

**Committee:** Licensing Sub Committee  
**Date:** Wednesday 25 February 2009  
**Time:** 10.30 am  
**Venue:** Bodicote House, Bodicote, Banbury, OX15 4AA

## AGENDA

**Please note this meeting was originally scheduled for 6 February 2009 which was abandoned due to severe weather.**

**1. Constitution of the Sub Committee**

The Membership of the Sub-Committee for this meeting will be Councillors Heath, Gibbard and Holland.

Please contact Alexa Coates (01295 221591) to tender apologies.

**Note:** Declaration of Interests: Any Member with a prejudicial interest will not be able to participate in the hearing, and should therefore notify the Head of Legal and Democratic Services in advance so that arrangements may be made for an alternate Member to attend.

**2. Premises Licence Appeal Hearings - Review of Premises Licence (Pages 1 - 26)**

**Summary**

This report contains details of an application for review from the Safer Communities and Community Development Team at Cherwell District Council in respect of Que Pasa, 64-65 High Street, Banbury that is to be considered by the Committee.

The Premises Licence is held by Marston's PLC of Marston's House, Brewery Road, Wolverhampton, WV1 4JT. The current Designated Premises Supervisor in respect of this premises licence is Darren Mark Primrose.

## **Recommendation**

There is no recommendation. In considering the application received and what is appropriate for the promotion of the licensing objectives, the options open to the Sub-Committee are, in broad terms:

1. Modify the conditions of the Premises Licence;
2. Exclude a licensable activity from the scope of the Premises Licence;
3. Remove the Designated Premises Supervisor from the Premises Licence;
4. Suspend the Premises Licence for a period not exceeding three months;
5. Revoke the Licence;

Any combination of or none of the above.

## **Information about this Agenda**

The agenda, reports and associated documents for the above hearing together with the Licensing Hearing Procedure are available at Bodicote House, Bodicote, Banbury, Oxfordshire OX15 4AA or on the Council's web site [www.cherwell-dc.gov.uk](http://www.cherwell-dc.gov.uk);

Members are asked to sign the Attendance Register; and

The Council and its Committees and Sub-Committees are required to consider the implications of the Crime and Disorder Act 1998 and the Human Rights Act 1998 when exercising their functions.)

### **Queries Regarding this Agenda**

Please contact Alexa Coates, Legal and Democratic Services [alexa.coates@cherwell-dc.gov.uk](mailto:alexa.coates@cherwell-dc.gov.uk)  
(01295) 221591

**Mary Harpley**  
**Chief Executive**

Published on Tuesday 17 February 2009

# Agenda Item 2

## CHERWELL DISTRICT COUNCIL

### LICENSING SUB COMMITTEE

6 FEBRUARY 2009

#### REPORT OF THE HEAD OF URBAN & RURAL SERVICES

##### PREMISES LICENCE APPEAL HEARINGS – REVIEW OF PREMISES LICENCE

#### **1 Introduction and Purpose of Report**

- 1.1 The purpose of this report is to provide an outline of an application to review that has resulted in the necessity for a hearing.

#### **2 Wards Affected**

- 2.1 Grimsbury and Castle

#### **3 Effect on Policy**

- 3.1 None.

#### **4 Contact Officers**

- 4.1 Natasha Barnes (ext. 3738)  
Claire Bold (ext. 3741)

#### **5 Background**

- 5.1 This report contains details of an application for review from the Safer Communities and Community Development Team at Cherwell District Council in respect of Que Pasa, 64-65 High Street, Banbury that is to be considered by the Committee.
- 5.2 The Premises Licence is held by Marston's PLC of Marston's House, Brewery Road, Wolverhampton, WV1 4JT. The current Designated Premises Supervisor in respect of this premises licence is Darren Mark Primrose.
- 5.3 The application is to seek to review the Premises Licence issued under the Licensing Act 2003. Details are provided in respect of the existing licence and grounds for review.

#### **6 Application for review of the premises licence in respect of Que Pasa, 64-65 High Street, Banbury.**

- 6.1 The application for the review of the premises licence was first received on 17 December 2008, from Rob Lowther on behalf of the Safer Communities and Community Development Team at Cherwell District Council.

## 6.2 Description of the grounds for review:

That the licensing objective of the prevention of public nuisance is not being achieved in that the noise from amplified music and the noise produced by customers using the rear garden of the premises is causing disturbance to the occupants of nearby dwellings.

## 7 Details of the existing Premises Licence issued under the Licensing Act 2003

### 7.1 The **Current** Premises Licence, which came into force on 24 November 2005, permits:

1. Sale (by retail) of alcohol, For consumption **On and Off** the premises:
  - Sunday to Monday from 10.00 to 04:00 hours the following morning
  - From the commencement of permitted hours on New Years Eve to the end of permitted hours on New Years Day.
2. Provision of Regulated Entertainment to include live and recorded music, the performance of dance and anything of a similar description to that falling within live music, recorded music or performance of dance, **Indoors and Outdoors**:
  - Sunday to Monday from 10.00 to 04:00 hours the following morning
  - From the commencement of permitted hours on New Years Eve to the end of permitted hours on New Years Day.
3. Provision of Entertainment facilities to include making music, dancing and entertainment of a similar description to that falling within live music, recorded music or performance of dance, **Indoors and Outdoors**:
  - Sunday to Monday from 10.00 to 04:00 hours the following morning
  - From the commencement of permitted hours on New Years Eve to the end of permitted hours on New Years Day.
4. The premises is permitted to remain open for half an hour following the cessation of the permitted times for the sale of alcohol

7.2 The Premises Licence in respect of this establishment came into force on 24 November 2005 and was originally held by the Eldridge Pope and Company LTD.

