

**Committee:**           **Licensing Sub Committee**  
**Date:**               **Tuesday 7 June 2011**  
**Time:**               **10.00 am**  
**Venue**               **Bodicote House, Bodicote, Banbury, OX15 4AA**

### **Membership**

**Councillor Mrs Diana Edwards**  
**Councillor Michael Gibbard**  
**Councillor Rose Stratford**

## **AGENDA**

### **1. Constitution of the Sub Committee**

The Membership of the Sub-Committee for this meeting will be Councillors Edwards, Gibbard and Rose Stratford.

Please contact Natasha Clark (01295 221589) 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. Review of Premises Licence (Pages 1 - 44)**

Report of Head of Safer Communities, Urban and Rural Services

#### **Summary**

To provide an outline of an application for the review of the Premises Licence in relation to Moko Bar and Kitchen, 16 Broad Street, Banbury for determination by the Licensing Sub Committee.

## **Recommendations**

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.

## **Information about this Agenda**

### **Apologies for Absence**

Apologies for absence should be notified to [democracy@cherwell-dc.gov.uk](mailto:democracy@cherwell-dc.gov.uk) or (01295) 221589 prior to the start of the meeting.

### **Declarations of Interest**

Members are asked to declare interests at item 2 on the agenda or if arriving after the start of the meeting, at the start of the relevant agenda item. The definition of personal and prejudicial interests is set out in Part 5 Section A of the constitution. The Democratic Support Officer will have a copy available for inspection at all meetings.

**Personal Interest:** Members must declare the interest but may stay in the room, debate and vote on the issue.

**Prejudicial Interest:** Member must withdraw from the meeting room and should inform the Chairman accordingly.

With the exception of the some very specific circumstances, a Member with a personal interest also has a prejudicial interest if it is one which a Member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest.

### **Local Government and Finance Act 1992 – Budget Setting, Contracts & Supplementary Estimates**

Members are reminded that any member who is two months in arrears with Council Tax must declare the fact and may speak but not vote on any decision which involves budget setting, extending or agreeing contracts or incurring expenditure not provided for in the agreed budget for a given year and could affect calculations on the level of Council Tax.

### **Queries Regarding this Agenda**

Please contact Natasha Clark, Legal and Democratic Services [natasha.clark@cherwell-dc.gov.uk](mailto:natasha.clark@cherwell-dc.gov.uk) (01295) 221589

## **Evacuation Procedure**

When the continuous alarm sounds you must evacuate the building by the nearest available fire exit. Members and visitors should proceed to the car park as directed by Democratic Services staff and await further instructions.

## **Access to Meetings**

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named below, giving as much notice as possible before the meeting.

## **Mobile Phones**

Please ensure that any device is switched to silent operation or switched off.

**Sue Smith**  
**Chief Executive**

Published on Friday 27 May 2011

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## Licensing Sub Committee

### Review of Premises Licence

7 June 2011

### Report of Head of Safer Communities, Urban and Rural Services

#### PURPOSE OF REPORT

To provide an outline of an application for the review of the Premises Licence in relation to Moko Bar and Kitchen, 16 Broad Street, Banbury for determination by the Licensing Sub Committee.

This report is public

#### Recommendations

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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.

#### Executive Summary

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##### Introduction

- 1.1 On 12 April 2011, the Licensing Authority received an application for the review of the premises licence held by Moko Bar and Kitchen, 16 Broad Street, Banbury
- 1.2 The Licensing Act 2003 provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken:
- 1.3 The licensing objectives are:

- The prevention of crime and disorder.
- Public safety.
- The prevention of public nuisance.
- The protection of children from harm.

Guidance issued under Section 182 of the Licensing Act 2003 states:

*Each objective is of equal importance. It is important to note that there are no other licensing objectives, so that these four objectives are paramount considerations at all times. But the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:*

- *the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting licensed premises of entertainment;*
- *the introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet customers' expectations;*
- *greater choice for consumers, including tourists, about where, when and how they spend their leisure time;*
- *the encouragement of more family friendly premises where younger children can be free to go with the family;*
- *the further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns and cities.*

- 1.4 The application was made by the Barclay Residents Company Limited, an interested party who represents persons living in the vicinity of the premises.
- 1.5 The application regards concerns that the Premises Licence Holders are not promoting the Prevention of Public Nuisance licensing objective.
- 1.6 A copy of the review application is to be found at Appendix 1 of this report.
- 1.7 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 offices.
- 1.8 The consultation period for the review ended on 10 May 2011.
- 1.9 A representation was received from Rob Lowther of the Anti-social Behaviour Unit on 10 May 2011. A copy of the representation is attached as Appendix 2 of this report.
- 1.10 Responses were also received from Thames Valley Police, Oxfordshire Fire and Rescue Service and Oxfordshire County Council Trading Standards. None of these authorities had any further comments to make. Their responses are attached to the report at Appendices 3, 4 and 5 respectively.
- 1.11 On 24 May 2011, Ms Joanne Kirby, representing the applicant, submitted further documentation in support of the review application. The documents are attached to this report as Appendices 6 to 13 respectively.
- 1.12 The application makes reference to potential nuisance being caused by persons smoking

outside of the premises. In July 2007, the introduction of The Health Act 2006 prohibited smoking in certain public areas. The Act made it an offence to smoke or permit others to smoke in smokefree premises as determined in the Act. Smokefree spaces refer to areas with a 50% or higher enclosure and do not cover open air areas. This legislation is enforced by Cherwell District Council's Public Protection Team.

