSIONS AND EVIDENCE

1.1 The evidence submitted by the applicant in support of the Licensing Objectives is provided in **Appendix A1**.

2. LICENSING ACT 2003 APPLICATIONS AND APPEAL HISTORY

3.1 Any chronology relating to appeals is set out in Appendix C.

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

- Licensing Act 2003
- City of Westminster Statement of Licensing Policy (7th January 2011)
- Amended Guidance issued under section 182 of the Licensing Act 2003 (June 2013)

(2)

Application to vary a premises licence 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.

I/We Co-operative Group Food Limited

(Insert name(s) of applicant)

being the premises licence holder, apply to vary a premises licence under section 34 of the Licensing Act 2003 for the premises described in Part 1 below

Premises licence number
14/03669/LIPN

Part 1 – Premises Details

Postal address of premises or, if none, ordnance survey map reference or description
Co-operative Food
18/22 Park Road

Post town	London	Postcode	NW1 4SH
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Telephone number at premises (if any)

Non-domestic rateable value of premises	£87,001-£125,000
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Part 2 – Applicant details

Daytime contact telephone number	0191 204 4342		
E-mail address (optional)	richard.arnot@wardhadaway.com		
Current postal address if different from premises address	Dept 10227 1 Angel Square		
Post town	Manchester	Postcode	M60 0AG

Part 3 - Variation

Please tick as appropriate

Do you want the proposed variation to have effect as soon as possible?

Yes

No

If not, from what date do you want the variation to take effect?

DD	MM	YYYY

Please describe briefly the nature of the proposed variation (Please see guidance note 1)

1. To remove condition 26
2. To amend condition 28 which shall be "All refuse to be collected inside the premises."
3. To amend condition 30 which shall be "Delivery vehicles will not be permitted to leave their engines running whilst making deliveries."

In all other respects, the licence is to remain the same save that the existing conditions will be renumbered to account for the removal of condition 26.

If your proposed variation would mean that 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend:

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Part 4 Operating Schedule

Please complete those parts of the Operating Schedule below which would be subject to change if this application to vary is successful.

Provision of regulated entertainment

Please tick all that apply

- a) plays (if ticking yes, fill in box A)
- b) films (if ticking yes, fill in box B)
- c) indoor sporting events (if ticking yes, fill in box C)
- d) boxing or wrestling entertainment (if ticking yes, fill in box D)
- e) live music (if ticking yes, fill in box E)
- 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)

Sale by retail 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 6)			Will the performance of a play take place indoors or outdoors or both – please tick (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 3)		
Mon					
Tue					
Wed			<u>State any seasonal variations for performing plays</u> (please read guidance note 4)		
Thur					
Fri			<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> (please read guidance note 5)		
Sat					
Sun					

B

Films Standard days and timings (please read guidance note 6)			<u>Will the exhibition of films take place indoors or outdoors or both – please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 3)		
Mon					
			<u>State any seasonal variations for the exhibition of films</u> (please read guidance note 4)		
Tue					
			<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> (please read guidance note 5)		
Wed					
Thur					
Fri					
Sat					
Sun					

C

Indoor sporting events Standard days and timings (please read guidance note 6)			<u>Please give further details</u> (please read guidance note 3)
Day	Start	Finish	
Mon			
Tue			<u>State any seasonal variations for indoor sporting events</u> (please read guidance note 4)
Wed			
Thur			<u>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</u> (please read guidance note 5)
Fri			
Sat			
Sun			

D

Boxing or wrestling entertainments Standard days and timings (please read guidance note 6)			<u>Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick (please read guidance note 2)</u>	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here (please read guidance note 3)</u>		
Mon					
			<u>State any seasonal variations for boxing or wrestling entertainment (please read guidance note 4)</u>		
Tue					
			<u>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 (please read guidance note 5)</u>		
Wed					
Thur					
Fri					
Sat					
Sun					

E

Live music Standard days and timings (please read guidance note 6)			Will the performance of live music take place indoors or outdoors or both – please tick (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	Please give further details here (please read guidance note 3)		
Mon					
Tue					
Wed					
			State any seasonal variations for the performance of live music (please read guidance note 4)		
Thur			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 (please read guidance note 5)		
Fri					
Sat					
Sun					

F

Recorded music Standard days and timings (please read guidance note 6)			<u>Will the playing of recorded music take place indoors or outdoors or both – please tick (please read guidance note 2)</u>	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here (please read guidance note 3)</u>		
Mon					
			<u>State any seasonal variations for the playing of recorded music (please read guidance note 4)</u>		
Tue					
			<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 (please read guidance note 5)</u>		
Wed					
Thur					
Fri					
Sat					
Sun					

G

Performances of dance Standard days and timings (please read guidance note 6)			<u>Will the performance of dance take place indoors or outdoors or both – please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 3)		
Mon					
Tue			<u>State any seasonal variations for the performance of dance</u> (please read guidance note 4)		
Wed					
Thur			<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> (please read guidance note 5)		
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 6)			Please give a description of the type of entertainment you will be providing		
Day	Start	Finish	<u>Will this entertainment take place indoors or outdoors or both – please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>
Mon				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Tue			<u>Please give further details here</u> (please read guidance note 3)		
Wed					
Thur			<u>State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g)</u> (please read guidance note 4)		
Fri					
Sat			<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> (please read guidance note 5)		
Sun					

I

Late night refreshment Standard days and timings (please read guidance note 6)			Will the provision of late night refreshment take place indoors or outdoors or both – please tick (please read guidance note 2)	Indoors	<input checked="" type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	Please give further details here (please read guidance note 3) Consumption off the premises only		
Mon					
Tue			State any seasonal variations for the provision of late night refreshment (please read guidance note 4)		
Wed					
Thur			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 (please read guidance note 5)		
Fri					
Sat					
Sun					

J

Supply of alcohol Standard days and timings (please read guidance note 6)			Will the supply of alcohol be for consumption – please tick (please read guidance note 7)	On the premises	<input type="checkbox"/>			
				Off the premises	<input checked="" type="checkbox"/>			
				Both	<input type="checkbox"/>			
Day	Start	Finish	State any seasonal variations for the supply of alcohol (please read guidance note 4)					
Mon								
Tue								
Wed								
Thur								
Fri								
Sat								
Sun								
						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 (please read guidance note 5)		

K

<p>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 8).</p> <p>None</p>

L

Hours premises are open to the public Standard days and timings (please read guidance note 6)			State any seasonal variations (please read guidance note 4)
Day	Start	Finish	
Mon			
Tue			
Wed			
Thur			
Fri			
Sat			
Sun			
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 (please read guidance note 5)			

Please identify those conditions currently imposed on the licence which you believe could be removed as a consequence of the proposed variation you are seeking.

Condition 26 is to be removed and conditions 28 and 30 are to be amended as described on page 2 of this application.

Please tick as appropriate

- I have enclosed the premises licence
- I have enclosed the relevant part of the premises licence

If you have not ticked one of these boxes, please fill in reasons for not including the licence or part of it below

Reasons why I have not enclosed the premises licence or relevant part of premises licence.

M

Describe any additional steps you intend to take to promote the four licensing objectives as a result of the proposed variation:

a) General – all four licensing objectives (b, c, d and e) (please read guidance note 9)

Having regard to the four licensing objectives, the applicant believes that no additional steps are required.

b) The prevention of crime and disorder

c) Public safety

d) The prevention of public nuisance

e) The protection of children from harm

Checklist:

Please tick to indicate agreement

- I have made or enclosed payment of the fee.
- I have sent copies of this application and the plan to responsible authorities and others where applicable.
- I understand that I must now advertise my application.
- I have enclosed the premises licence or relevant part of it or explanation.
- I understand that if I do not comply with the above requirements my application will be rejected.

IT IS AN OFFENCE, LIABLE ON SUMMARY CONVICTION TO A FINE NOT EXCEEDING LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION.

Part 5 – Signatures (please read guidance note 10)

Signature of applicant (the current premises licence holder) or applicant’s solicitor or other duly authorised agent (please read guidance note 11). **If signing on behalf of the applicant, please state in what capacity.**

Signature	<i>Licence Agent</i>
Date	29 August 2014
Capacity	Solicitors acting on behalf of the Applicant

Where the premises licence is jointly held, signature of 2nd applicant (the current premises licence holder) or 2nd applicant’s solicitor or other authorised agent (please read guidance note 12). **If signing on behalf of the applicant, please state in what capacity.**

Signature	
Date	
Capacity	

Contact name (where not previously given) and address for correspondence associated with this application (please read guidance note 13) Ward Hadaway Sandgate House 102 Quayside			
Post town	Newcastle upon Tyne	Post code	NE1 3DX
Telephone number (if any)	0191 204 4000		
If you would prefer us to correspond with you by e-mail, your e-mail address (optional)			

Notes for Guidance

This application cannot be used to vary the licence so as to extend the period for which the licence has effect or to vary substantially the premises to which it relates. If you wish to make that type of change to the premises licence, you should make a new premises licence application under section 17 of the Licensing Act 2003.

1. 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-supplies, you must include a description of where the place will be and its proximity to the premises.
2. Where taking place in a building or other structure please tick as appropriate (indoors may include a tent).
3. For example state type of activity to be authorised, if not already stated, and give relevant further details, for example (but not exclusively) whether or not music will be amplified or unamplified.
4. For example (but not exclusively), where the activity will occur on additional days during the summer months.
5. For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.
6. Please give timings in 24 hour clock (e.g. 16:00) and only give details for the days of the week when you intend the premises to be used for the activity.
7. If you wish people to be able to consume alcohol on the premises, please tick 'on the premises'. If you wish people to be able to purchase alcohol to consume away from the premises, please tick 'off the premises'. If you wish people to be able to do both, please tick 'both'.
8. Please give information about anything intended to occur at the premises or ancillary to the use of the premises which may give rise to concern in respect of children regardless of whether you intend children to have access to the premises, for example (but not exclusively) nudity or semi-nudity, films for restricted age groups or the presence of gaming machines.
9. Please list here steps you will take to promote all four licensing objectives together.
10. The application form must be signed.
11. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.

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12. Where there is more than one applicant, each of the applicants or their respective agents must sign the application form.
 13. This is the address which we shall use to correspond with you about this application.



City of Westminster
64 Victoria Street, London, SW1E 6QP

Schedule 12
Part A

WARD: Regent's Park
UPRN: 010033525241

Premises licence

Regulation 33, 34

Premises licence number:

14/03669/LIPN

Original Reference:

14/03669/LIPN

Part 1 – Premises details

Postal address of premises:

Co-operative Food
18-22 Park Road
London
NW1 4SH

Telephone Number: Not Supplied

Where the licence is time limited, the dates:

Not applicable

Licensable activities authorised by the licence:

Sale by Retail of Alcohol

The times the licence authorises the carrying out of licensable activities:

Sale by Retail of Alcohol

Monday to Saturday:

08:00 to 23:00

Sunday:

10:00 to 22:30

The opening hours of the premises:

Monday to Sunday:

07:00 to 23:00

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

Alcohol is supplied for consumption off the Premises.

Part 2

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

Co-operative Group Food Limited
Dept 10227
1 Angel Square
Manchester
M60 0AG

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

IP26715R

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

Name: Jinal Patel

Please note: It is the policy of the Licensing Authority not to display the address details of a designated premises supervisor.

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

Licence Number: LN20102368
Licensing Authority: London Borough Of Merton

Date: 7 August 2014

Signed: pp



Operational Director - Premises Management

Annex 1 – Mandatory conditions

1. No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
4.
 - (1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
 - (2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.
5.
 - (i) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
 - (ii) For the purposes of the condition set out in paragraph 5(i) above -
 - (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
 - (b) "permitted price" is the price found by applying the formula -
$$P = D + (D \times V)$$
Where -
 - (i) P is the permitted price,
 - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
 - (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -
 - (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
 - (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
 - (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

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- (iii) Where the permitted price given by Paragraph 5(ii)(b) above would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
- (iv) (1) Sub-paragraph 5(iv)(2) below applies where the permitted price given by Paragraph 5(ii)(b) above on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.
- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Annex 2 – Conditions consistent with the operating Schedule

None

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

6. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 28 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 28 day period.
7. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
8. All tills shall automatically prompt staff to ask for age verification identification when presented with an alcohol sale.
9. The licence holder shall ensure that outside of the hours authorised for the sale of alcohol and whilst the premises are open to the public, all alcohol within the trading area is to be secured behind locked grills, locked screens or locked cabinet doors so as to prevent access to the alcohol by both customers and staff.
10. No super-strength beer, lagers, ciders or spirit mixtures of 5.5% ABV (alcohol by volume) or above shall be sold at the premises.
11. No single cans or bottles of beer or cider or spirit mixtures shall be sold at the premises.
12. No more than (15) % of the sales area shall be used at any one time for the sale, exposure for sale, or display of alcohol.
13. There shall be no self service of spirits on the premises, save for spirit mixtures less than 5.5% ABV.
14. Prominent signage indicating the permitted hours for the sale of alcohol shall be displayed so as to be visible before entering the premises, where alcohol is on public display, and at the point of sale.
15. Prior to any football match taking place at Wembley Stadium the premises licence holder shall ensure that;
 - (i) Alcohol sales in respect of cans of beer or cider are limited to no more than 4 cans per person for a minimum of four hours before the commencement of the relevant designated sporting event;
 - (ii) No sales of alcohol in bottles or glass containers are made in the period four hours before the commencement of the designated sporting event
 - (iii) On any day where there is a relevant designated sporting event taking place, the premises will not externally advertise as a result of a local store promotion the availability of beer or cider in such a way as to be likely to be the sole inducement to attract persons to the premises who are either attending the designated sporting event or in the vicinity of the premises as a result of the designated sporting event;
 - (iv) All members of staff working at the premises are informed of this condition prior to taking up employment;
 - (v) On the day of the relevant designated sporting event, upon the direction of a police officer of the rank of Inspector or above, using the grounds of the prevention of crime and disorder or public safety, the premises will

immediately cease to sell alcohol until further directed by the police or until the relevant designated sporting event has finished.

16. There shall be "CCTV in Operation" signs prominently displayed at the premises.
17. An incident log (whether kept in a written or electronic form) shall be retained at the premises and made available to an authorised Officer of the Police or the Local Authority.
18. The premises shall operate a proof of age scheme, such as a Challenge 25, whereby the only forms of acceptable identification shall be either a photographic driving licence, a valid passport, military identification or any other recognised form of photographic identification incorporating the PASS logo, or any other form of identification from time to time approved by the secretary of the state.
19. The premises will be fitted with a burglar alarm system.
20. The premises will be fitted with a panic button system for staff to utilise in the case of an emergency.
21. The premises licence holder shall ensure that the appropriate fire safety, and health and safety regulations are applied at the premises.
22. A complaints procedure will be maintained, details of which will be made available in store and upon request.
23. A refusals register (whether kept in written or electronic form) will be maintained at the premises and will be made available for inspection upon request by an authorised Officer of the Police or the Local Authority.
24. All relevant staff will receive training in their responsibilities under the Licensing Act 2003 and Challenge 25 (or any similar scheme). Refresher training will be given twice a year and training records made available to the Police or an authorised officer of the Licensing Authority.
25. Tills will be installed at the premises which prompt staff to request age verification from customers who appear to be under the age of 25 (or any other age should Challenge 25 be replaced by a similar scheme).
26. All deliveries and collections to take place at the rear of the property marked 'x' on the plan.
27. All deliveries and collections to take place between 08:00 and 23:00 hours.
28. All refuse to be collected inside the premises and to be picked up from the area marked 'x' on the plan.
29. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
30. Delivery vehicles will not be permitted to leave their engines running whilst waiting to enter the delivery area.
31. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.

Annex 4 – Plans

Attached



City of Westminster
64 Victoria Street, London, SW1E 6QP

**Schedule 12
Part B**

**WARD: Regent's Park
UPRN: 010033525241**

**Premises licence
summary**

Regulation 33, 34

Premises licence number:

14/03669/LIPN

Part 1 – Premises details

Postal address of premises:

Co-operative Food
18-22 Park Road
London
NW1 4SH

Telephone Number: Not Supplied

Where the licence is time limited, the dates:

Not applicable

Licensable activities authorised by the licence:

Sale by Retail of Alcohol

The times the licence authorises the carrying out of licensable activities:

Sale by Retail of Alcohol

Monday to Saturday:
Sunday:

08:00 to 23:00
10:00 to 22:30

The opening hours of the premises:

Monday to Sunday:

07:00 to 23:00

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

Alcohol is supplied for consumption off the Premises.