7.3 On the 25 November 2005, an application to vary the designated premises supervisor from Gavin Hall to Gail Lorraine Pritchard was received from Bond Pearce Solicitors on behalf of Eldridge Pope and Company LTD. No objection was received from Thames Valley Police to the application and it was duly granted.

7.4 On the 6 December 2005, an application to vary the designated premises supervisor from Gail Lorraine Pritchard to Ian Lee Robinson was received from Bond Pearce Solicitors on behalf of Eldridge Pope and Company LTD. No objection was received from Thames Valley Police to the application and it was duly granted.

7.5 On 25 July 2006, an application was received to vary the premises licence. The variation sought to extend the permitted hours for licensable activities from 10.00 to 04.00 the following morning, seven days a week.

7.6 Objections were received to the variation from Environmental Health, Thames Valley Police and members of the public due to the impact of the variation on the licensing objectives, namely the prevention of crime and disorder and the prevention of public nuisance.

- 7.7 Following receipt of the objections, a hearing was convened in front of the Licensing Sub-Committee on 14 September 2006. The following conditions were attached to the licence as a result of this hearing:
1. No admission/readmission in the last hour of sale of alcohol;
  2. Door Staff – one per 100 patrons or part thereof subject to a minimum of two door supervisors at any one time from 21:00 on every night until at least 30 minutes after the last licensable activity has ended when any licensable activity ends after 00:00
  3. The licence holder shall implement a written responsible drinking policy to be agreed in writing with Thames Valley Police;
  4. All members of staff at the premises shall seek “credible photographic proof of age evidence” from any person who appears to be under the age of 21 years and who is seeking access to the premises or who is seeking to purchase or consume alcohol on the premises. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence, or Proof of Age Card carrying a “PASS” logo;
  5. Prominent clear notices shall be displayed at the point of entry to the premises and in a suitable location at any points of sale, advising customers that they may be asked to produce evidence of their age;
  6. All occasions when persons have been refused service shall be recorded in writing and kept at the premises for six months.
- 7.8 On the 16 October 2007, an application to vary the designated premises supervisor from Ian Robinson to Terry Lee Ambrose was received from Bond Pearce Solicitors on behalf of Eldridge Pope and Company LTD. No objection was received from Thames Valley Police to the application and it was duly granted.
- 7.9 On the 31 October 2007, an application to vary the designated premises supervisor from Terry Lee Ambrose to Jack Parsons was received from Bond Pearce Solicitors on behalf of Marstons PLC. No objection was received from Thames Valley Police to the application and it was duly granted.
- 7.10 On the 12 December 2007, an application to transfer the premises licence from Eldridge Pope and Company LTD to Marstons PLC was received from Bond Pearce Solicitors on behalf of Eldridge Pope and Company LTD. No objection was received from Thames Valley Police to the application and it was duly granted.
- 7.11 On the 10 June 2008, an application to vary the designated premises supervisor from Jack Parsons to Daren Mark Primrose was received from Bond Pearce Solicitors on behalf of Marstons PLC. No objection was received from Thames Valley Police to the application and it was duly granted.
- 7.12 A plan of the premises showing the locations of the licensable activities is included in the premises licence within **Annex 1** of this report.

## **8 Objections/Representations received**

- 8.1 The review application was served upon the Licensing Authority by Safer Communities and Community Development at Cherwell District Council on 17 December 2008.
- 8.2 A copy of the review application is to be found within **Annex 2** of this report.
- 8.3 In accordance with the regulations of the Licensing Act 2003, the Licensing Authority duly displayed the Notice of Review for a period of 28 days starting from the day after the date on which the application was served. The notice was displayed at the premises in question and at Cherwell District Council, Bodicote House.
- 8.4 The consultation period for the review ended on 11 January 2009; no further representations have been received as a result of 8.3 above.

## **9 Supporting Evidence Submitted**

- 9.1 The Safer Communities and Community Development Team produced a number of documents as supporting evidence and these all accompanied the Review application. These items of evidence have also been served by The Safer Communities and Community Development Team upon the Premises Licence Holder and notification of them has been served upon the Responsible Authorities. The contents of the evidence bundle is briefly described as;

1. Schedule 1
2. Abatement Notice (RL1)
3. Letter from Marstons (RL2)

Copies of this evidence can be found with **Annex 3** of this report.

- 9.2 In addition to the above evidence, The Safer Communities and Community Development Team have included a copy of sound monitoring recordings for the period of 17 October 2008 to 28 October 2008. A copy of this recording has been served on the premises licence holder and will be made available for the Licensing Sub-Committee to hear at the hearing.
- 9.3 At the time of compiling this report (27 January 2009) no evidence has been submitted on behalf of the Premises Licence Holder or any further evidence from the Safer Communities and Community Development Team. Any such evidence produced prior to the Hearing will be forwarded to Members of the Sub-Committee and all other parties upon receipt.

