

# NORWICH CITY COUNCIL

## Report for Resolution

**Report To** Licensing Sub-Committee

11 January 2011

**Report of** Head of Citywide Services

**Subject** Licensing Act 2003:  
Application for Review of a Premises Licence -  
The Edith Cavell PH 7 Tombland Norwich

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### Purpose

Members are asked, in accordance with the delegation of licensing functions contained in the Norwich City Council Statement of Licensing Policy (Licensing Act 2003), to consider an Interested Party application to review the Premises Licence in respect of The Edith Cavell PH 7 Tombland Norwich.

### Recommendation

That Members determine the review application respect of The Edith Cavell PH 7 Tombland Norwich in accordance with the:

- Licensing Act 2003;
- Guidance issued under Section 182 of the Licensing Act 2003; and
- Norwich City Council Statement of Licensing Policy.

### Financial Consequences

The financial consequences for this report are nil.

### Corporate Objective/Service Plan Priority

The report helps to achieve the service plan priority of protecting the interests of the public through the administration of the licensing function.

### Contact Officers

**Ian Streeter**

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### Background Documents

The Licensing Act 2003  
Guidance issued under Section 182 of the Licensing Act 2003  
Norwich City Council Statement of Licensing Policy

## **1.0 Licensing Act 2003 (The Act): Review Applications**

1.1 The Act provides a mechanism by which, following the grant of a Premises Licence, a Responsible Authority (e.g. Police or Fire Authority) or Interested Party (e.g. a resident living in the vicinity of the premises) may ask the Licensing Authority to 'review' the licence because of a matter(s) arising at the premises in connection with any of the four licensing objectives (the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm).

1.2. Where the request for review originates with an Interested Party, the Licensing Authority must first consider whether the complaint made is either: not relevant; vexatious; frivolous; or repetitious. The Guidance issued by the Secretary of State under Section 182 of The Act explains this terminology in more detail and the relevant paragraphs of the Guidance are reproduced in Appendix G to the report.

1.3 If an application is accepted the Licensing Authority must advertise the review by displaying a notice at, on or near the site of the premises to which the application relates and at the main offices of the Licensing Authority. Notification of an application is also sent to properties within the vicinity of the application premises, in accordance with the policy previously agreed by the City Council's Licensing Committee.

1.4 The Act provides the Licensing Authority with a range of powers that it may exercise on determining a review, where it considers them necessary for the promotion of the licensing objectives. However, the Licensing Authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives.

1.5 Where a Licensing Authority considers that action under its statutory powers are necessary, it may take any of the following steps:

- To modify the conditions of the Premises Licence (which includes adding new conditions or any alteration or omission of an existing condition);
- To exclude a licensable activity from the scope of the licence;
- To remove the Designated Premises Supervisor (for example, because they consider that the problems are the result of poor management);
- To suspend the licence for a period not exceeding three months; and
- To revoke the licence.

1.6 It should be noted that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.

1.7 Section 177 of The Act allows, in certain circumstances, for the suspension of any conditions relating to the provision of music entertainment imposed by a Licensing Authority, meaning for example that a condition as to the closure of doors and windows or provision of a noise limiter may not be enforceable. However, Section 177 can be disapplied if, following a review of the licence, it is amended to say that this exemption does not apply. This matter is addressed in paragraphs 3.25

– 3.31 of The Guidance issued by the Secretary of State under Section 182 of The Act reproduced in Appendix G to the report.

1.8 The following parties have a right of appeal to the Magistrates Court if they are aggrieved by the licensing authorities decision:

- The applicant for the review;
- The holder of the Premises Licence; and
- Any other person who made relevant representations in relation to the application.

## 2.0 Application for Review

2.1 An application to review the Premises Licence in respect of the The Edith Cavell PH 7 Tombland Norwich has been received from Professor Paul Binski of 24 Princes Street Norwich NR3 1AE. A copy of the application is attached at Appendix A to the report.

2.2 The application has been accepted by the Licensing Authority and the grounds for review fall under the licensing objective of the prevention of public nuisance. No previous application for review has been received in respect of these premises.

2.3 The current premises licence in place allows for the following licensable activities:

Films	Monday to Sunday	10:00 - 23:00
Indoor Sporting Events	Sunday	12:00 - 22:30
Indoor Sporting Events	Monday to Saturday	11:00 - 23:00
Late Night Refreshment	Sunday to Thursday	23:00 - 01:00
Late Night Refreshment	Friday and Saturday	23:00 - 02:00
Live Music	Friday	18:00 - 01:00
Live Music	Saturday	12:00 - 01:00
Live Music	Sunday	12:00 - 00:00
Live Music	Monday to Thursday	18:00 - 00:00
Performances of Dance	Sunday to Thursday	10:00 - 00:00
Performances of Dance	Friday and Saturday	10:00 - 01:00
Plays	Monday to Sunday	10:00 – 23:00
Provision of Dance Facilities	Monday to Thursday	10:00 - 00:00
Provision of Dance Facilities	Friday and Saturday	10:00 - 01:00
Sale by Retail of Alcohol	Sunday to Thursday	09:00 - 00:30
Sale by Retail of Alcohol	Friday and Saturday	09:00 - 01:30
Recorded Music	Sunday to Thursday	10:00 – 00:00
Recorded Music	Friday and Saturday	10:00 – 01:00

### Non standard / seasonal timings:

For all licensable activities:

An additional hour on New Years Day (1 January) Burns Night, Valentines' Day (14 February), St Davids Day (1 March), St Patricks Day (17 March), Good Friday, Easter Saturday, Easter Sunday, Easter Monday St Georges Day (23 April), May

Bank holiday (Friday to Monday inclusive), Spring Bank holiday (Friday to Monday inclusive), Late Summer Bank Holiday (Friday to Monday inclusive), St Andrews Day (30 November), Christmas Eve (24 December), Christmas Day (25 December), Boxing Day (26 December) 27 December and 28 December.