Name and (registered) address of holder of premises licence:

Co-operative Group Food Limited
Dept 10227
1 Angel Square
Manchester
M60 0AG

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

IP26715R

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

Jinal Patel

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

Restricted

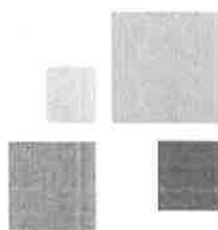
Date: 7 August 2014

Signed:

pp



Operational Director - Premises Management



BWB

CONSULTANCY | ENVIRONMENT
INFRASTRUCTURE | BUILDINGS

TRANSPORT & INFRASTRUCTURE – PLANNING

THE CO-OPERATIVE FOOD Ltd

18-22, PARK ROAD, LONDON

TECHNICAL NOTE – SERVICING

TRANSPORT & INFRASTRUCTURE – PLANNING

THE CO-OPERATIVE FOOD Ltd

18-22, PARK ROAD, LONDON

TECHNICAL NOTE – SERVICING

London
11 Borough High St, London, SE1 9SE
T: 020 7407 3879

DOCUMENT ISSUE RECORD

Revision	Date of Issue	Status	Author:	Checked:	Approved:
A	17/10/14	DRAFT	Daniel Jackson Engineer	David Hurren Director	David Hurren Director
B	20/10/14	FINAL	Daniel Jackson Engineer	David Hurren Director	David Hurren Director

Limitations

The assessments and interpretation have been made in line with legislation and guidelines in force at the time of writing, representing best practice at that time.

All of the comments and opinions contained in this report, including any conclusions, are based on the information obtained by BWB during our investigations.

There may be other conditions prevailing on the site which have not been disclosed by this investigation and which have not been taken into account by this report. Responsibility cannot be accepted for conditions not revealed by the investigation.

Any diagram or opinion of the possible configuration of the findings is conjectural and given for guidance only and confirmation of intermediate ground conditions should be considered if deemed necessary.

Except as otherwise requested by the Client, BWB is not obliged and disclaims any obligation to update the report for events taking place after:

- a) the date on which this assessment was undertaken; and
- b) the date on which the final report is delivered.

BWB makes no representation whatsoever concerning the legal significance of its findings or to other legal matters referred to in the following report.

This report has been prepared for the sole use of The Co-operative Food Ltd. No other third parties may rely upon or reproduce the contents of this report without the written permission of BWB. If any unauthorised third party comes into possession of this report they rely on it at their own risk and the authors do not owe them any Duty of Care or Skill.

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Table 2	Rear Loading Area Delivery Schedule
Table 3	Front Loading Bay Delivery Schedule

FIGURES

Figure 1	Site Location Plan
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APPENDICES

Appendix A	City of Westminster – Environmental Health Consultation Team Letter
Appendix B	The Olympic Code of Conduct for Quiet Night Time Deliveries

1.0 INTRODUCTION

Instruction

- 1.1 BWB Consulting (BWB) was instructed by The Co-operative Food Ltd (the Client) to respond to the City of Westminster (CoW) - Environmental Health Consultation Team's (EHCT) letter (reference 14/07378/LIPV) dated 29th September.
- 1.2 The proposed development at 18-22 Park Road, London is for a Co-operative Food Ltd shop which is in the A1 retail land use category.
- 1.3 **Figure 1** shows the site location in context of the surrounding highway network.

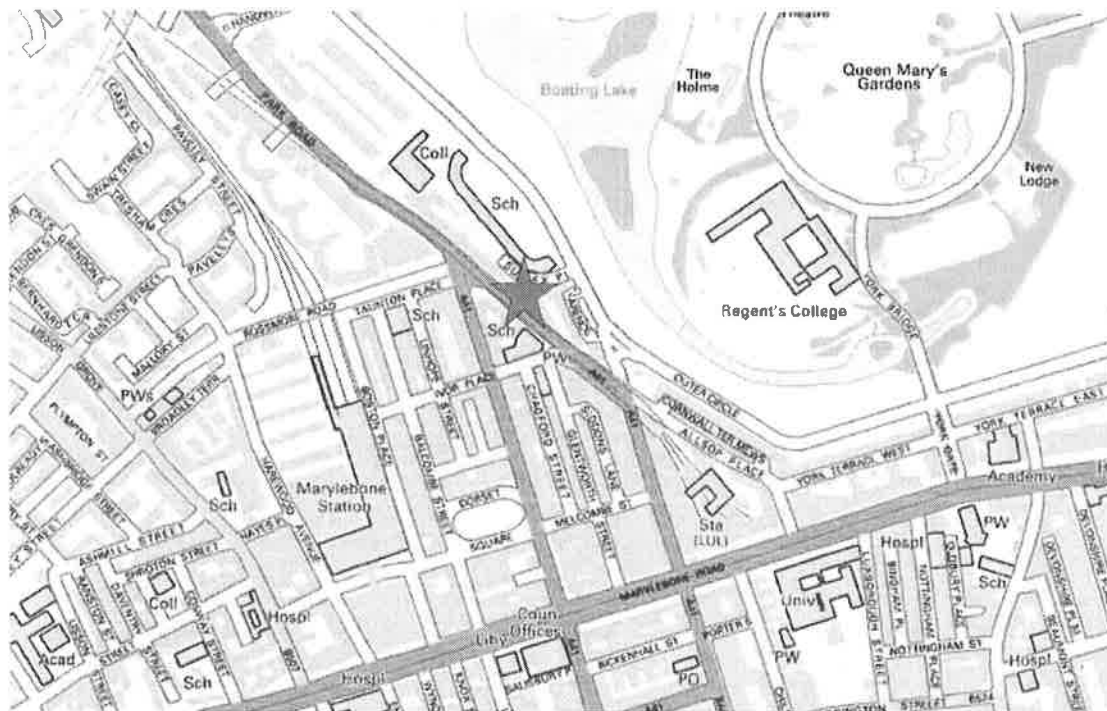


Figure 1 – Site Location Plan

Objectives

- 1.4 This report responds directly to CoW – EHCT's letter, shown in **Appendix A**, which states that the applicant (The Co-operative Food Ltd) 'has not provided any supportive statement for the variation or how these amendments will minimise public nuisance within the area'. The variation relates to the following:
 - To remove condition 26 that requires all deliveries and collections from the rear area of the property.
 - To amend condition 28 removing the requirement for refuse to be picked up from the rear area of the property.

2.0 THE SITE

Site Location

- 2.1 The location of the proposed Co-operative Food Store is at 18-22 Park Road, London.
- 2.2 It is situated on the east side of the A41 – Park Road which is part of the Transport for London Road Network (TLRN) and is also a Red Route which aims to prioritise buses.
- 2.3 This section of the A41 - Park is part of a route which is served by 6 bus routes which operate a very frequent service in both directions. Of the 4 bus routes that use this section of the A41 – Park Road, 2 of the routes also run as night buses.
- 2.4 Due to the strategic nature of the A41 – Park Road it lends itself to heavy vehicle flows which will contain a high proportion of Heavy Goods Vehicles (HGVs), buses and Light Goods Vehicles (LGVs) that will be undertaking servicing and making deliveries in London.
- 2.5 The A41 – Park Road has a Department for Transport (DfT) permanent traffic counter (Count Point 8083) located approximately 400m north of the site. The data collected at this location shows that the likely average traffic flow passing by the site, based on 2013 data, is approximately 24,500 vehicles per day.
- 2.6 Of these 24,500 vehicles it is likely that approximately 10% of this traffic flow will consist of HGVs and buses which are the noisiest vehicle types. **Table 1** (overleaf) shows a summary of the traffic count data on A41 – Park Road from the last 5 years.

AADF Year	Road	Cycles	Motorcycles	Cars & Taxis	Buses & Coaches	LGVs	All HGVs	Total Vehicles	% HGV	% HGV (incl Buses)
2009	A41	446	1055	20,406	1,797	3,191	843	27,292	3.1%	9.7%
2010	A41	174	532	16,125	1,590	2,357	786	21,390	3.7%	11.1%
2011	A41	472	1,179	20,354	1,744	2,998	689	26,964	2.6%	9.0%
2012	A41	478	1,123	18,702	1,683	2,937	753	25,197	3.0%	9.7%
2013	A41	394	1,076	17,995	1,636	30,63	825	24,595	3.4%	10.0%

Table 1 – A41 – Park Road – Annual Average Daily Flow Traffic Count Data (Source: DfT)

3.0 EXISTING CONDITIONS

Front Loading Bay

- 3.1 Situated directly outside of 18-22 Park Road is an existing loading bay which is approximately 42m in length. A bay of this size could accommodate the following:
- 2 x 16.5m Maximum Legal Articulated Vehicle;
 - 3 x 12.0m Rigid Truck; or
 - 5 x 7.5t Box Van.
- 3.2 **Photo 1** (overleaf) shows the loading bay in context of the site.
- 3.3 There are no restrictions on the time that loading bay can be used although the loading time is limited to 20 minutes. **Photo 2** (page 6) shows the sign that specifies that loading may take a maximum of 20 minutes.

Rear Servicing

- 3.4 There is a semi covered rear servicing area which can be and is used by 18-22 Park Road and the Mumtaz Indian Restaurant. Access to this area is achieved by turning in to Sussex Place from Outer Circle. **Photo 3** (page 7) shows access to and the size of the servicing area.
- 3.5 Our site visit suggested that Sussex Place is a private road although the access rights over this land are not known.
- 3.6 It is understood that Sussex Place is used for parking by residents of Clarence Terrace and employees of the London Business School. The area that is available for parking is a parallel parking bay although users are choosing to park perpendicular to the kerb. **Photo 4** (page 8).
- 3.7 The way this parking is being utilised could restrict the size of vehicle that can access and egress the rear servicing area.

18, 20 PARK ROAD, LONDON
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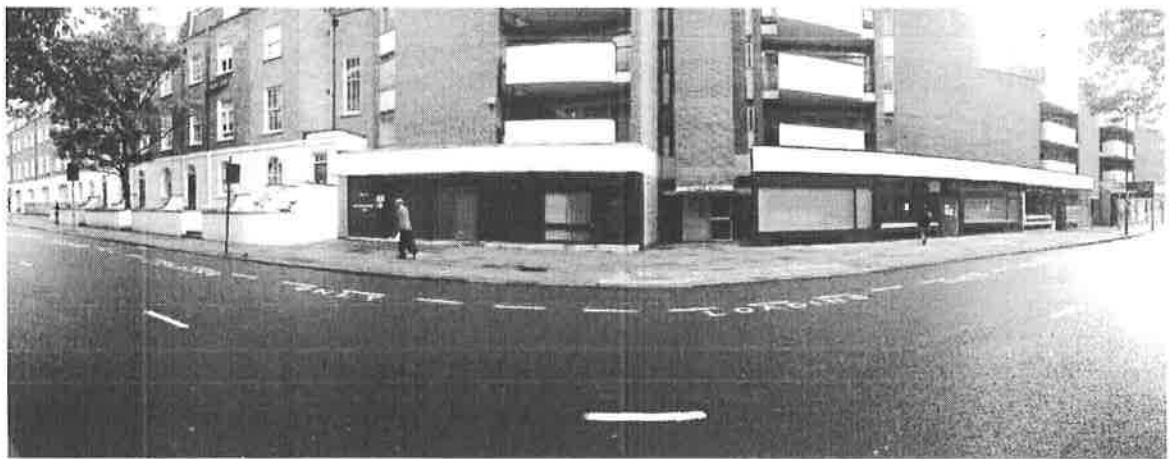


Photo 1 - Existing Front Loading Bay



Photo 2 – Loading Restrictions

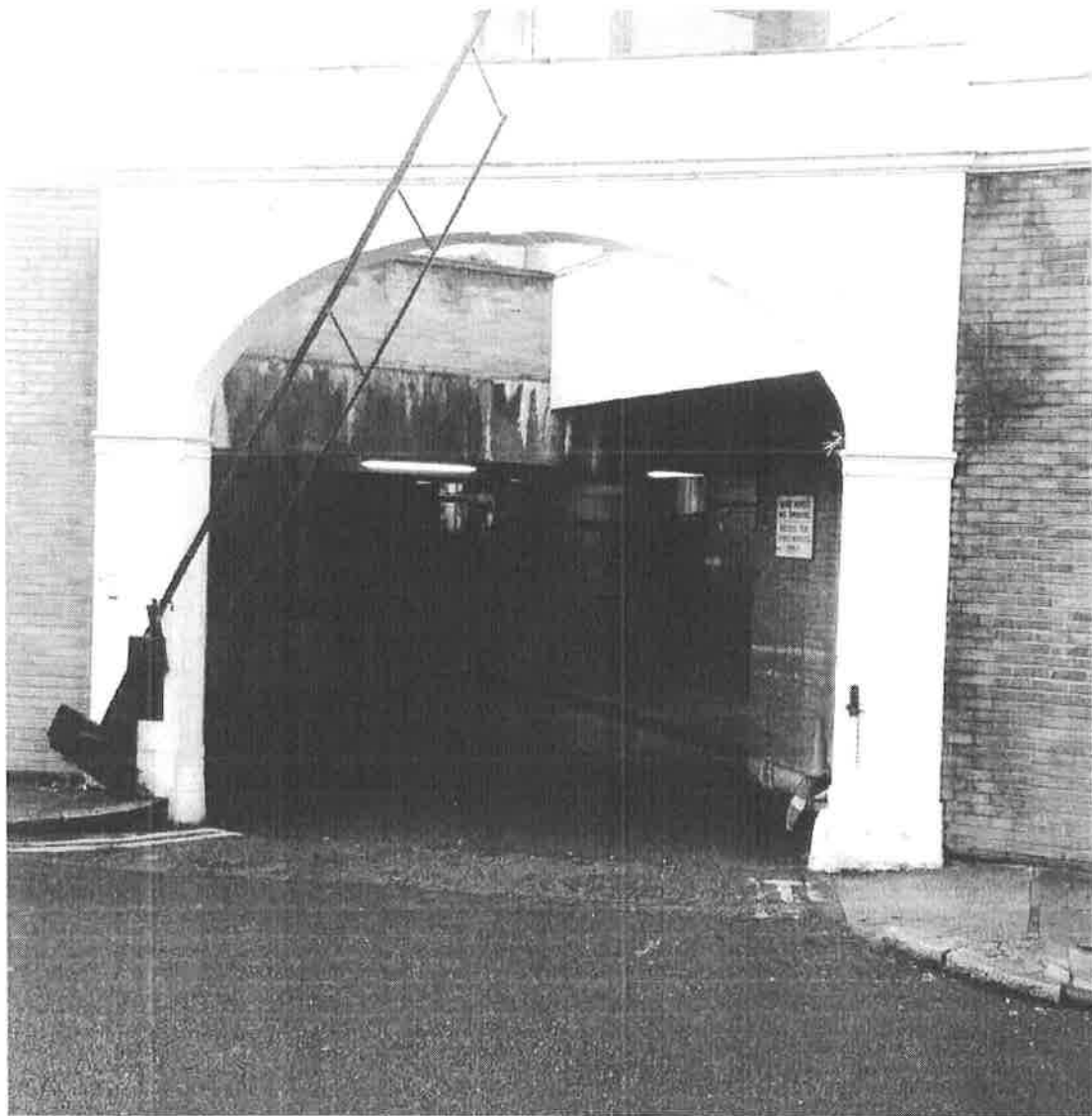


Photo 3 – Rear Servicing Area



Photo 4 – Sussex Place Parking

4.0 SERVICING PROPOSALS

Servicing Vehicles

- 4.1 The Co-operative Food Ltd use a range of vehicles to service and make deliveries to their stores. The vehicles that are likely to serve this site are:
- 7.5t Box Van; and/or
 - 18t Rigid Truck.

Delivery Schedule

- 4.2 As the Co-operative Food Ltd offers a range of products in its stores there will be a range of deliveries that will need to be made at differing times throughout the day. However, as a result of the store having the ability to service and deliver from either the front or rear of the store there are two potential delivery schedules.
- 4.3 Due to the size of the rear servicing area the size of vehicle that can access it is limited to a 7.5t Box Van whereas the front loading bay is able to accommodate any vehicle size.
- 4.4 On average a total of 17 cages per day will be delivered to the store in either 7.5t Box Vans or an 18t Rigid Truck. In addition to this, there will be one delivery each for papers, bakery items and sandwiches. These additional deliveries are likely to be made in vans that are smaller than a 7.5t Box Van although bakery items are usually delivered in an 18t Rigid Truck.
- 4.5 **Table 2** details the delivery schedule should only the rear servicing area be used and specifies the type of delivery, its frequency and the times that it will need to be delivered. It should be noted that this is a conservative estimate.