## **10 Relevant sections of the Guidance and Licensing Authority Policy issued under the Licensing Act 2003**

- 10.1 The relevant sections of the Guidance and Licensing Authority Policy issued under the Licensing Act 2003, which are applicable to the representations for this case are as follows:

### **Guidance:**

Pages 82 – 83	Sections 11.1 – 11.10	The Review Process
Pages 83 – 84	Sections 11.15 – 11.21	Powers of a Licensing Authority on the Determination of a Review
Pages 21 – 23	Sections 2.32 – 2.40	Public Nuisance

Pages 128 - 133	Annex D	Part 4. Conditions relating to the prevention of public nuisance
Pages 72 - 73	Sections 10.11 – 10.18	Imposed Conditions, Proportionality, Duplication with other statutory provisions

**Cherwell District Council Statement of Licensing Policy:**

Page 21	Policies LA3 – LA5	Section 7.3	General prevention of Public Nuisance
Page 23	Policy LA6	Section 7.3.10	Management and Control
Page 32	Policy DPS1	Section 7.6	Designated Premises Supervisors
Page 35	Policy OS2	Section 8.2.2	Log Book
Page 43	Policies RE1 – RE4	Section 10.1	Reviews

10.2 Members have been issued with copies of the Guidance, the Statement of Licensing Policy and the Council’s pool of conditions and are asked to bring them with them to the meeting.

**11 Options**

11.1 There is no recommendation. In considering the application received and what is appropriate for the promotion of the licensing objectives, the options open to the Sub-Committee are, in broad terms:

1. Modify the conditions of the Premises Licence;
2. Exclude a licensable activity from the scope of the Premises Licence;
3. Remove the Designated Premises Supervisor from the Premises Licence;
4. Suspend the Premises Licence for a period not exceeding three months;
5. Revoke the Licence;
6. Any combination of or none of the above.

11.2 The Licensing Act 2003 at Section 52, Paragraph 11 states:

“A determination under this section does not have effect-  
(a) until the end of the period given for appealing against the decision, or  
(b) if the decision is appealed against, until the appeal is disposed of.”

11.3 Schedule 5 of the Act, Section 9 Paragraph 2 states

“An appeal under this Part must be commenced by notice of appeal given by the appellant to the justices' chief executive for the magistrates' court within the period of 21 days....”

11.4 Therefore any decisions taken at the Review Hearing by the Licensing Sub-Committee will not take effect until the period within which an appeal can be brought has passed, and then following which until the determination of any such appeal.



# PREMISES LICENCE

Issued under the Licensing Act 2003

## Part A

Premises Licence Number

CHERWELL PRM 0227

Part 1 - Premises Detail

### Postal Address of Premises, or if none, ordnance map reference or description

Que Pasa  
64-65 High Street  
Banbury  
Oxfordshire OX16 5JJ

Telephone: 01295 276263

### Licensable activities authorised by the licence

#### Provision of Regulated Entertainment

- Live Music
- Recorded Music
- Performances of Dance
- Anything of a similar description to that falling within Live Music, Recorded Music or Performance of Dance

#### Provision of Entertainment Facilities for

- Making Music
- Dancing
- Entertainment of a similar description to that falling within Making Music or Dancing

#### Provision of late night refreshment

#### Sale (By Retail) of alcohol

### The times the Licence authorises the carrying out of licensable activities

LICENSABLE ACTIVITY	DAY	START	FINISH
Sale (By Retail) of Alcohol	Monday	10:00	04:00
	Tuesday	10:00	04:00
	Wednesday	10:00	04:00
	Thursday	10:00	04:00
	Friday	10:00	04:00
	Saturday	10:00	04:00
	Sunday	10:00	04:00
From the commencement of permitted hours on New Years Eve to the end of permitted hours on New Years Day.			

LICENSABLE ACTIVITY	INDOORS		DAY	START	FINISH
	OUTDOORS				
	BOTH	✓			
Provision of late night refreshment			Monday	23:00	04:30
			Tuesday	23:00	04:30
			Wednesday	23:00	04:30
			Thursday	23:00	04:30
			Friday	23:00	04:30
			Saturday	23:00	04:30
			Sunday	23:00	04:30
From the commencement of permitted hours on New Years Eve to the end of permitted hours on New Years Day.					



LICENSABLE ACTIVITY	INDOORS	DAY	START	FINISH
	OUTDOORS			
	BOTH			
<b>Provision of Regulated Entertainment</b> <ul style="list-style-type: none"> <li>• Live Music</li> <li>• Recorded Music</li> <li>• Performances of Dance</li> <li>• Anything of a similar description to that falling within Live Music, Recorded Music or Performance of Dance</li> </ul> <b>Provision of Entertainment Facilities for</b> <ul style="list-style-type: none"> <li>• Making Music</li> <li>• Dancing</li> <li>• Entertainment of a similar description to that falling within Making Music or Dancing</li> </ul>		Monday	10:00	04:00
		Tuesday	10:00	04:00
		Wednesday	10:00	04:00
		Thursday	10:00	04:00
		Friday	10:00	04:00
		Saturday	10:00	04:00
		Sunday	10:00	04:00
		From the commencement of permitted hours on New Years Eve to the end of permitted hours on New Years Day.		

