

Supplementary Agenda

Edinboro Castle Variation

APP\PREMISES-VARY\134112

Pages 1 – Proposed Plans – Future Plans

Pages 2-15 – Structural Report relating to the garden

Pages 16 – 34 – Case Law

Pages 35 – 39 – Management Plan

Pages 40 – 42 – Legal challenge to the representations

Pages 41 – 43 – Poppleston Allen invitation to discuss plans with residents

Pages 44 – 61 - DA resident submissions.



Prepared by
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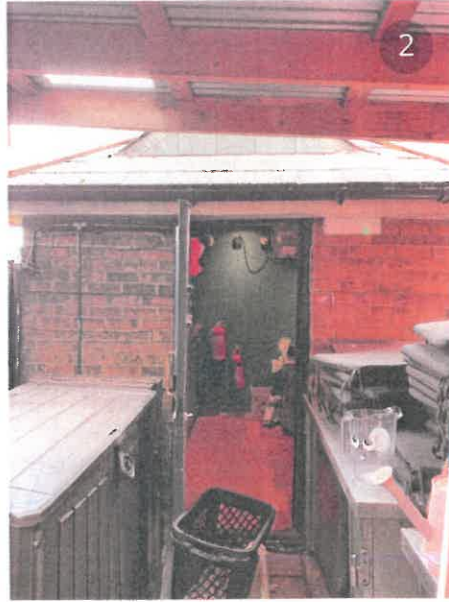
223410 - EDINBORO CASTLE, LONDON

Fortnightly Structural inspection of pub garden and external structures
Tuesday, 02 September 2025
Prepared For Mitchells & Butlers Plc

BBQ AREA



EXTERNAL BAR





EXTERNAL STORE ENCLOSURE





GARDEN SLAB





VERTICAL PLUMB LINE DIMENSIONS

1.

50mm top

29mm bottom

2.

51mm top

71mm bottom

3.

50mm top (including 10mm protrusion)

193m bottom

Approx 1400mm height between readings.

4.

Measurement point now obstructed by timber buttress walls.

5.

52mm top

228mm bottom

6.

Measurement point removed with pergolas

7.

Measurement point removed with pergolas

Note:

All dimensions taken from top of string line and at the bottom just above the plastic bead when weight is hanging just above ground level.





BIN STORE PIER







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England and Wales High Court (Administrative Court) Decisions

You are here: [BAILII](#) >> [Databases](#) >> [England and Wales High Court \(Administrative Court\) Decisions](#) >> Taylor v Manchester City Council TCG Bars Ltd [2012] EWHC 3467 (Admin) (07 December 2012)
URL: <http://www.bailii.org/ew/cases/EWHC/Admin/2012/3467.html>
Cite as: [2012] EWHC 3467 (Admin)

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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 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 an 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 to 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 severed from other aspects of the licence. The authority would also wish to consider, with the responsible authorities/interested parties, whether the conditions to which the applicant is prepared to submit address the concerns raised in their relevant representations as to the potential impact of the proposed variation on the promotion of the licensed objectives.
82. Given the administrative nature of the authority's function, it is perfectly appropriate for the authority thus to liaise with the applicant licensee and the responsible authorities/interested parties to see

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

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

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

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

Application of the Principles to this Appeal

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

application for review under section 51.

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

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

Conclusion

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

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

Edinboro Castle, 57 Mornington Terrace, London NW1 7RU

External Area Management Plan

The purpose of this plan is to manage guests who wish to eat and drink in the garden of the premises during peak trading times, in order to cause minimal disturbance or nuisance to neighbours and minimal impact upon the neighbourhood in relation to potential nuisance and anti-social behaviour. Regardless of trade levels, the garden will close by 10pm every day.

This plan is to be kept at the premises and any instances of noise or disturbance and actions taken are to be recorded in a log and retained for 3 months.