On New Years Eve from the end of permitted hours on New Years Eve to the start of permitted hours on New Years Day.

2.4 The opening hours of the premises are:

Monday	10:00 - 01:30
Tuesday	10:00 - 01:30
Wednesday	10:00 - 01:30
Thursday	10:00 - 02:30
Friday	10:00 - 03:30
Saturday	10:00 - 03:30
Sunday	10:00 - 00:30

**Non standard / seasonal timings:**

An additional hour on New Years Day (1 January) Burns Night, Valentines' Day (14 February), St Davids Day (1 March), St Patricks Day (17 March), Good Friday, Easter Saturday, Easter Sunday, Easter Monday St Georges Day (23 April), May Bank holiday (Friday to Monday inclusive), Spring Bank holiday (Friday to Monday inclusive), Late Summer Bank Holiday (Friday to Monday inclusive), St Andrews Day (30 November), Christmas Eve (24 December), Christmas Day (25 December), Boxing Day (26 December) 27 December and 28 December.

On New Years Eve from the end of permitted hours on New Years Eve to the start of permitted hours on New Years Day.

2.5 The current Premises Licence holder is Enterprise Inns Plc 3 Monkspath Hall Road Shirley solihull B90 4SJ. The Designated Premises Supervisor is Amy Pinkney.

2.6 The conditions attached to the Premises Licence for The Edith Cavell Wheel PH and a plan of the premises are attached at Appendix B to the report.

### **3. Relevant Representations**

3.1 The responses from the Responsible Authorities are as follows:

- Police – No representations.
- Environmental Services – Representation received (attached at Appendix C).
- Fire Officer – No representations.
- Planning Officer – No representations.
- Area Child Protection Committee – No representations.
- Trading Standards – No representations.

3.2 There has been one Interested Party representation supporting the review application. This is attached to the report at Appendix D.

3.3 A site map of the area identifying the premises to which the application relates is attached as Appendix E. A more detailed map of the area detailing the Interested Parties' residences will be available at your meeting.

## **4.0 Norwich City Council Statement of Licensing Policy**

4.1 Attached at Appendix F are the elements of the City Council's local Licensing Policy which are considered to have a bearing upon the application:

## **5.0 National Guidance (issued under section 182 of the Licensing Act 2003)**

5.1 Attached at Appendix G are the elements of the National Guidance issued by the Secretary of State that are considered to have a bearing upon the application.

## **5.0 Summary**

5.1 The Sub-Committee is obliged to determine this application with a view to promoting the licensing objectives which are:

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

5.2 In making its decision, the Sub-Committee is also obliged to have regard to guidance issued under Section 182 of the Licensing Act 2003 (National Guidance) and the Council's own local licensing policy. The Sub-Committee must also have regard to all of the representations made and the evidence it hears.

5.3 If, after considering the application and relevant evidence, action is considered necessary, the Sub-Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- To modify the conditions of the Premises Licence (which includes adding new conditions or any alteration or omission of an existing condition);
- To exclude a licensable activity from the scope of the licence;
- To remove the Designated Premises Supervisor (for example, because they consider that the problems are the result of poor management);
- To suspend the licence for a period not exceeding three months; and
- To revoke the licence.

5.4 The Sub-Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

5.5 The application for review, and the representations in support of the review relate to issues that fall under the licensing objective of the prevention of public nuisance. The Sub-Committee is directed to paragraphs 25.1 – 25.8 of the local licensing policy at Appendix F that contains examples of factors which can impact on the licensing objective of the prevention of public nuisance. These paragraphs also contain examples of control measures that may be taken into account having regard to the type of premises and/or the licensable activities.

# APPENDIX F

## Local Policy considerations

### 1.0 Introduction

1.4 The 2003 Act requires the Council to carry out its various licensing functions so as to promote the four licensing objectives. These are:

- The Prevention of Crime and Disorder
- Public Safety
- The Prevention of Public Nuisance
- The Protection of Children from Harm

1.5 The 2003 Act also requires that the Council publishes a 'Statement of Licensing Policy' that sets out the policies the Council will generally apply to promote the Licensing Objectives when making decisions on applications made under the Act.

4.1 "Responsible Authorities" will be asked to consider all applications and to make representations to the Council, if they relate to the promotion of the four licensing objectives and particularly in respect of applications which, might be regarded as contentious. Representations must be evidentially based and the organisation should attend any hearing when the application is being considered.

4.2 The Council will consider all representations from any "Interested Party" (see Appendix 7), or their representative, which should preferably be evidentially based and supported by attendance at any hearing at which the application is being considered.

4.3 A representation, will only be accepted by the Council if it is 'relevant', in that it must relate to the likely effect of granting the licence on the promotion of at least one of the four licensing objectives. Representation's, which are regarded as being frivolous or vexatious, will not be considered, and in the case of a review of a licence, any representation which is regarded as repetitious, will also not be considered. A decision as to whether a representation is frivolous, vexatious or repetitive will be made by an officer of the Council.