### Opening Hours of the Premises

DAY	START	FINISH
Monday	10:00	04:30
Tuesday	10:00	04:30
Wednesday	10:00	04:30
Thursday	10:00	04:30
Friday	10:00	04:30
Saturday	10:00	04:30
Sunday	10:00	04:30
On New Years Eve from the commencement of authorised hours on New Years Eve until thirty minutes after the end of authorised hours on New Years Day.		

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

Sale (By Retail) of Alcohol - On and Off Premise

### Part 2

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

Marston's plc  
Marston's House  
Brewery Road  
Wolverhampton  
WV1 4JT                      Tel: 01902 711300

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

00031461

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

Darren Mark Primrose  
64-65 High Street  
Banbury  
Oxfordshire OX16 5JJ

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

Licence No. : BH12021  
Authority : Bournemouth Borough Council



**C R Baynes**  
**Head of Corporate Services**  
**24 November 2005**

## **Annex 1 - Mandatory conditions**

### **Sale of alcohol**

1. No supply of alcohol may be made under this licence:-
  - (a) at a time when there is no designated premises supervisor in respect of it, or
  - (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
2. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.

### **Door Supervision**

3. Only individuals licensed by the Security Industry Authority may be used at the premises to guard against:-
  - (a) unauthorised access or occupation (eg through door supervision), or
  - (b) outbreaks of disorder, or
  - (c) damage

## **Annex 2 - Conditions consistent with the operating Schedule**

### **General – all four licensing objectives**

To extend existing standards and procedures so that they are applied over the proposed extended trading period and apply to all licensable activities requested. This will enable the premises to continue to operate as a premises providing a location for customers to socialise as well as purchase alcohol and food and to be entertained. Maintenance of existing standards will enable the premises to operate lawfully, peacefully, safely and without harm to children.

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

To continue with the responsible management of the premises in such a way that all the patrons are aware that crime and disorder of any nature will not be tolerated. To ensure that all staff are trained so as to maintain high standards of operation. This will include a cooling off period of 30 minutes after last sale of alcohol. To ensure that there are a sufficient number of door staff on the premises in order to be compliant with the Licensing Objectives.

### **Public Safety**

To continue to maintain the premises and operate them in a manner so that public safety is not put at risk. To comply with all relevant legislation relating to public safety.

### **The prevention of public nuisance**

To continue to ensure that sound from the premises is maintained at a level that does not cause a public nuisance. Notices at entrances/exits requesting customers to leave quietly and have regard to any neighbours and members of staff to request customers to leave quietly at closing time.

### **The protection of children from harm**

Staff fully trained in the implementation of proof of age schemes requiring photographic identification. To ensure that all staff are aware of the requirements of the Licensing Act 2003 so far as persons under 18 and under 16 are concerned.

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


- 1 No admission/readmission in the last hour of sale of alcohol;
- 2 Door Staff – one per 100 patrons or part thereof subject to a minimum of two door supervisors at any one time from 21:00 on every night until at least 30 minutes after the last licensable activity has ended when any licensable activity ends after 00:00
- 3 The licence holder shall implement a written responsible drinking policy to be agreed in writing with Thames Valley Police;
- 4 All members of staff at the premises shall seek “credible photographic proof of age evidence” from any person who appears to be under the age of 21 years and who is seeking access to the premises or who is seeking to purchase or consume alcohol on the premises. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence, or Proof of Age Card carrying a “PASS” logo;
- 5 Prominent clear notices shall be displayed at the point of entry to the premises and in a suitable location at any points of sale, advising customers that they may be asked to produce evidence of their age;
- 6 All occasions when persons have been refused service shall be recorded in writing and kept at the premises for six months.

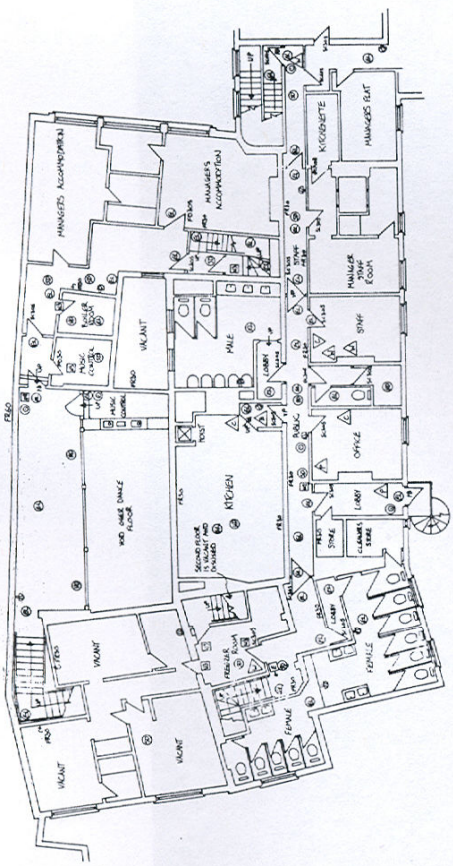
KEY TO SYMBOLS

- SC05 SELF-CLOSING FIRE DOOR - 30mins WITH SMOKE SEAL & INTUMESCENT STRIPS
- FD00 FIRE DOOR - 200min
- FR000 FIRE RESISTANCE 30mins / 60min
- EMERGENCY LIGHTING
- SMOKE DETECTOR
- HEAT DETECTOR
- TWO DOORS - FREEDOM OF ACCESS ON EITHER SIDE CONNECTED TO FIRE ALARM SYSTEM
- FIRE ALARM CALL POINT
- DOOR FITTED WITH PUSH BAR
- VISION PANEL
- FIRE ALARM SOUNDER
- FIRE ALARM PANEL
- FIRE EXTINGUISHER - WATER
- FIRE EXTINGUISHER - DRY POWDER
- FIRE EXTINGUISHER - CO2
- FIRE BLANKET
- ACCESS AND EGRESS
- EGRESS ONLY
- KEEP LOCKED SHUT WHEN NOT IN USE
- PUSH BAR TO OPEN
- FIRE EXIT SIGN WITH DIRECTION
- ACA ALCOHOL CONSUMPTION AREA
- ASA ALCOHOL SALES AREA
- EA ENTERTAINMENT AREA
- ENRA LATE NIGHT REFRESHMENT AREA

