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Brent

# Alcohol and Entertainment Licensing Sub-Committee - Supplementary

**Monday 25 June 2018 at 10.00 am**
Board Room 4 - Brent Civic Centre, Engineers Way, Wembley HA9 0FJ

## Membership:

| **Members** | **Substitute Members** |
|---|---|
| Councillors: | Councillors: |

**For further information contact:** Devbai Bhanji, Governance Assistant
Tel: 020 8937 4011; Email: devbai.bhanji@brent.gov.uk

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**www.brent.gov.uk/committees**

**The press and public are welcome to attend this meeting**

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**Notes for Members - Declarations of Interest:**

If a Member is aware they have a Disclosable Pecuniary Interest* in an item of business, they must declare its existence and nature at the start of the meeting or when it becomes apparent and must leave the room without participating in discussion of the item.

If a Member is aware they have a Personal Interest** in an item of business, they must declare its existence and nature at the start of the meeting or when it becomes apparent.

If the Personal Interest is also significant enough to affect your judgement of a public interest and either it affects a financial position or relates to a regulatory matter then after disclosing the interest to the meeting the Member must leave the room without participating in discussion of the item, except that they may first make representations, answer questions or give evidence relating to the matter, provided that the public are allowed to attend the meeting for those purposes.

***Disclosable Pecuniary Interests:**

(a) **Employment, etc. -** Any employment, office, trade, profession or vocation carried on for profit gain.

(b) **Sponsorship -** Any payment or other financial benefit in respect of expenses in carrying out duties as a member, or of election; including from a trade union.

(c) **Contracts -** Any current contract for goods, services or works, between the Councillors or their partner (or a body in which one has a beneficial interest) and the council.

(d) **Land -** Any beneficial interest in land which is within the council's area.

(e) **Licences-** Any licence to occupy land in the council's area for a month or longer.

(f) **Corporate tenancies -** Any tenancy between the council and a body in which the Councillor or their partner have a beneficial interest.

(g) **Securities -** Any beneficial interest in securities of a body which has a place of business or land in the council's area, if the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body or of any one class of its issued share capital.

****Personal Interests:**

The business relates to or affects:

(a) Anybody of which you are a member or in a position of general control or management, and:

- To which you are appointed by the council;
- which exercises functions of a public nature;
- which is directed is to charitable purposes;
- whose principal purposes include the influence of public opinion or policy (including a political party of trade union).

(b) The interests a of a person from whom you have received gifts or hospitality of at least £50 as a member in the municipal year;

or

A decision in relation to that business might reasonably be regarded as affecting the well-being or financial position of:

- You yourself;
- a member of your family or your friend or any person with whom you have a close association or any person or body who is the subject of a registrable personal interest.

# Agenda

Introductions, if appropriate.



Please remember to ***SWITCH OFF*** your mobile phone during the meeting.

- The meeting room is accessible by lift and seats will be provided for members of the public.

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**Agenda Item 4**

**Application for a New Premises Licence by Mr Butcher Market Ltd for the premises known as Mr Butcher (775 Harrow Road NW10 5PA), pursuant to the provisions of the Licensing Act 2003**

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**From:** Pearce, Chris
**Sent:** 12 June 2018 11:55
**To:** Legister, Linda; Exeter, Pollen; Business Licence
**Subject:** RE: New Premises - 775 Harrow Road, London, NW10 5PA - 11854

**RE: Licensing Act 2003**
**Application for the Grant of a New Premises Licence**
**775 Harrow Road, London, NW10 5PA - 11854**

Dear Mr Rocha

Thank you for your correspondence dated the 12th June 2018, stating that you accept the conditions set out in our representation.

I confirm that the Public Safety Team now withdraw the current representation and do not make any further representations regarding the application.

We will require the agreed conditions to appear on the licence schedule.

Kind regards

Mr Chris Pearce
Public Safety Officer
Regeneration & Environmental Services
Brent Council
020 8937 1031

**********

From: Jose Manuel Rocha
Sent: 12 June 2018 11:50
To: Legister, Linda
Subject: Re: New Premises - 775 Harrow Road, London, NW10 5PA - 11854

Dear Miss Linda

The Applicant Agree with all the Public Safety Officer Proposed Conditions

Kind Regards

Manuel Rocha

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**Agenda Item 5**

**Application for a New Premises Licence by for the premises known as Two Doors Down (17 Walm Lane NW2 5SJ), pursuant to the provisions of the Licensing Act 2003**

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**From:** Chan, Esther
**Sent:** 22 June 2018 11:58
**To:** 'Niamh Walshe McBride'
**Cc:** Business Licence; Legister, Linda
**Subject:** RE: CONSULT: 17 Walm Lane, London, NW2 5SJ - 11806

Dear Niamh/Annie,

Thank you your email. Unfortunately, I am not in a position to withdrawn my representation. I believe my conditions will uphold the licensing objectives.