- 1.13 The Public Protection Team were consulted as part of the application process for this review however, have refrained from making comment as should any breaches of the smoking legislation occur, they will deal with these under the appropriate legislation. The Secretary of States Guidance issued under Section 182 of the Licensing Act 2003 states:

***Avoiding duplication of other legal requirements:***

- *The licensing authority should only impose conditions on a premises licence or club premises certificate which are necessary and proportionate for the promotion of the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the premises licence holder or club. It is only where additional and supplementary measures are necessary to promote the licensing objectives that necessary, proportionate conditions will need to be attached to a licence.*

- 1.14 Therefore, any nuisance that may occur as a result of the act of smoking at the premises will be dealt with by the correct agency in accordance with the relevant legislation and not as part of this review process

## **Background Information**

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- 2.1 The existing Premises Licence came into force on 24 November 2005 and was originally held by Roger Herbert and Sonia Ryland of Ryland's, 16 Broad Street, Banbury
- 2.2 On 31 June 2006, an application was received to vary the premises licence. The variation sought to extend the permitted hours for the supply of alcohol and to include licensable activities in the form of live and recorded music, making music and dancing from 10.00 to midnight on Mondays to Thursdays, 10.00 to 02.00 the following morning on Fridays and Saturdays and from 11.00 to midnight on Sundays. A representation was received from Cherwell District Council's Environmental Services Department requesting that a condition be placed upon the licence requiring a noise limiter to be installed at the premises. This condition was duly agreed by the applicant and as no further representations were received, the licence was duly granted.
- 2.3 On the 13 August 2007, an application to transfer the premises licence from Roger Herbert and Sonia Ryland to Snap Inns Limited of 48 Parsons Street, Banbury and to simultaneously vary the Designated Premises Supervisor from Roger Ryland to Shirley Ainsworth. No objections were received from Thames Valley Police to either application and they were duly granted.
- 2.4 On the 23 January 2008, an application to transfer the premises licence from Snap Inns Limited to ABC Midlands Limited of 4 Highcliff Court, Weatherby and to simultaneously vary the Designated Premises Supervisor from Shirley Ainsworth to Peter Falgate. No objections were received from Thames Valley Police to either application and they were duly granted.
- 2.5 On 12 February 2008, a notification of interest was registered in the property by TLT

Solicitors on behalf of R&L Properties No 6 Limited. The applicants were duly noted of any changes made to the premises licence in accordance with the Licensing Act 2003. The notification has been renewed annually.

- 2.6 On the 13 May 2008, an application to vary the Designated Premises Supervisor from Peter Falgate to Michelle Pearce was received. No objection was received from Thames Valley Police to the application and it was duly granted.
- 2.7 On the 29 September 2008, an application to transfer the premises licence from ABC Midlands Limited to Bekim Hyseni of the Red Lion, Middleton Cheney and to simultaneously vary the Designated Premises Supervisor from Michelle Pearce to Bekim Hyseni. No objections were received from Thames Valley Police to either application and they were duly granted.
- 2.8 On the 9 April 2009, an application to transfer the Premises Licence from Bekim Hyseni to Scottish and Newcastle Pub Enterprises (Management) Ltd of 2-4 Broadway Park, Edinburgh was received. No objection was received from Thames Valley Police to the application and it was duly granted.
- 2.9 On the 2 June 2010, an application to transfer the premises licence from Scottish and Newcastle Pub Enterprises (Management) Ltd to Techno bar Pub Company of 161 Warwick Road, Banbury and to simultaneously vary the Designated Premises Supervisor from Bekim Hyseni to Carla Chalkley. No objections were received from Thames Valley Police to either application and they were duly granted.
- 2.10 On the 12 July 2010, a letter was received from Carla Chalkley stating she no longer consented to being the Designated Premises Supervisor at the premises. Ms Chalkley's letter accompanied an application to vary the Designated Premises Supervisor from Carla Chalkley to Patrick Broderick was received. No objection was received from Thames Valley Police to the application and it was duly granted.
- 2.11 On the 29 November 2010, an application to transfer the Premises Licence from the Technobar Pub Company back to Scottish and Newcastle Pub Enterprises (Management) Ltd of 2-4 Broadway Park, Edinburgh was received. No objection was received from Thames Valley Police to the application and it was duly granted.
- 2.12 On the 3 February 2011, an application to transfer the premises licence from Scottish and Newcastle Pub Enterprises (Management) Ltd to the Oxford Pub and Leisure Company Limited of Suite 1, 2 Botley Road, Oxford and to simultaneously vary the Designated Premises Supervisor from Patrick Broderick to Harriet Hornblow. No objections were received from Thames Valley Police to either application and they were duly granted.
- 2.13 In February 2011, a letter was received from Harriet Hornblow stating she no longer consented to being the Designated Premises Supervisor at the premises
- 2.14 On the 8 March 2011, an application to vary the Designated Premises Supervisor from Harriet Hornblow to Christopher Proudfoot was received. No objection was received from Thames Valley Police to the application and it was duly granted.
- 2.15 On 28 April 2011, the Licensing Team were contacted by a Mr Robin Barnes who wished to become the Designated Premises Supervisor at the premises. Mr Barnes also advised that the Oxford Pub and Leisure Company Limited had changed their registered address. Advice was given to Mr Barnes on how to make the relevant applications and how to update the address details of the licence holder. No applications had been received by the Licensing Team at the time of writing this report.