- Signage to be displayed at all entrance/exits to request that customers respect our neighbours and leave the premises quietly.
- On peak trading periods (i.e. weekend evenings or special events) regular checks will be made by staff/ door staff to ensure that noise levels within the external area are not likely to cause a nuisance to nearby residents and businesses.
- Signage to be placed on key tables in the garden, informing of the area's closing time.
- Clearing of the garden will begin at 9pm with team letting customers know we need to clear the garden by 10pm.
- At 9.30pm the team/door staff will start their usual process of clearing customers gently from the garden, to have the area clear by 10pm.
- From 9.45pm the garden exit will be manned by one of the team/door staff to ensure customers are moving away from the premises quietly and quickly.
- From 10pm a clearly marked smoking area will be signposted and roped inside the garden area to help reduce the amount of people outside the front of the business. No drinks will be allowed in the smoking area after 10pm. This area will be monitored by team/door staff.
- The pavement area outside the premises is to be swept at the end of each night and checked for any glassware/rubbish. Duty Manager to complete a final check for any litter/glassware outside.
- When external areas have been checked at the end of the night, and the last customers have left the external area, outside lights are to be turned off.
- Team are not permitted to use the garden once it is cleaned and closed down, other than for smoking or taking a brief break. Duty Manager to keep numbers of team to a minimum.
- External lighting of external areas shall be directed and maintained in working order so as not to cause a public nuisance to surrounding residential premises.

The lighting is on an automatic timer designed to turn off once staff have cleaned down, closed the business and left the premises.

Any problems enforcing any of the above should be logged by the Duty Management.

Noise Management and Dispersal Plan

This plan should be followed during any peak shifts (i.e. weekend evenings or key events) to ensure the smooth dispersal of guests towards, and at the end of trade.

The purpose of this dispersal plan is to move guests away from the premises and its immediate area in such a way as to cause minimal disturbance or nuisance to neighbours, and to make the minimal impact upon the neighbourhood in relation to potential nuisance, anti-social behaviour and crime. This plan is subject to review and will address problems and concerns as they are identified.

- The front door will be kept closed (except for access and egress) when any live or recorded music is being played.
- The front door will be continually manned by a door supervisor to ensure no customers are smoking or loitering in front of the premises.
- Upon bar closure, there will be increased movement and inspection through the bar and toilets by management and glass collectors to begin to encourage customers to move out of the premises in a quiet and orderly manner.
- Lighting levels inside the premises will be increased and all music turned off to encourage the dispersal of guests.
- Upon bar closure, Door Staff team will split internally and externally as follows:
 - **Internal Team** – Door supervisor to remain inside the premises and encourage customers to drink up and leave quietly, ensuring all areas cleared including toilets.
 - **External Team** - The primary role of the external team is to ensure the safety of customers as they leave the premises whilst encouraging them to keep noise to a minimum, be considerate of local residents and move away from the immediate area by directing them to public transport.
 - 1 door supervisor should remain on the front door to ensure guests are directed to leave the premises and head to local transport links, or to minimise noise whilst awaiting taxis.
 - 1 door supervisor to remain on the gates, ensuring customers leave safely and are considerate of our neighbours.
 - Door Supervisors on duty will wear high-visibility clothing.
 - A Duty Manager should remain outside/in the garden to ensure the door staff are correctly managing the dispersal of customers, whilst also encouraging customers to leave the immediate area in a considerate manner.
 - Door staff shall remain outside until customers are safely away from the immediate vicinity of the premises.

Edinboro Castle, 57 Mornington Terrace, London NW1 7RU PREM

Variation Application for garden works – APP/PREMISES-VARY/134112

Proposed Conditions

- 1) A CCTV system with recording equipment shall be installed and maintained at the premises. All recordings used in conjunction with CCTV shall:
 - a) Be of evidential quality in all lighting conditions;
 - b) Indicate the correct time and date;
 - c) Be retained for a period of 31 days.

