

# Agenda



## Licensing Sub-Committee

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Date: Monday, 6 August 2018

Time: 4.00 pm

Venue: Committee Room 1 - Civic Centre

To: Councillors D Davies (Chair), H Thomas (Deputy Chair), G Berry, J Cleverly, M Cornelious, T Holyoake, A Morris, M Rahman, W Routley, C Ferris and J Hughes

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Item		Wards Affected
1	<u>Apologies for Absence</u>	
a	<u>Agenda - CYM</u> (Pages 3 - 4)	
2	<u>Declarations of Interest</u>	
3	<u>Licensing Sub-Committee Code of Practice</u> (Pages 5-18)	
4	<u>Review of the Premises Licence for Baneswell Express</u> (Pages 19-58) 8 Baneswell Road, Newport, NP20 4BP.	Stow Hill

The agenda sets out the intended date and time of the hearing. The hearing May be adjourned or cancelled should circumstances change.

Please also note Section 5 of Code of Practice for Licensing Hearings overleaf.

### Requirements for Applicants and Interested Parties etc

Upon receipt of the notice of the meeting, the Applicant and the interested Parties must inform the Council in writing addressed to Mrs A Jenkins, Governance Team Leader, Newport City Council, Civic Centre, Newport, South Wales, NP20 4UR:

- Whether they intend to attend or be represented at the hearing
- Whether they consider a hearing to be unnecessary
- Requests for any other people to attend the hearing eg witnesses (including their names and a brief description of the evidence that they can give and its relevance to the application)

Contact: Anne Jenkins, Governance Team Leader

Tel: 01633 656656

E-mail: anne.jenkins@newport.gov.uk

Date of Issue: Monday, 23 July 2018

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# Rhybudd ynghylch Gwrandawriad Is-bwyllgor Trwyddedu

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Dyddiad: 06 Awst 2018

Amser: 4pm

Lleoliad: Ystafell Bwyllgora 1 - Y Ganolfan Ddinesig

At: Y Cynghorwyr D Davies (Cadeirydd), H Thomas, T Holyoake, G Berry, J Cleverly, M Cornelious, T Holyoake, A Morris, M Rahman, C Ferris J Hughes and W Routley

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Eitem	Y wardiau yr effeithir arnynt	
1	<u>Ymddiheuriadau am absenoldeb</u>	
2	<u>Datganiadau o fuddiant</u>	
3	<u>Cod Ymarfer yr Is-bwyllgor Trwyddedu</u>	
4	<u>Adolygiad llawn yn dilyn cais adolygu cryno</u> Baneswell Express <b>Amser y gwrandawriad: 4pm</b>	Stow Hill

Mae'r agenda yn nodi dyddiad ac amser arfaethedig y gwrandawriad. Gall y gwrandawriad gael ei ohirio neu'i ganslo os bydd amgylchiadau'n newid.

Yn ogystal, dylech ystyried Adran 5 y Cod Ymarfer ar gyfer Gwrandawriadau Trwyddedu.

### **Gofynion ar gyfer Ymgeiswyr a Phartïon â Diddordeb ac ati**

Ar ôl cael y rhybudd ynghylch y cyfarfod, rhaid i'r ymgeisydd a'r partïon â diddordeb hysbysu'r Cyngor yn ysgrifenedig gan ddefnyddio'r manylion cyswllt canlynol: Mrs A Jenkins, Arweinydd Tîm Llywodraethu, Cyngor Dinas Casnewydd, Y Ganolfan Ddinesig, Casnewydd, NP20 4UR

- A ydynt yn bwriadu bod yn bresennol neu gael eu cynrychioli yn y gwrandawriad
- A ydynt o'r farn nad oes angen gwrandawriad
- A hoffent wneud cais i unrhyw bobl eraill fynychu'r gwrandawriad, e.e. tystion (gan gynnwys eu henwau a disgrifiad byr o'r dystiolaeth y gallant ei rhoi a'i pherthnasedd i'r cais).

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## Conduct and Procedure of Licensing Sub-committee

### 1 Membership and appointment of Chair

- 1.1 The Licensing Sub-committee comprises all members of the committee, other than those who have an interest or who is the ward member for the ward in which premises under consideration is located. The quorum is three. The Chair will be elected on the day by a simple majority vote.
- 1.2 For example, if they live in the vicinity of the licensed premises, or have a friendship or a close personal association with either the applicant or any objector this would disqualify the Member from considering the matter.
- 1.3 Members of the Licensing Sub-Committees should inform the Senior Democratic Services Officer immediately if they consider that they are disqualified from considering any application, if members of the Licensing Sub-Committee become aware of any personal interest in any application before them they should declare the interest at the beginning of the meeting and withdraw immediately.

### 2 Ward Councillors

- 2.1 Ward Councillors are no longer expressly permitted to make representation in their capacity as Ward Councillors although they are entitled to make representations as individuals falling within the category of “any other person”, if they are likely to be affected by an application (for example if they live in close proximity to the licensed premises). Councillors however must comply at all times with the Members Code of Conduct (“the Code”). Ward Councillors should avoid discussing the application with any of the Licensing Sub-Committee beforehand to avoid any suspicion of undue influence or breach of the general obligation in the Code not to improperly use their position as a Councillor to secure any advantage.
- 2.2 If a Ward Councillor has a personal interest in an application (for example, because he/she lives in close proximity to the premises), then this is also likely to be a “prejudicial” interest under the Code. Provided that the Member declares the interest and withdraws from the hearing after making representations, then he/she is entitled under paragraph 14(2) of the Code to appear at the hearing in the same way as any other member of the public having made a relevant representation within the meaning of the Act (“any other person”). This also applies whether or not the Councillor is a Member of the Licensing Committee. Because of this “personal and prejudicial” interest the Ward Councillor cannot have any other involvement with officers or members regarding the application.
- 2.3 Ward Councillors who are not members of Licensing Committee may also act as the appointed representatives for any other person at the hearing, if requested to do so, but they should avoid discussing the application with any of the Licensing Sub-Committee beforehand. If a Ward Member is representing any other person, that other person must have objected by their own accord before a Ward Member can be requested to act as their representative at the hearing.
- 2.4 Ward Councillors who are members of Licensing Committee should not appear as the appointed representatives for any other person at the hearing because of the requirements of natural justice and the need to avoid giving any impression of undue influence or breach of the general obligation in the Code not to improperly use their position as a Councillor to secure any advantage.

### **3 Lobbying**

- 3.1 Other Members must not lobby any Member of the Licensing Sub-committee, directly or indirectly, about any application before them.
- 3.2 Members of the public or any of the parties must not lobby any members of the Licensing Sub-Committee about any application before them. If any of the members of the Licensing Sub-Committee are approached by any person about a licensing matter, they should explain that they cannot discuss the matter and refer the person to the Licensing Officer. Any written representations received by individual members of the Licensing Sub-Committee must be passed to the Licensing Officer and reported at the hearing.

### **4 Chair of the Licensing Sub-Committee**

The Chair of the Licensing Sub-Committee is to be elected by Members on the day by simple majority vote.

### **5 Quorum**

- 5.1 Although the Act allows for the hearing to continue with two members present, the Council's Constitution and the Statement of Licensing Policy provides that three Councillors shall constitute a quorum for any meeting and it is good administrative practice for three members to be present.

If the meeting becomes inquorate at any time, the matter will need to be adjourned or referred to full Licensing Committee.

- 5.3 Membership may change during the course of a Sub-Committee meeting only if an individual member is disqualified from considering some but not all of the applications on the agenda. All members considering an application however must be present throughout the individual hearing. If, for any reason, a member needs to withdraw during the hearing, the proceedings should be temporarily adjourned until the member returns. The meeting will only commence if quorate. If a member arrives late and after the hearing commences, he or she will be disqualified from hearing the specific case under consideration but can hear other cases set out in the agenda.

### **6 Statutory Guidance**

- 6.1 The Licensing Act 2003 (Hearings) Regulations 2005 SI 44/2005 and the The Licensing Act 2003 (Hearings) (Amendment) Regulations 2004 SI 78/2005 ("the Regulations") made under Section 183 of the Act set out the statutory framework for the Licensing Sub-Committee hearings.
- 6.2 These Regulations make provision for hearings required to be held by the Council as Licensing Authority, under the Licensing Act 2003. In particular, the Regulations provide for the timing of the hearings and the notification requirements regarding the time and date of the hearings and information to be given to the parties. In addition, provision is made for a party to provide information to the Licensing Committee about attendance at a hearing, representations, the seeking of permission for another person to attend to assist and whether a party believes that a hearing is necessary.
- 6.3 The Regulations provide for a range of procedural issues to govern the way in which preparations are made for a hearing, the procedures to be followed, the rights of parties at the hearing, the keeping of records and the manner of giving notices. The Regulations also make provision for the timing of the Licensing Committee's determination following a hearing.

6.4 Insofar as the Regulations do not make specific provision for procedures for and at hearings, the Licensing Authority can determine its own procedures.

## **7 Notice of Hearings**

7.1 The provisions of the Local Government Act 1972 requiring at least three clear working days' notice of Council and Committee meetings do not apply to hearings conducted under the Licensing Act 2003.

7.2 Instead Regulation 6 of the Regulations prescribes the period of notice to be given for a Licensing Committee hearing, depending upon the type of application being considered.

7.2.1 At least two clear working days' notice must be given if the hearing is to consider

- the cancellation of an interim authority notice following a police objection
- counter notice following a police objection to a temporary event notice

7.2.2 at least five clear working days' notice must be given if the hearing is to consider

- review of premises licence following a closure order
- determination of application for conversion of existing licence
- determination of application for conversion of existing club certificate
- determination of application by holder of justices' licence for the grant of a personal licence

7.2.3 In all other cases, at least 10 clear working day's notice of the hearing must be given.

## **8 Timescale for arranging hearings**

8.1 Regulations 4 and 5 and Schedule 1 set out the time periods within which the Council is required to arrange hearings. Where a hearing cannot be concluded in one day and has to be held on more than one day, the Regulations require that the hearing must be arranged to take place on consecutive working days.

8.2 The time frame for arranging hearings again depends on the nature of the application and varies from 20 working days from the last date when representation may be made or notice may be received from the Police to five working days in the case of cancellation of an interim authority notice following a police objection.

## **9 Form of Notice**

9.1 Regulation 34 requires that notice of the hearing shall be in writing although it is a matter for the Council to determine how the notice should be given. The Regulations specifically provide that notice can be given electronically (eg by email or fax transmission) provided that the recipient agrees to this method of notice beforehand and a hard copy of the notice is also despatched at the same time. The notice is then deemed to have been properly served at the time of the electronic transmission. Any notice served by second class post would generally be deemed to have been served within two working days.

9.2 It is recommended that all notices and information should be sent to the parties by second class post. In the case of emergency applications that have to be dealt with at short notice or where the parties specifically request, copies will also be sent by email or fax, where these details are known.

## **10 Information to be provided**

10.1 Regulation 7 provides that the following information must be sent out with the notice of hearing

- The rights of attendance, assistance and representation
- The consequences if a party does not attend or is not represented at the hearing (which will usually be that the hearing will proceed in the party's absence)
- The procedure to be followed at the hearing
- Any particular points on which the Licensing Committee considers that it wants clarification from any party at the hearing

10.2 Regulation 7(2) also provides that, in relation to the hearings listed in column 1 of Schedule 3 of the Regulations, certain specified documents must be sent with the notice of hearing to the persons identified. For most types of application, this means that copies of the relevant representations or notices given must be sent to the applicants or licence holders.

10.3 The Regulations require that the notice of the hearing and supporting information must be sent to the appropriate parties ie the applicant and any persons making relevant representations. There is no requirement for public notice to be given of the hearing or for the supporting information to be made available to the press and public or any other members of the Council. The Council however has a discretion as to whether or not to publicise the hearing more widely.

10.4 Having regard to the principles of open government, the Constitutional requirements that decisions are taken in a transparent and accountable manner and the requirements of Regulation 14(1) that hearings are generally conducted in public, it is recommended that the Licensing Sub-committees follow the same publicity arrangements as with other Committee meetings.

## **11 Requirements for Applicants and any other persons**

11.1 Upon receipt of the notice of the meeting, the Applicant and any other person must inform the Council in writing

- Whether they intend to attend or be represented at the hearing
- Whether they consider a hearing to be unnecessary
- Requests for any other people to attend the hearing eg witnesses (including their names and a brief description of the evidence that they can give and its relevance to the application)

11.2 In the case of emergency applications, such as the cancellation of an interim authority notice following representations by the police or a counter notice following a police objection to a temporary events notice, this information must be provided not later than one working day before the hearing. In the case of the review of premises licences following closure orders, an application for conversion of existing licences or club certificates and the grant of personal licences, the information must be provided at least two working days before the hearing. In all other cases the information must be provided at least five working days before the hearing.