Delivery	Frequency	Time Delivered
Ambient	Twice a day 6 days per week	10am – 4pm
Chilled	Twice a day 6 days per week	10am – 4pm
Frozen	Twice a day 6 days per week	10am – 4pm
Bakery	Once per day 6 days per week	10am – 4pm
Papers	Once per day 7 days a week	TBC
Sandwiches	Once per day 6 days a week	TBC
Total	9 deliveries per day	

Table 2 – Rear Loading Area Delivery Schedule

- 4.6 Due to the size of the rear servicing area limiting the size of vehicle that can access it, there will be a need for approximately 9 deliveries per day made by a 7.5t Box Van.
- 4.7 **Table 3** details the delivery schedule should the loading bay at the front of the store be used and specifies the type of delivery, its frequency and the times that it will need to be delivered.

Delivery	Frequency	Time Delivered
Ambient, Chilled & Frozen	Combined Delivery Once a day 6 days per week	10am – 4pm
Bakery	Once per day 6 days per week	10am – 4pm
Papers	Once per day 7 days a week	TBC
Sandwiches	Once per day 6 days a week	TBC
Total	4 deliveries per day	

Table 3 – Front Loading Bay Delivery Schedule

- 4.8 As the front loading bay does not restrict the size of vehicle all deliveries (excluding bakery, papers and sandwiches) can be combined into a compartmentalised 18t Rigid Truck which will only need to visit the store once a day.
- 4.9 A 7.5t Box Van does not have the ability to be compartmentalised to deliver ambient, chilled and frozen goods, which results in the much higher trip rate for these vehicles.
- 4.10 Therefore, if the store was to only use 7.5t Box Vans there would be two ambient deliveries, one chilled delivery and one frozen deliveries – or a total of four daily deliveries as opposed to a single delivery if utilising an 18t Rigid Truck.
- 4.11 In addition to this, an 18t Rigid Truck would not be at full capacity which means that at peak times i.e. Christmas, it would have sufficient spare capacity to accommodate further stock without an additional delivery should it be required.
- 4.12 Deliveries to the rear of the store would require vehicles to reverse in to the loading area which would require that reversing alarms are used for health and safety reasons. This would create a reasonable level of noise whereas deliveries made to the front of the store would not require a reversing manoeuvre and therefore reversing alarms would not be used.

Proposals

- 4.13 Based upon the information and evidence shown in the previous chapters regarding the existing servicing and loading facilities, the restrictions upon them, the constraints surrounding their use and the requirements of The Co-operative Food Ltd it is proposed that the following offer a pragmatic solution:

- One consolidated ambient, chilled and frozen goods and one bakery delivery per day made to the loading bay on A41 – Park Road using an 18t Rigid Truck;
 - All other deliveries (i.e. papers and sandwiches) using a vehicle 7.5t Box Van or smaller will be made to the semi covered rear servicing area;
 - All deliveries made to the loading bay on A41 – Park Road will abide by the restrictions upon the bay and will take no longer than 20 minutes;
 - All deliveries that are made to the loading bay on A41 – Park Road will be made between 10am and 4pm. It should be noted that there are no restrictions upon the hours of use on this loading bay. This proposal has been made to reduce the potential ‘public nuisance’ that could be caused if servicing was made outside of these hours; and
 - All deliveries that are made to the loading bay on A41 – Park Road will be in accordance with the **London Olympic Code of Conduct – Quiet Night Time Deliveries**.
- 4.14 The Olympic Code of Conduct – Quiet Night Time Deliveries aims to provide businesses with simple and practical guidance on how to minimise noise from night-time delivery activities. The code provides guidance on:
- Planning for quiet night time deliveries
 - Key measures to reduce noise at the delivery point; and
 - Key measures for drivers.
- 4.15 The Olympic Code of Conduct – Quiet Night Time Deliveries can be found in **Appendix B**.
- 4.16 The code is meant to reduce noise levels at night, which is a far more sensitive time of day for receptors of noise. The implementation of this code should therefore be seen as a robust approach to take in minimising noise of day time deliveries.
- 4.17 The time periods for deliveries suggested in Co-operative Food Ltd’s proposals aim to bring the loading bay outside of the proposed store in line with other surrounding loading bays which prohibits loading outside of the hours of 10am – 4pm.
- 4.18 By following these stringent proposals, it is likely that deliveries to the site will be no noisier than the current level of noise that is generated by general traffic and the high proportion of HGVs on the A41 – Park Road.

5.0 CONCLUSIONS

- 5.1 Based upon the information and evidence provided within this report a series of pragmatic servicing and delivery proposals have been suggested that will reduce potential public nuisance within the area.
- 5.2 Where it is practical to do so the semi covered rear servicing area will be utilised for deliveries that can access the area without the need for reversing alarms as they will be below the size of a 7.5t Box Van.
- 5.3 The proposals also provide benefits from an air quality point of view as deliveries, especially by larger vehicles, are made to the loading bay on A41 Park Road and a simple manoeuvre is required to access the bay. Use of the rear servicing area will require at least two turning manoeuvres (one to access and one to egress) and idle time which will increase the time that the vehicle spends in an area which is closer to residential properties along Sussex Place.
- 5.4 Use of the loading bay on A41 – Park Road allows the number of deliveries to be consolidated from 9 deliveries per day down to 4 which offers the most practical solution to minimising public nuisance. Consolidating deliveries is not only in line with TfL guidance but it also makes a positive contribution towards sustainability.
- 5.5 Any impact that is directly associated with deliveries made to the loading bay on A41 – Park Road are likely to be negligible due to the suggested proposals and the noise levels that the A41 already generates.
- 5.6 By following these stringent proposals, for what is in essence, an unrestricted loading bay, The Co-operative Food Ltd is demonstrating its willingness to listen to and work with local stakeholders to be a good neighbour as well as implementing sustainable delivery plans.

APPENDICES

APPENDIX A
CITY OF WESTMINSTER – ENVIRONMENTAL HEALTH
CONSULTATION TEAM LETTER

TO	Licensing Officer
REFERENCE	14/07378/LIPV

FROM	EH Consultation Team
REFERENCE	
BEING DEALT WITH BY	Ian Watson (iwatson@westminster.gov.uk)
TELEPHONE	020 7641 3183
DATE	29th September 2014

The Licensing Act 2003

Co-operative Food, 18-22 Park Road, NW1

I refer to the application for variation of the Premises Licence.

This representation is based on the operating schedule submitted.

The applicant is seeking the following

1. To remove condition 26 that requires all deliveries and collections from the rear area of the property.
2. To amend condition 28 removing the requirement for refuse to be picked up from the rear area of the property.
3. To amend condition 30 with the following 'Delivery vehicles will not be permitted to leave their engines running whilst making deliveries'.

I wish to make the following representation

1. The removal and amendment of conditions (26, 28 and 30) regarding deliveries and collections from the rear area will have the likely effect of causing an increase in Public Nuisance within the area.

The applicant has not provided any supportive statement for the variation or how these amendments will minimise public nuisance within the area.

Should you wish to discuss the matter further please do not hesitate to contact me.

Ian Watson
Senior Practitioner Environmental Health (Licensing)

APPENDIX B
THE OLYMPIC CODE OF CONDUCT FOR
QUIET NIGHT TIME DELIVERIES

Games Period 2012

Transport for London (TfL) Code of Practice for 'Quiet' Night-time Delivery and Servicing

Background

The Games period during Summer 2012 will have an impact on delivery and servicing activity across London.

In many cases, due to temporary restrictions, delivery and servicing activity for premises including shops, pubs, offices, hotels and restaurants may only be possible between 00.00 midnight and 06.00 a.m.

This required change to a night-time servicing profile will clearly pose challenges to businesses, operators and London Boroughs – night-time activity will need to be carried out in a way which both serves the needs of businesses and minimises disruption to local residents.

To help businesses and Boroughs deal with this change in the timing of activity, Transport for London (TfL) has developed this Code of Practice for 'quiet' night-time delivery and servicing during the Games period.

Purpose of the Code of Practice

The purpose of this Code of Practice is to provide businesses with simple, practical guidance on how to minimise noise from night-time delivery activities – the Code is relevant to all sectors of activity and is structured in 3 parts:

- General Guidance on planning for 'quiet' night-time deliveries
- Key measures to reduce noise at the delivery point
- Key measures for drivers

Businesses in London should ensure that their staff, suppliers and carriers are aware of the change in delivery profile and that they understand the sensitive nature of delivery and servicing activity at night during the Games period.

Businesses in London should forward copies of this Code of Practice to all parties likely to be servicing their premises during the Games period. It is particularly important that drivers are briefed on the Code of Practice, as they play a critical role in minimising noise from delivery and servicing activity.

This Code of Practice provides generic best practice in minimising noise from delivery and servicing activity – BUT each delivery point will have its own particular issues and it's important that these are reviewed and then specific noise reduction measures added, as required.

The effectiveness of this Code of Practice has been demonstrated in a series of out-of-hours delivery trials covering a variety of sectors, across London. Case studies for these demonstration trials are available.

General Guidance

- Think! - about the potential noise impact of any night-time activity on local residents and review the likely sources of noise from delivery and servicing activity for your specific situation
- Where possible, use newer and quieter delivery vehicles and equipment
- Ensure all staff involved in delivery activity are briefed and trained appropriately, in accordance with the Code of Practice
- Ensure all suppliers and carriers receive copies of the Code of Practice and are aware of the importance of adhering to it
- Liaise with your local Borough, making contact with the Environmental Health Officer (EHO – responsible for noise issues) to explain what you plan to do to manage night-time delivery and servicing activity during the Games period
- Liaise with colleagues, suppliers and carriers to ensure they are aware of the sensitive nature of night-time delivery activity in your location and try to minimise the likelihood of multiple vehicles arriving at the same time – ensure all drivers follow the guidance below

The Delivery Point

- Ensure delivery bay doors are well maintained to minimise noise when moved
- Switch off any external tannoy systems
- Avoid using external bells at delivery points
- Switch off the radio when delivery point doors are open
- Ensure the delivery point and surrounding areas are clear of all obstructions, helping to make vehicle manoeuvring as simple as possible
- Ensure all doors, gates and shutters are opened and closed as quietly as possible
- Keep doors other than the delivery point closed to ensure noise does not escape
- Where possible, prepare all empty handling units, salvage, returns etc behind closed doors. Check they are in the correct condition, position and height etc before taking outside - minimise activity 'out in the open'
- Think of how to minimise contact between hard surfaces, particularly metal on metal, during the unloading/loading processes – for example, use of rubber matting and buffering material on doors etc
- Service any equipment used in the delivery operation in advance to minimise noise
- Make sure the delivery point is ready for the vehicle in advance of arrival – gates and doors should be open in advance, to avoid the vehicle sitting stationary, idling
- Ensure staff don't shout or whistle to get the attention of the driver

The Driver

- If early for your delivery slot, do **not** park up/wait near to residential property
- Consideration to noise and local residents should be shown as you approach the site and manoeuvre your vehicle into position
- Do not sound your horn
- Reversing alarms should be switched off, if not subject to health and safety requirements; use a qualified banksman instead, if available
- Engines are to be switched off immediately when you are not manoeuvring – but try to minimise the number of start-ups and avoid over-revving
- Refrigeration equipment is to be switched off in advance of arrival at premises
- If sitting in the cab, waiting with the radio on, then ensure windows are closed and the radio is switched off before opening the cab door
- Minimise the frequency of opening and closing cab and other vehicle doors
- Take extra time if needed to unload as quietly as possible
- Close cab doors quietly
- Be mindful of how far your voice can carry when talking outside at night
- If opening a gate / roller shutter door to gain access, be sure to avoid excessive noise; raise roller shutter doors gently and try to reduce the frequency of door/gate opening
- Lower flaps on tail-lifts carefully and quietly
- No whistling or shouting to get the attention of store employees
- When moving gates, locks and load restraint bars, ensure these are placed gently in their resting position/stowage point– don't drop or drag them on the ground
- When safe to do so, use sidelights rather than headlights when off-road and manoeuvring, to minimise light intrusion
- Minimise excessive air brake noise
- When working in the vehicle loadspace, avoid banging cages etc into vehicle walls
- Show the same consideration when leaving the site, as when arriving

TfL 07/09/11

BWB



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RE. THE CO-OP AND PREMISES LICENCES UNDER THE LICENSING ACT 2003

ADVICE

1. I am asked to advise the Co-Op about a condition which appears in several of its premises licences granted under the Licensing Act 2003, and as to the proper interpretation of this condition.

2. I have in front of me a typical example of such a premises licence, in this case granted by Knowsley Council, for a Co-Op situated in Fazakerley. The licence authorises the licensable activity of the sale by retail or the supply of alcohol. The licensee is the Co-Operative Group Food Limited. Attached to this licence are the mandatory conditions, and various other conditions under the headings of the licensing objectives i.e. the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm. Modifications were made to the conditions, following a hearing on 14th March 2013, which the Council considered “appropriate, proportionate and reasonable” to make “having regard to the promotion of the licensing objectives”.

3. Under the heading of “The Prevention of Public Nuisance” appears just one condition, (not modified earlier this year) which is:-

“No deliveries to take place between 10pm and 7am the following day.”

4. I understand that no deliveries of alcohol have taken place between 10pm and 7am, but it has been alleged that some deliveries of other goods which the shop sells have taken place within those hours. This condition, as I have mentioned, is typical of more than one Co-op premises licence and although the premises licence I have quoted is one granted by Knowsley Council, this Advice extends to other licences with a similar condition. Knowsley Council, I understand, have put forward the view that the condition means that no deliveries whatsoever may take place between 10pm and 7am, whereas the Co-Op and my Instructing Solicitor maintain that the condition can only refer to the deliveries of alcohol to the premises covered by the licence.

The Licensing Act 2003

5. The heading to the Act specifies that it is:-

“An Act to make provision about the regulation of the sale and supply of alcohol, the provision of entertainment and the provision of late night refreshment, about offences relating to alcohol and for connected purposes.”

6. Section 1 sets out the “licensable activities”, the first one of which is the sale by retail of alcohol.

7. By Section 2(1)(a), a licensable activity (in this case the sale by retail and supply of alcohol) may be carried on under and in accordance with a premises licence. By Section 136, a person commits an offence if he carries on a licensable activity from premises otherwise than under and in accordance with an authorisation, i.e. a licence in this case. There are various other offences relating to alcohol set out in the following

sections. Obviously, therefore, the licence is entirely concerned with making lawful, and controlling, the licensable activities.

8. By Section 4(1) a licensing authority:-

“.....must carry out its functions under this Act (“licensing functions”) with a view to promoting the licensing objectives.

(2) The licensing objectives are:

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

9. By Section 11, a premises licence means a licence which “authorises the premises to be used for one or more licensable activities”. So, as may be seen, everything is tied to the licensable activity which in this case refers to the sale by retail of alcohol.

10. A licensing authority is given power to grant a premises licence subject to conditions (see Section 18). If no relevant representations are received, the authority’s power to impose conditions is limited, but if a relevant representation is received, the authority’s power is somewhat wider. However it is still constrained as the authority may only impose conditions (other than the mandatory conditions), “appropriate for the promotion of the licensing objectives”.

11. The Co-Op requires this licence solely to enable the sale of alcohol by retail. It does not require any premises licence to carry on the main bulk of its trade, which is that of selling food and other grocery products, presumably permitted under appropriate planning permission. Therefore, it can lawfully supply food and other grocery products other than alcohol without a premises licence. If there were no premises licence in force, the Co-Op can perfectly lawfully receive deliveries of food and other grocery products at any time.

12. A licensing authority may only impose a condition so far as it considers it appropriate for the promotion of the licensing objectives in relation to a licensable activity. It does not have carte blanche to impose any condition which it considers may be appropriate to the premises. To impose such a condition unrelated to a licensable activity would be ultra vires, unlawful and irrational. This was recently illustrated in a Scottish case, Bapu Properties Limited v. City of Glasgow Licensing Board 2012 WL 488659. This was an appeal to the Sheriff's Court under the Licensing (Scotland) Act 2005 where the Licensing Board had refused an application for a variation of a premises licence in relation to a licensed Indian restaurant. The restaurant wished to extend the ambit of the licence to include an external seating area along the pavement next to the glass frontage of the restaurant. One of the reasons given by the Board to support this refusal was that the granting of the application would be inconsistent with the licensing objective of preventing public nuisance. The Board considered that granting the application would limit the space on the footpath so as to cause congestion and inconvenience to pedestrians in a busy area of the city centre.