### 5.0 Conditions attaching to Licences

5.1 Where relevant representations are made, the Council will make objective judgments as to whether conditions may need to be attached to the premises licence to secure achievement of the licensing objectives. Any conditions arising as a result of representations will primarily focus on the direct impact of the activities taking place at licensed premises, on those attending the premises, and members of the public living, working or engaged in normal

activity in the area concerned, and will cover matters that are within the control of individual licensees.

- 5.2 All applications will be considered on an individual basis and any condition attached to such a licence, will be tailored to each individual premises, in order to avoid the imposition of disproportionate or burdensome conditions on those premises. Therefore, mandatory conditions, will only be imposed where they are necessary for the promotion of the licensing objectives.

## 11.0 Reviews of Licences and Certificates

- 11.1 A Licence or Certificate will be reviewed if, valid representations are received by the Council. Where practicable, the Council will mediate between applicants, relevant statutory agencies and occupiers of nearby premises, local residents groups, community or interested groups where significant issues have arisen relating to a premises licence. Where possible, the Council will mediate by:

- Identifying potential issues for other relevant statutory agencies particularly regarding the safety and amenity of local residents.
- Negotiating, if possible, potential conditions to reflect resolutions of this mediation.

This process will not override the right of any interested party to ask that the Council consider their valid objections, or for any licence holder to decline to participate in a mediation meeting.

Where mediation is not practicable or fails, the Council will advise the parties of the provisions of the Act concerning a formal review of the licence.

- 11.2 Should Responsible Authorities and Interested Parties give early notice to licence holders of any concerns about problems identified at premises and of the need for improvement, requests for a review of any licence will only be sought if such notice has failed to resolve the matter or problem.
- 11.3 The Council expects that any Responsible Authority or Interested Party will provide an evidentiary basis to support their application for a review of a premises licence.

## 25.0 Objective - Prevention of Public Nuisance

- 25.1 Licensed premises can potentially have a significantly adverse impact on communities through public nuisances that arise from their operation. The amenity of residents and occupiers of other businesses should be maintained and protected from the potential consequence of the operation of licensed premises, whilst recognising the valuable cultural, social and business importance that such premises provide.
- 25.2 “Public Nuisance” will be interpreted in its widest sense, and will take it to include such issues as noise, light, odour, litter and antisocial behaviour,

where these matters impact on those living, working or otherwise engaged in normal activity in an area.

- 25.3 Applicants should be aware that stricter conditions, including controls on licensing hours for all or some licensable activities will be applied, where licensed premises are in residential areas or where their activities may impact on residents or other business premises, and where relevant representations have been received. Conversely, premises for which it can be demonstrated have effective measures to prevent public nuisance, may be suitable for longer opening hours.
- 25.4 The council will normally permit the hours during which alcohol is sold to match the normal trading hours during which other sales takes place, unless there are exceptional reasons such as disturbance or disorder attributable to the location and/or the premises and relevant representations have been made.
- 25.5 The council believe that the impact a licensed premises can have on a neighbourhood is significantly influenced by the times when those licensed premises are open, and the times when licensable activities are taking place. Consequently, the council has adopted a policy on “hours of trading” , (Section E) and in doing so, has given full consideration to the Secretary of State’s Guidance on “Hours of Trading”.
- 25.6 Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and character of their premises and events.
- 25.7 When addressing the issue of prevention of public nuisance, the applicant must demonstrate that those factors that impact on the likelihood of public nuisance have been considered. These may include:
- the location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices, care homes and places of worship
  - the hours of opening, particularly between 23.00 and 07.00
  - the nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises
  - the design and layout of premises and in particular the presence of noise limiting features
  - the occupancy capacity of the premises
  - the availability of public transport
  - ‘wind down period’ between the end of the licensable activities and closure of the premises
  - last admission time
  - Preventing litter and refuse becoming an eyesore
  - Consideration of local residents that they are not upset by loud or persistent noise or by excessive light.
  - Preventing cars attending an event or premises from causing a noise nuisance and congestion, and from taking up local people’s parking

spaces.

- Avoid early morning or late night refuse collections
- Avoiding emptying bins into skips, especially if they contain glass, either late at night or early in the morning

25.8 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule, having regard to their particular type of premises and/or activities:

- Effective and responsible management of premises
- Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance, e.g. to ensure customers leave quietly
- Fit prominent signs requesting that customers respect local residents and leave quietly
- Control of operating hours for all or parts (e.g. garden areas) of premises, including such matters as deliveries i.e not too early in the morning
- Adoption of best practice guidance (e.g. Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by Institute of Acoustics, Licensed Property: Noise, published by BBPA)
- Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices
- Management of people, including staff, and traffic (and resulting queues) arriving and leaving premises
- Liaison with public transport providers
- Siting of external lighting, including security lighting
- Management arrangements for collection and disposal of waste, empty bottles etc.
- Effective ventilation systems to prevent the emission of unwanted odours
- Take away packaging to include the name and address of the premises on it.
- Capacity levels for Fast Food Outlets
- Introduce a chill out area with coffee and mellow music where customers can settle before leaving
- Introduce a 'closed door' policy, with attendance prohibited for new customers 2-3 hours before licensable activities finish.

## Section E - Hours of trading

31.1 This section primarily relates to premises where alcohol is sold/supplied, with or without any other licensable activity (e.g. provision of regulated entertainment). That is not to say that hours of trading at other types of licensed premises is of lesser importance, and all applicants for all types of licensed premises should consider "hours of trading", as an important issue, when preparing their operating schedules.

31.2 In determining its policy on the hours of trading, the council has given full consideration to those parts of the Secretary of State's Guidance to the Act which relate to hours of trading.