11.3 It is recommended that a separate letter be sent to the Applicant and any other person at the same time as the agenda for the meeting, reminding them of the need for this information and asking them for a response as soon as possible before the meeting. If the Licensing Sub-committee is informed in good time before the meeting that the parties do not wish to attend, then it may be possible to reschedule other business or applications for that meeting.



- 11.4 Regulation 9 allows the Council to dispense with the need for a hearing if the Applicant and all any other persons agree. If all the parties respond to the request for information stating that they consider a hearing to be unnecessary, the hearing can be vacated and notice given to the parties accordingly. A determination must then be made within 10 working days of the notice.
- 11.5 Regulation 10 provides that any party may withdraw their representations by giving written notice at least 24 hours before the hearing or orally at the hearing itself. There are no powers to avoid wasted costs in favour of either party in the event of an abortive hearing due to late withdrawal of representations. The parties should be encouraged to give as much notice as possible if they intend to withdraw their representations to avoid the unnecessary time and expense of arranging a hearing.
- 11.6 Where all objections are withdrawn and/or all the parties agree that a hearing may be dispensed with, the applications may be determined by officers under delegated powers.

## **12 Extensions of Time and adjournments (Regulations 11-13)**

The Licensing Sub-Committee have a general discretion to extend the time limits contained in the Regulations or adjourn hearings if this is considered to be necessary in the public interest. Proper notice would have to be given of any extension of time or adjournment. Time cannot be extended or hearings adjourned if this would result in a failure to comply with the timescales set out in the Act.

## **13 The Hearing**

### **13.1 Exclusions**

Regulation 14 provides that all hearings must be held in public. The Licensing Sub-Committee may however exclude the press and public (including the parties and their representatives) from all or part of the hearing if they consider that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in public.

13.2 The Access to Information provisions of Schedule 12A of the Local Government Act 1972 do not apply to hearings before the Licensing Sub-Committee. The test for exclusion of the press and public is not whether there is "exempt information" (as defined in Schedule 12A) which is likely to be disclosed, but whether it is in the "public interest" that the hearing (or part of the hearing) should be in private.

13.3 It is recommended that, as a general rule, all representations from the parties should be heard in public unless there are exceptional circumstances. The overriding public interest dictates that hearings should be conducted in a fair, open and transparent manner and justice should be seen to be done. The Council's constitution is also based on democratic open government, accountability and public access to meetings. The parties should be given the opportunity at the beginning of the hearing to make an application for a private hearing, but they would have to establish a clear reason why this should override the public interest in an open hearing. The fact that personal information or information relating to financial, business or commercial interests would be disclosed would not, in itself, justify exclusion. An application for exclusion of the press and public could be made, for example, where sensitive information relating to individual children could be disclosed in relation to a policy issue involving the protection of children from harm, or where there are criminal justice implications involving representations made by the police. The final decision as to whether the press and public should be excluded for all or part of the hearing on public policy grounds is a matter for the Licensing Sub-Committee.

13.4 It is however recommended that, as a general rule, the press, public and the relevant parties are all excluded from the meeting while the Licensing-Sub-committee deliberate and come to

their decision on the grounds that this private debate is considered to be in the “public interest”. Everyone should then be asked to withdraw from the room, except for the Licensing Officer, the Democratic Services Officer and the Head of Law and Standards or his nominated representative. These three officers shall be entitled to remain, but only for the purpose of offering advice as to procedure or any particular point of law and to record decisions. They must not participate in the decision-making by the Licensing Sub-Committee. Where it is more convenient, the Licensing Sub-Committee may withdraw to a private room rather than require everyone else to withdraw from the meeting room.

- 13.5 If there are any further points of clarification required, then all of the parties and the public should be allowed back into the meeting while these points of clarification are addressed.
- 13.6 Regulation 25 permits the Licensing Sub-Committee to exclude any person from the hearing if they are behaving in a disruptive manner, either permanently or temporarily (permitting them to return only if they comply with such conditions as may be specified). If one of the parties is excluded on these grounds and not permitted to return, they are entitled to submit to the Licensing Sub-Committee in writing any information which they would have been entitled to give orally had they not been excluded from the meeting.
- 13.7 Representations  
Any person or responsible authority may make written representations about an application for a premises licence or certificate within a specified period, which is generally 28 working days of the receipt of the application. Representations or requests for review will only be relevant if they relate to the four licensing objectives. The applicant will be provided with copies of all relevant representations received at the same time as the notice of hearing. The written representations will also be referred to as background papers to the Report of the Licensing Officer, which will be circulated to Members of the Licensing Sub-Committee and made available to the press and public as soon as possible and, in any event, at least two clear working days before the hearing.
- 13.8 Advice should therefore be given that, if any person responds to any notice or advertisement, their letter of objection or support will be made available to the public, including personal data (such as names and addresses) in accordance with the Data Protection Act 1988. If any person objects to their name and address, or any other personal information, being made public, then their representations will need to be redacted or anonymised before being circulated (but this may affect the weight that the Licensing Sub-Committee attaches to their representations).
- 13.9 Where relevant representations have been made and an application is to be determined at a hearing, the applicant and those parties who have made representations have a right to attend the hearing (subject to rights of exclusion) and may be assisted or represented at the hearing by any person (whether or not that person is legally qualified) (Regulation 15).
- 13.10 Regulation 16 provides that a party shall be entitled at the hearing to
- Give further information in response to a point upon which the Licensing authority has given notice that it wants clarification
  - Question any other party, if permission is given by the Licensing Sub-Committee
  - Address the Licensing Sub-Committee
- 13.11 Regulation 17 provides that Members of the Licensing Sub-Committee may question any party or other person appearing at the hearing.
- 13.12 In considering any application, representations or notice made by a party, the Licensing Sub-Committee may take into account documentary or other information produced by a party in support of their application, representations or notice, either before the hearing or, with the consent of the parties, at the hearing. The Licensing Sub-Committee has discretion as to whether to admit this documentary evidence but should, generally allow this to be presented

if it is relevant and material to the application, the representations or notice submitted and the licensing objectives. This however should not be seen as an opportunity to introduce new representations outside the statutory timescale. The parties should be advised to provide any additional documentary evidence as soon as possible before the hearing and, wherever possible, this should be circulated in advance to the Members of the Licensing Sub-Committee and the other parties. The Sub-Committee will then decide at the hearing whether or not this additional documentary evidence should be admitted and considered. If admitted, the additional information will then be made available to the press and public at the meeting. If the additional documentary evidence has not been produced before the hearing, it can only be admitted with the consent of all the parties. If any other party objects to the evidence being produced at the hearing, the Licensing Sub-Committee has no discretion to admit it or take it into account.

#### **14 Failure of parties to attend the hearing**

If a party has informed the Council that he/she does not intend to attend or be represented at the hearing, then the hearing may proceed in their absence. If a party, who has not given prior notice of his/her intention not to attend the hearing, is absent from the hearing the Licensing Sub-Committee may either adjourn the hearing or hold the hearing in the party's absence. Where the hearing proceeds in the absence of a party, the Licensing Sub-Committee must still consider the written representations or notice submitted by that party and follow the same principles of decision-making.

#### **15 Procedure at the hearing**

- 15.1 Subject to the provisions of the Regulations, the Licensing Sub-Committee has the discretion to regulate their own proceedings and procedure to be followed at the hearing. The proceedings should be kept as informal as possible although a logical and ordered approach should be maintained in order to ensure a fair and impartial hearing. A suggested form of procedure is attached however the Chair should make it clear that the Licensing Sub-Committee are not totally inflexible and would be prepared to vary the order of proceedings if this would facilitate the proper consideration of an application or notice.
- 15.2 Regulation 7(c) provides that parties should be informed of the procedure to be adopted at the hearing when they are sent notice of the arrangements for the meeting. It is therefore suggested that a copy of the written procedure is sent to the parties with the notice of the hearing.
- 15.3 Regulation 22 requires the Licensing Sub-Committee to explain the procedure to the parties at the beginning of the hearing and consider any request under Regulation 8(2) for permission for another person to appear at the hearing (such permission not to be unreasonably withheld). Prior notice should have been given if parties wish to call witnesses or other persons to address the hearing. Provided that their evidence or representations are relevant and material, permission should generally be allowed.
- 15.4 Regulation 23 provides that the hearing should take the form of a "discussion led by the authority" and cross-examination should not be permitted unless the licensing committee considers that this is required to enable them to consider the matter properly. Whilst parties and their representatives should not be allowed to make the hearing too adversarial, it is suggested that both parties should be allowed an equal opportunity to put questions to the other party and their representatives/witnesses (under Regulation 16). A period of five minutes each should be allowed for questions, with the Chair having discretion to disallow any questions which are considered by the Licensing Sub-Committee to be irrelevant, hostile or repetitive. Wherever possible, large groups of objectors should be encouraged to appoint a single spokesperson to present their case, to save time and avoid unnecessary duplication.

15.5 Regulation 24 provides that the Licensing Sub-Committee must allow the parties an equal maximum period of time in which to exercise their rights to put questions and address the hearing. It is suggested that, as a general rule, a maximum time of 20 minutes should be allowed for both parties, with 10 minutes for addressing the Sub-Committee, five minutes for questioning and five minutes for summing up at the end. The Licensing Sub-Committee can however extend time for both parties if this is necessary for the proper consideration of the matter.

## **16 Site Visits**

The Sub-Committee may, at its discretion, undertake a site visit of any premises that are the subject of any application. The visit may take place either before the hearing, by arrangement with the parties, or the Sub-Committee may adjourn the hearing at any time to visit the premises. If a site visit is undertaken, it should be a fact-finding exercise only and no representations should be heard from any party. Any questions should be addressed to licensing officer(s), wherever possible, but if it is necessary to ask a question of any party, this should be done in the presence of all the other parties.

## **17 Determination of applications**

17.1 Normally, the licensing Sub-Committee must make its determination at the conclusion of the hearing. In other cases the Sub-committee shall make its determination within five working days. Where a hearing has been dispensed with, the decision must be made within 10 working days of the notice to dispense with the hearing.

17.2 The Council's Statement of Licensing policy provides that every decision of the Licensing Sub-Committee shall be accompanied with reasons for that decision. A summary of the decision shall be posted on the Council's website as soon as possible after the decision has been made, where it will form part of the statutory licensing register.

17.3 Paragraph 24 provides that comprehensive reasons should be given and, on making findings of fact in its reasons, the Licensing Sub-Committee should ensure that they address the standard of proof and the burden of proof that they have adopted. The Licensing Sub-Committee should also address the extent to which the decision has been made with regard to its Statement of Licensing Policy and the Statutory Guidance issued under Section 182 of the Act.

17.4 Regulation 28 requires the Council to notify the parties in writing of the determination of the Licensing Sub-Committee and their rights of appeal. The Council is also required to send notification of the determination to the Chief Officer of Police, where the police have not been a party to the hearing. This notification must be sent within the period specified in the Act or, if no period is prescribed, forthwith on making the determination.

## **18 Right of appeal**

Any aggrieved party will have the right of appeal to the Magistrates' Court within 21 days of being notified of the decision.

## **19 Record of proceedings**

Regulation 30 provides that the Council must keep a record of the hearing in a permanent and intelligible form for a period of six years from the date of the determination or, where any appeal is brought against the determination of the Licensing Sub-Committee, from the disposal of any appeal. A verbatim note or transcript of the proceedings is not required, but the Minute recording the decision must be sufficiently detailed so as to provide an accurate record of both the proceedings and the decision taken, together with the reasons given and any conditions imposed.

## 20 Irregularities

Regulations 31-33 provide that any irregularities or clerical errors shall not invalidate any decision or render a determination void and enables the Council to correct any error or cure any irregularity as soon as possible.