13. The Scottish Licensing Act is not identical in its terms to the Licensing Act 2003 but it has striking similarities. It refers to “premises licences,” and licensing objectives, one of which is “preventing public nuisance.” One of the grounds for refusal of a licence is that “the Board considers that the granting of the licence would be inconsistent with one or more of the licensing objectives.” In my view, it is right that the Scottish court and the Scottish law should provide authority and guidance for the English court.

14. The Court found:-

“45. The single function of a Licensing Board under the 2005 Act is that of the licensing of the sale of alcohol. The powers to licence (sic) the sale of alcohol cannot be deployed to effect objectives not related to the sale of alcohol, but which the Licensing Board might yet find desirable. The objectives listed in Section 4 of the 2005 Act” (which are the licensing objectives), “though striking in their apparent generality, are not “free-standing” objectives. They are “licensing” objectives. The objectives, if they are to be relied upon to refuse a licence, must be “linked to the sale of alcohol” (Brightcrew Limited v. The City of Glasgow Licensing Board [2011] CSIH 46 at paragraph 26).”

The court went on to describe how the supposed public nuisance arose from the apprehended pedestrian congestion on the footpath. However the court held that congestion was not directly or materially linked to the sale of alcohol on the premises. It did not flow directly or materially from the licensing of the sale of alcohol. If it existed at all it would be attributable to the physical presence of the tables and the chairs of the restaurant’s external operation, which was already sanctioned by, inter alia, planning consent. Of course, conditions imposed on licences in England should not duplicate other

statutory provisions either, and here the Coop is entitled to sell food and other grocery products by virtue of planning permission.

15. The Court further stated:-

“48. The Board is not concerned with preventing public nuisance generally. The Board is only concerned with prevention of public nuisance so far as referable to the sale of alcohol.”

16. In the Brightcrew case (supra), at para 26, in addition to what was quoted in the Bapu case, the Inner House, Court of Session stated that, although the licensing objectives were all desirable in a general sense, that did not empower a Licensing Board to insist on matters not linked to the sale of alcohol. The same is true in England.

17. Consequently, in my view, any condition imposed has to be able to be materially and directly related to a licensable activity, which in this case is the sale by retail of alcohol. The authority do not have power under the Licensing Act to impose a condition which relates to anything other than one of the licensable activities i.e. here the sale by retail of alcohol. As was said in the Bapu Properties case (following the Brightcrew case), the authority is not concerned with preventing public nuisance generally, only with the prevention of public nuisance so far as it is referable to the sale of alcohol. A condition which purports therefore to limit all deliveries of foodstuffs or other groceries would be an unlawful condition because the authority would not have the power to impose it. However, the condition can be construed, and, in my view, must be construed, perfectly lawfully, if construed only to refer to deliveries of alcohol to be sold in the shop.

When faced with two possible interpretations, one of which would be unlawful and the other of which is lawful, the lawful interpretation is the one to be followed.

18. In contract law, “where the words of a contract are capable of two meanings, one of which is lawful and the other unlawful, the former construction should be preferred.” This principle is based on the proposition that “the parties are unlikely to have intended to agree to something unlawful.” (See Lewison “The Interpretation of Contracts,” 5th Edition at 7.1). The same can be said here: the authority is unlikely to have intended to impose a condition that was ultra vires and unlawful. Indeed, one must work on the basis that the authority intended to act lawfully and within its powers, and therefore, the condition can only refer to deliveries of alcohol.

19. I have in front of me a letter from Mrs Jane Miller in Croydon written to the local council in relation to a variation application put in by the Co-Op in respect of premises in Featherbed Lane, complaining that deliveries of bread to the Co-Op have taken place before 7am. The letter is the only representation received in respect of the application. The Licensing officer is suggesting that it is a relevant representation and therefore there needs to be a hearing. However, as I have set out above, when the authority are carrying out its duties under the Licensing Act, under section 4 (see para 8 above), the authority are concerned with matters relevant to the licensable activity in question and not public nuisance generally. Mrs Miller’s letter deals only with alleged deliveries of grocery products and has nothing to do with the retail sale of alcohol, and therefore has nothing to do with the likely effect of the grant of the application on the promotion of the licensing objectives. It therefore cannot be a relevant representation (see section 35(5)). Therefore

the application must be granted administratively without the need for a hearing (see section 35(2)).

SUSANNA FITZGERALD Q.C.

One Essex Court
Temple
London
EC4Y 9AR.

29 April 2013

**RE. THE CO-OP AND PREMISES
LICENCE**

UNDER THE LICENSING ACT 2003

ADVICE

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England and Wales High Court (Administrative Court) Decisions

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Neutral Citation Number: [2012] EWHC 3467 (Admin)
Case No: CO/5736/2012

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT IN MANCHESTER
(ON APPEAL FROM THE MANCHESTER AND SALFORD MAGISTRATES' COURT BY WAY OF CASE STATED)

Leeds Combined Court,
1 Oxford Row, Leeds LS1 3BG
07/12/2012

Before:

MR JUSTICE HICKINBOTTOM

Between:

MATTHEW TAYLOR

Appellant

- and -

MANCHESTER CITY COUNCIL
TCG BARS LIMITED

Respondents

Jeremy Phillips (instructed by LR Law) for the Appellant
Sarah Clover (instructed by Susan Orrell, City Solicitor, Manchester City Council)
for the First Respondent

The Second Respondents were not represented and did not appear.
Hearing date: 26 November 2012

HTML VERSION OF JUDGMENT

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Mr Justice Hickinbottom:

Introduction

1. When and to what extent, if at all, can an application to vary a licence under the Licensing Act 2003 be amended?
2. That is an important question in practice, because many applicants seek to change their proposed variation in the light of representations they receive objecting to it or some part of it. It is a question which, as I understand it, has never before been addressed by the courts.
3. The question comes before this court in the form of a case stated by Deputy District Judge Robinson sitting in the Manchester and Salford Magistrates' Court. On 8 and 9 March 2012, he heard an appeal by the Appellant Matthew Taylor against a decision of the Licensing Sub-Committee of the First Respondent Manchester City Council ("the Council"), taken on 7 October 2011, to grant a variation to a premises licence relating to premises known as Via in Canal Street, Manchester. The Second Respondents TCG Bars Limited ("TCG Bars") owned and operated Via, and were the premises licence holder.
4. As a preliminary issue, Mr Taylor contended that the Council had acted unlawfully because TCG Bars had significantly revised their application after the statutory period of advertisement and consultation had expired, meaning that responsible authorities (such as the Council's own Environmental Health Department) and local residents had no reasonable notice of the revision and no proper opportunity of making representations in respect of it.
5. The Deputy District Judge held that the Council did not act unlawfully, and Mr Taylor appealed that decision to this court by way of case stated dated 14 May 2012. In paragraph 52 of the Case Stated, the Deputy District Judge poses the following question for this court:

"Given the variance between the application to vary the premises licence originally advertised and the revised scheme, and the timing of those revisions, was I correct in ruling that it was lawful for [the Council] to proceed to determine [TCG Bars'] application in accordance with section 35 of the Licensing Act 2003?"

The Licensing Act 2003

6. In this judgment, all statutory references are to the Licensing Act 2003, unless otherwise indicated.
7. The Licensing Act 2003, which came into force on 24 November 2005, radically changed licensing in England and Wales. Until then, there had been a patchwork of licensing systems, under which alcohol licences were granted by licensing justices, reflecting their historical role in maintaining the peace; whilst other licensing functions, such as entertainment, were in the administrative province of local councils.
8. The 2003 Act created a single system, in which magistrates were relieved of their administrative licensing responsibilities, in favour of local authorities. The White Paper which led to the reforms ("Time for Reform: Proposals for the Modernisation of Our Licensing Laws" (Cm 4696) (April 2000)) identified three reasons for the transfer of all licensing functions to local councils, as follows (paragraph 123):

"...

- o Accountability: we strongly believe that the licensing authority should be accountable to local residents whose lives are fundamentally affected by the decisions taken.
- o Accessibility: many local residents may be inhibited by court processes, and would be more willing to seek to influence decisions if in the hands of local councillors.
- o Crime and disorder: Local authorities now have a leading statutory role in preventing local crime and disorder, and the link between

alcohol and crime persuasively argues for them to have a similar lead on licensing."

The first bullet point emphasises that licensing decisions were to be regarded as administrative decisions, taken in the public interest and subject to political accountability.

9. The role of a licensing authority under the 2003 Act was recently considered by the Court of Appeal in R (Hope and Glory Public House Limited) v City of Westminster [2011] EWCA Civ 31 ("Hope and Glory Public House"). Having rehearsed the history behind the Act, Toulson LJ, giving the judgment of the court, said (at [41]-[42]):

"41. ... [T]he licensing function of a licensing authority is an administrative function. By contrast, the function of the district judge is a judicial function. The licensing authority has a duty, in accordance with the rule of law, to behave fairly in the decision-making procedure, but the decision itself is not a judicial or quasi-judicial act. It is the exercise of a power delegated by the people as a whole to decide what the public interest requires...."

42. Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance. Although such questions are in a sense questions of fact, they are not questions of the 'heads or tails' variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact."

That chimes with the White Paper, Toulson LJ again stressing the essentially evaluative nature of the decision making process in most licensing matters, which demands a complex balancing exercise, involving particularly the requirements of various strands of the public interest in the specific circumstances, including the specific locality. He also marked the fact that Parliament has determined that, in this context, local authorities are best placed to make decisions of that nature.

10. The administrative nature of a licensing authority's function is also emphasised by, e.g., regulation 23 of the Licensing Act 2003 (Hearings) Regulations 2005 (SI 2005 No 44) ("the Hearing Regulations"), which provides that the hearing of an application "shall take the form of a discussion led by the authority..." and forbids cross-examination except in limited circumstances.
11. However, the justices still have a role to play in the new scheme. The main sanction for those who fail to comply with the new licensing laws is criminal, and magistrates have retained responsibility for dealing with people charged with offences under the licensing laws, as well as having an appellate function from licensing decisions of the relevant local authority.
12. The basic mechanism for regulation of the relevant activities is as follows. By section 2 of the 2003 Act, "licensable activities" can only be carried on under and in accordance with a "premises licence" issued by a "licensing authority", defined in section 3(1) usually to be the relevant local council; and section 136 imposes a criminal sanction on those who carry on licensable activities otherwise than under and in accordance with such a licence. "Licensable activities" include the retail sale of alcohol, the provision of regulated entertainment and the provision of late night refreshment (section 1(1)).
13. Section 4 is also an important provision. Under it, a licensing authority must carry out its functions under the Act (and hence must determine any licensing decision it has to make) with a view to promoting the following "licensing objectives":
- (a) the prevention of crime and disorder;
 - (b) public safety;
 - (c) the prevention of public nuisance; and

(d) the protection of children from harm.

It is noteworthy that all of these objectives are essentially concerned with the public interest; although, of course, evidence of how a licence might affect individuals may be relevant to the assessment of that public interest.

14. By section 4(3), in exercising those functions, the authority must also have regard to both:
 - i) Guidance issued by the Secretary of State under section 182, which requires her to issue such guidance. The relevant version for the purposes of this appeal, which I shall refer to as simply "the section 182 Guidance", was issued in April 2012. It has now been replaced by new guidance issued in October 2012.
 - ii) The authority's own licensing statement published under section 5, which requires each authority to publish a statement of licensing policy regularly, at the relevant time for a period of three years and now (by virtue of section 122 of the Police Reform and Social Responsibility Act 2011) for a period of five years. The Council's current Statement of Licensing Policy ("the Council's Statement of Licensing Policy") covers the period 2011-14.
15. The licensing functions of an authority are in practice delegated to a licensing committee or sub-committee (sections 6 and 7). In the Council's case, they have established a Licensing Committee of 15 Council Members, with any application that requires a decision being determined by a Sub-Committee of three members of the Licensing Committee at a hearing (paragraph 3.36 of the Council's Statement of Licensing Policy).
16. As Mr Phillips submitted, the regime is essentially a permissive one, generally allowing anyone to carry out "licensable activities" in an unfettered way by requiring the licensing authority to grant or vary a licence on application, unless the decision making powers of the licensing authority are triggered – by, e.g., representations being made on an application to vary – whereupon the authority must take a decision in response to the application based upon the promotion of the licensing objectives. However, even then, the steps it has power to take are limited to those specifically identified in the scheme.
17. Section 17 sets out the procedure for making an application for a new licence. Section 17(3) requires an application to be accompanied by "a plan of the premises to which the application relates, in the prescribed form". Section 17(5) provides that the Secretary of State must by regulations require the applicant and the licensing authority to advertise the application for a prescribed period and in a prescribed manner, and "prescribe a period during which interested parties and responsible authorities may make representations to the relevant licensing authority about the application". "Interested parties" are defined in section 13(3) as including a person living in the vicinity of the premises. (Under section 105 of the Police Reform and Social Responsibility Act 2011, "interested parties" has now been substituted by "persons who live, or are involved in a business, in the relevant licensing area"; but that change has no relevance to this appeal). "Responsible authorities" are defined in section 13(4) to include relevant local weights and measures, police, fire, rescue, health, environmental health and planning authorities.
18. An application must also put forward an individual as the "designated premises supervisor", and no supply of alcohol can be made under a licence unless there is such a supervisor named in the licence and he has a current "personal licence" in accordance with Part 6 of the 2003 Act (sections 15 and 19). Personal licences form no part of this appeal, and I need not say anything further about them; except that, since May 2010, the designated premises supervisor for the premises at 28-30 Canal Street has been Anthony Cooper.
19. The Secretary of State has made procedural regulations in respect of applications for premises licences in the form of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 (SI 2005 No 42) ("the Premises Regulations"), as well as the Hearing Regulations.
20. Subject to the express requirements of the Hearing Regulations, procedure at the hearing of an application is expressly a matter for the licensing authority (regulation 21 of the Hearing Regulations). There is no similar provision in the Premises Regulations, which are generally prescriptive as to the pre-hearing procedure that must be followed by the applicant (who must comply with the appropriate provisions in Parts 2 and 4), and the licensing authority (which must comply with the appropriate provisions in Parts 4 and 5) (regulations 4 and 6).

21. Regulation 23(1) of the Premises Regulations repeats the requirement that an application for a new licence must be accompanied by a plan; and regulation 23(3) provides that a plan, when required, must show various specified topographical features, including:

"(a) The extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;

(b) the location of points of access to and egress from the premises;

(c) if different from subparagraph (3)(b), the location of escape route from the premises;

(d) ..."

Of course, in addition to the elements required by regulation 23(3), a plan that is lodged may show other matters which are not required by law.

22. Regulation 25 requires applications to be advertised in specific ways for 28 days.

23. "Relevant representations" are defined as representations made by an interested party or responsible authority, which are neither frivolous nor vexatious nor withdrawn, and which are in time and "are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives" (section 18(6) and (7) of the 2003 Act). That definition is important: representations to be relevant have to be about the effect of the licence on the promotion of the public interest licensing objectives set out in section 4, although evidence of the actual or potential impact of the licence on individuals may be relevant to the various strands of public interest involved. That is reflected in Appendix 2 to the Council's Statement of Licensing Policy which, under the heading "Relevant Information for Residents and Other Interested Parties", states:

"...

- o In accordance with [the definition of 'relevant representation'], you should demonstrate how your representation affects the promotion of the licensing objectives.
- o Provide an evidential base for the grounds of the representation; which could include written logs of problems, details of previous complaints, photographs or video evidence of the particular case."

24. The relevant period for representations in a case such as this is "28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant" (regulation 22 of the Premises Regulations).

25. Where no "relevant representations" are made, the licensing authority is bound to grant the application subject only to specified conditions derived from the operating schedule (section 18(2)). Where such representations are made, a decision making power arises in the licensing authority, because the requirement that the authority is bound to grant the application is subject not only to those same conditions but also to section 18(3) and (4), which provides that, where relevant representations are made:

"(3) ... the authority must –

(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary; and

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

(4) The steps are –

(a) to grant the licence subject to [such conditions mandated by the statutory provisions, and such conditions as are consistent with the operating schedule accompanying the application modified to such extent as the authority considers necessary for the promotion of the licensing objectives];

(b) to exclude from the scope of the licence any licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application."