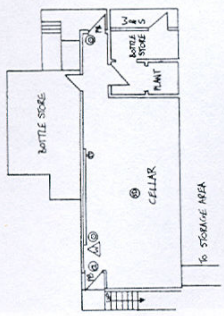
NET DRINKING AREA'S:  
 1.000 LITRES PER PERSON  
 ENCLOSED COURTYARD - KING APPROX

THIS DRAWING HAS BEEN PROVIDED FOR PREMISES PLAN PURPOSES AS REQUIRED UNDER THE LICENSING ACT 2003 (TRANSITIONAL PROVISIONS)  
 DO NOT SCALE FROM DRAWING

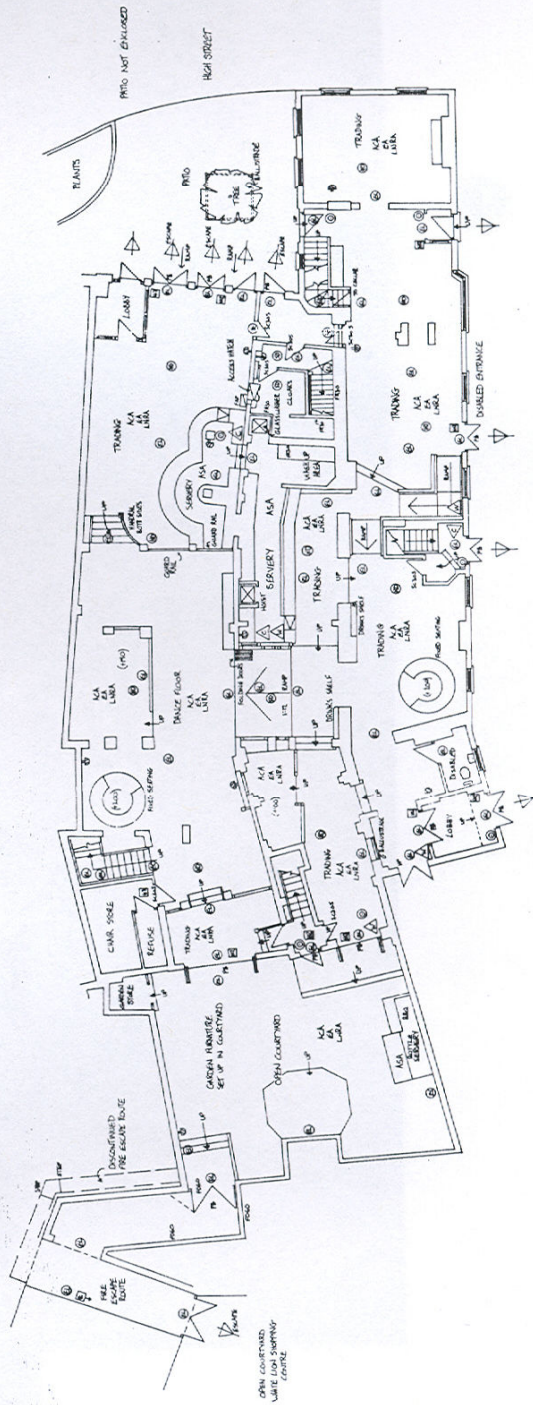
 EDGEMORE POPE & CO. S.L.C. Doughty Street Covent Garden DT1 1QT PROPERTY SERVICES DEPARTMENT    Tel: 0185 311511					
PREMISES PLAN QUE PASA @ BANBURY 64 HIGH STREET BANBURY OX16 5JJ					
Scale	1:100	Date	15th JULY 05	Drawn	KEB
DRG. No.	QPB 01	Revised		Job No.	M 95



FIRST FLOOR PLAN



BASEMENT PLAN



GROUND FLOOR PLAN

## Part B

Premises Licence Number

**CHERWELL PRM 0227**

Part 1 - Premises Detail

**Postal Address of Premises, or if none, ordnance map reference or description**

Que Pasa  
64-65 High Street  
Banbury  
Oxfordshire OX16 5JJ

**Telephone:** 01295 276263

**Licensable activities authorised by the licence**

**Provision of Regulated Entertainment**

- Live Music
- Recorded Music
- Performances of Dance
- Anything of a similar description to that falling within Live Music, Recorded Music or Performance of Dance

**Provision of Entertainment Facilities for**

- Making Music
- Dancing
- Entertainment of a similar description to that falling within Making Music or Dancing

**Provision of late night refreshment**

**Sale (By Retail) of alcohol**

**The times the Licence authorises the carrying out of licensable activities**

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### Opening Hours of the Premises

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Sunday	10:00	04:30
On New Years Eve from the commencement of authorised hours on New Years Eve until thirty minutes after the end of authorised hours on New Years Day.		