(i) "With regard to licensing hours, consideration which will be given to the individual merits of an application. The Government recommends that statements of policy should recognise that, in some circumstances, flexible licensing hours for the sale of alcohol can help to ensure that the concentrations of customers leaving premises simultaneously are avoided. This can help to reduce the friction at late night fast food outlets, taxi ranks and other sources of transport which lead to disorder and disturbance (para 13.40)".

(ii) "Terminal hours dictated by the Licensing Act 1964 were abolished to avoid the serious problems that arise when customers exit licensed premises simultaneously. Attempting to fix a terminal hour in any area would therefore directly undermine a key purpose of the 2003 Act (para 13.37)".

(iii) "Concentrations of young drinkers can result in queues at fast food outlets and for public transport, which may in turn lead to conflict, disorder and anti-social behaviour. In some circumstances, flexible licensing hours may reduce this impact by allowing a more gradual dispersal of customers from premises (para 10.19)".

(iv) "There is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount considerations at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/or different hours from those requested. (para 10.20)".

(v) "Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours (para 10.21)".

(vi) "The Government strongly believes that, prior to the introduction of the Licensing Act 2003, fixed and artificially early closing times (established under the Licensing Act 1964) were one of the key causes of rapid binge drinking prior to closing times; and one of the causes of disorder and disturbance when large numbers of customers were required to leave the premises simultaneously (para 1.17)".

(vii) "The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through flexible opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided (para 1.18)".

31.3 While consideration will be given to the individual merits of each application in respect of hours of trading it may be necessary to consider limiting hours of trading where it would assist in promoting the objectives of the Licensing Act.

31.4 Applicants should give particular consideration to the hours when it is proposed to provide licensable activities, especially the provision of entertainment and the sale

and supply of alcohol, in the preparation of their operating schedules. Applicants will also be expected to address and give due consideration to the impact their patrons may have after leaving their premises, in conjunction with patrons likely to be leaving other licensed premises in the vicinity.

31.5 The policy options which will be applied to applications for premises licences where the sale or supply of alcohol for consumption on the premises is proposed, are as follows:

- a) The council will consider restricting the hours if it believes, on the basis of representations made, that not doing so would lead to or exacerbate problems of crime, disorder or public nuisance;
- b) Where no relevant representations are received from either a responsible body or an interested party, the application will be granted in accordance with the terms of the operating schedule;
- c) Where relevant representations are received from either a responsible body or an interested party, and those representations relate to the hours of trading then subject to (a) above, the council will consider restricting the hours in relation to any of the licensable activities for which a licence is being sought, provided it is considered necessary to do so in order to promote one or more of the licensing objectives which may not be achieved without such restrictions. The council may impose different restrictions on hours for different licensable activities and for different days of the week.

31.6 Applicants should consider having “winding down” periods at the end of the night. By gradually “winding down” entertainment such as loud music before ending the sale of alcohol and the end of trading hours, and then allowing patrons to leave of their own volition, those patrons may behave less boisterously after they have left licensed premises.

31.7 Consideration will always be given to an applicant's individual case and if the matter of trading hours has been raised in a representation, the council will take into account any proposals the applicant has to minimise the risk of nuisance or disorder being caused or exacerbated by customers departing from the premises. It is however, unlikely that statements such as ‘the premises being well-managed’, or that ‘the applicant is of good character’ or that ‘the style of the premises is intended and likely to attract a discerning clientele’, will alone be sufficient to demonstrate that restrictions on hours of trading should not be applied.

# **APPENDIX G**

## **National Guidance (issued under section 182 of the Licensing Act 2003)**

### **Small venues providing dancing and amplified or unamplified music**

3.25 In addition, section 177 of the 2003 Act applies to suspend most licensing conditions relating to music entertainment in certain small venues when the conditions specified in the licence are met. The section is directed at premises with a capacity of 200 or less and which are licensed for the provision of music entertainment such as, for example, some pubs with entertainment licences. A detailed description of section 177 follows below.

3.26 Subsections (1) and (2) of section 177 of the 2003 Act provide that where,

- a premises licence or club premises certificate authorises the supply of alcohol for consumption on the premises and the provision of “music entertainment” (live music or dancing or facilities enabling people to take part in those activities),
- the relevant premises are used primarily for the supply of alcohol for consumption on the premises, and
- the premises have a permitted capacity limit of not more than 200 persons (see paragraph 2.29).

any conditions relating to the provision of the music entertainment imposed on the premises licence or club premises certificate by the licensing authority, other than those set out by the licence or certificate which are consistent with the operating schedule, will be suspended except where, under subsection (5), they were imposed as being necessary for public safety or the prevention of crime and disorder or both.

3.27 Examples of premises used “primarily” for the supply of alcohol for consumption on the premises would include some public houses and some qualifying club premises, but would not normally include, for example, a restaurant.

3.28 In addition, subsection (4) of section 177 provides that where

- a premises licence or club premises certificate authorises the provision of music entertainment, and
- the premises have a permitted capacity limit of not more than 200 persons

then, during the hours of 8am and midnight, if the premises are being used for the provision of unamplified live music or facilities enabling people to take part in such entertainment, but no other type of regulated entertainment, any conditions imposed on the licence by the licensing authority, again other than those which are consistent with the operating schedule, which relate to the provision of that music entertainment will be suspended.

3.29 The “unamplified” music exemption covers any premises appropriately licensed, including, for example restaurants.

3.30 The area to which the 200 “permitted capacity limit” applies concerns the area covered by the terms of the premises licence or club premises certificate. In this context, the capacity must be where the fire and rescue authority has made a recommendation on the capacity of the premises under the Fire Safety Order (see paragraph 2.29). The permitted capacity limit is only applicable to part of the premises where that part has been separately and accordingly licensed.