Duty Managers (or sufficient staff) must be trained to use the system and recorded images must be available for inspection and downloading immediately upon reasonable request to officers of the Responsible Authorities as defined by the Licensing Act 2003. All images downloaded from the CCTV system must be provided in a format that can be viewed on readily available equipment without the need for specialist software.
- 2) The use of door staff at the premises shall be considered based upon risk assessment.
- 3) When employed, all door supervisors will correctly display their SIA licence so as to be visible when on duty at the premises.
- 4) All windows and external doors facing directly onto Mornington Terrace shall be kept closed after 22:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.
- 5) Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
- 6) A direct telephone number for the Duty Manager at the premises shall be publicly available at all times the premises is open. This telephone number and/or email is to be made available to residents and businesses in the vicinity.
- 7) A Challenge 21 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram, or government-approved digital ID.
- 8) An incident log shall be kept at the premises and made available on request to an authorised officer of the Council or the Police. It must be completed within 24 hours of the incident and will record the following:
 - a) all crimes reported to the venue
 - b) all ejections of patrons

- c) any complaints received concerning crime and disorder
- d) any incidents of disorder
- e) all seizures of drugs or offensive weapons
- f) any faults in the CCTV system, searching equipment or scanning equipment
- g) any visit by a relevant authority or emergency service.

External Garden Hours

- 9) The external garden and seating area shall not be used by customers after 22:00 hours, save for the purposes of access to and egress from the premises, and for smoking as detailed in Condition 13 below. After 22:00 hours the area shall be closed to use and physically restricted by means of barriers, roping, or other suitable demarcation.

Capacity of External Areas

- 10) The number of persons permitted in the external seating area will be governed by the capacity level stated in the Fire Risk Assessment.

External Area Management and Dispersal Plan

- 11) An External Area Management and Dispersal Plan shall be maintained and implemented. The plan shall include measures for supervision, noise control, customer behaviour, dispersal, and the management of smokers, and shall be made available to authorised officers upon request. A copy of the Plan shall be made readily available at the premises for inspection by a police officer and/or an authorised officer of Camden Council.

Solid Fuel Appliances

- 12) No solid fuel or wood burning appliances, including wood fired or similar equipment, shall be installed or operated in the external areas of the premises.

Smoking Area Supervision

- 13) After 22:00 hours, any customers wishing to smoke shall use a designated smoking area only for that purpose and shall not take drinks with them. The area shall be actively supervised by staff to ensure customers do not congregate, cause nuisance, or create excessive noise.

Amplified Sound

- 14) Except for sound from televisions, acoustic and background music, no amplified sound, including that from speakers, or other audio equipment, shall be played in any external area of the premises at any time. Any internal and external amplified sound shall be controlled so as not to cause nuisance to nearby residents.

Andy Grimsey

From: Andy Grimsey
Sent: 19 March 2026 11:40
To: [REDACTED]
Cc: Steven Dormer
Subject: Edinboro Castle - Variation Application: Legal Submissions regarding representations. APP\PREMISES-VARY/134112
Attachments: Taylor v. TCG Bars.pdf

Dear William

I am writing to make legal submissions in respect of this variation application under section 34 of the Licensing Act 2003.

The application seeks to vary the existing premises licence PREM-LIC/2631 by amending the internal and external layout plans. The internal changes have now been approved by way of a minor variation. So the only remaining outstanding matter to consider in relation to this application relates to the changes to the garden.

There are no proposed changes to the hours for licensable activities, nor is there any request to add new licensable activities.

The purpose of this email is to question the validity of some of the representations made in response to this variation application, given that it relates solely to changes to the physical layout of the garden following important underpinning works required to ensure the continued safety of the premises, upon advice from a structural engineer to stabilise the ground. This involved having to remove all fixtures of the existing garden, then drilling and placing 56 x 10m long poles in a grid format throughout the garden, with a concrete slab placed on top to provide a safe level garden space. This work was undertaken at significant cost to avoid potential collapse and had to be completed out of necessity rather than for gain.

A summary of the physical changes is provided at the foot of this email.

Law and Guidance upon the validity of objections

- S35(5) LA 2003 – In this section ‘relevant representations’ means representations which –
 - (a) are about the likely effect of the grant of the application on the promotion of the licensing objectives ... (the underlining is mine)
- Paragraphs 72 & 77 of the Taylor V Manchester City Council case (attached).
- Paragraphs 8.57 and 9.4 of the S182 Guidance both confirm that for a representation to be relevant then it must relate to the likely effect of the grant of the variation/licence on the promotion of at least one of the licensing objectives; representations must be confined to the subject matter of the variation.
- An application to vary a premises licence should not become a de facto “back door” Review of that licence. There is a separate statutory procedure for Reviews under section 51 of the Licensing Act 2003.

