

**34 HART STREET, HENLEY – APPLICATION FOR GRANT OF A PREMISES LICENCE**  
**Supporting information**

This application has been based upon similar premises that our firm has worked with throughout the country and in particular Oxfordshire; cognisance has been had towards South Oxfordshire District Council's Statement on Licensing Policy, the Secretary of States Guidance issued under Section 182 of the Licensing Act 2003 and the Institute of Licensing's guidance on premises licence conditions. A significant number of other licences that have been granted by SODC for premises in Henley-on-Thames, such as the Hart Street Tavern and The Catherine Wheel, were also reviewed by ourselves when putting together this application.

Prior to submitting the application our firm consulted with Thames Valley Police to ascertain their opinions and some minor changes were made subsequently. It should be noted that no other responsible authority or interested party has raised any objections besides those received from Environmental Health.

Following receipt of the representation from Environmental Health on the penultimate day of the consultation period our firm has been in correspondence with the Environmental Health Officer in the hope of reaching an agreement. As a gesture of their wish to co-operate with the authorities, the applicant has voluntarily accepted a number of conditions proposed by the EHO, including conditions restricting the use of the small outdoor space and a significant reduction in the size of the area for licensable activity. The points which unfortunately cannot be agreed upon are the 2 remaining proposals for conditions by the EHO, which are:

1<sup>st</sup>      "*All outside areas shall be closed to customers after 22:00 with the exception of the external toilet area. This area shall be monitored by the DPS or nominated staff to ensure noise is kept to a minimum so as not to cause nuisance to residents.*"

2<sup>nd</sup>      "*The management of these premises shall ensure that no noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to undue disturbance, amounting to a nuisance, to local residents or businesses.*"

On the first of these contested proposals, as we have indicated above the applicant would be content to agree to restricting the use of the outside areas beyond 22:00, with the exception of those in transit to the men's toilet which is only accessible outdoors. On the requirement to monitor outdoor areas to ensure noise is kept to a minimum, case law makes it abundantly clear that this alone cannot be lawfully included as a condition on a premises licence. The decision of the courts in *Brightcrew Limited V The City Of Glasgow Licensing Board* [2011] CSIH 46 was that the licensing objectives are not freestanding, but by their very definition relate to licensable activity. The court determined that it would be an abuse of power for a licensing authority to impose licence conditions which attempt to control or regulate non-licensable behaviour, such as talking, laughing or shouting. With this in mind we are of the opinion that the proposed condition would be unlawful and cannot be included upon a premises licence.

On the second of these proposed conditions, we note that Secretary of State's Guidance is explicit in that conditions must be precise, enforceable and unambiguous (cf. paragraph 1.16). Clearly the proposed condition does not meet these requirements and is highly subjective. The proposed condition does not define what constitutes an "undue disturbance", nor what would be considered a "local" resident. We are mindful of the decision in *Uttlesford District Council v English Heritage* [2007] EWHC 816 (Admin) where a similar worded condition was deemed unlawful on account of being too subjective. Additionally, in *Crawley Borough Council v Attenborough* [2006] EWHC 1278 (Admin) the court ruled that:

*"The terms of a licence and its conditions may of course be the subject of enforcement. Breach carries criminal sanction. Everyone must know where they stand from the terms of the document."*

*"it is extremely important therefore that they should be expressed on the licence or certificate in unequivocal and unambiguous terms. It must be clear to the holder of the licence or club, to enforcement officers and to the courts what duty has been placed on the holder or club in terms of compliance"*

Notwithstanding the above point on the legality of the proposed conditions, we are of the opinion that such conditions are not necessary for the promotion of the licensing objectives, which are suitably promoted by the other conditions that have been volunteered by the applicant. Paragraph 2.17 of the Secretary of State's Guidance states that:

*"Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time."*

*"Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music."*

As the applicant has already volunteered extensive measures to address the risk of public nuisance, such as reducing the area for licensable activities and agreeing to restrict the use of outside areas beyond 22:00, further measures are neither justified nor proportional. Environmental Health and other responsible authorities have available to them statutory powers under legislation such as the Noise Act 1996 or the Environmental protection Act 1990 to deal with many of the issues which have been suggested may occur, including nuisance arising from non-licensable behaviour such as talking, shouting or singing. We are also mindful again of the Secretary of States guidance which says that licence conditions

*"should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation"* (cf paragraph 1.16).