### Organisation of Cases for the Hearing

- 1 The hearings will normally take place at the Civic Centre, Newport at times to be agreed with the Sub-Committee.
- 2 The agenda for the meetings of the Licensing-Sub-committee shall be agreed by the Licensing Officer and the Senior Democratic Services officer after any necessary consultation with the relevant Chair of the Licensing Sub-Committee. The officers shall determine how many applications can be heard at each meeting and the order in which the applications should be considered, taking into account the number of parties who will be attending.
- 3 Hearings should be scheduled in accordance with the timescales prescribed by the Regulations. In general a hearing must be held within 20 working days after the time has expired for making representations.
- 4 Once the draft agenda has been agreed, the Senior Democratic Services Officer should send out notice of the agenda to the Members, press and public in the usual way. Members should immediately inform the Senior Democratic Services Officer if they consider they are disqualified from hearing or they have an interest in any specific case.
- 5 At the same time, the Licensing Officer shall send notice of the hearing to the parties, together with
  - A copy of the procedure to be followed at the hearing
  - Confirmation of the parties' rights to be assisted or represented at the hearing (whether or not that person is legally qualified)
  - Confirmation that the parties will be allowed to address the Licensing Sub-Committee and put questions to the other parties for a maximum of 20 minutes
  - Confirmation that, if a party does not attend the hearing, the hearing would generally proceed in his/her absence
  - A note of any particular point on which the Licensing Sub-committee requires further clarification.
  - Copies of all relevant representations received
- 6 The parties should also be requested to notify the Council as soon as possible (and in any event within the timescale prescribed by the Regulations) whether they intend to appear and/or be represented at the hearing or whether they consider a hearing to be unnecessary.
- 7 If they intend to proceed with a hearing, they should be requested to give advance notice of any application to adduce any further documentary evidence (which should preferably be provided as soon as possible before the hearing) or request for any other person to appear at the hearing. The request must contain details of the name of the witness and a brief description of that person's evidence.
- 8 The notice of hearing and supporting documents should be sent by second class post and, except in the case of emergency applications or where the Regulations specify a shorter period, at least 10 clear working day's notice should be given. The Licensing Officer may also send electronic copies by email or fax by agreement with the applicants or other party.

- 9 The Chair of the Licensing Sub-committee may meet with the Democratic Services Officer, the Solicitor to the Licensing Sub-Committee and the Licensing Officer(s) presenting the report in advance of the hearing to identify any issues where further clarification should be requested from the parties. These issues will be notified to the parties by the Licensing Officer to enable them to address these issues in their submissions at the hearing. During this preliminary meeting and any pre-agenda meeting, no decisions shall be made and no discussions shall be held regarding the substantive merits of the application or representations.
- 10 The hearings shall be attended by a Solicitor, a Democratic Services Officer and the Licensing Officer. The officers shall attend for the sole purpose of giving advice on law and procedure and are not parties to the decision.
- 11 The role of the Solicitor is to provide legal advice in relation to the applications and submissions.
- 12 The role of the Democratic Services Officer is to record the proceedings and the decisions of the Sub-Committee and ensure efficient administration.
- 13 The Licensing Officer shall prepare a written Report for consideration by the Licensing Sub-Committee, which should include
  - A brief summary of the application
  - A brief summary of the representations
  - The relevant licensing objectives
  - Relevant aspects of the Council's Statement of Licensing Policy and statutory Guidance
  - Other background information (such as copies of letters)
- 14 The Licensing Officer's Report should be sent out as soon as possible and, in any event, no later than 10 clear working days before the hearing, together with copies of relevant documentary evidence submitted by the parties. Wherever possible, the Licensing Officer's Report should be sent out at the same time as the notice of hearing and supporting documents, but this will not be reasonably practicable where there are a significant number of applications to be determined. If additional documentary evidence is provided later by the parties, it should be copied and sent to the other parties before the hearing, if reasonably practicable.
- 15 After hearing all the representations and prior to retiring to make its decision, the Licensing Sub-Committee may, if it wishes, seek the guidance of the Licensing Officer and/or Solicitor on possible conditions that could be attached to any licence.
- 16 The Democratic Services Officer shall keep a record of the decisions taken and the Licensing Officer shall send written confirmation of the decision to the relevant parties, together with the reasons, any conditions and their rights of appeal.

### **Principles of Decision-Making**

- 1 This note is intended to provide members of the Licensing Sub-committee with a guide to the principles of decision-making. The licensing hearings are of a quasi-judicial nature and the procedures are, therefore, markedly different to the usual arrangements for Committee meetings.
- 2 It should be noted that the proceedings are governed by adjudication procedures and the rules of natural justice will, therefore, apply. All the parties should be given a full and fair hearing, which should be conducted in an open, transparent and accountable manner.
- 3 Members must, at all times, comply with the Council's Member Code of Conduct.

- 4 All licensing applications must be considered on the basis of whether they promote the four licensing objectives set out in the Act and incorporated in the Statement of Licensing Policy, namely
  - The prevention of crime and disorder
  - Public safety
  - The prevention of public nuisance
  - The protection of children from harm
  
- 5 In reaching their decisions under the Act, the Licensing Sub-Committee must have regard to all relevant considerations including (but not limited to)
  - The relevant statutory provisions
  - Relevant Statutory Guidance issued under Section 182 of the Act
  - The Council's Statement of Licensing Policy
  - The licensing objectives
  - The material facts based on the relevant evidence presented and representations received
  - The individual merits of each case
  - The public interest
  
- 6 The Licensing Sub-Committee must disregard any irrelevant considerations, including (but not limited to) information or evidence which is not relevant to the application or to the promotion of the licensing objectives. Members must also disregard any party political considerations or decisions taken in political group meetings.
  
- 7 Members of the Licensing Sub-Committee must act fairly, objectively and impartially throughout. They must not show any bias or predetermination and must keep an open mind on all applications until they have heard all the relevant representations and evidence. Members must not prejudge any application, express any view on the merits of any application, organise any support or opposition to any application, in advance of the hearing. Any Member with a "closed mind" on any application would be disqualified from sitting on the Licensing Sub-Committee which considers that application.

In the event of any licensing applications submitted by or on behalf of the Council or an officer of the Council, the same rules and procedures shall apply. No account shall be taken of the fact that the application is submitted by the Council or an officer and no favour or consideration shall be shown in relation to the application. Any member involved in the decision to apply for the licence shall be disqualified from sitting on the Licensing Sub-Committee which considers the application.

### **Procedure to be Followed at The Hearing**

#### **1 Preliminaries and Opening remarks**

At the commencement of the meeting, the Chair for the meeting shall be elected by simple majority of members present.

The Chair of the Sub-Committee opens the meeting and welcomes those attending.

The Chair introduces the members and the officers present.

#### **2 Apologies/declarations of interest**

The Chair deals with any apologies for absence and declarations of interest. Any substitution of members will be dealt with at this stage.

### 3 Introductions

The Chair invites the applicant, any other person and their representatives to introduce themselves and indicate who will be speaking.

The Chair explains the procedures to be followed and the time allocated to each party and asks if there are any questions. (The order of proceedings may be varied at the discretion of the Sub-Committee where the parties have any particular preference or where this is necessary for proper consideration). The proceedings will generally be conducted in public unless it is in the public interest to hear cases in private. Any applications to exclude the press and public should be dealt with at this stage.

### 4 Applications

The Chair will inform the parties whether their applications to have certain people attend the hearing under Regulation 8(2) (eg witnesses) have been granted or refused.

The Chair will summarise the papers before the Licensing Sub-Committee and will confirm that everyone has copies. Chair will ascertain whether any representations have been or are now to be withdrawn. Licensing Sub-Committee will consider any requests for additional documentary evidence or other information to be introduced by either party. (Note that advance notification must be given, otherwise the additional information or evidence can only be adduced at the hearing with the consent of all the parties and the agreement of the Sub-Committee).

Chair is to identify any specific points about which the Licensing Sub-Committee have requested clarification.

### 5 Report from Licensing Officer

The Licensing Officer presents the Report outlining

- The nature of the application
- Any relevant background information
- Relevant issues in relation to the promotion of the four licensing objectives
- Relevant representations received
- Any relevant policy issues, including the Statement of Licensing Policy and any statutory Guidance

The Licensing Officer presenting the report will not make any recommendation regarding the determination of the application, but will simply outline the relevant considerations which the Licensing Sub-Committee will need to take into account when arriving at their decision. (It should be noted if the Licensing Authority wishes to make representation regarding application as a relevant authority under the Licensing Act 2003 a further Licensing Officer will be required to attend the committee and Act as a relevant authority).

The Members will be able to ask questions of the Licensing Officer(s) presenting the report to clarify any issues arising out of the Report.

### 7 The Applicant's case

- (a) The Applicant/representative to address the Sub-Committee and to call any witnesses where permission has been granted (maximum period of 10 minutes). Parties may give their evidence by making a statement or by being questioned by their representative.
- (b) The objectors/representatives shall be allowed to put questions to the applicant/representative and any witnesses (maximum five minutes).
- (c) The members of the Licensing Sub-committee to put questions to the applicant/representative and any witnesses



8 The Objector(s) case

- (a) The Objectors/representatives to address the Sub-Committee and to call any witnesses, where permission has been granted (maximum period of 10 minutes). (The responsible authorities eg Police, Fire Authority, followed by any other person in the order in which they submitted their written representations. Where a large group have objected, they should be encouraged to appoint a single spokesperson in order to save time and avoid repetition).
- (b) The applicant/representative shall be allowed to put questions to the objectors/representatives and any witnesses, (maximum five minutes).
- (c) The members of the Licensing Sub-committee to put questions to the objectors/representatives and any witnesses.

9 Closing Statements

- (a) Objectors or their representative(s) to sum up (maximum of five minutes). (In the order in which they addressed the Sub-Committee, if more than one).
- (b) Applicant or representative to sum up (maximum of five minutes). (At this stage the applicant/representative should indicate whether, in the light of the representations made, they wish to amend their application or offer any conditions to overcome the objections and/or promote the licensing objectives).

10 Decision

If there are no further matters to be resolved, the Chair will ask all the parties if they are satisfied that they have had a fair hearing and will then close the proceedings.

The Sub-committee to consider whether it is in the public interest that they deliberate in private or whether this part of the hearing should continue to take place in public.

Pass resolution to exclude the press and public (including the parties and their representatives) pursuant to Regulation 14(2) during this part of the hearing, while the Sub-Committee discusses its decision. Everyone should then be asked withdraw from the room, except the Licensing Officer(s) presenting the report, the Democratic Services Officer and the Head of Law and Standards or his nominated representative(s). These officers shall be entitled to remain but only for the purpose of offering advice as to procedure or any particular point of law. The Sub-Committee may withdraw into a private room to do this

The Members of the Sub-Committee will deliberate and come to their decision. The reasons for the decision, the material findings of fact and any conditions will be agreed and recorded in writing by the Chair. In the event of any disagreement, any matter under consideration shall be determined by a simple majority of votes cast.

The hearing will then resume in public. The Chair will announce the decision and give the reasons for that decision, any material findings of fact, any licence conditions that are to be imposed and the licensing objectives that they relate to (unless, where permitted by the regulations, the decision is to be communicated at a later time).

11 Repeat process for each hearing

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# Report

## Licensing Sub Committee Report

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### Part 1

Date: 06<sup>th</sup> August 2018

**Subject** **Review of Premises Licence under Section 51 Licensing Act 2003**

**Baneswell Express 8, Baneswell Road, Newport NP20 4BP  
Premises Licence Number 16/00627/LAPREV**

**Purpose** The consideration and decision in respect of a review application under Licensing Act 2003.

**Author** William Lewis (Licensing Officer)

**Ward** St Julians

**Summary** An application for a review of the premises licence was served by Newport City Council Licensing Services on 19<sup>th</sup> June 2018 on the basis that the operation of the premises were failing to promote the Licensing Objectives in respect of the prevention of crime and disorder and public protection.

**Proposal** **To make a decision on the application as detailed within this report.**

**Action by** Head of Law and Regulation

**Timetable** Statutory Consultation Period

**Signed**

## 1. Application

1. On 19<sup>th</sup> June 2018 an application (Appendix 1) under section 51 Licensing Act 2003 for a review of the Premises Licence No 16/00627/LAPREV held by Arfan Sabir in respect of premises trading as Baneswell Express 8, Banewell Road, Newport was served on the Licensing Authority by Samantha Turnbull a Licensing Officer of Newport City Council Licensing Services acting in the capacity of a 'responsible authority' by virtue of the provisions of Section 182(4) Licensing Act 2003.
2. In accordance with the provisions of Section 51 Licensing Act 2003 Licensing Officer William Lewis attended Banewell Express at 1.15pm on 19<sup>th</sup> June 2018 and a copy of the application, addressed to Arfan Sabir was served on Mohammed Sabir who was present at that time. A blue notice (Appendix 2) advertising the application was affixed to the window to the street in accordance with provisions of the Licensing Act 2003. A copy of the Blue Notice was also displayed at Newport City Council Information Station reception. On the same date a copy of the application was served on the 'Responsible Authorities' and published on Newport City Council website detailing that representations from any person should be served on the Licensing Authority no later than the end of the 28 day consultation period on 17<sup>th</sup> July 2018.
3. The application for review is being requested as the Licensing Authority (acting as a Responsible Authority) believe the licensing objectives are not being upheld, namely the prevention of Crime and Disorder & Public Safety as a result of historic issues associated with the conduct of the premises and activity at 02:08am on 24<sup>th</sup> February 2018 observed by officers of the Licensing Authority who were engaged in Night Time Economy enforcement duties.
4. As a result of that observation of 24<sup>th</sup> February 2018 officers later attended at the premises where under lawful request they were provided a copy of images (copies produced Appendix 3) recorded on the premises CCTV system by Mr Arfan Sabir the holder of the Premises Licence and the Designated Premises Supervisor.
5. The CCTV recording was subsequently viewed and revealed evidence of breaches of conditions attached to the premises licence. Further details concerning what was revealed from the viewing of the CCTV recording is provided within the application for the review and shall be presented to the Licensing Sub-Committee by an authorised officer.