With the above in mind, I respectfully suggest that the representations of David Auger, Frances Parsons and the Delancey Street Residents’ Association should be disregarded.

David Auger.

In his representation dated 6 March 2026, Mr Auger does briefly refer to the impact of the layout changes on page 2, but this consists of only four bullet points and two short paragraphs. The remainder of his letter of 6 March 2026, together with the accompanying documentation, does not explicitly address the impact of any individual proposed layout changes to the external area.

Hi [REDACTED]

I'm writing to invite you, and members of the Delancey Street Residents Association, to a presentation of our investment plans for the Edinboro Castle, 57 Mornington Terrace.

As you are aware, we closed our garden areas to the public in September, to correct subsidence, and improve the aged facilities. We are following this with a full pub closure on February 22nd to improve the look and facilities internally.

We would like to go over the general plans, new amenities, and discuss adjusted measures we will be taking in regards to our Premises License and the local community.

I have booked space at the Engineer, 65 Gloucester Av, Primrose Hill, on Wednesday 18th February, between 1700-1830 for around 12 people to attend.

I'd like to use this time to answer any questions in relation to our plans, and take feedback to continue to safely operate the venue, in line with our licensing objectives.

Refreshments will be provided for the duration.

Please confirm in writing if this is an acceptable time and venue for you, and let me know the names of your attendees by Monday 16th February, so I can arrange suitable space.

I can be reached by email, enquiry@edinborocastlepub.co.uk, or over the phone on 020 7255 9651 during office hours.

I look forward to hearing from you, and for the opportunity show you what we have been working on at the Edinboro Castle, ahead of our Reopening date in late March.

Kind Regards

Andy Baird

General Manager

Edinboro Castle

We would draw your attention to paragraphs 72 and 77 of the Taylor case attached. These set out a clear test for the Licensing Authority when deciding whether a representation should be treated as relevant. It is not enough to simply reference the changes to the garden in the representation. It is important to consider whether those changes actually require consent and even if some do, the Licensing Authority still has to address its mind as to their likely effect on the licensing objectives. We submit that the changes do not make the garden “less weather-dependent”, nor intensify its use or create more noise as asserted by Mr Auger. Our client is replacing three currently permitted awnings with a single awning, which is smaller in size overall. The intensity of use and noise will be no different simply because part of the garden is now raised due to the underpinning works, and there is no change in any activities proposed in the garden. The status quo in terms of the garden remains, and as per paragraph 77 of Taylor objections should not be accepted that amount effectively to a back door review.

Mr Auger asks for his representation to an October 2025 application for an extension of hours to be included as part of this current representation. But that application related to extending hours, not physical layout changes. Equally, there are documents in his Appendix A that date as far back as 2004. Mr Auger has not identified explicitly how these documents relate to this specific application for physical layout changes in the garden. Such documents may have been relevant to an application to extend hours or other issues, but that does not make them relevant to the current purely physical alterations to the garden.

As further examples, Mr Auger also objects to the possible “reintroduction” of TV screens. The premises does not require permission to install TV screens, it has always had TV screens, and will continue to do so. This is not the subject of this variation application and therefore not relevant and should be disregarded.

Further, at section 6 of his representation, Mr Auger refers to noise measurements taken between June 2018 and January 2019, allegedly showing repeated patterns of noise during summer months with garden noise reaching 65–75 dB LAeq. However, this monitoring was commissioned by HS2 in relation to construction noise. It is unclear whether HS2 has even given permission for this report to be used in support of a licensing representation. The report appears to lack methodological detail, including the equipment used, calibration, purpose, and whether background noise was accounted for.

In the first paragraph of page 3, Mr Auger states that our application “constitutes a qualitative change in how licensable activities are conducted”. However, the only licensable activity which takes place in the garden is the sale of alcohol from the external bar. It is not apparent where Mr Auger specifically addresses concerns about the sale of alcohol from the external bar rather than general concerns about the use of the garden. The distinction is important.

These are just examples - in short, there is a large amount of material in Mr Auger’s representation that does not satisfy the criteria of a relevant representation to this specific application and should therefore be disregarded. It is not for the applicant to have to go through and disprove every point.