3.31 Section 177 can be disapplied in relation to any condition of a premises licence or club premises certificate following a review of the licence or certificate. This means that conditions attached to the existing premises licence relating to the provision of music entertainment can be given effect at the relevant times or that new conditions may also be imposed as an outcome of the review process.

## **Relevant, vexatious and frivolous representations**

9.8 A representation would only be “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessman which argued that his business would be commercially damaged by a new licensed premises would not be relevant. On the other hand, a representation that nuisance caused by the new premises would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance were inadequate would be relevant. There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises.

9.9 The “cumulative impact” on the licensing objectives of a concentration of multiple licensed premises may also give rise to a relevant representation when an application for the grant or variation of a premises licence is being considered, but not in relation to an application for review which must relate to an individual premises.

9.10 It is for the licensing authority to determine whether any representation by an interested party is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Frivolous representations would be essentially categorised by a lack of seriousness. An interested party who is aggrieved by a rejection of their representations on these grounds may challenge the authority’s decision by way of judicial review.

9.11 Licensing authorities should not take decisions on whether representations are relevant on the basis of any political judgement. This may be difficult for councillors receiving complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub-committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.

9.12 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application.

## **Reviews**

11.1 The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of a premises licence.

11.2 At any stage, following the grant of a premises licence, a responsible authority, or an interested party, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.

11.4 In addition, a review of the licence will normally follow any action by the police to close down the premises for up to 24 hours on grounds of disorder or noise nuisance as a result of a notice of magistrates' court's determination sent to the licensing authority.

11.5 Licensing officers may not initiate their own reviews of premises licences, but elected members of the licensing authority may request reviews if they are concerned about licensed activities at a premises or such matters are brought to their attention (see paragraph 8.15 above). Officers of the local authority who are specified as responsible authorities under the 2003 Act, such as environmental health officers, may also request reviews on any matter which relates to the promotion of one or more of the licensing objectives.

11.6 Representations made by a department of the local authority which is a responsible authority should be treated by the licensing authority in precisely the same way that they would treat representations made by any other body or individual.

11.7 In every case, the representation must relate to particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.

11.8 Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

11.9 It is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested

parties and responsible authorities in pursuit of common aims. It is therefore equally important that reviews are not used to drive a wedge between these groups in a way that would undermine the benefits of co-operation. It is good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. A failure to respond to such warnings is expected to lead to a decision to request a review.

11.10 Where the request originates with an interested party – e.g. a local resident, residents' association, local business or trade association – the licensing authority must first consider whether the complaint made is relevant, vexatious, frivolous or repetitious.

### **Powers of a licensing authority on the determination of a review**

11.16 The 2003 Act provides a range of powers for the licensing authority on determining a review that it may exercise where it considers them necessary for the promotion of the licensing objectives.

11.17 The licensing authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. However, where responsible authorities like the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to concerns, licensing authorities should not merely repeat that approach.

11.18 Where the licensing authority considers that action under its statutory powers are necessary, it may take any of the following steps:

- to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption) ;
- to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- to suspend the licence for a period not exceeding three months;
- to revoke the licence.

11.19 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

11.20 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.21 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems which impact upon the licensing objectives.

11.22 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as a necessary means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives.



NORWICH  
City Council

Licensing Office  
City Hall  
St. Peters Street  
Norwich  
NR2 1NH  
licensing@norwich.gov.uk

RECEIVED  
15 NOV 2010

APPENDIX

A

RECEIVED  
1 NOV 2010

**Application for the review of a premises licence or club premises certificate  
under the Licensing Act 2003**

**PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST**

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

I ..... 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  EDITH CAVELL 7 TOMBLAND	
Post town NORWICH	Post code (if known) NR3 1HF

Name of premises licence holder or club holding club premises certificate (if known) ENTERPRISE INNS PLC, 3 MONKSPATH HALL ROAD, SHIRLEY, SOLIHULL B90 4SJ
--

Number of premises licence or club premises certificate (if known) 08/00207 / PREMTR
---

**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 ☐

- 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
BINSKI	PAUL

Please tick ✓ yes

I am 18 years old or over ☒

Current address 24 PRINCES ST

Post Town	NORWICH	Postcode	NR3 1AE
-----------	---------	----------	---------

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
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
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

<input type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>

Please state the ground(s) for review (please read guidance note 1)

The premises regularly causes a public nuisance by playing amplified music at high volume which we can hear clearly in our home, causing us distress and loss of sleep. The situation is made worse by the glass-fronted nature of the property and the lack of double doors.

In doing so it contravenes points 19 and 20 of the Operating Schedule under Annex 2 of the licence:

"19. Volume levels from licensable music, both live and recorded, will be monitored by responsible persons throughout the period both inside and outside the premises with particular regard to excessive noise to neighbouring properties."

"20. All windows must be closed when amplified licensable music is played."

These conditions were contravened over a 6 month period in 2009 (from March to August) and on further occasions in 2010, the most recent being October 16/17.

Frequent changes of the Designated Premises Supervisor (three since March 2009) have left us at the mercy of irresponsible people who have no interest in the long-term reputation of the business or good relations with its neighbours. Club-volume noise is projected into the street in order to attract late-night custom. Although we have asked the staff politely to turn the volume down, our requests have not made a difference.