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

Sale (By Retail) of Alcohol - On and Off Premise

### Name, (registered) address of the holder of premises licence

Marston's plc  
Marston's House  
Brewery Road  
Wolverhampton  
WV1 4JT

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

00031461

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

DARREN MARK PRIMROSE

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



**C R Baynes**  
**Head of Corporate Services**

24 November 2005



CHERWELL DISTRICT COUNCIL  
LICENSING AUTHORITY

**Application for the review of a premises licence or club premises certificate** 17 DEC 2008

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

*Before completing this form please read the guidance notes at the end of the form.  
If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.  
You may wish to keep a copy of the completed form for your records.*

I Rob Lowther, Anti Social Behaviour Manager apply for the review of a  
*(insert name of applicant)*  
premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

**Part 1 - Premises or club premises details**

Postal address of premises or club premises, or if none, ordnance survey map reference or description	
Que Pasa 64-65 High Street Banbury Oxon	
Post town Banbury	Post code (if known) OX16 5JJ

Name of premises licence holder or club holding club premises certificate (if known)
Marston's Plc Marston's House Brewery Road Wolverhampton WV1 4JT

Number of premises licence or club premises certificate (if known)
Cherwell PRM 0227

**Part 2 - Applicant details**

- I am Please tick "yes"
- 1) an interested party (please complete (A) or (B) below)
  - a) a person living in the vicinity of the premises
  - b) a body representing persons living in the vicinity of the premises
  - c) a person involved in business in the vicinity of the premises
  - d) a body representing persons involved in business in the vicinity of the premises

CHERWELL DISTRICT COUNCIL  
LICENSING AUTHORITY  
17 DEC 2008



2) a responsible authority (please complete (C) below)

3) a member of the club to which this application relates   
(please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Mr  Mrs  Miss  Ms  Other title   
(for example, Rev)

Surname  First names

Please tick "yes"

I am 18 years old or over

Current address

Post Town  Postcode

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address
Telephone number (if any)
E-mail (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Rob Lowther Anti Social Behaviour Manager Safer Communities and Community Development Cherwell district Council Bodicote House Bodicote Banbury Oxon OX15 4AA
Telephone number (if any) 01295 221623
E-mail (optional) Rob.lowther@cherwell-dc.gov.uk

This application to review relates to the following licensing objective(s)

Please tick one or more boxes Y

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

H

Please state the ground(s) for review (please read guidance note1)

That the licensing objective of the prevention of public nuisance is not being achieved in that the noise from amplified music and the noise produced by customers using the rear garden of the premises is causing disturbance to the occupants of nearby dwellings.

CHERWELL DISTRICT COUNCIL  
LICENSING AUTHORITY

17 DEC 2008

Please provide as much information as possible to support the application (please read guidance note 2)

Please see schedule 1 attached.

CHERWELL DISTRICT COUNCIL  
LICENSING AUTHORITY

Have you made an application for review relating to this premises before Please tick  
yes

If yes please state the date of that application

Day	Month	Year

If you have made representations before relating to this premises please state what they were and when you made them

CHERWELL DISTRICT COUNCIL  
LICENSING AUTHORITY

17 DEC 2008

Please tick yes:

- 1 have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

**IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION**

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant's solicitor or other duly authorised agent (please read guidance note 4). If signing on behalf of the applicant please state in what capacity.

Signature *R.H. Lawth*

Date 16 December 2008

Capacity  
Anti Social Behavior Manager, Safer Communities and Community Development

Contact name (where not previously given) and address for correspondence associated with this application (please read guidance note 5)	
Post town	Post code
Telephone number (if any)	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)	

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

## Schedule 1

### **Application for premises license review – Que Passa 64-65 High Street Banbury Oxon.**

The Councils' Anti Social Behaviour Team first received complaints alleging excessive noise from the premises of Que Pasa 64-65 High Street Banbury Oxon on 14 January 2008. The complaint alleged that amplified music from the premises could be heard within the complainants dwelling and that in addition noise from customers using the rear garden of the premises was also audible within the dwelling at a level which was causing disturbance.

These allegations were investigated and officers from the Anti Social Behaviour Team formed the opinion that the noise constituted a statutory nuisance. Accordingly an abatement notice was served on the licensees of the premises Martsons Plc. The Abatement Notice was served on 18 March 2008. Notice of appeal was given on behalf of Marstons but following a period of negotiation the Council and Marstons agreed a form of words acceptable to both parties. A copy of the agreed abatement notice is produced as exhibit RL 1.

Whilst the legal discussion was taking place over the content and form of the abatement notice the Anti Social Behaviour Team were in discussions with the Marstons Area Manager for the Que Pasa brand. Through this channel a series of agreed measures were put in place which were designed to overcome the problems presented by noise within the premises and by noise escaping from the premises. These measures were as follows:

- Access to the rear garden area of the premises was restricted such that customers had to pass through a sound check lobby to reach the outside area.
- The two speakers located closest to the rear doors to the premises were turned off.
- The levels of sub bass and overall volume of the sound amplification system within the premises were to be reduced.
- All amplification equipment settings were to be set and maintained by the premises management .