Frances Parsons

Ms Parsons appears to believe the application seeks to extend alcohol hours. She states that “extending the drinking hours will surely exacerbate the disturbance late into the night.” As there is no evidence she is referring to anything else, this representation should be ruled irrelevant, as it does not relate to the likely effect of granting the change of layout to the garden.

Delancey Street Residents’ Association

Catherine Colley, on behalf of the Association, states that “the publican wants the garden to have a capacity of up to 300 people.” To be clear, the current garden already has a capacity of 300. The remainder of her representation is essentially a list of conditions she wishes to see imposed, rather than evidence-based representations about the likely effect of the changes on the licensing objectives.

This representation should therefore also be disregarded.

I therefore respectfully ask that you review the representations and remove all irrelevant material and where, appropriate, disregard them in their entirety.

Kind regards

Andy

Proposed External Works.

New Lean to roof with walk through – top left-hand side
New raised area to the Mid-garden area
Removal of Pergola by the entrance to the premises
New Awning in the mid-garden area
New ramps and steps installed for access to the mid-garden area
Removal of existing BBQ and Bar servery
New Pizza Kitchen, and Freezer/cold and chemical rooms and stores
New Bar servery with glass wash area
Change to the existing booth seating at the top to make way for new covered pergolas
New Bin Stores
Drinks shelf removed from the middle of the garden area
Removal of booth seating to the bottom of the garden area
Removal of 2 covered areas below the entrance to the premises

Pre Hearing Submission for 16 April 2026 Licensing Panel B

**Re Variation Application licensed premises, reference number 134112
Edinboro Castle Public House, 57 Mornington Terrace, London, NW1 7RU.**

David Auger, Resident 52A Mornington Terrace, NW1 7RT

This submission follows the Representation made in response to the Application and included on Pages 97 to 106 of the Public Documents Pack together with detailed Appendices (pages 107 to 220) including details of previous complaints recorded noise levels and proposed conditions. The Representation was made on 6 March 2026, before the garden reopened on 26 March 2026. It is noted the time of year and weather means the garden has operated well below current capacity 300.

Attached are photographs of the changes in the garden. The Panel's attention is drawn to removal of all the planting and the covered benches that previously screened residents from noise in garden the changes have resulted in. Residents have raised a formal complaint in regard to the Planning compliance including the size of the awning, and the removal of covered benches that per the plans were to remain.

This submission summarises the impacts since the garden reopened and the key requests by residents for conditions to be attached to the Licence.

1. Conditions be attached to Licence in relation to Proposed "External Area Management Plan" and "Noise Management and Dispersal Plan" as well as controls requested as "voluntary arrangements" are ineffective and unenforceable

The Plans proposed by the premises are not working, with the same issues as in the past in breach of the Prevention of Public Nuisance objective. The capacity of the garden is understood to be 300 persons per online booking sites. It is submitted that large numbers of people cannot be adequately supervised to prevent a nuisance in the outside space, and then asked to leave quietly by 2 or 3 door staff. See noise log and photos attached as examples. The issues include:

- Shouting and singing in the garden
- Groups congregating outside the premises on the street to smoke and talking loudly clearly audible inside residents' homes
- Groups not leaving the premises vicinity at closing time
- Door staff directing patrons across the road where they stand talking loudly outside residents homes
- Door staff leave (finishing work) walking past patrons not dispersing particularly on corner of Mornington Terrace and Delancey Street.
- Disposal of glass and clearing up clearly audible after 10pm (when garden currently closes)
- Small groups of patrons stand away from premises (frequently by Network Rail Access point the other side of #58 MT, opposite #52MT) engaging in antisocial activities then go back to premises. Door staff not present to observe and refuse entry.

2. Conditions be attached in relation to use of garden

9pm is requested as a closing time to allow time for clear up and ensure that Patrons leave the vicinity rather than previous situations where large numbers seek entry to premises' building which cannot be accommodated due to capacity constraints. 9pm is common with other premises' licences for premises with gardens in residential areas. It is requested the following be attached as conditions.