2.16 The Premises Licence allows the following Licensable activities:

**Provision of Regulated Entertainment:**

Indoor Sporting Events – **NB INDOORS ONLY**

Boxing or Wrestling 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 and Entertainment of a similar description to that falling within making music or dancing

**Provision of late night refreshment**

**Sale (By Retail) of alcohol**

2.17 The Licensable Activities are permitted for the following times:

LICENSABLE ACTIVITY	DAY	START	FINISH	
Sale (by retail) of alcohol	Monday	10:00	00:00	
	Tuesday	10:00	00:00	
	Wednesday	10:00	00:00	
	Thursday	10:00	00:00	
	Friday	10:00	02:00	
	Saturday	10:00	02:00	
	Sunday	11:00	00:00	
	Bank Holiday Sundays & Mondays until 01:00			
	Christmas Eve until 02:00			
	New Years Eve from the end of permitted hours on New Years Eve to the start of permitted hours on the following day			
	LICENSABLE ACTIVITY	INDOORS	DAY	START
OUTDOORS				
BOTH				
Provision of Regulated	Monday	11:00	00:00	

Dance			
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LICENSABLE ACTIVITY	INDOORS	✓	DAY	START	FINISH
	OUTDOORS				
	BOTH				
<b>Provision of Regulated Entertainment</b> <ul style="list-style-type: none"> <li>Live Music</li> </ul>	<b>Up to a maximum of eight times per year within the hours detailed below</b>				
	Monday			10:00	00:00
	Tuesday			10:00	00:00
	Wednesday			10:00	00:00
	Thursday			10:00	00:00
	Friday			10:00	02:00
	Saturday			10:00	02:00
	Sunday			11:00	00:00
	Bank Holiday Sundays & Mondays until 01:00				
	Christmas Eve until 02:00				

LICENSABLE ACTIVITY	INDOORS	✓	DAY	START	FINISH
	OUTDOORS				
	BOTH				
<b>Provision of Regulated Entertainment</b> <ul style="list-style-type: none"> <li>Recorded Music</li> </ul> <b>Provision of Entertainment Facilities for</b> <ul style="list-style-type: none"> <li>Making Music</li> <li>Dancing</li> </ul>	Monday			10:00	00:00
	Tuesday			10:00	00:00
	Wednesday			10:00	00:00
	Thursday			10:00	00:00
	Friday			10:00	02:00
	Saturday			10:00	02:00
	Sunday			11:00	00:00
	Bank Holiday Sundays & Mondays until 01:00				
	Christmas Eve until 02:00				
	New Years Eve from the end of permitted hours on New Years Eve to the start of permitted hours on the following day				

LICENSABLE ACTIVITY	INDOORS	✓	DAY	START	FINISH
	OUTDOORS				
	BOTH				
<b>Provision of Entertainment Facilities for</b> <ul style="list-style-type: none"> <li>Entertainment of a similar description to that falling within Making Music or Dancing</li> </ul>	Monday			10:00	00:00
	Tuesday			10:00	00:00
	Wednesday			10:00	00:00
	Thursday			10:00	00:00
	Friday			10:00	02:00
	Saturday			10:00	02:00
	Sunday			11:00	00:00

LICENSABLE ACTIVITY	INDOORS	✓	DAY	START	FINISH
	OUTDOORS				
	BOTH				
<b>Provision of Regulated Entertainment</b> <ul style="list-style-type: none"> <li>Recorded Music - <b>ONLY</b> when pursuant to S182 of The Licensing Act 1964</li> </ul>	Monday			00:00	00:00
	Tuesday			00:00	00:00
	Wednesday			00:00	00:00
	Thursday			00:00	00:00
	Friday			00:00	00:00

	Saturday	00:00	00:00
	Sunday	00:00	00:00

LICENSABLE ACTIVITY	INDOORS	✓	DAY	START	FINISH
	OUTDOORS				
	BOTH				
Provision of late night refreshment			Monday	23:00	00:00
			Tuesday	23:00	00:00
			Wednesday	23:00	00:00
			Thursday	23:00	00:00
			Friday	23:00	01:00
			Saturday	23:00	01:00
			Sunday	23:00	00:00
			Good Friday and Christmas Day as Standard timings		

2.18 The current Premises Licence details the opening hours of the Premises to be:

DAY	START	FINISH
Monday	10:00	00:30
Tuesday	10:00	00:30
Wednesday	10:00	00:30
Thursday	10:00	00:30
Friday	10:00	02:30
Saturday	10:00	02:30
Sunday	11:00	00:30
May open to Public for non-licensable activities		

### **Key Issues for Consideration/Reasons for Decision and Options**

3.1 The Licensing Act 2003 states that all licensing matters must promote the four Licensing Objectives, they are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

3.2 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:**

Sections	11.1 – 11.11	The Review Process
Sections	11.16 – 11.22	Powers of a Licensing Authority on the determination of a review
Sections	10.7 – 10.18	Proposed Consistency, Consistency with Steps Described in Operating Schedules, Imposed

		Conditions, Proportionality, Duplication with other statutory provisions
Annex D		Core Principles
Sections	2.32 – 2.40	Public Nuisance
Annex D	Part 4.	Conditions relating to the prevention of public nuisance

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

Page 1	Policy GN 1	Section 1.1.1	Objectives
Pages 19 – 20	Policies LA 3 – LA 4	Sections 7.3.1 – 7.3.8	General Prevention of Public Nuisance
Page 20	Policies LA 5	Sections 7.3.9	Addressing Local Concerns
Page 21	Policy LA 6	Section 7.3.10	General Management and Control
Pages 30 – 31	Policy DPS 1	Sections 7.6.1 – 7.6.5	Designated Premises Supervisor
Page 40	Policies RE1 – RE4	Sections 10.1.1 – 10.1.3	Reviews

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.

The following options have been identified. The approach in the recommendations is believed to be the best way forward

<b>Option One</b>	Modify the conditions of the Premises Licence;
<b>Option Two</b>	Exclude a licensable activity from the scope of the Premises Licence;
<b>Option Three</b>	Remove the Designated Premises Supervisor from the Premises Licence;
<b>Option Four</b>	Suspend the Premises Licence for a period not exceeding three months;
<b>Option Five</b>	Revoke the Premises Licence;
<b>Option Six</b>	Any combination of the above; or
<b>Option Seven</b>	None of the above

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.”