## 2. Representations

No representations were received from 'responsible authorities' or 'other persons'.

## 3. Current Premises Licence

The Premises Licence 16/00627/LAPREV (Appendix 6) was granted following a review of the Premises Licence and decision of the Licensing Sub-Committee on 15<sup>th</sup> June 2016 and a subsequent appeal at Newport Magistrates Court on 07<sup>th</sup> October 2018 where agreement was reached prior to a full hearing that the **sale of alcohol for consumption 'off' the premises** was restricted to:

Monday to Sunday inclusive 08:00 - 23:00

#### 4. Background/Premises Licence History



1. The premises as shown above were granted a Premises Licence under the Licensing Act 2003 effective as of 24th November 2005 following application to convert a Justices Licence granted under the Licensing Act 1964 which permitted the sale of alcohol for consumption 'off the premises' Monday to Saturday between the hours of 08:00 and 23:00, Sunday between the hours of 10:00 to 22:30 and Good Friday between the hours of 08:00 and 22:30.
2. In April 2008 an application for a 'full variation' of the Premises Licence was submitted by Mr Arfan Sabir the holder of the Premises Licence seeking an extension of the hours for the sale of alcohol to:  
Sunday to Thursday inclusive 07:00 to 01:00  
Friday and Saturday 07:00 to 03:00
3. This application was met with an objection and in accordance with statutory provisions of the Licensing Act 2003 was deferred to Newport City Council Licensing Sub-Committee on 19th June 2008 for determination of the application.
4. The Sub Committee having taken into account the statutory Licensing Objectives, the Council's Statement of Licensing Policy and evidence presented in the interest of promoting the Licensing Objective of the Prevention of Public Nuisance determined to grant the application but in order to prevent disturbance and nuisance arising during the early hours of the morning in what is primarily a residential area modified the hours for the sale by retail of alcohol for consumption off the premises to:  
Sunday to Thursday inclusive – 8am to 12 midnight  
Friday and Saturday – 8am to 1am

5. On 23<sup>rd</sup> September 2015 the Premises Licence Holder Arfan Sabir attended Newport Central Police Station for a meeting with the Police Licensing Officer and Mr Alastair Dearling the council's Principal Licensing Officer. This meeting concerned intelligence and information which gave strong suspicions that the premises were engaging in unauthorised sale of alcohol which was denied by Mr Sabir. He was nevertheless strongly advised of his responsibilities and warned of the consequences of failure to comply with the times and conditions attached to the Premises Licence.
6. In spite of that meeting and the warnings given further information emerged to suggest that the premises were still engaging in selling alcohol outside the hours permitted by the Premises Licence. On 06<sup>th</sup> February 2016 and 27<sup>th</sup> February 2016 officers of the Licensing Authority conducted test purchases at the premises after the terminal hour for the sale of alcohol. The investigation following these test purchases revealed further matters regarding breaches of conditions of the Premises Licence and on 04<sup>th</sup> April 2016 an application for a review of the Premises Licence under Section 51 Licensing Act 2003 (copy included at Appendix 4) was served by Mr Alastair Dearling of the Licensing Authority (responsible Authority) on the grounds that the operation of the premises were failing to promote the licensing objectives of the prevention of crime and disorder and public protection.
7. A hearing in respect of that review application before Newport City Licensing Sub-Committee was held on Wednesday 15<sup>th</sup> June 2016. The Licensing Sub-Committee having considered the presentation of the report and responses of the Premises Licence Holder determined that there had been a failure in the promotion of the Licensing Objectives and modified the Premises Licence to reduce the hours for permitted sale of alcohol and added conditions as follows:
  - The sale by retail of alcohol for consumption off the premises is to take place between 0800 hours and 2200 hours Sunday to Saturday.
  - A personal licence holder must be present at the premises between the hours of 0800 hours and 2200 hours.
  - All alcohol should be clearly labelled as having been obtained from or sold by Baneswell Express; this can be incorporated within the price label.
  - The Designated Premises Supervisor shall be actively employed on the premises and shall not be a Designated Premises Supervisor in respect of premises elsewhere.
  - The doors to the premises shall be closed allowing no public access after the terminal hour for the sale of alcohol after which retail sales shall be restricted to the service hatch located at the front of the premises.
8. The decision of the Licensing Sub-Committee was appealed by Arfan Sabir to Her Majesty Court Service. The appeal was heard at Newport Magistrates Court on 07<sup>th</sup> October 2016 where the proposals of Legal Counsel for Mr Sabir were agreed by the Licensing Authority prior to requirement for a full hearing. The Premises Licence was amended to reflect the agreed proposals as determined by the court order (Appendix 5).
9. In May 2017 intelligence and information that surfaced concerning activities at the premises resulted in a visit from Mr Dearling and the Police Licensing officer on 30<sup>th</sup> May 2017. Mr Arfan Sabir was spoken to in relation to the premises selling balloons of nitrous oxide. Subsequent to this visit a letter (Appendix 7) was sent to Mr Arfan Sabir detailing the legal position concerning the supply of Psychoactive substances which include Nitrous Oxide.

10. On 19<sup>th</sup> February 2018 and 08<sup>th</sup> March 2018 visits to the premises by officers of Newport City Council Licensing Department and Newport Police resulted in finding of breaches of conditions attached to the Premises Licence. Following these visits Licensing Officer Samantha Turnbull sent a letter dated 21<sup>st</sup> March 2018 (Appendix 8) to Mr Arfan Sabir identifying these condition breaches and the requirement for compliance.

## **5. Legal Considerations, Guidance, Policy Consideration.**

1. The decision must be taken following consideration of the representations received with a view to promoting the licensing objectives which are:
- Prevention of crime and disorder
  - Public Safety
  - Prevention of Public Nuisance
  - Protection of Children from Harm

In each case the Sub-Committee may make the following determination

- To modify the conditions of the Premises licence
- To exclude a licensable activity from the scope of the premises licence
- To remove the designated premises supervisor from the licence
- To suspend the premises license for a period not exceeding 3 months
- To revoke the premises licence
- Take No Action in respect of the Premises Licence.

## **6. Guidance**

1. Relevant extracts of the Statement of Newport City Council Licensing Policy as regards this application include:

Paragraph 33.1

The Licensing Authority can only review a licence where it is alleged by a “responsible authority”, or other person that the licensing objectives are being breached. Responsible authorities will aim to give licence holders early warning of any concerns identified at the premises. Only Responsible Authorities or other local persons (e.g. local residents, local organisations and councillors) can apply for the review of a licence. At any subsequent hearing, the Sub-Committee will consider evidence and make a determination. It views particularly seriously applications for the review of any premises licence which involves the:

- **use of licensed premises for the sale and distribution of controlled drugs and the laundering of the proceeds of drugs crimes;**
- use of licensed premises for the sale and distribution of illegal firearms;
- evasion of copyright in respect of pirated films and music;
- underage purchase and consumption of alcohol;
- use of licensed premises for prostitution or the sale of unlawful pornography;
- use of licensed premises for unlawful gaming;
- use of licensed premises as a base for organised criminal activity;
- use of licensed premises for the organisation of racist, homophobic or sexual abuse or attacks;
- use of licensed premises for the sale of smuggled tobacco or goods;
- use of licensed premises for the storage or sale of stolen goods;

- the police being frequently called to attend to incidents of disorder;
- prolonged and/or repeated instances of public nuisance;
- serious risk to public safety have been identified and the management is unable or unwilling to correct;
- serious risk to children.

The Licensing Sub-Committee will consider all evidence provided at the hearing and apply appropriate weight to that evidence when making its decision. It will consider all sanctions at its disposal by virtue of the Act and guidance, including taking no action, if appropriate. In cases where a licensing objective is seriously undermined, the revocation of the licence, even in the first instance, will be considered where appropriate to ensure the licensing objectives are promoted.

## **7. Issues for discussion**

1. The application and supporting evidence requesting the review of the Premises Licence.
2. Any mitigation from Arfan Sabir.



## **APPENDIX 1**

The application form dated 19<sup>th</sup> June 2018 from Newport City Council/Licensing Officer (responsible authority) requesting a review under Section 51 Licensing Act 2018 of the Premises Licence for Baneswell Express.

*[Insert name and address of relevant licensing authority and its reference number (optional)]*

### **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 Licensing Authority Newport City Council**

*(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**

<b>Postal address of premises or, if none, ordnance survey map reference or description</b> Baneswell Express 8 Baneswell Road	
<b>Post town</b> Newport	<b>Post code (if known)</b> NP20 4BP

<b>Name of premises licence holder or club holding club premises certificate (if known)</b> Mr Arfan Sabir
---------------------------------------------------------------------------------------------------------------

<b>Number of premises licence or club premises certificate (if known)</b> 16/00627/LAPREV
----------------------------------------------------------------------------------------------

#### **Part 2 - Applicant details**

I am

Please tick ✓ yes

- 1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)
- 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)

Please tick ✓ yes

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

**Surname**

**First names**

**I am 18 years old or over**

Please tick ✓ yes

**Current postal  
address if  
different from  
premises  
address**

**Post town**

**Post Code**

**Daytime contact telephone number**

**E-mail address  
(optional)**

**(B) DETAILS OF OTHER APPLICANT**

Name and address

Telephone number (if any)

E-mail address (optional)

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

Name and address Licensing Authority Newport City Council PO Box 883 Civic Centre Godfrey Road Newport NP20 4UR
Telephone number (if any) <b>01633 656656</b>
E-mail address (optional) <a href="mailto:Environment.licensing@newport.gov.uk">Environment.licensing@newport.gov.uk</a>

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

- Please tick one or more boxes ✓
- |                                         |                                     |
|-----------------------------------------|-------------------------------------|
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety                        | <input checked="" type="checkbox"/> |
| 3) the prevention of public nuisance    | <input type="checkbox"/>            |
| 4) the protection of children from harm | <input type="checkbox"/>            |

**Please state the ground(s) for review** (please read guidance note 2)

The review is being requested as the Licensing Authority (acting as a Responsible Authority) believe the licensing objectives are not being upheld, namely the prevention of

- **Crime and Disorder**
- **& Public Safety.**

Despite several enforcement activities undertaken by the Licensing Authority in respect of the Baneswell Express premises since September 2015, the premises licence holder and Designated Premises Supervisor (DPS) Mr Arfan Sabir continues to operate the premises in contravention of the licence conditions attached to the premises licence; notably the conditions that were formally attached to the premises licence following mediation between the premises licence holder Mr Sabir and Newport City Council at an appeal hearing on 07 October 2016 at Newport Magistrates Court.

The latest enforcement activity having taken place on **24 February 2018** was undertaken as part of routine late night enforcement Officers were conducting across the City Centre. It was identified by Officers that at 02:08am despite the front door of the premises being closed it appeared that a member of staff working in the premises, known to the Officer to be Mr Mohammed Sabir was serving an individual inside the shop premises.

The Officers continued to witness a male individual leave the shop premises at 02:10am with a package and enter into a vehicle parked up outside the premises.

Following this enforcement activity, Officers visited the premises and met with the Premises Licence Holder and Designated Premises Supervisor, Mr Arfan Sabir, in order to request CCTV footage be provided of 24 February 2018.

The CCTV recordings were provided and these have been subsequently examined.

The CCTV recordings provided highlight multiple breaches of licensing conditions have occurred on 24 February 2018, notably the following two conditions:

***“2. Premises to close to customers no later than 12 midnight on any day.”***

***“3. All alcohol to be screened or covered after licensable activities period ends whilst premises remains open to customers.”***

The CCTV recordings provided cover the period from 01:30am to 02:30am. Cameras cover the internal areas where customers have access and the cameras immediately outside the shop, including the service hatch area.

At the start of the recordings two males are located inside the premises. One male known to Officers to be Mr Mohammed Sabir, is working at the premises and he is the only individual working at the shop premises during the duration of the footage.

The other male located inside the premises remains in the premises until 02:02am; during the footage he is seen to be drinking from cans, one of which he obtains from a stack of cans located inside the premises, eating and smoking inside the premises.