During the course of further enquiries following the implementation of this agreement evidence was obtained which suggested that the set amplification levels were not being used by one of the premises resident DJs. This led to the likely offender being dismissed by the company and the following additional sound control measures being put in place:

- A copy of the agreed amplifier settings were to be displayed next to the DJs equipment and a copy provided to the Council. I produce a copy of this document as exhibit RL 2.
- The amplification equipment was locked away from unauthorised access.

At the time these discussions were taking place the feasibility of providing sound insulation to parts of the premises was also discussed but as of 16 May 2008 the original complainant indicated their satisfaction with the current sound levels from the premises this option was not pursued.

It must be stressed that these arrangements were made by informal agreement and were not subsequently put forward for inclusion in the operating schedule which formed part of the premises license.

On 24 September 2008 we again received information alleging that there was excessive noise coming from the Que Passa premises. The substance of the allegations were similar to those received early in the year in that bass noise from the premises was intruding into a nearby dwelling and noise from customers using the rear garden of the premises was also causing disturbance.

During the course of our investigations the agreed settings for the premises sound amplification were checked and at the time of our visit were found to be as per the schedule. During the course of this visit it was noted that customers were still gaining access to the rear garden area via the twin fire exit doors at the rear of the premises rather than via the door way fitted with the sound check lobby and one of the self closing devices to the sound check lobby was defective.

The allegations were investigated by installing calibrated sound recording equipment in the customers' premises between 17 October 2008 and 28 October 2008. These recording exercises produced evidence of noise disturbance within the customers' dwelling on both occasions and I produce copies of these recordings as exhibit RL3.

The licensees have been advised of our concerns at Area Manager Level and I am advised that they exploring ways of dealing with the issues arising from the use of the premises rear garden.

In the light of the information above the request for a review of the premises license may seem premature however I would argue that there are sound reasons for doing so.

Firstly there is evidence of ongoing disturbance due to noise from the premises. Secondly the control measures put in place in response to the first noise complaint investigation rely heavily on a human input in that in order to ensure that sound does not escape from doors being left open at the rear of the premises a human input by way of policing by door staff is required. Equally the use of agreed settings for sound equipment relies on a degree of control being exercised by the premises manager and there is an opportunity for these levels to be overridden even if the control regime is being vigilant. Unfortunately it is not possible to control the amount of noise made by customers by the use of a volume control and indeed the well meaning interventions of door staff in an attempt to ask noisy individuals to behave can be counter productive.

The purpose of this review application is to invite the licensing committee to consider varying the operating schedule of the premises in order to design out the 'human' elements of the current and proposed sound control programme such that the premises can continue to operate without causing disturbance to the occupants of nearby dwellings. With this in mind the committee may wish to consider a requirement to carry out sound insulation to the structure of the premises and the imposition of a curfew on the rear garden of the premises which would address the issues of sound break out through open doors and the disturbance caused by customers using this area of the premises in the late evening and early hours of the morning.

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**ENVIRONMENTAL PROTECTION ACT 1990, section 80**

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**Abatement Notice in respect of Noise Nuisance**

To: The Company Secretary, Marstons Plc Marstons House Brewery Road Wolverhampton WV1 4JT

**TAKE NOTICE** that under the provisions of the Environmental Protection Act 1990 the **CHERWELL DISTRICT COUNCIL** being satisfied of the likely occurrence of noise amounting to a statutory nuisance under section 79(1)(g) of that Act at Que Pasa 64-65 High Street Banbury Oxfordshire

within the district of the said Council arising from the playing of amplified music within your premises.

**HEREBY REQUIRE YOU** as the owner of the premises from which the noise is or would be emitted forthwith from the service of this notice, to abate the same and also

**HEREBY PROHIBIT** the occurrence of the same and for that purpose require you to: Devise and implement a sound management plan to prevent noise escaping from the premises at such levels and on such occasions as would constitute a statutory nuisance under section 79(1)(g) within nearby private dwellings.

**IN** the event of an appeal this notice shall be suspended until the appeal has been abandoned or decided by the Court.

**IF** without reasonable excuse you contravene or fail to comply with any requirement of this notice you will be guilty of an offence under section 80(4) of the Environmental Protection Act 1990 and on summary conviction will be liable to a fine not exceeding level 5 on the Standard Scale\*\*, together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after conviction. A person who commits an offence on industrial, trade or business premises will be liable on summary conviction to a fine not exceeding £20,000.

The Council may also take proceedings in the High Court for securing the abatement, prohibition or restriction of the nuisance. Further, if you fail to execute all or any of the works in accordance with this notice, the Council may execute the works and recover from you the necessary expenditure incurred.

DATED 25<sup>th</sup> day of June

2008.

*P. H. Leather*  
Signed *pp. AsB Manager* (Under delegated authority)  
Head of Safer Communities and Community Development

Cherwell District Council  
Bodicote House  
Bodicote  
Banbury  
Oxfordshire  
OX15 4AA

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**NB** The person served with this notice may appeal against the notice to a magistrates' court within twenty-one days beginning with the date of service of the notice. See notes attached.

\*\* Currently £5,000, subject to alteration by Order



- I. The Statutory Nuisance (Appeals) Regulations 1995 provide as follows:

**APPEALS UNDER SECTION 80(3) of the ENVIRONMENTAL PROTECTION ACT 1990**  
("the 1990 Act")

2.