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....”

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.

## **Consultations**

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Full consultation in accordance with the requirements of the Licensing Act 2003 was carried out for a period of 28 days from the date of application for review, ending at midnight on 10 May 2011.

## **Implications**

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- Financial:** There are no financial implications of this report  
Comments checked by Denise Taylor, Service Accountant, 01295 221982
- Legal:** The decision must comply with relevant legislation and Council Policy.  
All parties have a right of Appeal to the Magistrates Court against the decision  
Comments checked by Paul Manning, Solicitor, 01295 221691
- Risk Management:** There is a risk that if policy and legislation has not been correctly followed, any resulting appeal could be successful.  
Comments checked by Clare Taylor, Corporate Strategy and Performance Manager, 01295 221566

## **Wards Affected**

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Banbury Grimsbury & Castle

## **Document Information**

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<b>Appendix No</b>	<b>Title</b>
Appendix 1	Application for the review of a premises licence: Moko Bar and Kitchen
Appendix 2	Representation form Rob Lowther, Manager of the Anti Social Behaviour Team at Cherwell District Council
Appendix 3	Response form Thames Valley Police
Appendix 4	Response from Oxfordshire Fire and Rescue Service
Appendix 5	Response from Oxfordshire County Council Trading Standards
Appendix 6	Email from Joanne Kirby on behalf of Barclay Residents Company Limited
Appendix 7	Supplementary Information from applicant
Appendix 8	Supplementary Information from applicant

Appendix 9	Supplementary Information from applicant
Appendix 10	Supplementary Information from applicant
Appendix 11	Supplementary Information from applicant
Appendix 12	Supplementary Information from applicant
Appendix 13	Supplementary Information from applicant
<b>Background Papers</b>	
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.	
<b>Report Author</b>	Claire Bold, Licensing Team Leader
<b>Contact Information</b>	01295 753741 claire.bold@cherwell-dc.gov.uk



## Application for the review of a premises licence or club premises certificate

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.*

Barclay Residents Co Ltd

(insert name of applicant)

apply for the review of a 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	
Moko Bar and Kitchen 16 Broad Street	
Post town Banbury	Post code (if known) OX16 5BN
Name of premises licence holder or club holding club premises certificate (if known) Oxford Pub and Leisure Co Ltd	
Number of premises licence or club premises certificate (if known) PRM0070	

### Part 2 - Applicant details

I am	Please tick "yes"
1) an interested party (please complete (A) or (B) below)	<input type="checkbox"/>
a) a person living in the vicinity of the premises	<input type="checkbox"/>
b) a body representing persons living in the vicinity of the premises	<input checked="" type="checkbox"/>
c) a person involved in business in the vicinity of the premises	<input type="checkbox"/>
d) a body representing persons involved in business in the vicinity of the premises	<input checked="" type="checkbox"/>

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  
Barclay Residents Co Ltd  
c/o Common Ground Estate & Property Management Ltd  
Sandford Gate  
East Point Business Park  
Oxford  
OX4 6LB

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

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

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 | <input type="checkbox"/>            |
| 2) public safety                        | <input type="checkbox"/>            |
| 3) the prevention of public nuisance    | <input checked="" type="checkbox"/> |
| 4) the protection of children from harm | <input type="checkbox"/>            |

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

Prevention of public nuisance

Noise nuisance

Music played in the bar continues well after 11pm, in particular on Friday, Saturday and Sunday nights when they have a disco from 10.00pm until after midnight, and creates a noise nuisance to persons living in the vicinity

Low notes and bass beats are transmitted upward through the structure of the building causing the rooms to vibrate, particularly in those flats on the first floor immediately above the bar.

The area immediately outside the bar is both the designated smoking area and used for bar tables and chairs. The door is therefore repeatedly opened increasing the noise level near the flats

The music is sufficiently loud to prevent people from sleeping, and to wake them late at night.

Smoking nuisance

The smoking area is immediately underneath the windows of six flats, which cannot therefore be opened during bar hours without allowing secondary smoke into the living area of the flats

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

Construction of premises and proximity to flats



Though this photograph was taken some years ago with the bar concerned under different ownership (Rylands) it clearly shows the proximity of the bar to the six residential flats above, and others to the right.

The property was not designed with the intention of the lower part being used as a bar (indeed this was specifically excluded on the original freehold) and has therefore not been constructed with suitable internal sound insulation. Sound and vibration are transmitted upward through the building structure, especially for the bass notes of amplified music.

Noise levels

Residents in the flats have had to call the Cherwell Antisocial Behaviour Team on their night number on many occasions in view of the noise.

Specific dates where the noise was recorded as being a nuisance include:

- 3<sup>rd</sup> and 5<sup>th</sup> February - very loud, unable to sleep
- 18<sup>th</sup> and 19<sup>th</sup> February - really loud, unable to sleep
- 12<sup>th</sup> March - audible until midnight, enough to irritate if trying to sleep
- 25<sup>th</sup> March - really loud, music did not stop before 1am
- 26<sup>th</sup> March - noise level high, could hear music clearly even with TV on
- 1<sup>st</sup> April - music really loud until 1am, unable to sleep
- 2<sup>nd</sup> April - music really loud until midnight, unable to sleep
- 3<sup>rd</sup> April - live band/singer, really loud, did not finish until just after midnight
- 8<sup>th</sup> April - music very loud, did not stop until 1am
- 9<sup>th</sup> April - "so loud it was as if we had played the music in our flat". Did not stop until 1am
- 10<sup>th</sup> April - 10:30pm, live band has stopped playing but can still hear the music

Environmental Health are aware of an ongoing noise problem and have measured noise levels in Flat 9. They were called out again due to noise levels on April 2<sup>nd</sup>.