26. With regard to subsection (4)(a):

(i) by section 18(5), for these purposes, conditions are "modified" if any of them is "altered or omitted or any new condition is added"; and

(ii) by section 109 of the Police Reform and Social Responsibility Act 2011, "necessary" has now been replaced by "appropriate"; but again that change is not material to this appeal.

27. Whilst the provisions of section 18(3) and (4) are written in mandatory terms ("... the authority *must...*"), a discretion arises as the result of the words "take such steps ... *as it considers necessary* ..." (emphases added). However, in determining a licence application, the discretion that an authority has is limited in two ways: (i) that authority can only take one or more of the steps listed in section 18(4), and (ii) it is empowered (although also obliged) to take only such of those steps it "considers necessary for the promotion of the licensing objectives". The statutory provisions consequently both define and limit an authority's powers in determining an application for a new licence.
28. Once a licence has been granted, if it is proposed to change the relevant business or premises such that the carrying out of licensable activities will fall outside the licence which has been granted, then the licence holder can change the licence in one of three ways.
29. First, if it is proposed to extend the period for which the licence has effect or to vary substantially the premises to which it relates, then a new application under section 17 has to be made (section 36(6), and paragraph 8.73 of the section 182 Guidance). That requires, not only advertisement and a period for the making of relevant representations to be made, but also the licensing authority to reconsider and review the entire licence afresh.
30. Second, at the other end of the scale, if the proposal is of a very limited nature, which is incapable of having an adverse impact on the promotion of any of the licensing objectives, then a simplified procedure involving restricted publicity can be adopted (sections 41A-41D, introduced by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 (SI 2009 No 1772)). Paragraphs 8.59 and 8.60 of the section 182 Guidance provide:
- "8.59. Many small variations to layout will have no adverse impact on the licensing objectives. However, changes to layout should be referred to the full variation process if they could potentially have an adverse impact on the promotion of the licensing objectives, for example by... affecting access between the public part of the premises and the rest of the premises or the street or public way, e.g. block emergency exits or routes to emergency exits....
- 8.60. Licensing authorities will also need to consider the combined effect of a series of applications for successive small layout changes (for example, as part of a rolling refurbishment of a premises) which in themselves may not be significant, but which cumulatively may impact on the licensing objectives. This emphasises the importance of having an up to date copy of the premises plan available."
31. It is not suggested by any party that the changes proposed in this case, to which I shall come shortly, warranted a new section 17 application for a new licence, or could properly have been the subject of the minor variation procedure. It is common ground that it was appropriate for those proposed changes to be the subject of the third procedure, namely an application for a variation of the licence under

section 34.

32. The procedure for an application under section 34 mirrors the procedure for a new application under section 17.
33. The Secretary of State has to make regulations for the due advertisement of the application (section 34 (2)); and, by regulations 25 and 26 of the Premises Regulations, she has provided that the advertisement of such application must be the same as for an application under section 17 for a new licence.
34. Any premises licence has to be accompanied by a plan; but that does not mean that a plan always has to accompany an application to vary. Section 34(5) and regulations 27 and 27A of the Premises Regulations refer, expressly or implicitly, to accompaniment by a plan *where appropriate*; and regulation 23(1) only requires a plan to accompany an application for a new licence under section 17. For example, if an application to vary is made merely to extend hours for the same licensed activities without any change to the premises themselves, a plan would be unnecessary in practice and is not required by the scheme. However, it was properly common ground that where, as here, there is an application for a variation including significant changes to the internal layout of the premises (including elements required to be on a plan by regulation 23(3)), a plan complying with regulation 23(3) would be essential to the application.
35. Section 35(2)-(4) of the 2003 Act, reflecting to an extent section 18(2)-(4) in respect of a section 17 application for a new licence, provides that, where no relevant representations are received within the relevant period, then the licensing authority must grant the variation; but, where such representations are received, then they trigger a decision making process. The authority must hold a hearing and must, having regard to the representations, take such steps from those listed in section 35(4), if any, as it considers necessary for the promotion of the licensing objectives. Sub-section (4) states that:
- "(4) The steps are –
- (a) to modify the conditions of the licence;
- (b) to reject whole or part of the application
- and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added."
36. Again, the licensing authority has a discretion in its decision making here; but, as with section 18(4) for an application for a new licence, where there are relevant representations in respect of an application to vary, it is limited: the authority can only respond to the application in one or more of the ways set out in section 35(4), and it can only take such steps "as it considers necessary for the promotion of the licensed objectives." Again, that requires an evaluation of what is necessary for the promotion of those objectives.
37. Therefore, as with a section 17 application, it can be seen that it is the making of relevant representations in respect of an application to vary that triggers a process of decision making by the authority, in the form of a hearing and decision to take such steps as are allowed and required by section 35(3) and (4). Where no representations are received within the relevant period, the applicant is entitled to the variation he seeks: no decision making process is triggered at all (Corporation of the Hall of Arts and Sciences v The Albert Court Residents' Association [2011] EWCA Civ 430, "Corporation of the Hall of Arts and Sciences"). It was suggested, obiter, in Corporation of the Hall of Arts and Sciences that an authority has no power to take into account late representations even where the decision making process may have been triggered by other, in-time representations (see, e.g., [41]); and it seems to me that that follows from the wording of section 35(3), which focuses exclusively on relevant representations which are defined in terms of being in-time. However, it was common ground before me – and, in my view, properly so – that, if someone has made relevant representations, then he may later amplify them.
38. There is one final procedure that should be mentioned. Under section 51, where a premises licence is in effect, a responsible authority or interested party may apply to the licensing authority for a review of the licence. The onus of establishing grounds for review falls upon the person initiating the application – including establishing that the ground is relevant to one or more of the licensing objectives (section

51(4)(a) – but, otherwise, the procedure again reflects that for a new licence. In particular, any such application has to be the subject of advertisement (as well as notice to the licence holder), and there is a period in which representations may be made. There must be a hearing to consider the application and any relevant representations, which are again defined by reference to relevance to the licensing objectives (section 52(7)). In response to an application, the authority again must take such steps that are listed as it considers necessary for the promotion of the licensing objectives, those steps being, in this context:

- "(a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence."

39. Such an application would be appropriate where a licence holder performs licensable activities, within the scope and in accordance with the terms and conditions of his licence, but nevertheless those activities impact adversely on local residents, by causing unanticipated disorder or a public nuisance. It might be prompted by, e.g., a change in the manner in which the business is conducted (albeit within the scope and conditions of the licence), or merely busier trade.

The Facts

40. Canal Street is an area of restaurants and bars, as well as residential accommodation, in a central part of Manchester known as the Village.
41. Since September 2005, TGC Bars have operated a bar in premises at 28-30 Canal Street, under a premises licence granted by the Council. Those premises front onto Canal Street, and back onto Richmond Street, a parallel street. They comprise essentially two licensed floors: the ground floor including a mid-level mezzanine floor, and a basement.
42. The licence authorises three activities: the retail sale of alcohol, the provision of identified regulated entertainment and the provision of late night refreshment. The licence as initially granted was subject to 94 conditions, including the following in Annex 2:

Condition 31: "The licensed premises shall be provided with an adequate number of exits clearly indicated and so placed and maintained so as to readily afford the audience ample means of safe egress."

Condition 33: "Emergency doors must not be fitted with any securing device other than an approved type of panic bolt fitting...."

Condition 34: "Doors not in normal use, which are regarded as emergency exits, should be fitted with an alarm which is activated when they are opened. The alarm should be inaudible in public areas and should sound in an area permanently manned by management/staff whilst the premises are occupied...."

Condition 60: "Alterations or additions, either permanent or temporary, to the structure, lighting, heating or other installations or to the approved seating gangways or any other arrangements in the premises must not be made except with the prior approval of the City Council."

Condition 71: "Occupancy: Basement 240 persons, Mid Level 120 persons, Ground Level 260 persons, Total 620 persons."

Condition 72: "The windows and external doors on the Canal Street façade to be kept closed after 23.00 hours except for access and egress."

43. The licence had a plan of each floor attached to it, showing the matters required by regulation 23(3), and more. It showed five sets of external doors on the Canal Street façade ground floor, two (each with a lobby inside) marked, "Entrance"; and one, at the south east end of the building, giving access to the basement only via a doorway onto Canal Street ("the V2 doorway") and a set of stairs. The V2 doorway is adjacent to the door to the residential apartments on the upper floors of 10 Canal Street (the first floor, ground floor and basement of those premises being another licensed bar called "Crunch", owned and managed at the relevant time and now by the Appellant, which has an entrance just a few yards further up Canal Street). At the bottom of those stairs from the V2 doorway, the basement plan attached to the licence for the Via premises shows double doors marked "FD" into a bar area with dance floor.
44. The extent to which the V2 doorway had been used prior to the application to vary is contentious. However, it was common ground before the Deputy District Judge that it had not been used as the principal entrance and exit to the premises, and use of the doorway had not been required to cease as a result of being a breach of licence. For the purposes of the preliminary ruling, the parties agreed that it was not necessary for the judge to make a finding about the extent of the use that had been made of that doorway (Case Stated, paragraph 13) – and he did not make any such finding.
45. On those licence plans, there are a number of doors shown from the rear of the building onto Richmond Street; notably one set, again to the east end of the building, giving access to a second set of stairs down to the basement ("the Richmond Street doorway"). The external doors to the Richmond Street doorway are again marked on the plan, "FD". The evidence was, and the Deputy District Judge found (Case Stated, paragraph 10), that at all material times that doorway was in fact only used by staff and as an emergency escape.
46. In addition, the plans showed that there were several sets of internal stairs joining the ground floor and basement.
47. On 9 August 2011, TGC Bars made an application to the Council, under section 34, to vary their licence. The proposed variation had a number of elements, comprising in effect as follows (Case Stated, paragraph 14):

- " ...
- o An extension of hours [for both sale of alcohol and provision of entertainment by one hour per day, ending one hour later each day].
 - o Internal works to the ground floor premises.
 - o The creation of two separate venues (Via – ground floor; Club Polari – basement), by the construction of internal walls, which had the effect of providing new toilet accommodation for Via at basement level. Club Polari would have its own completely separate toilet accommodation.
 - o The provision of a wholly new and independent means of access to Club Polari for members of the public/club patrons by way of a public entrance doorway on Richmond Street (necessary because the previously utilised access from Via would no longer be possible with the new layout)."

The "previously utilised access from Via" is, of course, not a reference to the V2 doorway and stairs; but to the internal access from the ground floor.

48. The application was based upon a completed prescribed form, schedule of alterations and plans. The plans showed considerable changes to the internal walls and general layout of each floor (which made a plan a vital component of the application: see paragraph 34 above); but no change to the structure or layout of either the staircase at the north east corner of the building to the Richmond Street doorway (where the legend "FD" still appeared on the external doors), or the staircase at the south east corner onto Canal Street via the V2 doorway (where the doors at the foot of the stairs were also still marked "FD"). However, the schedule made clear that the alterations would include:

"... a full refurbishment of the rear staircase (currently used for staff and as an emergency escape) to provide improved and independent public access to this basement area from the rear of the building."

49. The application was duly advertised, and a number of representations were received by the Council in respect of the proposed extension of hours and the public access from Richmond Street. None objected to the division of the premises into two separate public venues, *per se*.
50. The Council's Environmental Health Department opposed both the proposed increase in hours and the proposed public use of the Richmond Street doorway on grounds of public nuisance. In respect of the latter, they said that that door was likely to lead to issues of public nuisance because Richmond Street is very narrow and bordered by high sided buildings, so any noise created by customers using that side of the building would likely be exaggerated by the corridor effect of the buildings which could lead to noise nuisance for the occupiers of the apartments that back onto Richmond Street. Those apartments include some in 10 Canal Street. No representations were received from any other responsible authority.
51. With regard to interested parties, the occupants of Flat 8, 10 Canal Street (Mr & Mrs Seymour) objected to the public use of the Richmond Street doorway on similar grounds, asking for permission for that new public entrance to be refused. Mr Taylor (who lives in Flat 1), the occupant of Flat 3 (Mr Welford) and another local resident living in a different block, all objected to the extension of hours. All of those representations were received by the Council before the close of statutory period for representations, on 7 September 2011.
52. On 12 September, solicitors for TCG Bars responded to those representations by writing to the Council as follows:

"The application is made up of three parts --

1. To carry out some internal alterations.
2. To create a new entrance on Richmond Street.
3. To extend the operation hours at the premises for alcohol and entertainment.

We have received representations from some residents and from the Environmental Health [Department] which our client has considered fully.

We are instructed, therefore, to amend the application in the light of the representations as follows.

1. We withdraw the part of the application to extend the hours for licensable activities which will remain as existing.
2. We attach amended layout plans which remove the application for the new entrance on Richmond Street.

The application to carry out other internal works which have not received any representation remains as per the amended plans.

We have copied in all authorities and the residents with email addresses and would ask them to confirm as soon as possible that the representations are now withdrawn as they have no relevance to the application so that the application can be granted by delegated powers."

It is to be noted that the letter purported to "amend" the application to vary.

53. The "amended plans", dated 12 September 2011, were headed "Revision A – Main entrance to basement bar now positioned to front elevation". They showed most of the external doors at the back of the building (including the Richmond Street doorway) marked, "Escape"; and the V2 doorway

marked, "Entrance to Basement Bar". However, there were no differences in the structure or layout from the plan used for the original application. The doors in the basement at the foot of the V2 doorway stairs, and the external doors of the Richmond Street doorway, were both still marked "FD".

54. The new proposal came to Mr Taylor's immediate notice, and he discussed it with three other residents of 10 Canal Street on the evening of 12 September, before writing to TGC Bars' solicitors, with a copy to the Council, the following day:

"Looking at your revised plans. On your ground floor plan there is a new second entrance planned for named "Entrance to Basement Bar". This entrance is new on this plan which is currently a fire escape for the premises. This new proposed Entrance is directly next to the entrance door way to the 10 Canal Street flats. This is of great concern as Via already creates more than an acceptable amount of noise and I believe that this entrance will create further noise and disturbance.

My objection has been based around noise...

... I believe most if not all premises in the area now include operating conditions in their licences to assist with the management of noise and disturbance including having sound limiters, closing doors and windows when regulated entertainments are taking place, and the use and training of dispersal aids and policies with staff.

If the applicant can provide some conditions in their licence for this, I believe I would be happy to agree the application."

55. Mrs Seymour, having first withdrawn her representation, reinstated it on 7 October, having been contacted by Mr Taylor who pointed out the intention to use the V2 doorway as the sole means of public access to the basement. Mr Welford, the same day (7 October) also objected to the revision, on that same basis. The Environmental Health Department appears to have withdrawn its objection on the basis that the hours were not to be extended and Richmond Street would not be used for public access.
56. The hearing before the Council's Licensing Sub-Committee was held that day, 7 October 2011. Mr Taylor was the only interested party to attend, and he pressed for a number of conditions. In the event, the Sub-Committee granted the application, but included two further conditions on the licence, as follows:

1. Exit from the premises onto Richmond Street is to be used as a fire exit only.
2. A barrier to ensure queue forms in front of Via is to be operational from 20.00 daily. The barriers to be removed at the same time as the barriers which define the smoking area.

The second additional condition reflects paragraph CD1 of the Council's Statement of Licensing Policy, which requires the effective management of queues to prevent any nuisance or disorderly behaviour: "... [L]icensees are expected to demonstrate how they will manage queues to the premises."

57. That decision was formally notified to Mr Taylor on 20 October 2011. On 24 October, he lodged an appeal with the Magistrates' Court, under section 181 of the 2003 Act. It was in the context of that appeal that the Deputy District Judge made his ruling in respect of the preliminary issue, which has in turn been appealed to this court.
58. To complete the chronology, without prejudice to this appeal, the Council, TGC Bars and the interested parties who had made representations (notably, Mr Taylor) have now agreed that further conditions should be imposed; the Council have imposed those further conditions; and the premises have been operating as two discrete bar venues for some months on the basis of those conditions. No application for any review of the licence has been made under section 51, and there is no evidence of any difficulties in practice occurring as a result of the business operating under the licence with those conditions. Mr Cooper's apparently unchallenged evidence (paragraph 3 of the undated and unsigned statement used before the Deputy District Judge) was to the effect that, since the opening of the discrete basement bar in November 2011, there have been no issues with the Council's Environmental Health Department, the premises have been trading well, and he has maintained good relations with

neighbours including those who live in 10 Canal Street.