**At 01:30am on 24 February 2018** Two males are allowed entry into the premises.

Whilst the two males remain in the area of the premises directly in front of till counter, Mr Mohammed Sabir takes a blue coloured plastic carrier bag from the till point area and goes to the rear of the premises into the premises' store room, this area is not covered by the CCTV footage we were provided with. Mr Mohammed Sabir returns into the shop premises and when he returns immediately to the till counter area items are inside the blue plastic carrier bag.

The CCTV recordings do not highlight what items are inside the carrier bag, however it appears that the size of the items enclosed in the carrier bag give the appearance of being cans in their shape and size, however this cannot be categorically determined and the items if in fact are cans they could be large energy drink cans. These energy drink can products are normally located in refrigerated chiller units located along the one side of the shop premises.

The males do not select any products themselves whilst they are located inside the premises and following an exchange of notes by one male with Mr Mohammed Sabir at the till counter the males then leave the premises without the blue carrier bag containing items.

Some minutes later, the same male who exchanged notes with Mr Mohammed Sabir returns into the shop premises for a brief period and within minutes again the same male is seen outside the premises being passed the blue plastic carrier bag containing items through the shop premises' service hatch.

At 01:39am a male is seen on the CCTV recordings to approach the front door to the premises, however he was not able to enter the premises.

At 02:07am on 24 February 2018 Mr Mohammed Sabir opens the door of the premises and permits a male to enter into the premises. This male is seen to be walking around the shop premises browsing at products. He approaches the till with what appears to be two items he has selected, one of which appears to be a multipack of chocolate confectionary. Mr Mohammed Sabir places another product on the counter, which appears to be tobacco and the male makes payment to Mr Mohammed Sabir with a note, at 02:10am this male customer leaves the premises.

Officers have determined from extensive examination of the CCTV recordings obtained for the 24 February 2018 that the Licensing Authority cannot categorically determine whether the customers allowed entry into the premises during the time period in question purchased alcohol as part of their transactions, but is clearly a breach of the Premises Licence conditions that stipulates

***“2. Premises to close to customers no later than 12 midnight on any day.”***

It is clearly evident that payment was made by both customers on the 24 February 2018. I exhibit a copy of CCTV of the 24 February from 01:30 hrs and 02:30 hrs as appendix two to this report.

In respect of the CCTV recordings obtained, at various intervals during the footage Mr Mohammed Sabir and the male who remains in the premises from the start of the recordings obtained from 01:30am until he is seen leaving at 02:02am, are both witnessed smoking cigarettes inside the shop premises. Thereby committing offences under section 7 of the Health Act 2006. Both Mr Arfan & Mohammed Sabir have been warned at previous meetings regarding the offences of smoking in the shop. The males can be seen to be using an ash tray whilst they smoke.

On 03 May 2018 Mr Arfan Sabir attended a formal interview with Officers and was asked for a response in relation to the evidence obtained for the 24 February 2018 and the offences committed.

Mr Sabir indicated that he was fully aware of the conditions attached to his premises licence. When questioned specifically about members of the public being permitted to enter his premises beyond midnight he indicated that he does permit known persons to enter to browse as opposed to them being limited to only have products passed through the premises' hatch, however he stated such permitted persons are never allowed alcohol and this is known to them.

He further stated that other persons know to him, such as individuals working in the taxi trade in Newport, are permitted to enter his premises for purposes other than to purchase goods, notably to use the toilet or have a coffee.

At this interview it was made clear to Mr Sabir that condition 2 attached to his premises licence means that customers are never permitted to enter his shop premises after 12 midnight and what was witnessed from the CCTV recordings from his system were clear breaches of conditions attached to the premises licence.

**Please provide as much information as possible to support the application** (please read guidance note 3)

The Premises Licence was previously reviewed at a hearing before Newport City Council Licensing Sub-Committee on 15<sup>th</sup> June 2016 following application on 04/04/16 by the Licensing Authority/Responsible Authority as a consequence of conduct associated with the premises and where previous actions and mediation between Gwent Police Licensing and Newport City Council Licensing with the holder of the Premises Licence failed to resolve the issues of an undermining of Licensing Objectives of the Prevention of Crime and Disorder and Public Safety.

The Licensing Sub-Committee heard that the premises failed two test purchase operations undertaken by the Licensing Authority on **06 February 2016** and **27 February 2016**, in respect of both Licensing Officers were able to purchase a 20cl bottle of Glens Vodka.

Further evidence was presented regarding obstruction of the authorised officers who in accordance with a condition of the premises licence requested copies of CCTV recordings for the dates and times of the test purchases and at the time of their attendance and request Mr Rizwan Sabir (brother of premises licence holder) deliberately deleted all CCTV evidence from the shop premises' system via a laptop located at Mr Arfan Sabir's home.

The Licensing Sub-Committee considered that the evidence presented amounted to a failure by the premises licence holder to promote the licensing objectives and they issued a decision that the Premises Licence should be modified as follows:

- The sale by retail of alcohol for consumption off the premises is to take place between 0800 hours and 2200 hours Sunday to Saturday.
- A personal licence holder must be present at the premises between the hours of 0800 hours and 2200 hours.
- All alcohol should be clearly labelled as having been obtained from or sold by Baneswell Express; this can be incorporated within the price label.
- The Designated Premises Supervisor shall be actively employed on the premises and shall not be a Designated Premises Supervisor in respect of premises elsewhere.
- The doors to the premises shall be closed allowing no public access after the terminal hour for the sale of alcohol after which retail sales shall be restricted to the service hatch located at the front of the premises.

Mr Sabir appealed the decision of the Licensing Sub Committee to Her Majesties Courts Services and on **07 October 2016** the appeal was listed at Newport Magistrates Court. Mr Sabir (the Appellant) and his solicitor engaged in mediation with Newport City Council Legal Officer which resulted in the removal of the need for a full hearing. The court was instructed accordingly and issued a court order that the Premises Licence be modified as follows:

Monday to Sunday inclusive 08:00 - 23:00.

1. Sale of alcohol (for consumption off the premises) to be permitted between 8am and 11pm Sunday to Saturday (inclusive)
2. Premises to closed to customers no later than 12 midnight on any day

3. All alcohol to be screened or covered after licensable activities period ends whilst premises remains open to customers
4. Signage to be deployed setting out hours permitted for sale of alcohol
5. All members of staff (serving customer) to be BII/ALPCH certified (or an appropriate equivalent)
6. All alcohol to be labelled "Baneswell Express" (or name of shop)

On the **30<sup>th</sup> May 2017** The Licensing Authority and Gwent Police were required to attend the premises after receiving comprehensive evidence that the shop was selling Psychoactive Substance in the form of Nitrous Oxide (Street name Laughing Gas / Hippy Crack). At the time of the visit there were a number of Nitrous Oxide Charges discarded outside the premises.

Nitrous oxide is depressant-type drug, which means it slows down your brain and your body's responses The effects of nitrous oxide vary depending on how much has been inhaled but they include:

- Feelings of euphoria, relaxation and calmness.
- Dizziness, difficulty in thinking straight and fits of giggles/laughter.
- Sound distortions or even hallucinations.

Nitrous oxide can cause dizziness or affect your judgement, which might make you act carelessly or dangerously and put you at risk of hurting yourself, particularly in an unsafe environment.

Other risks include:

- Unconsciousness or death from lack of oxygen. This occurs when the available oxygen for breathing is effectively pushed out by the nitrous oxide. The risk is greater if the gas is consumed in an enclosed space or if a plastic bag is used that covers both nose and mouth.
- Heavy regular use of nitrous oxide can lead to deficiency of vitamin B12 and to a form of anaemia. The severe B12 deficiency can lead to serious nerve damage in some cases, which causes tingling and numbness in the fingers and toes and other extremities, and even difficulties with walking and pains in affected areas. Regular use may also depress formation of white blood cells.
- Can be hard to judge the amount to use safely. If you have too much you can end up fainting, having an accident or much worse.
- Mixing nitrous oxide with alcohol is especially dangerous as it can increase the risks associated with both substances and can lead to an increased risk of accidents or death.

Although nitrous oxide has been legal in the past, since the Psychoactive Substances Act came into effect on **26 May 2016**, it is now illegal to supply or import nitrous oxide for human consumption.

A warning letter was given jointly by the Police Licensing Team and Newport Licensing Team. I exhibit a copy of this letter as appendix three. Once again this demonstrates lack of management at the premises and disregard of the law and selling of Nitro Oxide clearly undermines the licensing objectives of both public safety and crime and disorder

On **15 July 2017** whilst undertaking evening enforcement in Newport City Centre Officers noted that the Baneswell Express premises was open and trading around the terminal hour for the sale of alcohol for consumption off the premises, as a result of this observation Officer's chose to return to the premises in

order to undertake a test purchase operation to investigate whether an Officer was able to purchase alcohol beyond 23:00. At 23:17 an Officer was able to purchase a bottle of Koppaberg Cider from a male working at the premises.

Following the successful test purchase on 15 July 2017, Officers again attended the premises along with the Police Licensing Officer PC Andrew Lewis, to request CCTV footage of 15 July 2017. At this visit PC Lewis also requested CCTV recordings of 08 July 2017 between 23:00 – 23:30.

A review of the CCTV recordings for **08 July 2017** highlighted that Mr Mohammed Sabir again sold alcohol to a member of the public at 23:29.

Following the commission of these offences on 08 and 15 July 2017 an investigation was undertaken by the Licensing Authority and the decision was made to formally prosecute Mr Mohammed Sabir for committing offences under section 136 of the Licensing Act 2003, notably providing unauthorised licensable activities.

Mr Mohammed Sabir was found guilty of the offences at Newport Magistrates Court on the **9<sup>th</sup> April 2018** and received the following penalty : £120 fine reduced to £80 for guilty plea, Victim Support Cost £30 and Council cost of £536.37p as such a total of **£646.37p**.

On the **19 February 2018** the premises was visited as part of the licensing team's risk rating inspection schedule; further to this visit a re-visit to the premises was required due to matters un-covered at the first visit . As part of these visits on 19 February and 08 March 2018, the premises were once again found in breach of its conditions, specifically conditions 6, 9 and 10 attached to the premises licence:

**6: “Any refusal to supply alcohol shall be recorded in an incident book which shall be kept at the premises and made available to an Authorised Officer on request.”**

**9: “All staff shall be trained in the identification of underage drinkers.”**

**10: “All alcohol to be labelled “Baneswell Express” (or name of shop)”**

To note is that condition 10 above was specifically attached to the premises licence by the Licensing Sub Committee at the review hearing of **15 June 2016**.

I exhibit the post inspection letter sent to Mr Sabir on 21 March as appendix 4 which details the matters that required his attention and warning of the consequences operating in breach of the premises licence issued to his shop premises.

The most recent contraventions of the premises licence identified by Officers of the Licensing Authority occurred on **24 February 2018** when Officers were conducting routine late night enforcement in Newport City Centre. As highlighted at the start of this report whilst in the Baneswell area of the City, Officers identified that at 02:08am despite the front door to the premises being closed it appeared that a member of staff working at the premises, known to the Officer to be Mr Mohammed Sabir was serving an individual inside the shop premises.

The Officers continued to witness a male leave the shop premises at 02:10am with a package and enter into a vehicle parked up outside the premises.

Evidence comprising CCTV recordings from Mr Afran Sabir's CCTV system has been extensively examined as part of the Authority's investigation into the offences and highlight contraventions of conditions attached to the premises licence for Baneswell Express. These contraventions are detailed further above in the grounds for review section of this application.



As detailed in the earlier part of this review application, despite numerous enforcement activities undertaken by the Licensing Authority working in partnership with responsible authorities, notably Heddle Gwent Police and furthermore engagement with the Premises Licence Holder at regular routine visits to the premises, including those on 14 June 2017, 19 February 2018 and 08 March 2018 it is clear to the Licensing Authority that Mr Arfan Sabir as the Licence holder and Designated Premises Supervisor appears to have no regard for his responsibilities to ensure the premises licence issued in respect of Baneswell Express is fully complied with and no regard for the promotion of the licensing objectives.

In continuing to operate in breach of the conditions attached to his premises licence he is failing to demonstrate that he is a responsible retailer promoting the licensing objectives.

The Licensing Authority acting as a responsible authority strongly believes that the following measures are required in order to fully promote the 4 licensing objectives in respect of licensable activities being provided at the premises:

Ultimately we have determined that revocation of the premises licence would be justified following the outcomes of the enforcement activities undertaken which clearly evidence the poor management of the premises by Mr Arfan Sabir, his lack of control in respect of the premises licence and continued failure to ensure full compliance with the premises licence.

The Licensing Authority believes that there is a clear indication of deeper problems in respect of the management of the premises that are consequently impacting upon the licensing objectives.