Continued on continuation sheet, page 1



Please tick yes:

I 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



Date

11/4/11

Capacity

Company Secretary

Contact name (where not previously given) and address for correspondence associated with this application (please read guidance note 5)	
Mrs J Kirby Barclay Residents Co Ltd c/o Common Ground Estate & Property Management Ltd Sandford Gate, East Point Business Park	
Post town Oxford	Post code OX4 6LB
Telephone number (if any)	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) barclayresco@gmail.com	

**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.

## **Application for the review of a premises licence or club premises certificate**

With regard to Moko Bar and Kitchen, 16 Broad St, Banbury

Continuation sheet, page 1

### Lack of mitigating actions taken by the bar

The bar owners have been approached by representatives of the residents, the managing agents, and the Antisocial Behaviour Manager, Cherwell DC. They have made it clear that they consider they are within the terms of their license and will make no effort to reduce the noise below the maximum permitted.

### Information to support the application (continued)

No sound proofing materials have been installed by the licensees

No air conditioning or ventilation equipment is visible from outside the building, suggesting none has been installed by the licensees to assist in keeping the doors and windows closed.

The licensing terms for the bar include a noise limiting device. We have no way to determine what noise level it is set to, nor if it is working.

Cherwell DC Environmental Health Department has issued an Noise Abatement Notice under the Environmental Protection Act regarding the excessive noise

### Smoking nuisance

The bar has no legal access to the area behind (except for a right of way) and therefore cannot use this as a designated smoking area.

### Suggested remedial action

The residents of Barclay House, as represented by Barclay Residents Co Ltd, would consider a satisfactory resolution to be:

- Installation and use of an effective noise limiter to reduce the noise level from amplified music
- All music (amplified or live) to cease at 23:00
- Notice be given to residents in advance of any live music events
- Loudspeakers to be mounted on a structure separated from the walls of the building and suitably insulated so that vibrations are not transmitted through the building structure
- Erection of a canopy over the bar to deflect smoke from the flat windows

Barclay Residents Co Ltd  
c/o Common Ground Estate & Property  
Management Ltd  
Sandford Gate  
East Point Business Park  
Oxford  
OX4 6LB

Urban and Rural Services (Licensing)  
Cherwell District Council  
Bodicote House  
Bodicote  
Banbury  
Oxfordshire  
OX15 4AA



11 April 2011

Dear Sir/Madam,

Application for the review of a premises licence - Moko Bar & Kitchen, 16 Broad St

Please find enclosed a completed application requesting review of the Premises License at the above location.

This application is made by Barclay Residents Co Ltd on behalf of the residents of the flats adjoining the bar, including those located immediately above, for which the noise and disturbance produced by the current bar and its predecessor cause a regular and excessive nuisance.

Yours sincerely,  
For Barclay Residents Company Ltd

J Kirby (Secretary)  
N Bolas  
L Greenaway  
A Tyler  
C Mahfound  
B Gascoigne  
M Lentall

**Cherwell District Council  
Safer Communities and Community Development  
Anti-social Behaviour Units Licensing Consultation Response.**

**Licensing Act 2003: Application for a review of a premises license.  
Applicant(s): Barclay House Residents Company Ltd c/o Common Ground Estate  
& Property Management Ltd  
Sandford Gate East Point Business Park Oxford OX4 6LB**

**Premises:**

Moko Bar and Kitchen 16 Broad Street Banbury Oxon.

**Details of the application:**

The applicants are seeking a review of the Premises License current held in respect of the Moko Bar and Kitchen on grounds of public nuisance citing excessive noise and the nuisance caused by smokers as their principal grounds.

**History:**

This submission is made on by Cherwell District Councils' Anti Social Behaviour Team performing its role of Responsible Authority for Public Nuisance.

To put these comments into context it may assist the Licensing Sub Committee to briefly describe the situation of the premises that are the subject of this review and set out the history of the use of the premises.

The Moko Bar and Kitchen is located in Broad Street Banbury, an area which in land use planning terms can be described as commercial. The bar occupies the ground floor of the three story building with the first and second floors being six self contained flats.

When the Licensing Act 2003 came into force the premises operated under the name Rylands. When the application to convert the Liquor and Public Entertainment Licenses to a Premises License was made in 2006 a member of the Councils' then Environmental Protection Team commented that as a result of noise complaints received from the residents of Barclay House a sound limiting device had been installed at the premises and restrictions had been placed on the number of occasions when live music could be played within the premises.

In August 2007 the Premises License was transferred to a company known as Snap Inns Ltd. Who continued to trade as Rylands. In 2008 the Premises License was again transferred this time to a company known as ABC Midland Ltd. In October of that year there was a further transfer of the premises license to a Mr Hyseni. The premises continued to operate under this ownership until June 2010 when the license transferred to the Technobar Pub Company. The Premises License was transferred to its present holders' The Oxford Pub and Leisure Company Ltd in February 2011.

The Councils' Anti Social Behaviour Team received the first complaint alleging excessive noise from the premises on 03/02/11 when one of the occupants of the flats above the premises made an out of hours report to the Council. A visit to this customers' property was made on 04/03/11 and a subjective assessment of the level of noise within the flat was made. A further call was received the following evening at 22:00 hrs. A further site visit was made and the level of music noise was judged to be excessive.

A visit was also made to the bar that evening and a conversation took place between Mr Carter, the Managing Director of The Oxford Pub and Leisure Company Ltd. and myself. I advised him that we had received noise complaints that in our view were justified and after some debate as to the source of the noise we agreed to meet at his premises on to discuss the problem further.