- (1) The provisions of these regulations apply in relation to an appeal brought by any person under section 80(3) of the 1990 Act against an abatement notice served upon him by a local authority.
- (2) The grounds on which a person served with such a notice may appeal under section 80(3) are any one or more of the following grounds that are appropriate in the circumstances of the particular case: -
- (a) that the abatement notice is not justified by section 80 of the 1990 Act;
  - (b) that there has been some informality, defect or error in, or in connection with, the abatement notice or in connection with any copy of the abatement notice served under section 80A(3);
  - (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonable in character or extent, or are unnecessary;
  - (d) that the time, or, where more than one time is specified, any of the times within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
  - (e) where the nuisance to which the notice relates -
    - (i) is a nuisance falling within section 79(1)(a),(d),(e),(f) or (g) of the 1990 Act and arises on industrial, trade or business premises, or
    - (ii) is a nuisance falling within section 79(1)(b) of the 1990 Act and the smoke is emitted from a chimney;
    - (iii) is a nuisance falling within section 79(1)(ga)(a) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used of industrial, trade or business purposes;that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.
  - (f) that, in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act, the requirements imposed by the abatement notice by virtue of section 80(1)(a) of that Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of: -
    - (i) any notice served under section 60 or 66 of the Control of Pollution Act 1974 ("the 1974 Act"), or
    - (ii) any consent given under section 61 or 65 of the 1974 Act, or
    - (iii) any determination made under section 67 of the 1974 Act;
  - (g) that, in the case of a nuisance under section 79(1)(ga) of the 1990 Act the requirements imposed by the abatement notice by virtue of section 80(1)(c) of the Act are more onerous than the requirements for the time being in force in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of Schedule 2 to the 1993 Act.
  - (h) that the abatement notice should have been served on some person instead of the appellant, being:-
    - (i) the person responsible for the nuisance, or
    - (ii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises, or
    - (iii) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;
    - (iv) the person responsible for the vehicle machinery or equipment;
  - (i) that the abatement notice might lawfully have been served on some person instead of the appellant being:-
    - (i) in the case where the appellant is the owner of the premises, the occupier of the premises, or

- (ii) in the case where the appellant is the occupier of the premises, the owner of the premises, and that it would have been equitable for it to have been so served;
- (j) that the abatement notice might lawfully have been served on some person in addition to the appellant, being:-
  - (i) a person also responsible for the nuisance,
  - (ii) a person who is also an owner of the premises, or
  - (iii) a person who is also an occupier of the premises,
  - (iv) a person who is also the person responsible for the vehicle, machinery or equipment, and that it would have been equitable for it to have been so served.
- (3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, or in connection with any copy of the notice served under section 80(A)(3), the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.
- (4) Where the grounds upon which an appeal is brought include a ground specified in paragraph (2)(i) or (j) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which this regulation applies he may serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which this regulation applies he may serve a copy of his notice appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.
- (5) On the hearing of an appeal the court may:-
  - (a) quash the abatement notice to which the appeal relates, or
  - (b) vary the abatement notice in favour of the appellant, in such manner as it thinks fit, or
  - (c) dismiss the appeal;  
and an abatement notice that is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.
- (6) Subject to paragraph (7) below, on the hearing of appeal the court may make such order as it thinks fit:-
  - (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or
  - (b) as to the proportions in which any expenses which may become recoverable by the authority under Part III of the 1990 Act are to be borne by the appellant and by any other person.
- (7) In exercising its powers under paragraph (6) above, the court:-
  - (a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required, and
  - (b) shall be satisfied, before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

## **SUSPENSION OF NOTICES**

### **3.**

- (1) Where:-
  - (a) an appeal is brought against an abatement notice served under section 80 or section 80A of the 1990 Act, and,
  - (b) either:-
    - (i) compliance with the abatement notice would involve any person in expenditure on carrying out of works before the hearing of the appeal, or
    - (ii) in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act, the noise to which the abatement notice relates is noise caused in the course of the performance of some duty imposed by law on the appellant, and
  - (c) either paragraph (2) does not apply, or if it does apply but the requirements of paragraph (3) have not been met, the abatement notice shall be suspended until the appeal has been abandoned or decided by the court.
  
- (2) The paragraph applies where:-
  - (a) the nuisance to which the abatement notice relates:-
    - (i) is injurious to health, or
    - (ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect, or
  - (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.
  
- (3) Where paragraph (2) applies the abatement notice:-
  - (a) shall include a statement that paragraph (2) applies, and that as a consequence it shall have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court, and
  - (b) shall include a statement as to which of the grounds set out in paragraph (2) apply.



Our Ref: DP/BAN/EHO

18<sup>th</sup> April 2008

**Strictly Private & Confidential**

The individual levels of each of the volume controls and settings which we have all agreed are as follows.

Front Bar (controls located on pillar by coffee machine)

Front = 4  
Dance Floor = 7

Rear Bar (control located nr cupboard)

Front = 3  
Middle = 5  
Rear = 3

DJ Booth (focussing on mixer controls)

Level = 7  
Low = 5 Max  
Middle = 5 Max  
High = 5 Max

Any member of staff or management who operates the system in excess of these agreed parameters will face disciplinary action.

Yours sincerely

**Dave Price**  
**Area Operations Manager**  
**Que Pasa**