The Licensing Authority wish to highlight that as with all licensed premises across the City we wish to work with businesses to ensure they operate as fully compliant licensed premises and operate in such a way as to fully promote the four licensing objectives; it is never the intention of the Licensing Authority to close businesses down, though unfortunately despite exploring every avenue to ensure Banewell Express are compliant with the Licence they continue to undermine the Licensing Objectives.

It is felt by simply adding further conditions to licence would not promote the Licence Objectives as clearly the premises' history demonstrates a brazen disregard to both conditions and hours attached to the Premises Licence and the Licensing objectives.

If it is the case that the management of the premises and the staff who have shown clear disregard to the Licensing Act were to be removed from the premises, it may be the case that adding further conditions may be more appropriate for the promotion of the licensing objectives and proportionate to promoting the Licensing Objectives, than simply revoking the licence.

As such it is felt appropriate that Mr Arfan Sabir the DPS is removed from the premises licence.

The Licensing Authority believe that as a result of Mr Arfan Sabir's continued poor management of the premises, proven lack of supervision and control of the premises, including those individuals he leaves in control of the premises in his absence, fully justifies this measure being evoked.

Despite the previous enforcement actions undertaken in respect of the premises and the sanctions against the premises, Mr Arfan Sabir has continued in his failure to comply with the premises licence and to promote the licensing objectives, he has admitted to allowing customers to enter his licensed premises after 12 midnight despite having full awareness that this is not permitted as a result of a condition attached to his licence. He demonstrates a lack of control over the persons he leaves in charge of his business; demonstrations of a lack of control include the fact that he allows staff to openly smoke inside the shop premises in contravention of the Health Act 2006, allowing the premises to sell

illegal Psychoactive drugs and despite a member of staff constantly breaching the premises conditions he continues to allow the staff member to work unsupervised.

**The Licensing Authority also request that the Licensing Sub-Committee consider it appropriate to the promotion the Licensing Objectives that the following conditions be attached to the premises licence for Baneswell Express**

- The DPS shall be present on the premises on Friday and Saturday’s and Bank Holiday Sundays between the hours of 22:00 – 23:00. If the DPS is not able to be present on the premises on a Friday and Saturday and Bank Holiday between 22:00 – 23:00, a minimum of two personal licence holders shall be employed at the premises for these periods.
- All alcohol to be located within fully enclosed lockable cupboards/fridge units.
- All units to have full covers in place so that all alcohol can be entirely covered and all units to be locked between 23:00 and 08am. Or from 22:00hrs when the DPS is not present or when there are less than two personal holders on the premises.
- No alcohol should be visible through the shutters.
- All units must be covered by CCTV and display clear and prominent signage which stipulates that there is no sale of alcohol between 23:00 – 08:00.
- All bags provided to and/or purchased by customers in order to carry the items they have purchased from the Baneswell Express shop premises must be fully transparent after 23:00hrs till 08:00hrs, thereby not concealing the contents of the carrier bag.
- Fully documented staff training, to include training on the premises licence conditions as well as the premises’ challenge 25 policy. Training should be undertaken at regular intervals throughout the calendar year, as a minimum every 6 months. Staff shall sign and date documentation at the conclusion of their training session, acknowledging that they have received and fully understood the training provided to them.
- A further CCTV camera should be installed to the satisfaction of the Licensing Authority to clearly identify items being passed through the “hatch” of the premises.

**The Following Table summarises the above contents:**

<b>Date</b>	<b>Incident / Event</b>
13 September of 2015 at 01:36hrs	Gwent Police believed they witnessed the premises selling a bottle of wine after hours.
23 September 2015	Gwent Police & The Licensing Authority held a formal mediation meeting under the Licensing Act 2003 regarding the premises “selling after hours”. Mr Arfan Sabir denied this practice, though was given a verbal warning regarding the premises conduct.
06 February 2016	Test Purchase undertaken by the Licensing Authority. Mr Mohammed Sabir sold 20cl of Glens Vodka at 37.5 at 01:20hrs.

27 February 2016	A further Test Purchase undertaken by the Licensing Authority. Once again Mr Mohammed Sabir sold a further 20cl of Glens Vodka at 37.5 at 01:29hrs.
29 February 2016	Post the test purchases, when CCTV was requested from the premises licence holder, the premises obstructed officers and deleted the footage of the test purchases on the 06 & 27 February 2016.
31 May 2016	Licensing Review
07 October 2016	Licensing Appeal  Mr Sabir (the Appellant) engaged in mediation with Newport City Council on the day of the Licensing Appeal at Gwent Magistrates.
30 May 2017	The Premises was visited by Gwent Police & Licensing Authority and warned regarding selling illegal Psychoactive substances.
8 July 2017	Mr Mohammed Sabir Again sells alcohol at 23:29hrs "after hours"
15 July 2017	Mr Mohammed Sabir Again sells alcohol at 23:19hrs "after hours" after a test purchase was conducted by the Licensing Authority.
9 April 2018	Mr Mohammed Sabir was convicted under section 136 of the Licensing Act 2003 providing unauthorised licence activities, selling alcohol after hours on the 8 & 15 July 2017
19 February 2018 08 March 2018	The Premises were found to be operating in breach of conditions 6, 9,10 of the premises licence during a risk rating inspection and subsequent re-visit undertaken by the Licensing Authority.
24 February 2018	Officers witness the members of the public entering the premises after 00:00hrs contrary to condition that stipulates:  "Premises to close to customers no later than 12 midnight on any day".
24 February 2018	Despite Mr Mohammed Sabir and Arfan Sabir being warned that smoking in the premises is unlawful under the Health Act 2006, this practice continues in the store.

Please tick ✓ yes

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

If yes please state the date of that application

Day Month Year

0	4								
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04 April 2016

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

Representation for review was made April 2016.

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, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.**

**Part 3 – Signatures** (please read guidance note 4)

**Signature of applicant or applicant’s solicitor or other duly authorised agent** (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature *S Turnbull*

Date **19 June 2018**

Capacity **Licensing Authority, Responsible Authority**

<b>Contact name (where not previously given) and postal address for correspondence associated with this application</b> (please read guidance note 6)	
<b>Post town</b>	<b>Post Code</b>
<b>Telephone number (if any)</b>	
<b>If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)</b>	

## **APPENDIX 2**

Copy of Blue Notice in respect of current Review Application

### **LICENSING ACT 2003 - SECTION 51**

#### **NOTICE OF APPLICATION FOR THE REVIEW OF A PREMISES LICENCE**

The Licensing Authority of Newport City Council, Civic Centre, Newport, NP20 4UR, HEREBY GIVE NOTICE THAT on 19<sup>th</sup> June 2018 an application under Section 51 Licensing Act 2003 for a review of the Premises Licence in respect of

BANESWELL EXPRESS 8, BANESWELL ROAD, NEWPORT NP20 4BP

was served by Newport City Council Licensing Services, a responsible authority under the Licensing Act 2003 on the grounds that the licensing objectives of (i) prevention of crime and disorder and (ii) public protection, are being undermined.

Responsible authorities under the Licensing act 2003 and/or **any other person** who wishes to make representation in respect of this review may do so in writing to:

**The Licensing Section, Newport City Council, PO BOX 883, Civic Centre, Newport, NP20 4UR, or by email to:**

[environment.licensing@newport.gov.uk](mailto:environment.licensing@newport.gov.uk)

Representations in writing should be received before midnight on  
**17<sup>th</sup> July 2018**

The full application may be viewed at, Information Station, Old Station Building, Queensway, Newport, NP20 4AX between the hours of 8.30 am and 5.00 pm Monday to Friday.

Under section 158 of the Licensing Act 2003, it is an offence to knowingly or recklessly make a false statement in connection with an application. The maximum fine for which a person is liable of conviction is up to £5,000 (level 5 on the standard scale).

### **Appendix 3**

CCTV recordings of 24 February 2018 between the hours of 01:30 – 02:30am from Mr Sabir's CCTV system installed within the Baneswell Express premises.

## **APPENDIX 4**

Copy of the application for review of the Premises Licence dated 04<sup>th</sup> April 2016

# **Newport City Council**

## **Application for the review of a premises licence 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 Alastair Dearling (Principal Licensing Officer)**

**apply for the review of a premises licence under section 51 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)**

#### **Part 1 – Premises or club premises details**

<b>Postal address of premises or, if none, ordnance survey map reference or description</b> Baneswell Express, 8 Baneswell Road, Newport, NP20 4BP.	
<b>Post town</b> Newport	<b>Post code (if known)</b> NP20 4BP

<b>Name of premises licence holder or club holding club premises certificate (if known)</b> Mr Arfan Sabir
---------------------------------------------------------------------------------------------------------------

<b>Number of premises licence or club premises certificate (if known)</b> 08/03017/LAPV
--------------------------------------------------------------------------------------------

#### **Part 2 - Applicant details**

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)



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)

Please tick  yes

Mr

Mrs

Miss

Ms

Other title

(for example, Rev)

**Surname**

**First names**

**I am 18 years old or over**

Please tick  yes

**Current postal  
address if  
different from  
premises  
address**

**Post town**

**Post Code**

**Daytime contact telephone number**

**E-mail address  
(optional)**

**(B) DETAILS OF OTHER APPLICANT**

Name and address

Telephone number (if any)

E-mail address (optional)

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

Name and address  Alastair Dearling, Newport City Council, Licensing Department PO Box 883, Civic Centre, Godrey Road, Newport. NP20 4UR
Telephone number (if any) <b>01633 656656</b>
E-mail address (optional) <a href="mailto:alastair.dearling@newport.gov.uk">alastair.dearling@newport.gov.uk</a>

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

- |                                         |                                 |
|-----------------------------------------|---------------------------------|
|                                         | Please tick one or more boxes ✓ |
| 1) the prevention of crime and disorder | ✓                               |
| 2) public safety                        | ✓                               |
| 3) the prevention of public nuisance    | <input type="checkbox"/>        |
| 4) the protection of children from harm | <input type="checkbox"/>        |

**Please state the ground(s) for review** (please read guidance note 2)

The review is being requested as the Licensing Authority (acting as a Responsible Authority) believe the licensing objectives are not being upheld, namely the presentation of Crime and Disorder & Public Safety.

The Licensing Authority will offer evidence that the premises is continuously committing offences under the Licensing Act 2003, despite warning from Gwent Police and Licensing Authority regarding carrying on a licensable activity on the premises other than in accordance with the premises licence. In this case “selling alcohol after hours” this clearly undermines the Licensing Objectives of ;

- the prevention of crime and disorder
- & public safety

Through my role as the Principal Licensing Officer, I have attended a number of meetings regarding Night Time Economy within the City Centre of Newport. One of the constant topics discussed at these meeting is the number of alcohol glass bottles found discarded on the streets of Newport.

Through these discussions, Newport Licensing Officers and Gwent Police worked with a number “on licences” in City Centre, especially with door staff to try and eliminate the number of glass bottles being discarded on the streets, especially on a Friday and Saturday night.

It became evident that the majority of the glass bottles where not coming from the “On licences” ie pubs and nightclubs within the City Centre. But from members of the public coming into the city centre and from the off licences in city centre.

Glass on the streets of the City Centre not only give a very negative image of Newport’s night time economy, but the bottles can be used as weapons or are just simply a Health & Safety hazard for members of public.

It was also highlighted that some “Off” Licence premises within the City Centre where remaining open late into the morning and contrary to there licensing hours. Door staff and Licence holders from the city centre pubs and bars stipulated that customers would often visit the off licence in the City to either pre load or simply “top up” cheaply whilst going from pub to pub.

This has caused significant issues for the door staff as customers are heavy drinking on the streets from the off licences before entering the premises. As such customers entering the premises seem to be sober on entering the premises but become very intoxicated even before purchasing a drink at their venues. Common types of bottles found round the city centre are small bottles of vodka and bottles of wine.

As such the Police and Newport Licensing Team started monitoring the Premises within the City Centre, the majority of the Off Licences within the City Centre have terminal hours of 23:00hrs other than Baneswell Express that is licenced to sell alcohol till 01:00hrs on Friday and Saturday night and midnight Sunday to Thursday. It came evident from the intelligence that Baneswell Express where selling alcohol “after hours”.

Baneswell Express is a small family run “corner shop” run by the Sabir family. Approximately 20% of the shop floor displays alcohol, selling beers, cider, wine and spirits. The Shop is situated on Baneswell Road this road is found within both the Council Cumulative Impact Policy and the Council Public Space Protection Order (PSPO).

The PSPO prevents the consumption of alcohol on the streets of the City centre. Persons within the PSPO that refuse to stop drinking alcohol or fail to hand over any containers (sealed or unsealed) which are believed to contain alcohol, when required to do so by authorised officer to prevent public nuisance or disorder will commit a criminal offence. This offence can be dealt with through the issue of a fixed penalty notice £100, or a fine up to £1000 on prosecution.