The premises are small and have plate glass on two sides which do not contain high volumes of amplified music. At least one door is always left open for smokers, exacerbating the problem. There is no automatic sound limiting device, and the music hours are such as to affect our sleep. We think the license is unsuitable for a property of this physical type.

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

The problems began in 2009 (see attached documents) and we kept an informal log from March 27<sup>th</sup> through early July at which time we obtained the official log sheets from the Council [see enclosed ref. EH09/21036 and EH09/27976] following complaints made to the out of hours telephone number. Our neighbours at no 26 Princes Street also wrote to the dps (letter March 20 2009 enclosed).

On the most recent occasion (October 16/17 2010) we made three calls to the council's out of hours number between approximately 9pm on the 16th and 1am on the 17th. We phoned the police twice, the second time at 1.15am by which time the premises was in clear breach of their licence for recorded music which extends until 1am. Reference numbers for these calls: 605/16/10 and 56/17/10.

We tried speaking to the DPS at 9pm on October 16 when the noise started – the DPS was not on the premises but the barman closed the door. This unfortunately did not last for long as the noise levels inexorably increased through the night. The police eventually enforced silence well after 1 am.

Since the mid 2000s this pub has been run by at least four dps's and, following our most recent complaint, has now been totally shut for over three weeks. We consider this an appropriate moment to apply for a review.

Please tick **Y**  
**yes**

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

☐

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

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

Capacity

7 November 2010

Applicant

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.

Tombland Alley Residents Group  
C/O 26 Princes Street  
Norwich

March 20<sup>th</sup> 2009

Re Excessive Noise Levels

Dear Sir,

We are writing on behalf of ourselves and on behalf of other residents in the vicinity of your public house. Recently there has been an increase in regular incidents, weekdays and weekends, of extremely loud music coming from your property and continuing into the early hours of the morning. The level of noise has made sleep impossible and is starting to cause considerable distress.

We appreciate that in these difficult economic times the addition of music in your facility will help draw customers into your pub; however the needs of local residents must also be considered.

Not all your musical acts cause distress and some acts keep the volume to a reasonable level, but for instance; last nights volume of noise which went on into the early hours of the morning did prevent sleep being possible even at the rear of our properties.

We would be extremely grateful if you would not only keep your doors closed, as listed on your licence agreement, when music is being played. But also keep the volume to a reasonable level. As you know we have called into your establishment several times in the past to request this courtesy to fellow residents and we would appreciate this help with what is becoming a serious concern.

If you would like to discuss the issue with us we can be contacted on or you can call in at 26 Princes Street in an evening. We all hope this matter can be dealt with quickly and with the minimum of fuss.

Yours sincerely

Hannah and Remy Aquarone.  
cc Other members of the residents group

NORWICH  
City Council

Mr Paul Binski  
24 Princes Street  
Norwich  
NR3 1AE

**PREMISES TO WHICH COMPLAINT RELATES**  
The Edith Cavell P H Tombland Norwich

This contemporaneous record signed by me is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have willfully stated in it anything which I know to be false or do not believe to be true.

Dated.....

[illegible]

\*Please amend if incorrect



# APPENDIX B

## Annex 1 – Mandatory conditions

- 1 No supply of alcohol may be made under a premises licence -
  - (a) at a time when there is no designated premises supervisor in respect of the premises licence, 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 the premises licence must be made or authorised by a person who holds a personal licence.
- 3 No moving picture shall be exhibited unless: -
  - (i) it has received a "U", "PG", "12A", "15" or "18" certificate of the British Board of Film Classification; or
  - (ii) it is a current newsreel which has not been submitted to the British Board of Film Classification; or
  - (iii) the permission of the Licensing Authority is first obtained and any conditions of such permission are complied with.
- 4 No person under the age of 18 years shall be admitted to any exhibition at which there is to be shown any moving picture which has received an "18" certificate from the British Board of Film Classification.
- 5 No person under the age of 15 years shall be admitted to any exhibition at which there is to be shown any moving picture which has received a "15" certificate from the British Board of Film Classification.
- 6 No person under the age of 12 years shall be admitted to any exhibition at which there is to be shown any moving picture which has received a "12A" certificate from the British Board of Film Classification.
- 7 Where, at specified times one or more individuals must be at the premises to carry out a security activity each such individual must be licensed by the Security Industry Authority.

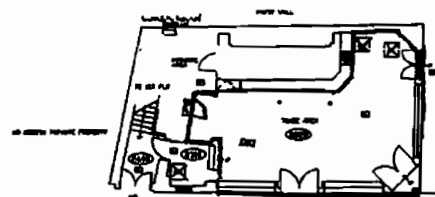
## Annex 2 – Conditions consistent with the Operating Schedule