This meeting took place on 08/02/11 and Mr Carter agreed to isolate the floor mounted bass speakers from the floor of the bar in an effort to reduce the transmission of sound through the structure of the building. I also discussed with Mr Carter other means of sound control. Our meeting concluded with us agreeing to meet again at the premises on 11/02/11 to assess progress. At this meeting I was introduced to Mr Christopher Proudfoot. I was told he was Mr Carter's business associate. Isolation mounts had been placed between the floor mounted bass speakers as agreed. I also visited one of the first floor flats above the bar with Mr Carter. The music noise level heard at this time was considered acceptable.

We received no further complaints until 25/02/11 and 26/02/11. On the latter occasion an officer attend the customers' premises at 23:10 hrs. Excessively loud music was heard but subsequent enquiries at the bar indicated that they were closing shortly.

We continued to receive regular complaints of excessive noise from residents of both first and second floors of Barclay House. Having heard noise that was judged to be excessive in one of the second floor flats an attended noise monitoring exercise was carried out on 26/03/11 from one of the first floor flats in Barclay House. An officer arrived at the premises at 22:00 hrs and remained until the music noise from the bar ceased at 00:20 hrs. During this period of observation the music noise level was assessed both subjectively and objectively. Sound level measurements were made every 15 minutes. The average noise level during the period of observation was Laeq (15 min) 50 dB with the maximum level being 56 Db. A further measurement was made once the music noise had stopped. This was Laeq(15 mins) 28 dB.

During the officers observation it was possible to hear the music being played in the bar at a level where individual tracks could be identified. Bass music noise was dominant and vibration could be felt in the walls and floor of the flat.

On the basis of these observations the level of music that could be heard within the flat was judged to constitute a statutory noise nuisance under the Environmental Protection Act 1990.

Two noise abatement notices were drafted. The first was sent by post to The Oxford Pub and Leisure Company Ltd at their Registered Office address, Suite 1 2 Botley Road Oxford OX2 0AB. The notice was sent by recorded delivery on 07/04/11. The documents were returned to the Council by the Post Office endorsed 'Address inaccessible'. A copy of the noise abatement notice was also served on Mr Christopher Proudfoot who was now the Designated Premises Supervisor (DPS) of the premises. The notice was sent to the home address he had given in his Transfer Application, The Old School Gloucester Green Oxford OX1 2DA. This notice was returned to the Council by the Post Office endorsed ' Addressee gone way. Addressee unknown'.

Further copies of the noise abatement notices addressed to The Company Secretary, The Oxford Pub and Leisure Company Ltd and Mr Proudfoot c/o Moko Bar and Kitchen

16 Broad Street Banbury Oxon. The covering letter that went with the abatement notices requested confirmation in writing of the addresses of both the company's registered office and Mr Proudfoot. To date no response has been received.

I have heard verbally from the Councils' Licensing Department that the company's registered office has changed and that a change of DPS is in progress. Once these details have been confirmed further copies of the abatement notices will be sent to the appropriate addresses.

We continue to receive noise complaints from residents of the both floors of Barclay House and will seek to enforce the noise abatement notice(s) once clarification of the identity and address of the DPS and the address of the Premises License holders Registered Office has been clarified.

I have no submission to make in respect of the alleged nuisance from smoking by the bars' customers as this activity is controlled by separate legislation through the Responsible Authority for Public Safety, the councils Public Protection Department.

**Recommendation:**

We would submit that on the basis that noise from the premises is causing both statutory and public noise nuisances that the Premises License should be varied as follows:

*No amplified sound shall be produced within the premises after 23:00 hrs or before 08:00 hrs on any day.*

*Notwithstanding the above recommendation that the level of sound within the premises be controlled using a sound limiting device calibrated such that it does not allow amplified sound to be produced at a level that would materially interfere with the enjoyment of nearby dwellings.*

*The permission allowing the performance of live music within the premises be withdrawn*

**Rob Lowther**  
**Anti Social Behaviour Manager**  
**10/05/11**

A copy of this report is sent to the applicant(s) or their agents and to the Licensing Authority for the Cherwell District Council Area. Should you wish to discuss the contents of this report and its recommendations please contact Rob Lowther on 01295 221623 or [rob.lowther@cherwell-dc.gov.uk](mailto:rob.lowther@cherwell-dc.gov.uk).

**PLEASE CONFIRM IN WRITING THAT YOU HAVE RECEIVED THIS DOCUMENT, THAT YOU AGREE THE RECOMMENDED CONDITIONS OR THAT YOU INTEND TO CHALLENGE THE RESPONSIBLE AUTHORITIES RECOMMENDATION**  
Correspondence must be addressed to Safer Communities, Urban & Rural, The Licensing Authority, Cherwell District Council, Bodicote House, Bodicote Banbury OX15 4AA

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**Claire Bold**

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**Subject:** FW: Application for a review of MOKO, Banbury

**From:** Morris Laura [mailto:Laura.Morris@thamesvalley.pnn.police.uk]

**Sent:** 10 May 2011 12:30

**To:** Claire Bold

**Subject:** RE: Application for a review of MOKO, Banbury

Good morning

Having looked at command and control and cedar since Jan 2011 there are no recorded crimes directly relating to this premise. Therefore I am unable to support this review under grounds of crime and disorder although there have been a few calls referring to Noise complaints. Thames Valley Police had issues of crime and disorder with the previous DPS but since this has changed there are no reports.