- Garden to close by 9pm (historically the informal 10pm close has been "flexibly" interpreted)
- Cleaning garden to be completed by 9.30pm
- All patrons to be seated, no vertical drinking
- All seats to be standard height, no tall chairs to facilitate seating enforcement, and discourage groups of mixed sitting and standing.
- Numbers be limited to 50 persons (per Licensing proposal in 2015, page 132 of Public Documents Pack)
- Patrons not be permitted to shout and sing given likely disturbance to residents, and asked to leave if do so.

3. Conditions be attached in relation to pavement space outside premises

It is requested the following be attached as conditions.

- Patrons not to be permitted to congregate on pavement to smoke and re-enter premises
- Patrons not be permitted to take drinks off the premises unless sold in sealed containers

4. Conditions be attached in relation to dispersal

It is noted the number of door staff employed is insufficient given the numbers frequently present both in the garden and inside the premises when each close. It requested conditions be attached to ensure:

- Sufficient door staff employed both at time of garden closure and main premises
- Patrons not to be directed merely across the road but to leave the area entirely.
- Door staff not to leave until patrons have dispersed including from the opposite side of the street from the main doors and entrance to garden
- Bike racks to be provided in garden to ensure patrons don't chain their bikes to residents' railings causing disturbance as they unlock them at closing

5. Conditions be attached to prohibit TV screens and Speakers in the Garden

TV Screens and Speakers in the garden significantly increase the noise generated by Patrons in the garden, due to frequent shouting, chanting and singing during sporting events and general increased volume from large numbers of people making themselves heard.

It is requested conditions be attached to prohibit TV screens and the playing of live or recorded music in the garden. It is noted this is not an unusual request for example the Black Lion, NW6 1RD Licence specifically excludes TV screens.

6. Conditions be attached in relation to ensuring main doors kept closed at all times

While the doors are fitted with self closers which do operate (with a frequent bang audible in residents' homes), in the summer months the premises frequently hooks the main doors on Mornington Terrace in the open position causing nuisance inside residents' homes from noise.

It is requested conditions be attached to ensure this practice is prevented and the doors kept closed at all times (except as legally necessary for emergency exit in event of an evacuation).

7. Conditions be attached in relation to deliveries and waste collections

Deliveries are either metal kegs which cause a disturbance as unloaded, or food with the delivery truck keeping its engine running which we have been told is for refrigeration unit and cannot be turned off. The waste disposal is VERY noisy with crashing glass as bins emptied.

At the moment these are all at antisocial hours. For example in last 2 weeks, there were deliveries at 8.30am on both Good Friday and Easter Monday, and waste collection is 10.30pm in the evening.

It is requested conditions be attached to ensure:

- No deliveries or waste collections before 8am Monday to Saturday
- No deliveries or waste collections after 6pm Monday to Friday, and 1pm Saturday
- No deliveries or waste collections at any time on Sundays or Bank Holidays.

8. Restricted use of Temporary Entertainment Notices for remainder 2026

The Garden is required to be included in the plan as licensable activities take place with the bar in the garden per Sections 8.35 and 8.36 of Revised Guidance issued under section 182 of the Licensing Act 2003. Regulation 23 of The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 is the specific legal provision that mandates an application for a premises licence must be accompanied by a plan of the premises.

However the premises does not have a current plan under which to operate. The period immediately after opening from 26 to 29 March was covered by a TEN but not since then, and residents have sought clarification from the Licensing Team regarding the apparent breach.