- 1 In the absence of adequate daylight, the lighting in any area accessible to the public must be in operation when they are present.
- 2 All licensed premises must have a means of giving warning to persons in the event of an outbreak of fire or other emergency. Where determined by the risk assessment that a mains electrical fire alarm is required, this must be designed to and installed in accordance with British Standard 5838 Current Edition.
- 3 Fire safety signs must be adequately illuminated.
- 4 In the interest of public safety the management policy is to close the doors to restrict further entry when this is necessary to prevent overcrowding. This does not compromise the means of escape in case of fire.
- 5 **The Prevention of Public Nuisance**
- 6 Internal and external lighting provided for the purpose of customer and staff safety and for the security of the premises must be so positioned to not cause nuisance to neighbouring or adjoining premises.
- 7 Suitable ventilation and extraction systems must be provided to eliminate noxious odours. Such systems must be maintained on a regular basis.
- 8 The premises must remove their waste and refuse in a timely manner to a licensed waste disposal facility.
- 9 The premises must enter into a waste removal agreement with a licensed waste disposal contractor and keep documented evidence of the agreement.
- 10 Empty bottles must be stored in a lidded skip within the curtilage of the premises prior to collection. Operationally bottles must be removed from the public area on a frequent basis and transferred to the skip. Transfer to an external skip will not be undertaken between the hours of 23:00 and 07:00 to minimise noise disturbance to adjoining properties.
- 11 There must be clear and legible notices displayed at exits and other circulatory areas requesting patrons to leave the premises having regard to the needs of local residents, in particular emphasising the need to refrain from shouting and slamming car doors.
- 12 Volume levels from licensable music, both live and recorded, will be monitored by responsible persons throughout the period both inside and outside the premises with particular regard to excessive noise to neighbouring properties.
- 13 All windows must be closed when amplified licensable music is played.
- 14 **The Protection of Children From Harm**
- 15 A suitably worded sign of sufficient size and clarity must 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.
- 16 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 18 years and who is seeking to purchase or consume alcohol on the premises.
- 17 No person under 18 years will be allowed to that part of the premises if any adult entertainment is being performed.
- 18 **The Prevention of Crime and Disorder**
- 19 There will be a 30 minute "chill out" / wind down period after all licensable activities (except for late night refreshment) have ended.
- 20 All bar staff will be trained in the basic law relating to the sale/supply of alcohol.
- 21 **General - all four licensing objectives**
- 22 The licensee and the designated premises supervisor shall ensure that there are effective management arrangements in place to enable them to know how many persons there are in the premises at all times when the premises are open for a licensable activity.
- 23 A suitably worded sign of sufficient size and clarity must 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.
- 24 The Licensee, that is the person in whose name the Premises Licence is issued, shall ensure that at all times when the premises are open for any licensable activity, there are sufficient, competent staff on duty at the premises for the purpose of fulfilling the terms and conditions of the Licence and for preventing crime and disorder.
- 25 No patrons shall be allowed to leave the curtilage of the premises whilst in the possession of any drinking vessel or open glass bottle whether empty or containing any beverage.

SCHEDULE OF ADDITIONAL ACCOMMODATION

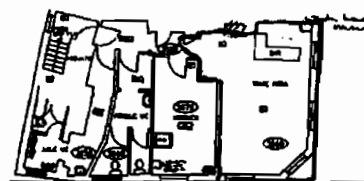
1. Number of storeys of building.	2. Storeys
2. Staff accommodation.	3. Bedrooms
3. Letting rooms with self bar.	4. Rooms
4. Letting rooms without self bar.	5. Rooms

- LEGEND
- CEILING HEIGHT
  - WINDOW
  - FIRE PLACE
  - DOOR
  - TOILET
  - URINAL
  - WASH HAND BASIN
  - BOILER
  - FIRE EXIT
  - EMERGENCY LIGHT
  - DISTRIBUTION BOARD
  - STEPS
  - SUNB LANT
  - HOUSEWORK WITH PRIZES
  - BAR FLAP



BUILDING SURVEYED AREA = 2864 SQ. M.  
 IS LOCATED ALSO IN PRIVATE FLAT

SCALE 1:100  
 GROUND FLOOR



SCALE 1:100  
 FIRST FLOOR



INDICATIVE ONLY  
 SCALE 1:1250

Property ID	Property Name	Comm. Descr.	DATE OF SURVEY	Scale
144706/001	Address	7 Terrace Bristol BS2 1AP	02/05/00	AS SHOWN

## Shearman, Anthony

**From:** Shearman, Anthony  
**Sent:** 26 November 2010 11:58  
**To:** 'adam.cogan@enterpriseinns.plc.uk'  
**Subject:** Edith Cavell Review

Adam,

Many thanks for taking the time to meet with me on Tuesday.

As discussed, many of the noise issues raised by the review applicant seem to involve the doors of the premises being open when music is played. At present the premises licence conditions fail to address this as they only require the windows to be kept closed when amplified licensable music is played (cond. 13 annex 2).

In order to resolve this I would suggest replacing the existing condition 13 with the following:-

Except for access and egress, windows and doors shall be kept closed whenever regulated entertainment is provided.

Also there is the following condition currently attached to the licence:-

**Annex 2 cond. 10.** - Empty bottles must be stored in a lidded skip within the curtilage of the premises prior to collection. Operationally bottles must be removed from the public area on a frequent basis and transferred to the skip. Transfer to an external skip will not be undertaken between the hours of 23:00 and 07:00 to minimise noise disturbance to adjoining properties.

As there is no external area available at the premises, it is my understanding that the waste is stored within the premises, not in a lidded skip outside, until collected for disposal. This means that technically the above condition cannot be complied with, therefore in the interests of preventing crime and disorder (as it would be a crime on behalf of the licensee to not comply with the licence conditions), I would suggest that the condition be re-worded as follows:-

Empty bottles must be stored within the curtilage of the premises prior to disposal. Transfer externally will not be undertaken between the hours of 23:00 and 07:00.

If you are in agreement with the above changes please let me know and I will make the necessary arrangements with the licensing office.

Many thanks ..... Tony

*Tony Shearman*

Environmental Protection Officer

Norwich City Council  
City Hall  
St. Peters Street  
Norwich  
NR2 1NH

Tel: 01603 21(2278)

# APPENDIX D

## Objection to the playing of music in the Edith Cavell Public House Tombland.

When we moved into our house on Princes Street six years ago the Edith Cavell Public House was fully functioning as a pub but it did not have a music license. We were happy to be neighbours with the Edith Cavell, there was a bit of noise at times as people left the pub but nothing which disturbed us too greatly.