The Parties' Contentions

59. Mr Phillips for the Appellant Mr Taylor stressed that the 2003 Act, Regulations and Guidance do not on their face allow for any change to an application to vary a licence. Whilst he was prepared to accept that *de minimis* changes to an application might be made, he submitted that no amendment could be made that might reasonably be considered capable of having an adverse impact on the promotion of the licensing objectives. Where such a change is contemplated, an applicant is bound to start again by resubmitting the application, with the consequent new obligations for advertisement and new rights for responsible authorities and interested parties to make representations. Such changes, he submitted, should not generally arise when an applicant has engaged in pre-application consultation with responsible authorities and interested parties, as encouraged by paragraph PN3 of the Council's Statement of Licensing Policy. However, to allow amendments greater than that after the application had been made and advertised would fundamentally undermine the regulatory scheme's provisions for representations; encourage the undesirable practice of applicants lodging applications in a form designed to attract a lesser degree of objection, with the intention of amending subsequently and without notice to those who might be detrimentally affected; and be "transparently at odds" with local residents' right to private life under Article 8 of the European Convention on Human Rights.
60. Applying those principles to this case, Mr Phillips submitted that the 12 September amendment, with its change of route for public access to the basement floor, was clearly at least capable of having an effect on the licensing objectives, notably the prevention of public nuisance. By advertising the initial proposal to create a discrete basement venue with a new means of access on Richmond Street and then, after the expiry of the time for making representations and without public notice, amending the location of that access to the V2 door onto Canal Street, responsible authorities and interested parties were effectively deprived of the opportunity to make representations in relation to potential effects the revised scheme might have upon the promotion of the licensed objectives. They would not necessarily have become aware of the new means of access at all; but, even if they did, they could not have become aware of them until, at the earliest, 12 September 2011, when the revision was put forward. By that date, they would have been debarred from making any representations against the revised scheme, as the time limit for representations is strictly construed and had expired.
61. In the circumstances of this case, the legislative scheme required responsible authorities and interested parties to be given an opportunity to make representations in respect of that new proposal. As they were denied that opportunity, the Sub-Committee acted unlawfully in proceeding on the basis of the amended application.
62. Miss Clover for the Council submitted that, under the premises licence, the licence holder had always been able lawfully to use the V2 doorway for public access to the premises. On 12 September 2011, TGC Bars abandoned their application for extended hours and the refurbishment of the Richmond Street stairway and entrance to enable them to be used for public access to the basement. The application was thereafter restricted to the internal structural and layout changes, which did not include any changes to the structure of the V2 doorway and stairs, nor any changes to which any relevant representations had been made. The mere increase in intensity of use of that doorway for public access that was likely as a result of the proposed change did not require any formal variation to the licence.
63. The Sub-Committee was therefore able, and indeed right, to deal with the application solely on the basis of that limited remaining proposed variation in structure and layout. If, in the view of interested parties such as local residents, the change of business operation in fact impacted upon the licensing objectives, then the appropriate remedy lay in an application for review under section 51 (see paragraphs 38-39 above).

Discussion

64. This appeal concerns the principles and structure of the licensing scheme implemented by the 2003 Act.
65. As I have described (paragraph 12 above), regulation of the retail sale of alcohol and prescribed entertainment is effected by imposing a criminal sanction upon those who carry out such activities other than in accordance with a licence granted by the relevant local authority. This means that a licence holder is entitled to sell alcohol and provide entertainment in any manner he wishes, so long as

the licence does not prohibit that manner of provision in some way, because (e.g.) it falls entirely outside the scope of the licence or it breaches one of the licence conditions.

66. If those activities are carried out lawfully, within the scope of the premises licence and in accordance with the licence conditions, but the manner in which they are carried out adversely impacts on one of the licensing objectives (e.g. by in fact causing disorder or a public nuisance), then the remedy of any person affected (whether a responsible authority or an interested party) is to apply for a review of the licence under section 51, to which the licence holder, and responsible authorities and other interested parties can respond.
67. Where the holder of a licence intends to carry out activities in a way that he considers may not be in accordance with his licence, then he is able to apply for a variation of the licence to extend the scope of the licence to cover that manner of carrying out those activities or remove a condition in respect of which he considers he would be in breach, using one of the three procedures set out above. If he does not, and the activities do fall outside the scope of the licence or breach the licence conditions, he is liable to prosecution. So the risk of not applying for a variation is his. That is no doubt why the terms of section 34(1) do not require an application for variation to be made in any circumstances, those terms being merely permissive: "The holder of a premises licence may apply to the relevant licensing authority for variation of the licence" (emphasis added).
68. On an application to vary, the Premises Regulations provide detailed rules for both advertisement, and as to how, when and by whom representations can be made in respect of the application. Representations can only be made on the public interest grounds set out in section 4, and must be made within 28 days; although representations can be amplified once made, once the 28 day period has expired the authority has no power to receive representations from those who have not previously submitted any. If no representations at all are made on those grounds in that 28 day period, then the licence holder is entitled to his variation as of right. If representations are made on those grounds, then that triggers a process of decision making by the authority. The very purpose of the representations is, initially, to be that trigger.
69. Once the decision making process is triggered, it is driven by the terms of the scheme, the discretion given to the authority by the scheme, and the requirement that the authority acts fairly.
70. The scheme provides no mechanism for amending an application once made, and neither the Act nor the regulations, nor the Secretary of State's Guidance nor the Council's own Statement of Licensing Policy, makes any mention of the possibility of amendment. Clearly, a power to amend that would defeat or undermine the object of the procedural provisions relating to advertisement and right of responsible authorities and interested parties to make representations could not conceivably be implied; and neither Mr Phillips nor Miss Clover suggested otherwise.
71. However, the scheme has no express power enabling an applicant to amend an application to vary; and, in my judgment, properly construed, the regulatory scheme does not as such allow or envisage any amendment to an application to vary once it has been made.
72. It does not need to do so, because of the nature of the decision making process with which the authority is involved. As stressed in the illuminative judgment of Toulson LJ in Hope and Glory Public House (see paragraph 9 above), in respect of licensing, a licensing authority exercises an administrative function given to it by Parliament. Whilst the authority must no doubt take into account the rights of those people who live and work in the vicinity, those interested parties can only make representations as to the "likely effect of grant of the application on the promotion of the licensing objectives", i.e. on the basis that the public interest will be adversely affected. It is the potential impact upon that public interest, and that alone, which triggers any decision making process at all. In its absence, the licence holder has a right to the variation it seeks.
73. Once triggered, it requires the making of an evaluative judgment, involving (as Toulson LJ said in Hope and Glory Public House) the weighing of a variety of competing public policy considerations, such as the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, and including the impact generally on the lives of those who live and work in the vicinity. It inherently involves an evaluation of what is to be regarded as reasonably acceptable in the particular location, and of what is necessary and proportionate to the promotion of the statutory licensing objectives in terms of scope of the licence and conditions in a local context.

74. The scheme is based on the premise that the relevant local authority is uniquely equipped and well-placed to make such judgments. In such areas of quintessential policy, the State generally has a wide margin of appreciation, or, in the more domestic terms used by the Divisional Court in Meade v Brighton Corporation [1968] 67 LGR 289 (a case concerning a gaming machine permit under the Betting, Gaming and Lotteries Act 1963): "The discretion in the local authority is about as wide as it could be". The court will be cautious before interfering with the exercise of such a discretion.
75. However, wide as a licensing authority's discretion might be in general, it is limited by the specific terms of the scheme: in the context of premises licence applications under the 2003 Act – whether for new licences under section 17, or for variations under section 34, or for review under section 51 – a licensing authority does not simply have a open discretion, even when its decision making function is brought into play.
76. The principle restrictions on an authority's discretion are, for the purposes of this appeal, two-fold.
77. First, an application to vary never triggers a general review of the licence: the scope of the review of the licence is limited. "Relevant representations", which trigger the review, must be (i) confined to the subject matter of the variation (paragraph 9.4 of the section 182 Guidance), and (ii) "about the likely effect of the grant of the application on the promotion of the licensing objectives". That focus reflects the fact that, where those representations are made, they trigger an enquiry by the authority into the effect the proposed variation may have upon the promotion of the licensing objectives (and, to that extent, I respectfully agree with the authors of Alcohol and Entertainment Licensing Law by Manchester, Poppleston & Allen (2nd Edition) (2008), at paragraph 6.9.4, to that effect). An application for a new licence or for a review is similarly limited, although the precise statutory restrictions are different, tailored to the nature of the particular application.
78. Second, in the light of the conclusions of that enquiry, the authority must determine the application to vary. However, the scheme again does not give the authority an open discretion to do whatever it likes. Indeed, the provisions are prescriptive. Section 32(5) requires the authority to consider whether, for the promotion of the licensing objectives, it is necessary to reject the application (in whole or in part) and/or to modify the conditions of the licence to accommodate the variation in the context of the licence as a whole. There is a discretion here, insofar as the authority only has to act if it considers such rejection or modification is necessary: but, if and insofar as it does consider that, then it has both a power and an obligation to reject the application or modify the licence conditions accordingly. The authority can do no more, and no less. Again, an application for a new licence or for a review has similar restrictions on the authority's powers.
79. These provisions therefore effectively define and limit the extent of the authority's powers as to how a licensing authority may respond an application to vary a licence. Its field of potential action is limited by the scope of the extant licence and the application to vary that licence; and it is limited to rejecting the application to vary (in whole or in part) and/or to modifying the conditions of the licence to accommodate the variation in the context of the licence as a whole.
80. It is here that an applicant's changing wishes or intentions may come into play. Given the power of a licensing authority to reject part of an application for variation or modify the licence conditions, it is open to an applicant (e.g. in the face of relevant representations received) to indicate to both licensing authority and responsible authorities/interested parties who have made relevant representations that (i) he does not wish to pursue part of an application and/or (ii) he is willing to agree to a modification to the licence conditions to cater for the concerns expressed.
81. Whilst that may be expressed, as in this case, as an "amendment" to the application to vary, in my view it does not amount to a formal amendment to his application; but the licensing authority is bound to take those views of the licensee into account in exercising its discretion as to appropriate steps it might take in deciding the application in its original form. An authority would not usually consider it necessary to consider further any part of the application which the applicant no longer wishes to pursue – although, on particular facts, it may do so if, for example, the part abandoned cannot be properly be severed from other aspects of the licence. The authority would also wish to consider, with the responsible authorities/interested parties, whether the conditions to which the applicant is prepared to submit address the concerns raised in their relevant representations as to the potential impact of the proposed variation on the promotion of the licensed objectives.
82. Given the administrative nature of the authority's function, it is perfectly appropriate for the authority thus to liaise with the applicant licensee and the responsible authorities/interested parties to see

whether a compromise can be reached. Where, after relevant representations are lodged, discussions between the licensing authority, the applicant and responsible authorities/interested parties who have made relevant representations lead to an agreement within the scope of the extant licence and original application to vary as to the parts of the application to be granted and the conditions upon which that grant will be made, then it is open to the authority to make a grant on those conditions; so long as it considers that the rejection of the parts agreed to be rejected and modification of the conditions agreed to be modified are necessary for the promotion of the licensing objectives. In those circumstances, the responsible authorities/interested parties might withdraw their representations (regulation 10 of the Hearing Regulations), or the parties may agree that a hearing is unnecessary and the authority may dispense with a hearing if it agrees that it is unnecessary (section 35(3)(a), and regulation 9 of the Hearing Regulations)

83. For the reasons already explored, given the decision making power granted to it by Parliament, the administrative nature of that power and the unique position an authority is in to make the relevant judgments, subject to any restrictions expressly imposed by the terms of the statutory scheme itself, the discretion of a licensing authority is necessarily wide, and the exercise of such a discretion with which this court should be cautious of interfering. Whilst the pre-hearing procedure is detailed and prescriptive, and does not have the equivalent of regulation 21 of the Hearing Regulations (which expressly gives the authority power over its own procedure), that discretion applies to the procedure the licensing committee adopts pre-hearing, subject to the procedure adopted (i) complying with the procedural requirements of the scheme, and (ii) being "fair" and directed to promoting the licensing objectives in section 4. That was illustrated in Corporation of the Hall of Arts and Sciences, in which, in addition to the mandated advertisement of the application to vary, the authority had a practice of notifying directly businesses and residents in the immediate vicinity of the relevant premises. "Fair" here has to be seen in the context that the authority is performing an administrative function: it is not acting in a judicial or quasi-judicial capacity (see Hope and Glory Public House at [41] per Toulson LJ). If the licensing committee stray outside that wide discretion, and adopt a procedure which is irrational or otherwise unlawful, then the resulting decision may be open to challenge by way of appeal or judicial review (see Hope and Glory Public House at [51]-[52] per Toulson LJ; and Corporation of the Hall of Arts and Sciences at [39] per Stanley Burnton LJ).
84. In conclusion, it is to that extent, but only to that extent, that an applicant may notify "amendments" to the parts of the application he wishes to pursue, and the conditions he is prepared to accept to enable the variation to be granted. However, the licensing authority in the form of the licensing committee or sub-committee must eventually itself come to a judgment as to whether the promotion of the licensing objectives requires the rejection of the whole or part of the original application as made, and, insofar as it does not, whether it requires any modification to the licence conditions. In making that judgment, it cannot however extend the scope of the licence.
85. If the variation is granted in terms that are unacceptable to an interested party, then there are a number of routes of challenge. First, of course, as in this case, an appeal can be made to the Magistrates Court. Second, if the procedure adopted by the authority is irrational or otherwise unlawful, then the resulting decision would be open to challenge by way of judicial review (see paragraph 83 above). Third, if the variation results in unexpected adverse effects on the licensing objectives, then an interested party can seek a review of the licence under section 51.
86. Let me deal finally with two specific submissions made by Mr Phillips.
87. First, he submitted that, on an application to vary, no change to the licence could be made that might reasonably be considered capable of having an adverse impact on the promotion of the licensing objectives, unless that change was made clear in the initial application as advertised; and, where such a change to an application to vary is contemplated, an applicant is bound to start again by resubmitting the application, with the consequent new obligations for advertisement and new rights for responsible authorities and interested parties to make representations.
88. I do not agree with that proposition – or, at least, the full extent of it – which, with respect, does not seem to me to be in line with the nature of the scheme when looked at as a whole.
89. The proposition might have more force if the function of the decision maker were judicial, rather than administrative. However, relevant representations trigger an administrative investigation by the licensing authority into the effect the proposed changes will make to the promotion of the licensing objectives: that decision making process having been triggered, it is then for the authority to weigh the various strands of public interest and determine whether the promotion of those objectives requires the

rejection of any part of the application or modification of the licence conditions.