Regards

Laura Morris

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Oxfordshire County Council  
**Fire and Rescue Service**  
 West Cherwell Area Office  
 Cope Road  
 Banbury  
 Oxon OX16 2EY

Mrs J Kirby  
 Barclay Residents Co Ltd  
 C/O Common Ground Estate & Property  
 Management Ltd  
 Sandford Gate  
 East Point Business Park  
 Oxfordshire County Council OX4 6LB

Telephone: 01295 759030  
 Fax: 01295 275451

Malcolm Jones  
 Fire Risk Manager - West Cherwell

My Reference  
 605/018/017

Your Reference

Date  
 27/04/11

This matter is being dealt with by  
 Dave Luke  
 Email: David.Luke@oxfordshire.gov.uk

Direct Line  
 01295 759032

#### Address of Applicant

Mrs J Kirby  
 Barclay Residents Co Ltd  
 C/O Common Ground Estate & Property Management Ltd  
 Sandford Gate  
 East Point Business Park  
 Oxfordshire County Council OX4 6LB

Cc Cherwell District Council  
 Licensing Committee.

Dear Sir,

#### Licensing Act 2003

No adverse comments from Fire Authority

<b>Name of Applicant</b>	<b>Barclay Residents Co Ltd</b>
<b>Premises / Location</b>	<b>Moko Broad St Banbury Oxon OX16 5BN</b>
<b>Type of Licence</b>	<b>Review request to Premise licence</b>

It is confirmed that the Oxfordshire Fire and Rescue Service have no adverse comments to make.

A full Fire Safe Audit was carried out on the 26<sup>th</sup> April 2011. While areas of improvement were identified there are no issues that would make me state anything other than no adverse comments.

This application is not from the licence holder. It is further noted that the residents have made at least one un-necessary complaint against this company.



Should you wish to discuss this matter, please do not hesitate to contact the Officer indicated.

Dave Luke

Community Fire Safety Officer

**Alexandria Gilbert**

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**From:** Bradford, David - Community Safety - Trading Standards [David.Bradford@Oxfordshire.gov.uk]  
**Sent:** 12 May 2011 13:46  
**To:** Licensing  
**Subject:** Licensing Act Applications - No Objections

Ref: 99p Stores, Bridge Street, Banbury - No Objections  
Ref: Moko Bar, Broad Street, Banbury - No Objections

**David Bradford**  
**Principal Trading Standards Officer**  
**Oxfordshire County Council**  
**Trading Standards Service**  
**Graham Hill House**  
**Electric Avenue**  
**Ferry Hinksey Road**  
**Off Botley Road**  
**Oxford, OX2 0BY**  
**Tel: 01865 816570**  
**Fax: 01865 783106**  
<<http://www.oxfordshire.gov.uk/tradingstandards>>

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**MOKO Bar and Kitchen, Banbury - Message (HTML)**

File Edit View Insert Format Tools Actions Help

Reply Reply to All Forward [Icons]

From: Joanne Kirby [joanne.kirby1@gmail.com] Sent: Tue 24/05/2011 14:22  
To: Claire Bold  
Cc:  
Subject: MOKO Bar and Kitchen, Banbury

Attachments: IMG\_0003.pdf (365 KB); IMG\_0004.pdf (125 KB); IMG\_0005.pdf (110 KB); IMG\_0006.pdf (283 KB); IMG\_0007.pdf (264 KB); IMG\_0008.pdf (246 KB);  
IMG\_0009.pdf (257 KB); IMG\_0010.pdf (184 KB)

Please find attached documents I would like to submit for the hearing on 7 June.

I have attached the following:

Original plan of the site showing the plan for the bar to be three shop units

Emails received from my tenant, Alina, prior to making an application for a Review of the Licence and also a more recent email advising me of current situation - I have removed the email addresses

Email from the owner of Flat 16 prior to making an application for a Review of the Licence - I have removed the email addresses