Then the pub changed hands and the new owners applied for the right to play music and live music. We agreed at the time with this request on the condition that the music was not played on speakers outside and that the doors were always kept closed. The license was we believe granted on those conditions.

However, the noise from the music nights has been unbearable. And it has meant that the front bedroom in our house has been unusable on those nights!

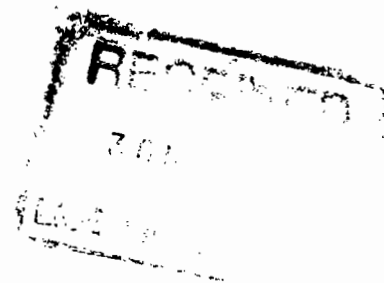
The problem stems from the Edith Cavell being such a tiny pub. There is no back room; the area where music is played is directly onto the street. The doors are always open as people leave and enter the building and the volume has been incredibly loud.

We strongly object to the playing of music in this building. It has had serious implications for our sleep. Playing well past eleven pm, when we like to go to bed, and the base in particular being so loud that even ear plugs don't drown out the beat.

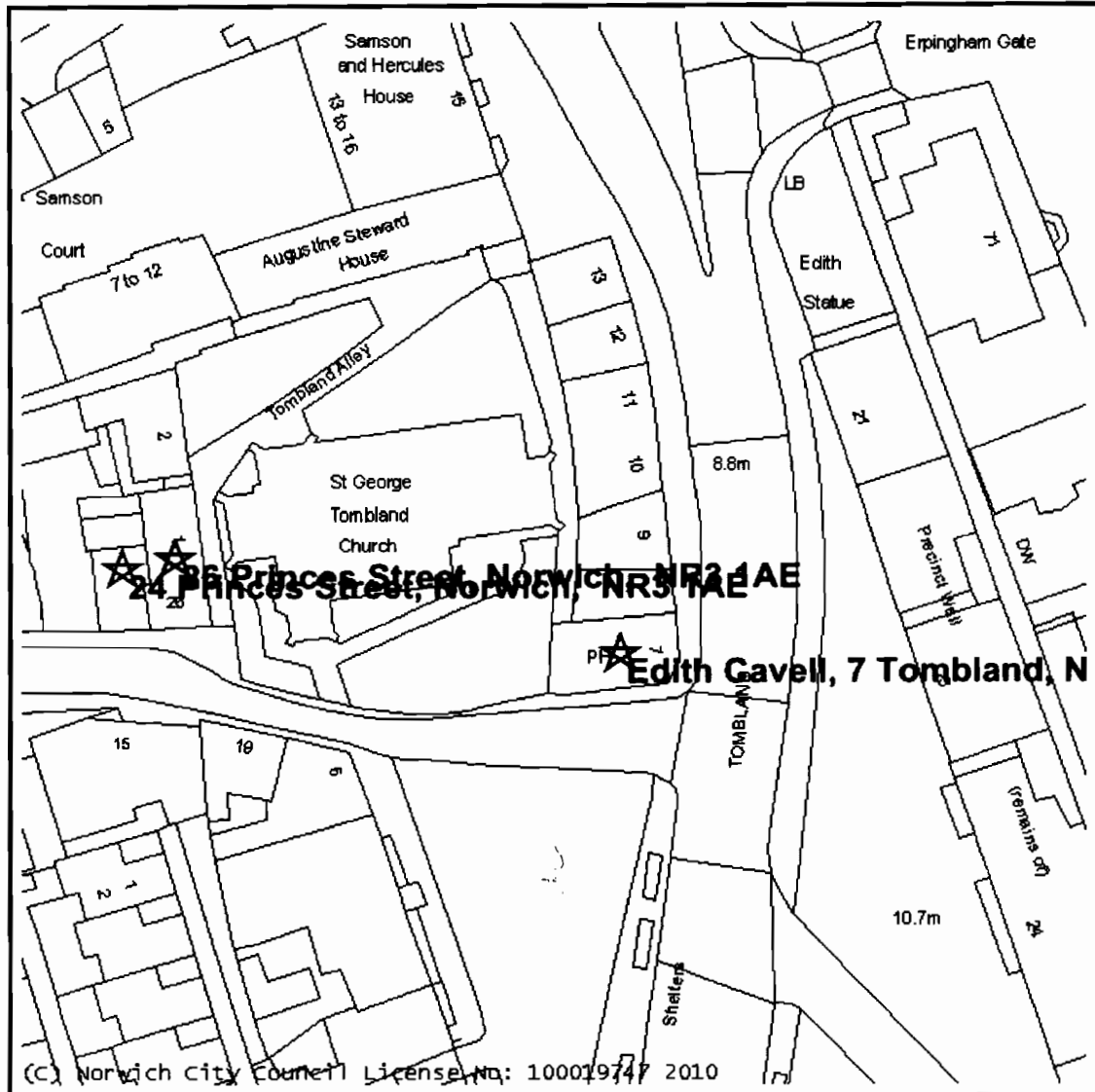
Please can this building revert to being just a pub?


Mr and Mrs Aquarone  
26 Princes Street  
Norwich  
Norfolk  
NR3 1AE

29<sup>th</sup> November 2010.



# APPENDIX E



 <p><b>NORWICH</b> City Council</p> <p>Edith Cavell PH</p> <p>Scale 1:609</p>	<p>Licensing Act 2003: review of premises licence</p>
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