In terms of the plan, we have not received an up to date plan which excludes the external area.

Kind Regards
Esther Chan
Licensing Inspector
Planning, Transportation & Licensing
Brent Council

Tel: 0208 937 5303

www.brent.gov.uk

**********

**From:** Niamh Walshe McBride
**Sent:** 20 June 2018 15:33
**To:** Chan, Esther <Esther.Chan@brent.gov.uk>
**Subject:** Re: CONSULT: 17 Walm Lane, London, NW2 5SJ - 11806

Dear Esther Chan,

Thank you for the representations made in relation to Two Doors Down at 17 Walm Lane.

We confirm that we **accept** the conditions detailed below:

CCTV as requested (1,2 and 3)

Challenge 25 (4)

Incident lag as requested (6)

Premises Licence summary as requested (7)

Alcohol sales training as requested (9)

Door supervisors as required (10)

Respect Neighbours Notices as requested (11)

We suggest the following:

(5)  Customers shall not be permitted to take open containers onto the public highway (unless in accordance with apporpriate street trading licence)

(12) Music volume should be such as to not cause nuisance outside the premises

We cannot accept the reduction of permitted hours.

We will not trade on the public highway without appropriate licences.  You now have an up to date plan drawn by our architects.

Please call me on .  It would be great to reach agreement on the few outstanding issues, failing which they will fall to be determined at the hearing on 25th.

Many thanks, Annie Walshe

**Agenda Item 6**

**Application for a New Premises Licence by Mrs Bindal Givan Velgi for the premises known as DIU Restaurant (5 Heather Park Parade, Heather Park Drive HA0 1SL), pursuant to the provisions of the Licensing Act 2003**

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**From:** Figueiredo, Susana
**Sent:** 22 June 2018 10:39
**To:** 'Manpreet Kapoor'
**Cc:** Business Licence
**Subject:** RE: CONSULT: New Premises - 5 Heather Park Parade, Heather Park Drive, HA0 1SL - 11841

Dear Mr Kapoor,

Further to your email, I can confirm withdrawal of my representation based on your clients agreement to the proposed conditions.

Kind Regards

Susana Figueiredo
Licensing Enforcement Officer
Planning, Transportation & Licensing
Brent Council

**********

**From:** Manpreet Kapoor
**Sent:** 07 June 2018 14:52
**To:** Figueiredo, Susana
**Cc:** Business Licence
**Subject:** RE: CONSULT: New Premises - 5 Heather Park Parade, Heather Park Drive, HA0 1SL - 11841

Dear Susana,

Having discussed with applicant they have agreed to the proposed conditions.

Kind Regards

Manpreet Singh Kapoor BA(Hons)
Licensing Consultant

Personal Licence Courses uk ltd, Infotree House, Newport Road, Hayes, UB4 8JX

**********

**From:** Figueiredo, Susana
**Sent:** 06 June 2018 07:02
**To:** Business Licence
**Cc:** 'info@personallicencecourses.com'
**Subject:** CONSULT: New Premises - 5 Heather Park Parade, Heather Park Drive, HA0 1SL - 11841

Dear Sir/Madam,

Please can you confirm whether you agree to the attached conditions which were submitted on the 14th May 2018.

Kind Regards

Susana Figueiredo
Licensing Enforcement Officer
Planning, Transportation & Licensing
Brent Council

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METROPOLITAN POLICE TOTAL POLICING

DIRECTORATE OF LEGAL SERVICES

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Your ref:

Our ref: 143267/SAG

sally.gilchrist@met.police.uk
Service not accepted by e-mail

21st June 2018

Regulatory Services (Licensing)
Brent Council
Brent Civil Centre
Engineers Way
Wembley
HA9 0FJ

Dear Sirs

***DIU Restaurant, 5 Heather Park Parade, HA0 1SL***

I write in relation to the above premises licence application which is to be determined by the licensing sub-committee at a hearing on Monday 25th June 2018.

The Metropolitan Police ['the MPS'], as a responsible authority, will serve written relevant representations, pursuant to Section 18(6) of the Licensing Act 2003. The licensing officer PC McDonald will attend the hearing together with counsel instructed by the MPS in order to make oral representations and, if necessary, make preliminary submissions of law as outlined below:

1. I acknowledge that the police representations are made outside the period set by Reg 22(1)(b) of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 ['the 2005 Regulations'].
2. However, that circumstance is entirely the fault of the council by reason of its misdirection to the police in the council's e-mail dated 22nd May 2018 [copy



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enclosed]. That error on the part of the council tended to frustrate the statutory right of the police to make representations as a responsible authority and thereby to undermine (rather than promote, as is the council's statutory duty) the licensing objectives established by Section 4 of the Licensing Act 2003, in particular the prevention of crime and disorder.