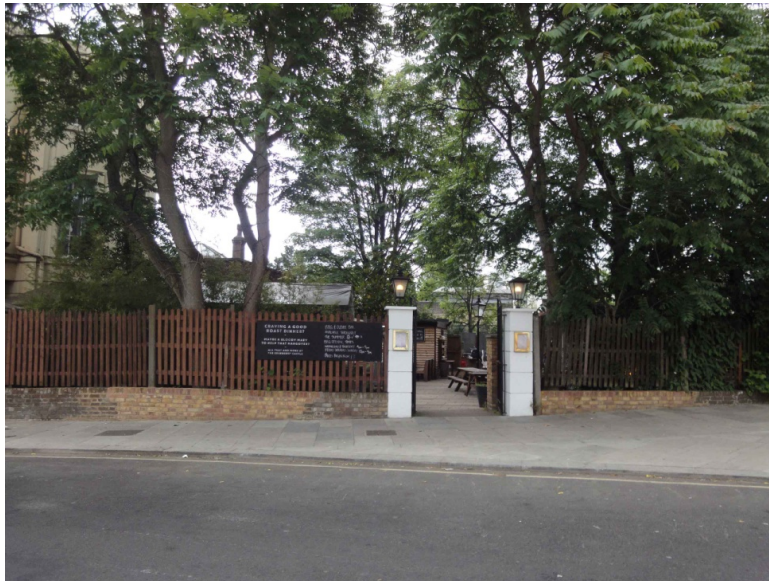
It is noted that the Premises could have applied considerably earlier for the variation and could have applied and used TENs for the period, although the number of TENs is limited per annum and would have been used up.

It is requested the Panel provide guidance to Licensing Team and other relevant departments that no further TENs are to be issued for 2026 reflecting the circumstances that the premises should have been using TENs for period from reopening on 26 March to the hearing 16 April, a period of 21 days.

Pictures taken before the works commenced extracted from planning documents, and the new layout.

Key elements, the screening from planting and wooden covered benches or pods have been removed, resulting in garden being much more open and noise breakout impacting residents

Pictures from before works; taken in 2015 and 2024 (included in planning docs)



Pictures from March 2026 after opening



Large TV screens spread around garden



“External Area Management Plan” and “Noise Management and Dispersal Plan” are not working, with the same issues as in the past when similar plans were agreed but the issues remained

Noise log from Saturday 28 March as example

Pictures outside before and after closing time

Similar pictures from 2019 after the previous plans were agreed after complaints and investigation, submitted to planning hearing

Noise Log Saturday 28th March 2026

from inside front room at 52A Mornington Terrace from 5pm when returned home

4.50pm shouting from garden as walked past, busy but lots of empty seats

5.00pm General hubbub of noise in background when seated in front room, continuous

5.05pm singing "God save the King"

5.10pm shouting

5.17pm shouting and singing, "I love you baby"

5.27pm, started singing and stopped "long live our...."

5.35pm, singing "God save the king"

5.47pm, shouting, "on 3...."

5.56pm, singing "happy birthday" and cheering

6.08pm singing "God save the king"

6.20pm seemed to quieten down

8.35pm crashing glass from bin being emptied

9.48pm group outside main door, no door staff

10.05pm group outside no door staff

10.39 to 10.44pm group outside main door, talking loudly no door staff visible

10.52pm shouting from street, not observed, 10.55pm 1 person smoking outside, no door staff visible

11.05pm noisy group leaving no door staff visible

11.15pm noisy group outside, no sign of door staff, noise increased as pub emptied, quiet by 11.23pm.

11.48pm noisy group leaving pub and standing outside before leaving

Groups loitering outside not in smoking area in garden; No staff visible



27 March 2026 10.56pm



27 March 2026 11.12pm

Dispersal policy not working; groups staying outside or just moved across road, door staff left before patrons left, patrons linger talking loudly



2 April 2026 11.28pm



11 April 2026 11.24pm, large group round the corner from noise

Planning Committee 14 -11-19

Edinboro Castle 2019 / 3522P

David Auger

Photos taken in July – September 2019 after measures agreed with Camden regarding garden closure at 10pm and dispersal.

Pictures show garden not closed on time, crowds – not leaving, size of crowds when they do, and failure to disperse even after closing

**Crowds of people gather on the pavement both going in and leaving pub garden.
Use of garden extends venue to significant size with several hundred people.**

7 August 2019 at 20.53pm queuing
for entry on street



4 September 2019 at
21.52pm as garden
closing



Garden not closed at 10pm despite agreement and no dispersal on occasion

11 July 2019 10.05pm

25 July 2019 at 10pm exactly when garden is supposed to have closed. Clearly not closed and people not leaving.



25 July 2019 at 10.25pm after garden has closed

Even when people leave promptly there is still considerable disturbance to residents