We must also point out that neither of the contested proposed conditions appear on the premises licences that have been granted by SODC to other licensed establishments in Henley-on-Thames that we have reviewed. This is despite the fact that those premises operate as high volume 'vertical' drinking establishments (a HVVD) where the onus is on consuming large quantities of cheaper alcohol in a shorter space of time. This is in sharp contrast to how the applicant proposes to trade and indeed this premises is geared far more towards more well-heeled clientele. It logically follows that, if it is considered that those premises which operate as HVVD's are suitably promoting the licensing objectives with far less conditions on their licences, a premises such as 34 Hart Street with considerably more rigorous conditions should be seen as promoting those licensing objectives even greater. The nature of the premises and the type of clientele it seeks to attract plays an important role in determining which conditions are appropriate to be included upon a premises licence, as each application must be viewed upon its own merits and conditions tailored to suit each premises (again see paragraphs 1.16 & 1.17 of the Secretary of State's guidance). In the case of *Brewdog Bars Limited V Leeds City Council* [2012] the District Judge stated:

*If I accept, as I do, that the enterprise sells expensive beers in expensive measures, then I think I can conclude that the people likely to be attracted are not "get it down your neck" drinkers but rather better heeled customers. The type of clientele a premises attracts has a material part to the play in the decision, because if I am not worried about their clientele and am impressed by the running of their bars elsewhere, it follows that it is unlikely that their clientele will have any adverse impact on the area here.*

In summary, we of the view that neither of the proposed conditions put forward by the EHO are capable of legally being added to a premises licence. Notwithstanding this we would suggest that those conditions are not necessary for the promotion of the licensing objectives, especially given the nature of the premises. For the avoidance of doubt the applicant would be happy to agree to the other proposals put forward by Environmental Health, including restricting the use of the outside space after 22:00 and reducing the area for licensable activities. Should there be any issues going forward it would be open to any authority including Environmental Health or local residents to call the licence for a review.

To assist the committee in its decision we have included a table of key licensing principles that we hope will be found useful.

Conditions must be <b>appropriate</b> for the promotion of the licensing objectives	Secretary of State's Guidance
Conditions must not be disproportionate or overly burdensome	Secretary of State's Guidance
Conditions must be relevant and relate to a licensable activity	<i>Brightcrew Limited v The City of Glasgow Licensing Board, [2011] CSH 46</i>

Conditions imposed on a licence under the Act need to be sufficiently precise for applicants to know the obligations imposed upon them.	<i>R-v-Hammersmith &amp; Fulham London Borough Council, ex parte Earls Court Ltd, Times, 15 July 1993</i>
The role of a licensing authority is to consider what conditions from an operating schedule are appropriate to the promotion of the licensing objectives, not to simply copy the operating schedule.	<i>R on the application of City Council of Bristol] -v-Bristol City Magistrates Court [2009]</i>
Conditions should not duplicate a statutory provision, duty or responsibility.	Secretary of State's Guidance at 1.16
Conditions must be appropriate for the promotion of the licensing objectives	Secretary of State's Guidance at 1.16
Conditions must be precise and enforceable	Secretary of State's Guidance at 1.16  See also <i>Crawley Borough Council v Attenborough [2006] EWHC 1278 (Admin)</i>
Conditions must be unambiguous and clear in what they intend to achieve	Secretary of State's Guidance at 1.16
Conditions must be tailored to the individual type, location and characteristics of the premises and events concerned	Secretary of State's Guidance at 1.16
Conditions should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case	Secretary of State's Guidance at 1.16
Conditions should not replicate offences set out in the 2003 Act or other legislation	Secretary of State's Guidance at 1.16
Conditions should be proportionate, justifiable and be capable of being met.	Secretary of State's Guidance at 1.16  <i>R v Secretary of State's for Health ex parte Eastside Cheese [1999] 3 CMLR 123</i> : "...when there is a choice between several appropriate measures <b>recourse must be had to the least onerous</b> , and the disadvantages caused must not be disproportionate to the aims pursued."  <i>De Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing [1999] 1 AC 69</i> , consideration should be had as to whether :  "(i) the legislative objective is sufficiently important to justify

	limiting a fundamental right; (ii) the measures designed to meet the legislative objective are rationally connected to it; and (iii) the means used to impair the right or freedom are no more than is necessary to accomplish the objective."
Conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff	Secretary of State's Guidance at 1.16
Conditions must be self-contained with no external approval process	<u><i>Ellis v Dubowski [1921] 3 KB 621,</i></u> <u><i>R v Greater London Council, ex p Blackburn [1976] 3 All ER 184</i></u>