90. It is true that the investigation is restricted to the matters raised in the representations, but the important point is that the action the authority can take is restricted by the scheme to rejecting the application in whole or part, or modifying the licence conditions.
91. In respect of the former, insofar as the authority rejects the application to vary, that will have the effect of leaving the licence, to that extent, unaltered: the authority cannot extend the scope of the licence beyond that of the extant licence and the variation proposed.
92. With regard to modification of the licence conditions, the statutory scheme gives the authority full scope to add, subtract or vary any conditions to accommodate the variation in the context of the licence as a whole. The scheme requires the authority to modify the conditions if and to the extent that it considers modifications necessary to promote the licensing objectives. "Promoting the licensing objectives", as I have described, requires the balancing of various strands of public interest; and, in performing that balance, it is possible, of not inevitable, that one of the objectives may be demoted in order to benefit another. Where that is so, the scheme simply does not require further consultation of local residents and other interested parties in the form of re-advertisement with a fresh opportunity to make new relevant representations. It does not do so because:
- i) The authority is already charged with the task of balancing the strands of public interest involved, on the basis of such evidence as it has collected. In many cases, it will consider that it is in a position to make that decision without formally consulting interested parties and local residents again. If it is not – e.g. if it considers that the procedure will be unfair to local residents without such further consultation – then it is open to the authority to require the applicant to start again with a fresh application. However, absent a proposed change extending the scope of the licence, that would be an exceptional case.
- ii) If the authority were required to start the process over again, simply because the exercise of its statutory powers might adversely affect one strand of the public interest involved, that would seriously compromise the dialogue between the authority, applicant and responsible authorities/interested parties who have made representations, which is encouraged as an inherent part of the scheme.
93. Responsible authorities and interested parties can take considerable comfort from the fact that the authority cannot extend the scope of the licence beyond that of the extant licence and variation proposed. Furthermore, where such authorities and parties have made relevant representations, they are able to play a full part in both the pre-hearing dialogue (designed to come to a result that is satisfactory to the applicant and responsible authorities/interested parties) and the hearing itself. If they are dissatisfied with the result of the hearing in practice, they are able to appeal or challenge the result by way of judicial review or seek a review of the licence. If the manner in which the licensed business is operated causes (e.g.) a private nuisance, then they can bring a private law claim. But, in licensing terms, their rights and interests are not paramount: they are just one factor which the authority must take into account, when determining an application to vary. For the reasons I have given, in exercising a licensing function, the focus is on the public interest.
94. For those reasons, I do not accept Mr Phillips' proposition.
95. Nor do I find Mr Phillips' reliance on Article 8 effective. Article 8 concerns an individual's right to a private life. For the reasons I have just given, there are considerable safeguards for that right in the scheme, and in the private law. There is no arguable breach of Article 8 simply because the scheme does not provide for re-advertisement of any proposed change of licence conditions which might arguably affect either the licensing objectives or the private life of a specific individual. Far from being "transparently at odds" with local residents' right to private life under Article 8, I do not consider that Article 8 has any role to play in the issue in this appeal.
96. It seems to me that the principles that I have outlined are not only clear from the terms of the regulatory scheme, but are also practical in their application. Whilst I have been involved in an exercise in the proper construction of the terms of the statutory scheme, that comes as some comfort – particularly as it must have been Parliament's intention to impose a regulatory scheme that is workable. On the evidence before me, they also appear to be the principles which, in practice, licensing authorities have in substance generally applied since the advent of the new scheme in 2005. That may explain why the issue in this appeal has not until now ever come before the courts.

Application of the Principles to this Appeal

97. I now turn to apply those principles to the appeal before me.
98. The Appellant's complaint is that the initial application to vary the licence did not indicate that the V2 doorway would be used as the only means of public access to and egress from the new self-contained basement bar. In that application, the proposal was to refurbish the Richmond Street doorway and stairway to or from the basement, and use that to get the public to and from the basement. That change to the application was not the subject of advertisement, and consequently the Appellant and other local residents were denied the opportunity to make representations in respect of the use of the V2 doorway for that purpose. That amendment, it was submitted, required the licence holder applicant to start the variation process again -- at least so far as advertisement and period for representations are concerned. It was that failure which rendered the decision of the authority unlawful.
99. For the reasons I have given above, the applicant could not formally amend his application, once it had been submitted; but the Council, in determining whether it was appropriate to reject the whole or part of the application, or modify the licence conditions to accommodate the proposal, was entitled to take into account the applicant's changed wishes and intentions. In the face of opposition to both the extension of hours and the refurbishment of the Richmond Street doorway and stairway to enable public access to the basement bar by that route, the Council was entitled to conclude that they could and should properly reject those parts of the application.
100. The real issue, of course, is whether the Council was entitled to grant the variation, on the basis of the original application, with the V2 doorway being the sole public means of access to the newly-discrete basement bar, without requiring the applicant to submit a new application or at least requiring the new proposal to be re-advertised with a fresh period for responsible authorities and interested parties to lodge relevant representations.
101. As I have indicated, the extent to which the V2 doorway was in fact used for public access to the premises prior to the application to vary is controversial. As I understand it, there was some evidence that, for a short period, the V2 doorway had been used for public access to the basement; but the evidence suggests that the doorway was not used a great deal, and Mr Cooper (the premises licence's designated premises supervisor: see paragraph 19 above) appears to confirm that the V2 door was used as a fire door but not used as a (public) entrance, access to the basement being through the main doors of V1a and internal stairs (paragraph 2 of an unsigned and undated statement used at the hearing before the Deputy District Judge).
102. However, as the parties properly conceded before the Deputy District Judge, in respect of the application to vary, what mattered was not the use to which the V2 doorway had actually been put, but the use of it that was lawful under the original licence. In my judgment, the licence as issued in 2005 undoubtedly allowed the V2 doorway to be used for public access to the premises.
103. Mr Phillips conceded before me that the 2005 licence enabled that doorway to be used for public access to the basement, in the sense that the licence did not limit the use to which that entrance/exit could be put and, therefore, if that doorway were used for public access to the basement, a prosecution under section 136 for breach would fail. He submitted that it would fail merely because of the high burden of proof required in criminal proceedings; but, in my view, there was clearly no restriction on the use of that entrance/exit to the premises in the 2005 licence.
104. I accept that, by virtue of regulation 23(3)(b) and (c) (paragraph 21 above), a licence plan should identify the location of points of access to and egress from the premises on the one hand, and, if different, identify discretely the location of escape routes from the premises; but the marking "FD" in the internal doors at the foot of the V2 stairs cannot indicate that the route from the basement to the V2 doorway was merely an escape route and no more. Many internal doors are marked on the plans with "FD" and, whatever that means (and, of course, it might stand for "Fire Door": see also paragraph 2 of Mr Cooper's statement), it does not appear to identify mere escape routes. Even on the final plan, from the face of which it is clear that the applicant proposed to use the V2 doorway and stairs as the only means of public access to the basement, the doors at the foot of the stairway are marked "FD".
105. In the 2005 licence, in my judgment, there were no restrictions on the use of doorways between the premises and the streets, front and back, either in the conditions or on the face of the plans that form part of the licence. In those circumstances, any of the doorways (including the V2 doorway and the Richmond Street doorway) could be used for public access to and egress from the premises. If the means of access through a particular door caused an adverse impact on the licensing objectives, it would have been open to either a responsible authority or an interested party to have made an

application for review under section 51.

106. Mr Phillips relied upon the well-known passage from the judgment of Scott-Baker LJ in Crawley Borough Council v Stuart Attenborough [2006] EWHC 1278 (Admin) at [6]-[7], to the effect that licence conditions must be enforceable, and consequently sufficiently clear for that purpose; but, in my judgment, the scope of the licence and conditions in this case, so far as the allowable use of the V2 entrance is concerned, were manifestly clear.
107. The ability of the licence holder lawfully to use the V2 doorway means of public access to and egress from the basement was not lost, even if the licence holder did not in fact use that doorway in that manner either very much or at all or to the extent that he may use it in the future. Nor, in my view, was it lost merely by the separation of the ground floor and basement bars into distinct units. That separation, of course, had an inevitable effect on how the business would operate. The final proposal, which involved the V2 doorway being used as the sole entrance/exit for the new discrete basement bar, inevitably changed the degree of use of the V2 doorway by (i) reducing the number of people who might use the V2 entrance/exit, from 620 (the total capacity of the premises) to 240 (the capacity of the basement alone), whilst (ii) meaning that all of those who used the basement bar would have to use the V2 entrance/exit. That was a change of business which resulted in a change of intensity of use of the doorway – in effect, reducing the possible maximum usage of that doorway whilst substantially increasing the likely use – but that did not require a variation to the licence at all.
108. That applied equally to the door into Richmond Street at the north east corner of the premises: there were no restrictions on the use of that doorway either, and, under the 2005 licence, the licence holder could have used that doorway for public access – although it may have been likely that, had they done so, there would have been an application for review by the Environmental Health Department, if not the occupiers of residential accommodation that abutted Richmond Street. However:
- i) The application to vary included an application to change the structure and layout of the building to this extent, namely the "full refurbishment of the rear staircase... to provide improved and independent public access to this basement area from the rear of the building...". That appears, not from the plan – the plan was unaltered from that attached to the 2005 licence – but from the schedule of proposed alterations (see paragraph 48 above). Insofar as that involved a change to the structure or lay out of the premises, it may have required a variation to the licence (and/or approval under Condition 60 of the licence conditions: see paragraph 42 above).
- ii) In any event, it was open to the applicant, in the light of opposition to the use of the Richmond Street doorway, to indicate that it would not use that doorway for the public, but would use the V2 doorway. No structural or layout changes were requested (or, as I understand it, required) for use of the V2 stairs and doorway for the purposes of access to the basement. The only change marked on the final plans, and the only change intended, was substantially greater use of that route for public access to the premises than had previously occurred. However, that was not required to be put into the plan, and that use already fell within the boundaries of the extant licence. Increased use of a means of egress and ingress in fact, where that use is already lawful in terms of the licence, does not require a variation of the licence.
109. In those circumstances, TCG Bars did not need a variation in their licence to enable them lawfully to use the V2 doorway for public access to the basement. After 12 September 2011, the only variation proposed by TCG Bars related to the internal structure and layout of the premises, in respect of which no representations were made and of which neither Mr Taylor nor any other person making relevant representations made any complaint.
110. However, the TCG Bars nevertheless had to satisfy the Council that queues would be managed effectively (paragraph CD1 of the Council's Statement of Licensing Policy: see paragraph 56 above). It was open to the Council, in the light of the likely future use in fact of the V2 doorway as a public entrance/exit to modify the conditions of the licence, by imposing an additional condition relating to queuing. It can properly be assumed that that condition was imposed because the Council considered it necessary for the promotion of the licensing objectives relating to the prevention of disorder and public nuisance.
111. For those reasons, in my judgment, the Council's Licensing Sub-Committee was lawfully entitled (i) to proceed with the application to vary the licence; (ii) to take into account the applicant's express wish not to proceed with parts of the application, namely the extension of hours and refurbishment of the Richmond Street entrance and stairway for use by the public; (iii) to determine, in accordance with

those wishes, to reject those parts of the application as not being necessary for the promotion of the licensing objectives; (iv) to determine that, if the remaining parts of the application were to proceed, a new condition relating to queuing outside the V2 entrance was necessary for the promotion of those objectives; and (v) to grant the variation on that basis. That is the substance of the Sub-Committee's decision in this application.

Conclusion

112. For those reasons, in my judgment, the judge was correct in ruling that it was lawful for the Council to proceed to determine the application to vary in accordance with section 35 as it did, even though the applicant had notified the change of scheme whereby the public access to and egress from the basement would be by way of the V2 doorway and not the Richmond Street doorway. The result was not outwith the scope of the existing licence and application to vary as seen together.
113. I would consequently answer the question posed by the Deputy District Judge in the affirmative, and I dismiss this appeal accordingly.

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URL: <http://www.bailii.org/ew/cases/EWHC/Admin/2012/3467.html>

CITY OF WESTMINSTER

MEMORANDUM

TO Licensing Officer

REFERENCE 14/07378/LIPV

FROM EH Consultation Team

REFERENCE

BEING DEALT WITH BY Ian Watson (iwatson@westminster.gov.uk)

TELEPHONE 020 7641 3183

DATE 29th September 2014

The Licensing Act 2003

Co-operative Food, 18-22 Park Road, NW1

I refer to the application for variation of the Premises Licence.

This representation is based on the operating schedule submitted.

The applicant is seeking the following

1. To remove condition 26 that requires all deliveries and collections from the rear area of the property.
2. To amend condition 28 removing the requirement for refuse to be picked up from the rear area of the property.
3. To amend condition 30 with the following 'Delivery vehicles will not be permitted to leave their engines running whilst making deliveries'.

I wish to make the following representation

1. The removal and amendment of conditions (26, 28 and 30) regarding deliveries and collections from the rear area will have the likely effect of causing an increase in Public Nuisance within the area.

The applicant has not provided any supportive statement for the variation or how these amendments will minimise public nuisance within the area.

Should you wish to discuss the matter further please do not hesitate to contact me.

Ian Watson
Senior Practitioner Environmental Health (Licensing)

Eaton, Sam

From: Russell, Sandy
Sent: 08 September 2014 11:25
To: richard.arnot@wardhadaway.com
Cc: idoxlicensing
Subject: 14/07378/LIPV Co-op 18-22 Park Road, NW1

Follow Up Flag: Follow up
Flag Status: Completed

Dear Mr Arnot,

Police do not object to the above licence variation application.

Best Wishes,

Sandy Russell

PC Sandy Russell 4167CW
Westminster Police Licensing Team
4th Floor, 64 Victoria Street,
LONDON, SW1E 6QP
Tel: 0207 641 3179

Comments for Licensing Application 14/07378/LIPV

Application Summary

Application Number: 14/07378/LIPV

Address: 18-22 Park Road London NW1 4SH

Proposal: Premises Licence - Variation

Case Officer: Miss Samantha Eaton

Customer Details

Name:

Address:

Comment Details

Commenter Type: Local Group

Stance: Customer objects to the Licensing Application

Comment Reasons:

Comment:5:47 PM on 09 Sep 2014 The St Marylebone Society objects to the removal of the conditions attached to this licence. The conditions are entirely reasonable and their removal would have a negative impact on local residents, in the matter of noise, fumes, and obstruction, and also upon the streetscape, should refuse be allowed on the street.

WCC please note: the name and address details of the person commenting on behalf of the society should NOT be released, only the name of the Society and its email address.

Mrs G Jeffries
Flat 2, 24 Park Road
London NW1 4SH



Mr Steve Harrison
Licensing Service Premises Management
Westminster City Hall, 64 Victoria Street
London SW1E 6QP

Monday 22nd September 2014

Dear Mr Harrison

**Application for a Premises Licence - Variation Co-op Foods 18-22 Park Road
Application Reference: 14/07378/LIPV**

Conditions attached after a hearing by the licensing authority:

- 26. All deliveries and collections to take place at the rear of the property marked 'x' on the plan.*
- 28. All refuse to be collected inside the premises and to be picked up from the area marked 'x' on the plan.*
- 30. Delivery vehicles will not be permitted to leave their engines running whilst waiting to enter the delivery area.*

The new Licence Variation is seeking to remove conditions 26 and 30 entirely, and to amend condition 28 - removing mandatory use of the rear entrance to the property.

Condition 26: I object to this being changed as it will cause a Public Nuisance and issues of Public Safety.

Condition 28: Delivery and collection must be through the rear exit and not across a public pavement which is a Public Nuisance. Public Safety is at risk when deliveries and collections may be made at a time school children are also being dropped off or collected from school.

Condition 30 - Delivery lorries parked with their engines running cause nuisance and distress to people whose sleep had been disturbed in the early hours of the morning. Noise and fumes caused by these vehicles are both a health risk and a nuisance. The exhaust fumes are a public health and safety issue causing harm to children and adults alike.

I object to all the Licence Variations Co-op Foods 18-22 Park Road -Application Reference: 14/07378/LIPV on grounds of Public Nuisance related to noise and rubbish removal from Park Road. On grounds of Public Safety with the proposed deliveries and collections on a public footpath and the Health and Protection of Children should vehicles be allowed to leave their engines running before or during deliveries. Making deliveries on a red-route will cause a Public Nuisance and is a threat to Public Safety.

Yours sincerely,
Gabby Jeffries

A handwritten signature in black ink, appearing to read "Gabby Jeffries".

Eaton, Sam

From: Jane El-khazen [janekhazen@hotmail.com]
Sent: 22 September 2014 09:33
To: Premises Licensing
Subject: Application Reference: 14/07378/LIPV
Attachments: Coop Objection 1892014.pages.zip; ATT00001.htm; Coop Objection 1892014.pdf; ATT00002.htm

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr. Harrison,

I attach my letter of objection to any Variation in the Coop Application **Application Reference: 14/07378/LIPV**. Please acknowledge receipt of this letter.

Yours sincerely,
Jane El-Khazen

Mrs J El-Khazen
Flat 8
24 Park Road
London NW1 4SH

Friday 18th September 2014

Mr Steve Harrison
Licensing Service Premises Management
Westminster City Hall
64 Victoria Street
London SW1E 6QP

Dear Mr Harrison

Application for a Premises Licence - Variation Co-op Foods 18-22 Park Road
Application Reference: 14/07378/LIPV

Conditions attached after a hearing by the licensing authority:

26. All deliveries and collections to take place at the rear of the property marked 'x' on the plan.

28. All refuse to be collected inside the premises and to be picked up from the area marked 'x' on the plan.

30. Delivery vehicles will not be permitted to leave their engines running whilst waiting to enter the delivery area.

The new Licence Variation is seeking to remove conditions 26 and 30 entirely, and to amend condition 28 - removing mandatory use of the rear entrance to the property.