Baneswell Express is located close to the City Centre bars, clubs and the night time economy, the closest premises being Le Pub on Caxton Place and the Queens Hotel (Weatherspoons) on Bridge Street. Cambrain Road and

Market Street are heavily populated where a number of pubs, bars and nightclubs are all within a minute walk from Baneswell Express.

The Licensing Authority has serious concerns regarding the premises continually selling alcohol outside of their prescribed hours. It is clear that the Licence holder who is also the Designated Premises Supervisor (DPS) Mr Arfan Sabir pays little or no attention to the conditions and times attached to the premises licence and is simply unable to operate the business within the law.

On 13<sup>th</sup> September of 2015 at 01:36 hours Gwent Police Officers witnessed the premises trying to sell a bottle of Wine to Female Member of the public after hours. The Police Officers intervened and the alcohol was put back behind the counter and the lights to the alcohol shelves were then turned off.

As such PC Nick Hilton the Licensing Officer for Gwent Police (Newport & Monmouthshire) and Licensing Authority (Alastair Dearling) proposed to hold a meeting to discuss the importance of complying with licensing hours and conditions with Mr Arfan Sabir. The meeting took place at the Council Information Station Offices on the 23<sup>rd</sup> September 2015.

Mr Arfan Sabir was informed the importance of keeping to his licence hours and conditions on Premises Licence. He was also informed of the negative impact that some off sales are having on the City Centre. Mr Sabir was informed he should not sell alcohol to those who he may think will drink alcohol outside his premises or vicinity of his premises due to the Public Space Protection Order.

Mr Sabir was informed by the Licensing Authority and the Police the seriousness nature of breaching licensing hours and conditions and Mr Sabir was told that "selling after hours" is an offence and carries a maximum of six months imprisonment and unlimited fine. Mr Sabir was also warned that if it was evidenced that the premise was selling "after hours" the premises would be reviewed.

Mr Sabir stipulated at the meeting that his premises did not sell "after hours", He agreed that a female member of the public did try and buy a bottle of wine after 1:00am but the member of staff refused the sale before any Police intervention.

Mr Sabir was given a verbal warning regarding the premises conduct as it felt due significant hearsay evidence it was likely that Mr Sabir and his staff were in fact selling alcohol "after hours".

It came apparent that Mr Sabir was ignoring the verbal warning given by Gwent Police and Licensing Department regarding selling alcohol after hours. A door staff and On licences within the City Centre were still stipulating that customers were still pre loading & "topping up" at Baneswell Express despite the store being required to be closed for alcohol at 1:00am.

As such it was determined by the Licensing Authority to undertake two test purchase operations. These took place on the 6<sup>th</sup> February 2016 at 1:20am and 27<sup>th</sup> February 2016 at 1:29am, at both occasions Licensing Officers of Newport City Council were able to purchase 20cl of Glens Vodka at 37.5%, the Officers statements are found in Appendix A of review application.

Post the test purchases, the Licensing Team and Gwent Police Licensing Team attended the premises on the 29<sup>th</sup> February 2016 to obtain CCTV to support the test purchase operations and also the hearsay evidence / intelligence the authorities have received.

Condition 2S01 on Baneswell Express Premises Licence stipulates:

*CCTV cameras shall be installed both inside and outside the premises and these cameras shall be operational at all times the premise is trading. All recordings shall be retained for a minimum of 30 days and shall be made available for inspection by an Authorised Officer on request.*

Condition 2S01b on Baneswell Express Premises Licence stipulates:

*A CCTV camera shall be positioned to view the area of the premises where alcohol is displayed.*

Licensing Officers Alastair Dearling, Sam Turnbull accompanied by PC Andy Lewis (Gwent Police Night Time Economy / Licensing Officer) visited the premises and asked to speak to the DPS and licence holder Mr Arfan Sabir.

Mr Arfan Sabir was not present at the premises at the time of the visit, though his brother Mr Razwan Sabir was present. The Officers went into the Office area of the shop where the CCTV system was located. Mr Razwan Sabir was briefly explained the reason for the visit and that the Officers wished to speak to Mr Arfan Sabir the DPS and Licence holder.

Mr Razwan Sabir contacted his brother by phone; he spoke with his brother and then handed the Phone to Officer Dearling. Mr Arfan Sabir stipulated to the Officer that he would be at least an hour. It was known that he lived in the local area from the premises as such Officer stipulated it was important he attends in next 20 minutes or so. After the phone conversation Mr Arfan Sabir father attended the premises.

Officers waited in the office area of the shop in full view of the CCTV system that included a monitor displaying live cameras of the premises. Whilst waiting for Mr Arfan Sabir it noted by the Officers that Razwan Sabir had left the premises. At 12:06 all the CCTV cameras went down on the CCTV system and the CCTV system rebooted.

At approximately 12:20 Mr Arfan Sabir attended the store, Mr Arfan Sabir was requested to provide CCTV images of the 26<sup>th</sup> & 27<sup>th</sup> from 1:05hrs till 1:45hrs. Mr Arfan Sabir started to look at the CCTV system and committed to the officers that CCTV was playing up. He stipulated that he had a person look at it. But when questioned who undertook the work, he stipulated that a customer who had CCTV on his jacket had a look at the system for him, but had no contacts for him or invoices.

Mr Arfan Sabir continued to try and obtain the images, but the system would only show images from 29<sup>th</sup> February 2016 from 12:06, the exact time the system rebooted. Mr Razwan Sabir also became present in the store.

Officers asked Mr Arfan Sabir if he had remote access to CCTV system, what he denied. After further Questions regarding CCTV system Mr Arfan Sabir stipulated he could access the CCTV from his Mobile Phone, he demonstrated the system clearly highlighting that he could not reboot the system or delete images. It was felt by Officers that in fact the CCTV had been deleted and Mr Arfan Sabir was being obstructive.

After further questions and after Officer stipulated that they would have to start ceasing evidence, including all alcohol stock, CCTV and Phones, Mr Razwan Sabir stipulated that when left the shop he went to Mr Arfan Sabir home, logged onto the CCTV via his laptop and deleted the CCTV evidence, this of course occurred at 12:06hrs, when CCTV rebooted in the stores office.

Mr Arfan Sabir was instructed by the Officers that he would have to retrieve this data via Data Analyse company so as they demonstrate they complying fully with the premises conditions. At time of writing the review paper work Mr Arfan Sabir has instructed Fire & Security Systems Ltd to retrieve the data, though this can take 60 days.

At the time of undertaking a risk assessment to undertake the second test purchases on the 27<sup>th</sup> February 2016 it was noticed by Licensing Officers that customers were coming out of the premises with black bags so you could not see what was in the bags. Though the outline of the bags looked like cans of alcohol or bottles of wine. This came evident when a female customer took a bottle of wine whilst walking past the Officers. The Licensing Team suggest that this setup is intention in order to allow staff to remove alcohol from the store in black bags after hours so Police Office could not see alcohol was being sold at the premises, staff appear to be well practice in this sales technique. At the Second Test Purchase though the Officer who undertook the test purchase was not given a black bag, the member of staff that sold the small bottle of vodka instructed that the bottle should be placed in pocket before leaving the store.

As documented above, Licensing Authority and the Police have made numerous efforts to engage with the DPS at the venue in order to stop persistent Licensing Act offences. Mr Arfan Sabir was given official warning in September 2015, despite the interventions he and his staff have continued to sell "after hours", appearing to have

no regard for his responsibilities or Licensing Objectives and be intent on trading alcohol to whomever he pleases when he pleases.

It clear that the Mr Arfan Sabir is aware of the risk of being caught and has taken measures to reduce the risk by means of deleting CCTV remotely and staff tactics of using black bags or telling customers to place alcohol in pockets before leaving the store. The action of the DPS and the staff is having a significant impact on Commutative Impact area of the City Centre and his actions are not of a responsible retailer promoting the licensing objectives.

The Licensing Authority acting as responsible authority strongly believes that any measures, other than to reduce the licensing hours at premises till 22:00hrs, remove the DPS and Suspended the licence for a minimum of 4 weeks;

And the following conditions:

All alcohol should be placed in secure display counters, with a tamper proof / lockable shutters. The shutters must be closed and locked between the hours of 22:00hrs & 08:00hrs, No alcohol should be visible through the shutters and the units must be covered by CCTV.

A personal licence holder must be present at the premises between the hours of 08:00hrs and 22:00hrs.

If customer wishes to purchase a bag for alcohol, this bag must be transparent.

All alcohol should clearly be labelled as Baneswell Express; this can be incorporated within the price label.

Alcohol cannot be sold through a hatch system at the store.

The Designated Premises Supervisor shall be actively employed on the premises and shall not be a Designated Premises Supervisor for premises elsewhere.

The Licensing Authority respectfully request the panel to reduce the hours, as it is felt that this course of action is both proportionate in these circumstance and is wholly necessary of upholding the licensing objectives.

**Please provide as much information as possible to support the application** (please read guidance note 3)

#### **Appendix A**

Alan Leen (Licensing Officer) statement regarding test purchase operation on the 6<sup>th</sup> February 2016.

Alastair Dearling (Principal Licensing Officer) statement regarding test purchase operation on 27<sup>th</sup> February 2016, Site Visit on 29<sup>th</sup> February 2016 and meeting with Arfan Sabir / Baneswell Express on the 13<sup>th</sup> September 2015.

Samantha Turnbull (Licensing Officer) statement visit to Baneswell Express on 29<sup>th</sup> February 2016 .

PC Andy Lewis statement visit to Baneswell Express on 29<sup>th</sup> February 2016 .

#### **Appendix B**

CCTV from the Premises (at time of undertaking review paperwork the CCTV system was being recovered after being deleted by Baneswell Express.)

Please tick ✓ yes

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

If yes please state the date of that application

Day	Month	Year

**If you have made representations before relating to the 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 4)

**Signature of applicant or applicant’s solicitor or other duly authorised agent** (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature

.....

Date

.....

Capacity

.....

<b>Contact name (where not previously given) and postal address for correspondence associated with this application</b> (please read guidance note 6)	
<b>Post town</b>	<b>Post Code</b>
<b>Telephone number (if any)</b>	
<b>If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)</b>	

### Notes for Guidance

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



## **APPENDIX 5**

A Copy of the Court Order of 07<sup>th</sup> October 2016 regarding the appeal by Arfan Sabir against the decision reached by the Licensing Sub Committee of Newport City Council Licensing Sub-Committee of 15<sup>th</sup> June 2016.



Gwent Magistrates Court  
Code 3211  
Administration Department, The Law Courts, Faulkner Road, Newport, NP20 4PR  
Telephone: 01633 261300  
Fax: 0870 739 4319

NEWPORT CITY COUNCIL  
LICENSING SERVICES  
CIVIC CENTRE  
NEWPORT  
SOUTH WALES  
NP20 4UR

Case number: **611600092910**

### **Orders**

The court has heard the matters shown below and made the orders listed.

**Stephen Whale Clerk to the Justices**

Date: 7 October 2016

*Justices' Clerk*

### **Matters and orders**

611600092910/1

Appeal against a decision of the Newport City Council licensing authority relating to Baneswell Express, 8 Baneswell Road, Newport on an application for a review of a premises licence under section 52 of the Licensing Act 2003 on the ground that 1. the decision was against the weight of the evidence 2. the Respondent failed to consider, or failed to consider sufficiently 3. relevant and appropriate information provided by the Complainant 4. the Respondent placed undue weight and consideration upon the representations provided by those making representations at the hearing 5. the Respondent failed to attach conditions to the licence commensurate with the evidence 6. generally as may be adduced in evidence. In accordance with Part 1 of Schedule 5 to the Licensing Act 2003.