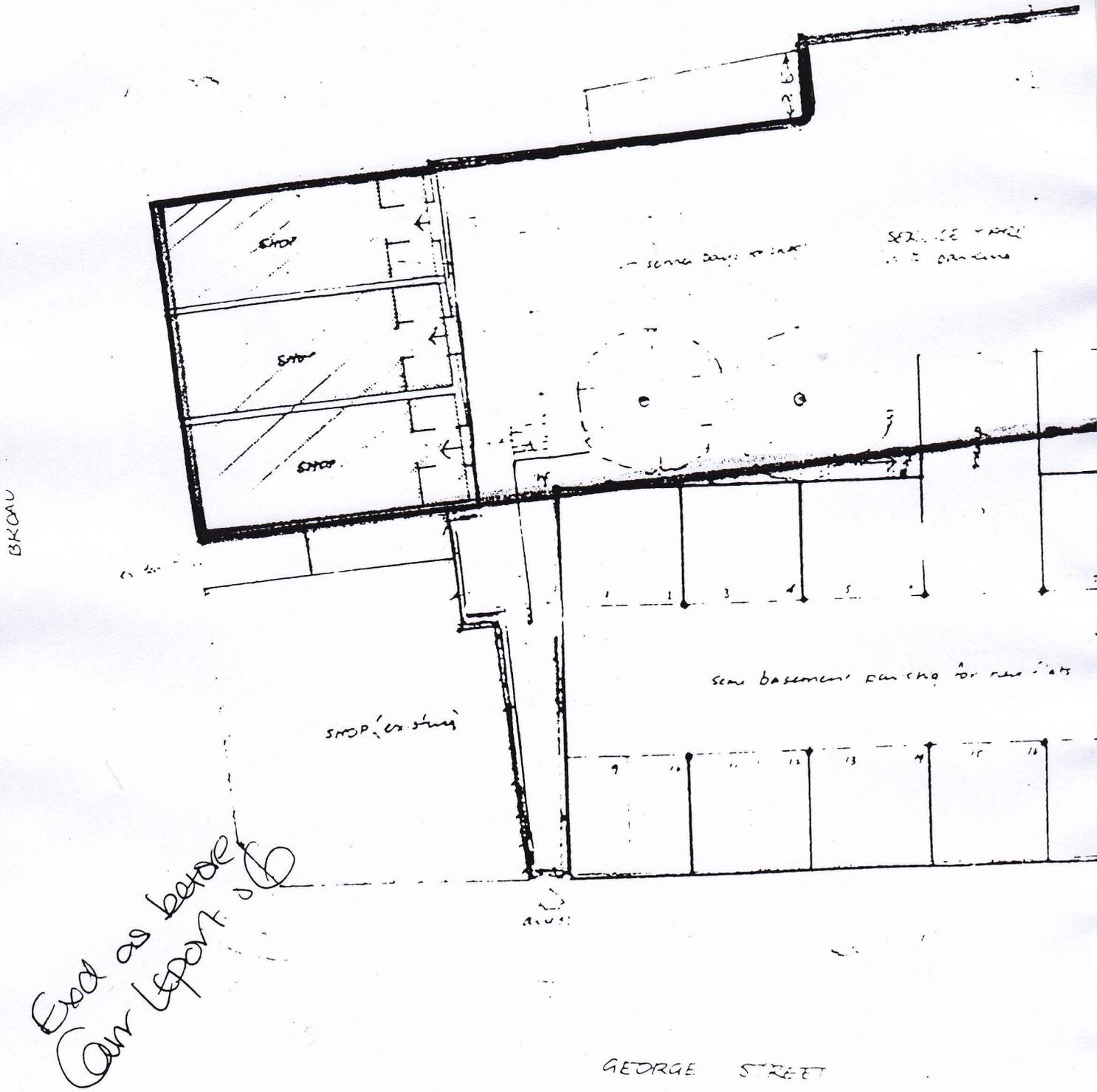
I confirm that I will be attending the hearing on 7 June together with Stephanie Kite who is a member of the Barclay House Residents Association and the owner occupier of Flat 16.

I hope to have a further document to send to you but I am waiting for the tenant to send it to me.

Kind regards  
Joanne Kirby

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ORIGINAL PLAN FOR BAR SHOWING  
THREE SHOP UNITS



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**From:**  
**To:**  
**Sent:** 07 February 2011 22:56  
**Subject:** Re: Tenancy  
Hi Joanne,

Yes, the music was very loud on Thursday and Saturday night, but now it's ok.  
Let's see what happens this weekend.

Thank you for an update.

Kind Regards  
Alina Kawka

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**From:**  
**To:**  
**Sent:** 19 February 2011 23:43  
**Subject:** Re: Tenancy

Hello Joanne,  
Just to let you know that the music coming from the pub underneath is really loud this week.

Kind Regards,  
Alina

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**From:**  
**To:**  
**Sent:** 20 May 2011 22:26  
**Subject:** RE: Licensing Review  
Hello Joanne,

Just to let you know that there has been no improvement in the noise since mid April. The music starts every Friday and Saturday at about 10pm and does not finish before 1am. Sometimes the loud music is on on Tuesdays as well. There have been two Sundays without live band, but last week the singer started performing again. It usually starts at about 8pm and finishes around 11pm.

Kind Regards  
Alina

W dniu 2011-05-20 15:06:43 użytkownik

Alina

I hope you are keeping well.

I am gathering the paperwork together for the Licensing Review we have on 7 June as I need to submit it early next week.

Please could you let me know whether or not there has been an improvement in the noise since we put the application through in mid April.

Kind regards  
Joanne

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**From:**  
**To:**  
**Sent:** 11 April 2011 12:27  
**Subject:** RE: Barclay House  
Hi Joanne

I don't think anything happens on a Thursday, as I have not noticed any loud music. Sundays are now really bad, as they seem to have live music, which last week went on until just after midnight. I wasn't at home last night, so not sure if it was bad again. Saturday was really bad. It started about 9m and by 11pm was incredibly loud. I have been keeping an eye on it as and when it is a problem.

Regards  
Steph

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**From:**  
**To:**  
**Subject:** Barclay House  
**Date:** Mon, 11 Apr 2011 11:47:55 +0100

Steph

I am just about to put the documents together for the review. When the bar first opened I think they were advertising music on Thurs, Fri and Sat but I have a feeling Thursday never really took off. Please could you confirm if this is the case, I think it is now very bad on a Sunday as well.

Joanne

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**From:**  
**To:**  
**Sent:** 03 April 2011 18:06  
**Subject:** RE: Tenancy  
Hello,

Unfortunately, I can't remember the dates.  
But I can tell you that it was really loud and the music did not stop before 1am last Friday.  
Yesterday it stopped at about midnight.  
Usually the music stops between 11pm and midnight.

Kind Regards  
Alina

W dniu 2011-04-03 17:37:56 użytkownik

Alina

We are now working towards putting in an application for the licence for the bar below to be reviewed. Do you by any chance have a list of dates when the music has been too loud since they started at the beginning of February? I have copies of the emails you sent me but a more comprehensive list would be useful, if you can remember how late the music went on etc.

Kind regards  
Joanne

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**From:**  
**To:**  
**Sent:** 17 April 2011 00:54  
**Subject:** RE: RE: Re: Tenancy  
Hi again,

Just to let you know that we have been visited by Rob at Cherwell DC who checked how loud the music was and updated us with what is going on with the Noise Abatement.

Regards  
Alina

W dniu 2011-04-17 00:40:00 użytkownik

Hi,

I have just called Emergency Number to log the noise from the pub, as nothing has changed.  
It was the same yesterday.

Regards  
Alina

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