Permission was granted to the Co-op Food group to sell alcohol from the proposed retail outlet in Park Road following the Licensing Sub-Committee meeting on the 3rd of July. This permission came with 32 conditions designed to protect both residents and the general public from the effects of crime and disorder through the misuse of alcohol and to prevent a general public nuisance. Some specific 'noise' related items were included at the residents request. As a resident I was unhappy that the Licence had been granted but was happy there were some safeguards in place.

Condition 26: As part of the submission at the 3rd July meeting it was minuted that Co-op Foods said they 'would be making all their deliveries to the rear of the property and the store would be purpose built to accept deliveries'. This then became a condition of the Licence that all deliveries and collections were to be to the rear of the property. Residents were led to believe that with deliveries being made to the rear of the property there would be less public nuisance caused by noise from lorries delivering and parking on a public red route road.

Condition 28: Park Road is a relatively clean road of residential properties. To have refuse being collected from a public pavement area when there is the option for refuse to be

collected from the private delivery area of the premises is unacceptable. Other supermarkets I have observed, often wheel their bins of refuse outside the premises whilst waiting for their lorries to collect, causing an unsightly mess for residents and visitors. This is also an issue of public safety for people having to walk past them. To allow deliveries and collections at the front when there is only one entrance to the premises for customers should not be allowed. This was a specific condition attached to the original Licence.

Condition 30 - Particular mention was made at the Licencing Meeting of delivery lorries parked with their engines running causing nuisance and distress to people whose sleep had been disturbed in the early hours of the morning. Regardless of the delivery destination the noise and fumes caused by these vehicles waiting for a parking place to become available in their chosen delivery areas are both a health risk and a nuisance. The exhaust fumes are a public health and safety issue causing harm to children and adults alike.

I am also concerned that this business gives the impression that it can disregard the local Council Conditions. The conditions were thoughtfully agreed at the meeting and the Licence issued. The Co-op were the ones who originally stated that all deliveries would be at the back. A lack of preparation on their part should not be paid for by the local residents having to compromise. The delivery area and access to it have not changed since 3rd July meeting.

On 13th August 2014, after the Licence had been granted, the Co-op found they were unable to comply with some of the conditions in the Licence designed to safeguard the residents. The Co-op Foods Group had lately identified a problem with the size of their delivery vehicles. Again this is a lack of preparation on behalf of the Co-op. What other major flaws have they overlooked in their planning? Surely access and delivery are something that should have been looked at before the Licence was applied for! I have been advised that Waitrose Supermarket have had to reduce the size of their vehicles delivering to their Marylebone High Street store because of the very tight corners giving access to their loading bay. The answer for Waitrose Supermarket was not to block the pavement with deliveries and rubbish collections but to adapt their operation to suit the site location. The Co-op Foods Group should also adapt to the proposed store location and use much smaller delivery vans suited to the location.

I heartily object to the Licence Variation Co-op Foods 18-22 Park Road -Application Reference: 14/07378/LIPV. I object on grounds of Prevention of Public Nuisance related to noise and rubbish removal from Park Road. On grounds of Public Safety with the proposed deliveries and collections on a public footpath using a shared access door to the shop, and the health and protection of Children (and Adults with respiratory conditions) should vehicles be allowed to leave their engines running before or during deliveries. Making deliveries on a red-route will cause a Public Nuisance and is a threat to Public Safety.

Yours sincerely,
Jane El-Khazen

Eaton, Sam

From: victor [vkhazen@hotmail.com]
Sent: 22 September 2014 09:41
To: Premises Licensing
Subject: FW: 14/07378/LIPV - 18-22 paek road
Attachments: Coop Victor 18_9_2014.pdf

Follow Up Flag: Follow up
Flag Status: Completed

From: victor [<mailto:vkhazen@hotmail.com>]
Sent: 22 September 2014 09:37
To: 'premiseslicensing@westminstere.gov.uk'
Subject: 14/07378/LIPV - 18-22 paek road

Dear Mr Harrison
Please find my letter of of objection to any variation to the coop licence in the attachment
Yours faithfully
Victor el Khazen
24 park road

Mr V F El-Khazen
Flat 9, 24 Park Road
London NW1 4SH

Friday 18th September 2014

Mr Steve Harrison
Licensing Service Premises Management
Westminster City Hall
64 Victoria Street, London SW1E 6QP

Dear Mr Harrison

**Application for a Premises Licence - Variation Co-op Foods 18-22 Park Road
Application Reference: 14/07378/LIPV**

The new Licence Variation is seeking to remove conditions 26 - All deliveries and collections to take place at the rear of the property marked 'x' on the plan, and 30 - Delivery vehicles will not be permitted to leave their engines running whilst waiting to enter the delivery area, and to amend condition 28 - removing mandatory use of the rear entrance to the property.

Condition 26: Deliveries being made to the rear of the property will cause less public nuisance than those made to the front of the building when lorries would be parking on a public red route road. This would cause Public Safety and a Public Nuisance to pedestrians and road users alike.

Condition 28: To allow the removal of this condition would cause a Public Nuisance to every resident and business on this part of Park Road and cause Safety issues for the Public.

Condition 30 - Regardless of the delivery destination the noise and fumes caused by vehicles with their engines running, waiting for a parking place to become available are both a health risk and a nuisance. The exhaust fumes are a public health and safety issue causing harm to children and adults alike.

The Co-op Foods Group had lately identified a problem with the size of their delivery vehicles. They will have to adapt their business to the local site.

I heartily object to the Licence Variation Co-op Foods 18-22 Park Road -Application Reference: 14/07378/LIPV. I object on grounds of Prevention of Public Nuisance related to noise and rubbish removal from Park Road. On grounds of Public Safety with the proposed deliveries and collections on a public footpath using a shared access door to the shop, and the health and protection of Children (and Adults with respiratory conditions) should vehicles be allowed to leave their engines running before or during deliveries. Making deliveries on a red-route will cause a Public Nuisance and is a threat to Public Safety.

Yours sincerely,
Victor El-Khazen

Eaton, Sam

From: zafar siddiqi [zssamaa@hotmail.com]
Sent: 23 September 2014 21:40
To: Premises Licensing
Subject: Application reference 14/07378/LIPV

Follow Up Flag: Follow up
Flag Status: Completed

From Flat 7,24 Park road in relation to Co-op Foods 18-22 Park Road
To allow delivery lorries from Park road will only add to the traffic and noise levels in our flat.
We object to this .
Thanks and best regards
Zafar Siddiqi

Comments for Licensing Application 14/07378/LIPV

Application Summary

Application Number: 14/07378/LIPV

Address: 18-22 Park Road London NW1 4SH

Proposal: Premises Licence - Variation

Case Officer: Miss Samantha Eaton

Customer Details

Name: Ms Roya Mahboubian

Address: 40 Clarence Terrace Regents Park London

Comment Details

Commenter Type: Neighbour

Stance: Customer made comments in support of the Licensing Application

Comment Reasons:

Comment: 8:05 PM on 29 Sep 2014 We were bewildered and horrified to learn of the decision by the Licensing Sub-Committee allowing goods delivery to this commercial property to be diverted from Park Road, an A41 secondary highway rd to Sussex Place South which is situated within a gated, residential and highly regulated conservation area of Regent's Park! The argument put forward for this decision was that some residents in a block of modern purpose built building situated in Park Road complained that the presence and noise from these vehicles disturbed their peace and it would be better for these lorries to deliver through a private residential road in Regent's Park!

This request was made without the approval or knowledge of residents of Clarence Terrace or Crown Estate.

Not only is Sussex Place South a private road, managed and monitored by the CEPC, but it is also the road that leads to the Clarence Terrace main underground parking area, provides access to the main door of a block of mews flats belonging to Clarence Terrace and is adjacent to historic Nash grade II listed block 5 of Clarence Terrace.

There are strict regulations imposed by CEPC: gates to Outer Circle shut at midnight and re-open at 7:00 am. There are strict regulation as to the times commercial vehicles can service business buildings (normally only between 8:00 am and 5:00 pm). There are plans to limit the flow of traffic within the Outer Circle and restrict noise and pollution.

The representation made by Mr Brown and number of residents from Park Road on 3 July was at best misplaced and I respectfully ask the licensing committee to review their decision and not allow deliveries for commercial properties residing in major highways surrounding the park such as Park Road to be diverted to peaceful and serene gated residential areas of the park.

37 Clarence Terrace
Regents Park
London NW1 4RD
Tel: 020 7723 1460



Premises Licensing 4th Floor
Westminster City Hall
64 Victoria Street
London SW1E 6QP

5th September 2014

Dear Sirs,

**Reference: Notice of Application to VARY Premises Licence in respect of deliveries at
Co-op, 18-22 Park Road, London NW1 4SH**

We refer to the above application by the Co-operative Group Food Ltd of 1 Angel Square, Manchester M60 0AG.

We would like to support this application to allow deliveries to the Co-op using the Westminster City designated Lorry Delivery Bays outside their premises on Park Road.

We were horrified to learn of the decision by the Licensing Sub-Committee No.4 of the 3 July 2014 for deliveries to be accessed via the Crown Estate Paving Commission's private road : Sussex Place South, using the Outer Circle in Regents Park .

It seems unimaginable that the WCC Sub-Committee should have made a decision which rejects a retail establishment from using an already designated delivery bay in Park Road. These were presumably designed by Westminster City Council for quick deliveries with minimum polluting effects and minimum vehicular traffic implications. The substitution to delivering to the rear will mean further traffic congestion and pollution by introducing more commercial traffic to Regents Park since these commercial vehicles would have to park on a double line area on the Outer Circle of Regents Park. Due to their inability to reverse through 90 degrees into a restricted private road and then another 90 degrees to get to the delivery area they would have to deliver by trolley down an uneven surface in Sussex Place South with attendant noise disturbance for residents of Clarence Terrace.

That decision by the Licensing Sub-Committee was made without considering:-

- The chained entrance of Sussex Place South has car parking spaces by permission of the Crown Estate Paving Commission and therefore it's extreme narrowness would make it impossible for lorries to reverse into it from the Outer Circle and then do a 90 degree turn into the narrow 4 metre wide entrance to what is basically a 'refuse collection area' for Clarence Terrace and Park Road premises.
- It was also made without reference to the owners of the private road Sussex Place South [The Crown Estate Paving Commission eg. CEPC]. The CEPC have their rules on commercial traffic in Regents Park which clearly the Licensing Committee did not appreciate or consider.
- Sussex Place South is right outside our main bedroom window, as it is with 4-5 other flats in Clarence Terrace.
- Furthermore it was implied in the Licensing Sub-Committee minutes of the 3 July that Mr Brown [Citizens Advice Bureau] was communicating the wishes of local residents. This was not so and he had no right falsely to represent all residents. He was representing just two named Park Road residents and none from Clarence Terrace.

We respectfully ask the Licensing Sub-Committee to review their decision and permit deliveries by the Co-op ONLY from the WCC designated lorry delivery bay on Park Road which is right in front of 18-22 Park Road.

Yours faithfully

Mr & Mrs Simon C. Davidson
simoncathlyn@hotmail.com

cc. Mr Max Jack, Director, Crown Estate Paving Commission, 12 Park Square East, Regents Park,
London NW1 4LH

Appendix C

Licence & Appeal History

Application	Details of Application	Date Determined	Decision
New Premises Licence 14/03669/LIPN	Application for a New Premises to permit the Sale of Alcohol off the premises.	03.07.2014	Granted by Licensing Sub Committee.
Variation Application 12/01735/LIPT	Application to vary the licence to delete conditions 26 and vary condition 28 and 30.		Pending Application

There is no appeal history for this premises.

APPENDIX D

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

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

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

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

Conditions on Existing Licence

Annex 1 – Mandatory conditions

1. No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3. Every supply of alcohol under this licence must be made or authorised by a person who hold a personal licence.
4.
 - (1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
 - (2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.
5.
 - (i) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
 - (ii) For the purposes of the condition set out in paragraph 5(i) above -
 - (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
 - (b) "permitted price" is the price found by applying the formula -
$$P = D + (D \times V)$$
Where -

- (i) P is the permitted price,
 - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence -
- (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- (e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.
- (iii) Where the permitted price given by Paragraph 5(ii)(b) above would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
- (iv) (1) Sub-paragraph 5(iv)(2) below applies where the permitted price given by Paragraph 5(ii)(b) above on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.
- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Annex 2 – Conditions consistent with the operating Schedule

None

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

6. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 28 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 28 day period.
7. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.

8. All tills shall automatically prompt staff to ask for age verification identification when presented with an alcohol sale.
9. The licence holder shall ensure that outside of the hours authorised for the sale of alcohol and whilst the premises are open to the public, all alcohol within the trading area is to be secured behind locked grills, locked screens or locked cabinet doors so as to prevent access to the alcohol by both customers and staff.
10. No super-strength beer, lagers, ciders or spirit mixtures of 5.5% ABV (alcohol by volume) or above shall be sold at the premises.
11. No single cans or bottles of beer or cider or spirit mixtures shall be sold at the premises.
12. No more than (15) % of the sales area shall be used at any one time for the sale, exposure for sale, or display of alcohol.
13. There shall be no self service of spirits on the premises, save for spirit mixtures less than 5.5% ABV.
14. Prominent signage indicating the permitted hours for the sale of alcohol shall be displayed so as to be visible before entering the premises, where alcohol is on public display, and at the point of sale.
15. Prior to any football match taking place at Wembley Stadium the premises licence holder shall ensure that;
 - (i) Alcohol sales in respect of cans of beer or cider are limited to no more than 4 cans per person for a minimum of four hours before the commencement of the relevant designated sporting event;
 - (ii) No sales of alcohol in bottles or glass containers are made in the period four hours before the commencement of the designated sporting event
 - (iii) On any day where there is a relevant designated sporting event taking place, the premises will not externally advertise as a result of a local store promotion the availability of beer or cider in such a way as to be likely to be the sole inducement to attract persons to the premises who are either attending the designated sporting event or in the vicinity of the premises as a result of the designated sporting event;
 - (iv) All members of staff working at the premises are informed of this condition prior to taking up employment;
 - (v) On the day of the relevant designated sporting event, upon the direction of a police officer of the rank of Inspector or above, using the grounds of the prevention of crime and disorder or public safety, the premises will immediately cease to sell alcohol until further directed by the police or until the relevant designated sporting event has finished.
16. There shall be "CCTV in Operation" signs prominently displayed at the premises.
17. An incident log (whether kept in a written or electronic form) shall be retained at the premises and made available to an authorised Officer of the Police or the Local Authority.
18. The premises shall operate a proof of age scheme, such as a Challenge 25, whereby the only forms of acceptable identification shall be either a photographic driving licence, a valid passport, military identification or any other recognised form of photographic identification incorporating the PASS logo, or any other form of identification from time to time approved by the secretary of the state.
19. The premises will be fitted with a burglar alarm system.

20. The premises will be fitted with a panic button system for staff to utilise in the case of an emergency.
21. The premises licence holder shall ensure that the appropriate fire safety, and health and safety regulations are applied at the premises.
22. A complaints procedure will be maintained, details of which will be made available in store and upon request.
23. A refusals register (whether kept and written or electronic form) will be maintained at the premises and will be made available for inspection upon request by an authorised Officer of the Police or the Local Authority.
24. All relevant staff will receive training in their responsibilities under the Licensing Act 2003 and Challenge 25 (or any similar scheme). Refresher training will be given twice a year and training records made available to the Police or an authorised officer of the Licensing Authority.
25. Tills will be installed at the premises which prompt staff to request age verification from customers who appear to be under the age of 25 (or any other age should Challenge 25 be replaced by a similar scheme).
26. All deliveries and collections to take place at the rear of the property marked 'x' on the plan.

(Proposed for Deletion)

27. All deliveries and collections to take place between 08:00 and 23:00 hours.
28. All refuse to be collected inside the premises and to be picked up from the area marked 'x' on the plan.

Proposed Amendment:

All refuse to be collected inside the premises.

29. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
30. Delivery vehicles will not be permitted to leave their engines running whilst waiting to enter the delivery area.

Proposed Amendment:

Delivery vehicles will not be permitted to leave their engines running whilst making deliveries.

31. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.



City of Westminster

18-22 Park Road, London, NW1 4SH



10 Meters

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APPENDIX E

Residential / Proposed Residential	139
Under Construction	0
Other Uses	29
Proportion Residential of all Uses	83%

Data Source: Uniform Database
Date: 07/10/2014

APPENDIX F





BARG

PARK ROAD