**It is ordered that modification of licence with following conditions by agreement of parties:-**

- 1. Sale of alcohol to be permitted between 8am and 11pm Sunday to Saturday (inclusive)**
- 2. Premises to closed to customers no later than 12 midnight on any day**
- 3. All alcohol to be screened or covered after licensable activities period ends whilst premises remains open to customers**
- 4. Signage to be deployed setting out hours permitted for sale of alcohol**
- 5. All members of staff (serving customer) to be BII/ALPCH certified (or an appropriate equivalent)**
- 6. All alcohol to be labelled "Baneswell Express" (or name of shop)**
- 7. No order as to costs.**

## **Appendix 6**

Copy of the current premises Licence issued on 07<sup>th</sup> October 2017 following an appeal hearing before Gwent Magistrates

### **Schedule 12**

#### **Part A**

(THIS PART OF THE LICENCE  
MUST BE KEPT AT THE  
PREMISES AT ALL TIMES AND  
PRODUCED UPON REQUEST OF  
AN AUTHORISED OFFICER)

#### **Premises Licence**

#### **City of Newport**



<b>Premises Licence Number</b>	16/00627/LAPREV
--------------------------------	-----------------

#### **Part 1 – Premises Details**

<b>Postal address of premises, or if none, ordnance survey map reference or description, including Post Town, Post Code</b>	
Baneswell Express 8 Baneswell Road Newport South Wales NP20 4BP	
<b>Telephone number</b>	01633 662050

<b>Where the licence is time limited the dates</b>
Not Applicable

<b>Licensable activities authorised by the licence</b>
Sale by retail of Alcohol

<b>Times the licence authorises the carrying out of licensable activities</b>
Sale by retail of Alcohol Monday to Sunday inclusive 08:00 - 23:00

<b>The opening hours of the premises</b>
No Restriction -

<b>Where non-standard timings are authorised, the opening times shall be as those authorised for licensable activities with an additional 30 minutes on the terminal hour.</b>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>Where the licence authorises supplies of alcohol whether these are on and / or off supplies</b>
Alcohol is supplied for consumption off the Premises

**Part 2**

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

Arfan Sabir  
8 Baneswell Road  
Newport  
South Wales  
NP20 4BP  
Business Phone Number 01633 662050

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

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

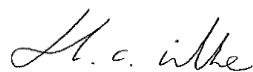
Mr Arfan Sabir  
253 Caerleon Road  
Newport  
South Wales  
NP19 7HB  
  
Contact Telephone Number 01633 662050

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

Party Reference: NCC/07/1887                      Licensing Authority: Newport City Council

**This Premises Licence is issued by Newport City Council as Licensing Authority under Part 3 of the Licensing Act 2003 and regulations made thereunder.**

**Dated this** 7th October 2016



Helen Wilkie  
Public Protection Manager

## **Mandatory conditions**

1 No supply of alcohol may be made under the premises licence:

- i) at a time when there is no designated premises supervisor in respect of the premises licence; or
- ii) 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 Where at specified times one or more individuals may be at the premises to carry out a security activity, each individual must be licensed by the Security Industry Authority.  
For the purposes of this section:

- i) "security activity" means an activity to which paragraph 2(1)(a) of that Schedule applies; and
- ii) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.

4 (1) The premises licence holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either-

- (a) a holographic mark, or .
- (b) an ultraviolet feature.

## **New Mandatory condition for on and off sales from 28 May 2014**

(1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

(2) In this condition:-

(a) "permitted price" is the price found by applying the formula  $P = D + (D \times V)$ , where-

- (i) P is the permitted price,
- (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
- (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- (b) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
- (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence-
  - (i) the holder of the premises licence,
  - (ii) the designated premises supervisor (if any) in respect of such a licence, or
  - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

(3) Where the permitted price would not be a whole number of pennies, the permitted price shall be taken to be the price rounded up to the nearest penny.

(4) Where the permitted price on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax, the permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

### **Conditions consistent with the Operating Schedule**

1. No adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children, (including, but not exclusively, nudity or semi nudity), regardless of whether children are present on the premises, are permitted within the premises at any time when the premises is open to the public.
2. Any person who attempts to purchase alcohol for a person under 18 years of age shall be banned from the premises.
3. Anyone appearing to be under 18 years of age shall be required to produce photographic ID for proof of age when attempting to purchase alcohol.
4. CCTV cameras shall be installed both inside and outside the premises and these cameras shall be operational at all times the premises is trading. All recordings shall be retained for a minimum of 30 days and shall be made available for inspection by an Authorised Officer on request.
5. A CCTV camera shall be positioned to view the area of the premises where alcohol is displayed.
6. Any person causing noise or other antisocial behaviour shall be reported to Heddlu Gwent Police and banned from the premises.
7. All emergency lighting shall be provided and maintained in good working order and shall be checked on a monthly basis. The results of such a test shall be recorded in a log book, which shall be made available for inspection by an Authorised Officer on request.
8. Suitable and sufficient fire-fighting equipment shall be provided in all public areas. The equipment shall be kept in good working order and be so placed as to be readily available for use. All portable fire fighting equipment shall be tested annually by a competent person and all relevant certification shall be made available for inspection by an Authorised Officer on request.
9. All staff shall be trained in the identification of underage drinkers.
10. Any refusal to supply alcohol shall be recorded in an incident book which shall be kept at the premises and made available to an Authorised Officer on request.
11. The Designated Premises Supervisor shall be actively employed on the premises and shall not be a Designated Premises Supervisor in respect of premises elsewhere.

### **The following conditions were attached following mediation between the Appellant (Arfan Sabir) and Newport City Council at the appeal hearing at Newport Magistrates Court on 07th October 2016**

1. Sale of alcohol to be permitted between 8am and 11pm Sunday to Saturday (inclusive)
2. Premises to closed to customers no later than 12 midnight on any day
3. All alcohol to be screened or covered after licensable activities period ends whilst premises remains open to customers
4. Signage to be deployed setting out hours permitted for sale of alcohol
5. All members of staff (serving customer) to be BII/ALPCH certified (or an appropriate equivalent)
6. All alcohol to be labelled "Baneswell Express" (or name of shop)

**The following conditions were attached following mediation between the Appellant (Arfan Sabir) and Newport City Council at the appeal hearing at Newport Magistrates Court on 07th October 2016**

1. Sale of alcohol to be permitted between 8am and 11pm Sunday to Saturday (inclusive)
2. Premises to closed to customers no later than 12 midnight on any day
3. All alcohol to be screened or covered after licensable activities period ends whilst premises remains open to customers
4. Signage to be deployed setting out hours permitted for sale of alcohol
5. All members of staff (serving customer) to be BII/ALPCH certified (or an appropriate equivalent)
6. All alcohol to be labelled "Baneswell Express" (or name of shop)

**Plans**

Please see attached plans ( P 05/01627/LAPRE )

## **Appendix 7**

Copy of letter sent to Arfan Sabir by Principal Licensing Officer Alastair Dearling following a visit to the premises on 30<sup>th</sup> May 2017 regarding the sale of Nitrous Oxide.

Ask for / Gofynnwch am Alastair Dearling  
Our Ref / Ein Cyf  
Your Ref / Eich Cyf  
Tel / Ffôn **01633 656656**  
Direct Dial / Rhif Union  
DX  
E-Mail / E-Bost [99463 Newport \(Gwent\) 3  
alastair.dearling@newport.gov.uk](mailto:alastair.dearling@newport.gov.uk)

**Regeneration and Regulatory Services  
Gwasanaethau Adfywio a Rheoliadol**



Licensing Service/  
Gwasanaeth Trwyddedu  
PO Box 883/Bwlch Post 883  
Civic Centre/Canolfan Ddinesig  
Newport/Casnewydd  
South Wales/De Cymru  
NP20 9LR

Mr Arfan Sabir,  
Baneswell Express,  
8 Baneswell Road,  
Newport.  
NP20 4BP

Dear Mr Sabir

### **Re: Psychoactive Substance Act 2016**

On the 30<sup>th</sup> May 2017 the Licensing Authority and Gwent Police attended your shop as it had received intelligence that the shop was selling Nitrous Oxide “Laughing gas / Hippy Crack” to members of the public. At the time of the visit a number of Nitrous Oxide Charges were discarded outside the premises.

Despite Nitrous Oxide having several legitimate uses in medicine and is sold as an aerosol spray propellant within whipped cream canisters, Under the Psychoactive Substances Act 2016 it has made it illegal for retailers to supply or offering to supply a Psychoactive substance this includes Nitrous Oxide.

The fact the shop had balloons commonly used for consumption for laughing gas and charges were outside the shop and charges were also stored under the counter of the shop may indicate that the charges were not being sold for legitimate purposes i.e. to a restaurant for cream chargers, but to members of the public intending to get “high” on the drug.

It should be noted selling Nitrous Oxide as Psychoactive Substance is criminal offence, the maximum penalty on summary conviction for supply is 12 months imprisonment and/or an unlimited fine - on indictment it is 7 years with unlimited fine.

It is also very likely that a Responsible Authority under the Licensing Act 2003 will review your Alcohol Premises Licence if Nitrous Oxide is continued to be sold as a Psychoactive Substance.

The government has provided guidance to retailers regarding psychoactive substances that I have enclosed with this letter, but if you do have any questions or queries please don't hesitate to contact the Councils Trading Standards team or the Licensing Authority.

Yours Sincerely

Alastair Dearling  
Licensing Manager

## **Appendix 8**

Copy of letter dated 21<sup>st</sup> March 2018 sent to Arfan Sabir by Licensing Officer Samantha Turnbull

Ask for / Gofynnwch am  
Our Ref / Ein Cyf  
Your Ref / Eich Cyf  
Tel / Ffôn  
Direct Dial / Rhif Union  
DX  
E-Mail / E-Bost

Samantha Turnbull  
16/00627/LAPREV  
  
**01633 656656**  
01633 851330  
99463 Newport (Gwent) 3  
samantha.turnbull@newport.gov.uk

**Law and Regulation**  
**Y Gyfraith a Rheoleiddio**



Arfan Sabir  
**Designated Premises Supervisor**  
Baneswell Express  
8 Baneswell Road  
Newport  
NP20 4BP

Licensing Service/  
Gwasanaeth Trwyddedu  
PO Box 883/Bwlch Post 883  
Civic Centre/Canolfan Ddinesig  
Newport/Casnewydd  
South Wales/De Cymru  
NP20 4UR

21 March 2018

Dear Mr Sabir

**LICENSING ACT 2003 – PREMISES LICENCE**  
**BANESWELL EXPRESS, 8 BANESWELL ROAD, NEWPORT, NP20 4BP**

Further to visits to your premises on 19 February 2018 and 08 March 2018 by Officers of the Licensing Authority and Heddlu Gwent Police I wish to highlight matters that were brought to your attention at the visits:

**Condition 6:**

*“Any refusal to supply alcohol shall be recorded in an incident book which shall be kept at the premises and made available to an Authorised Officer on request.”*

At the initial visit on 19 February you were unable to produce when requested the refusals book you are currently maintaining in the premises; you insisted to officers that a book was being maintained at the premises and your brother working at the premises at the time of the visit stated he had reason to locate the book recently however you concluded that it must have been misplaced on 19 February.

At the revisit the refusals log was able to be readily produced to Officers; the most recent entry in the log was made on 20 January 2018, with previous entries detailed as having been made on 31/12/2017, 26/12/2017 and 12/10/2017.

Officers re-iterated that all staff must be fully aware of the location of the refusals log in the premises and must be suitably trained in how to complete the log. It was further explained that as opposed to simply writing ‘alcohol’ for the product a detailed description of the alcohol product refused should be written down by the staff member, ie “Vodka 70cl bottle”, “Red wine”, “4 cans Carling” etc.



**Condition 10:**

*"All alcohol to be labelled "Baneswell Express" (or name of shop)"*

At the re-visit Officers highlighted to you that labels were missing from some items of alcohol in your chiller unit, notably a 500ml Kopparberg mixed fruit bottle, cans of Holsten Pils and a number of your 2 litre bottles of cider. You confirmed that you understood the condition attached to your premises licence and also added that in respect of the cider you believed you were the only shop in the City Centre to sell such ciders and therefore questioned the requirement for a label as in your opinion they could be linked back to your premises. It was explained to you as the condition clearly states **all alcohol** on sale at your premises must be labelled "Baneswell Express". You confirmed you would ensure all alcohol is fully labelled as required.

**Condition 9:**

*"All staff shall be trained in the identification of underage drinkers."*

At the visit you explained that current staff are your brother Razwan Sabir a personal licence holder with Newport City Council, Diane Hagen a personal licence holder with Cardiff City Council and your father who currently holds the BIIAB level two award for personal licence holder.

Officers explained at the visit that staff training should be fully documented and you were provided with an employee training log template created by Newport City Council Trading Standards department. You already had within your folders the training information pack compiled by the Trading Standards department.

You explained you have in place in the shop the Challenge 21 scheme, with posters on display and when requested you also demonstrated the till prompt system you have in place on your tills to assist staff when selling alcohol products

Please be advised, as you are aware, that a breach of a condition(s) attached to a premises licence whilst conducting licensable activities renders the premises licence invalid and all licensable activities provided will therefore be unauthorised; the provision of a licensable activity otherwise than in accordance with a relevant authorisation is a criminal offence pursuant to section 136(1) of the Licensing Act 2003. The fine for this offence is unlimited.

You should ensure that you are fully aware of all conditions that are attached to the Premises Licence for Baneswell Express and that you fully comply with these conditions when providing licensable activities.

If you require any further information regarding the matters detailed above please do not hesitate to contact me direct on (01633) 851330.

Yours faithfully

Samantha Turnbull  
**Licensing Officer**

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