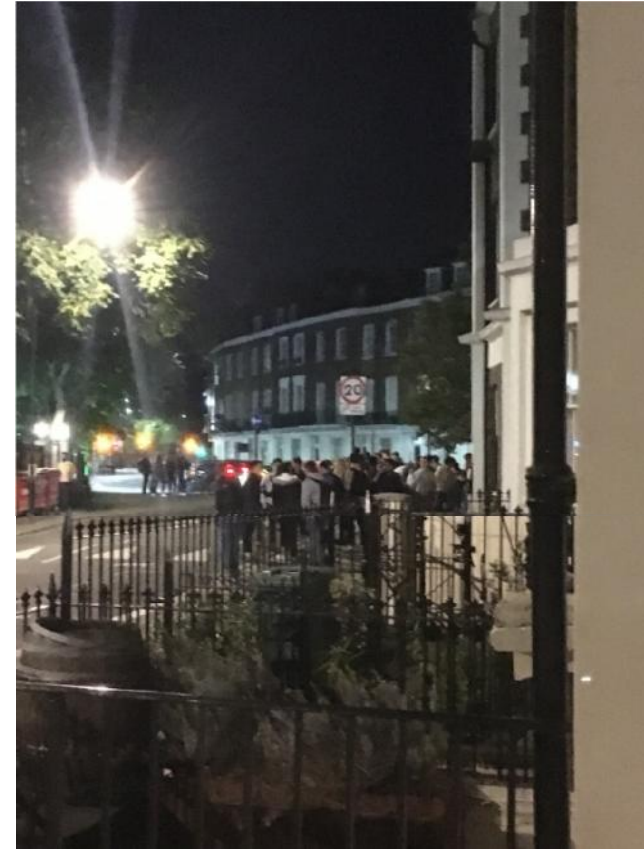
21 August 2019 9.58pm, group walking down street after leaving garden. This was one party of people, with lots of shouting to organise them.



24 August 2019 10pm, crowds gather, disrupting traffic, honking horns etc



5 September 2019 at
21.55pm as garden closing,
no door staff in sight ? Maybe
just

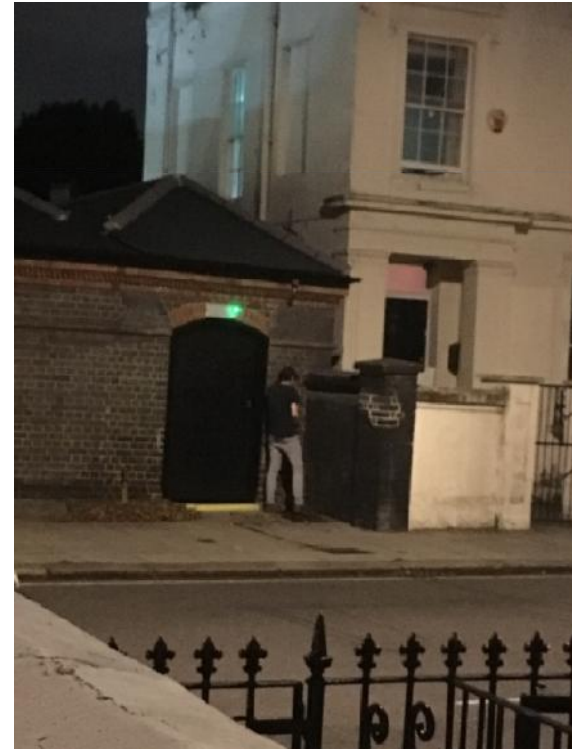


5 September 2019 at
21.54pm as garden closing,
no door staff in sight ? Or just
outside pub ?



7 September 2019 at 9.59pm as garden closes, no door staff visible, controlling patrons as leave.

31 July 2019 10pm. Problems not limited to crowds outside the pub but also patrons doing other things in vicinity. House on right is #58, next door to pub, directly opposite #53. Not uncommon !



Problems not limited to simply when garden closes, but rather groups of people / parties not leaving even well after closing time (11.20pm)

Last Christmas period, a party in January 2019. Taken on 18 January 2019 at 11.38pm, well after closing time. This was despite formal complaints before Christmas.



23 July 2019 11.39pm. Crowds still outside, despite numerous complaints to pub and Camden, and Camden confirming an agreements had been reached with the pub ??