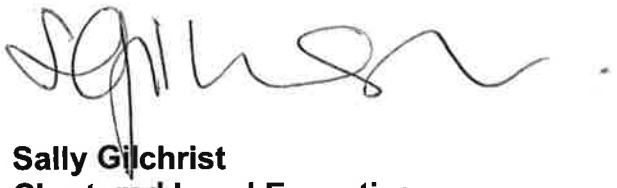
3. Reg 22(1)(b) of the 2005 Regulations does not impose an automatic, absolute bar on the committee receiving and considering relevant representations from the police, even outside the statutory period. The principles relating to 'late' representations are well established in R (on the application of TC Projects Ltd) v Newcastle Justices [2006] EWHC 1018 (Admin) at Paras. 33-35; and Belfast City Council v Miss Behavin' Ltd [2007] 1WLR 1420 (HL(NI)) at Paras. 8 and 75 [copies enclosed]. The committee has a discretion whether to receive and consider 'late' representations. It would be unlawful for the committee to refuse to exercise its discretion at all (i.e. by erroneously treating the police representations as automatically and absolutely barred). It would also be unlawful for the committee to exercise its discretion irrationally.
4. When exercising its discretion, it would be irrational for the committee to refuse to receive the police objections because:
    (a) The lateness of the police objections is solely attributable to the council's own misdirection to the police;
    (b) The Applicant is not prejudiced (because we have served the objections directly);
    (c) It would frustrate rather than promote the Licensing Act 2003 Section 4 licensing objectives, in particular that relating to the prevention of crime and disorder, to refuse to

receive the police objections and would therefore put the council in breach of its Section 4(1) statutory duty;

(d) There is in any event to be a hearing of objections from other parties.

5. Should the council fail to exercise its discretion rationally or at all, the police would consider an application for judicial review with the consequent risk on costs for the council.

Yours faithfully



**Sally Gilchrist**
**Chartered Legal Executive**

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House of Lords

# *Belfast City Council *v* Miss Behavin' Ltd

[2007] UKHL 19

2007 Feb 26;
April 25

Lord Hoffmann, Lord Rodger of Earlsferry, Baroness Hale of Richmond, Lord Mance and Lord Neuberger of Abbotsbury

*Human rights — Right to freedom of expression — Interference with — Refusal of sex establishment licence — Applicant's Convention right not considered — Decision to refuse licence not itself violating right — Whether to be quashed — Human Rights Act 1998 (c 42), Sch 1, Pt I, art 10*

*Human rights — Right to peaceful enjoyment of possessions — Refusal of sex establishment licence — Applicant's Convention right not considered — Decision to refuse licence not itself violating right — Whether to be quashed — Human Rights Act 1998 (c 42), Sch 1, Pt II, art 1*

*Licensing — Sex establishment — Objections — Period of 28 days allowed for representations and objections to application for licence — Representations and objections made after expiry of 28-day period — Subsequent refusal of licence — Whether licensing authority entitled to hear objections made after expiry of 28-day period — Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 (SI 1985/1208 (NI 15)), Sch 2, para 10(15)(16)*

The appellant council resolved pursuant to article 4 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 that the system for the licensing of sex establishments contained in Schedule 2 should apply to its district. The respondent company applied for a licence to use premises as a sex shop, and the council refused the application on the ground, inter alia, in paragraph 12(3)(c) of Schedule 2 that the appropriate number of sex shops in the relevant locality was nil. It had before it in arriving at its decision representations and objections by members of the public made after the expiry of the 28-day period prescribed by paragraph 10(15) of Schedule 2. The company sought judicial review of the council's decision, and the judge, who took the view that the council had had a discretion to consider late objections, refused the application. The Court of Appeal, allowing the company's appeal, held that the council had not sufficiently taken into account the company's right to freedom of expression under article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms[1] and its right to the peaceful enjoyment of its possessions under article 1 of the First Protocol.

On appeal by the council—

*Held*, allowing the appeal, (1) that a local authority, in arriving at its decision to grant or refuse a licence, had a discretion to take all relevant matters into account, including late objections, although fairness required that the terms of any representations that it proposed to consider should be communicated to the applicant so that he might have an opportunity to comment ( post, paras 8, 17, 40, 75).

(2) That on judicial review of the decision the relevant question was not whether the local authority had properly considered whether the applicant's rights under the Convention would be violated but whether there had actually been a violation of those rights; and that, where the council had exercised its powers of judgment rationally and in accordance with the purposes of the relevant statutory provisions and its decision could not be said to have amounted to a disproportionate restriction on the applicant's Convention rights, its failure to refer specifically to those rights did

[1] Human Rights Act 1998, Sch 1, Pt I, art 10: see post, para 83.
Sch 1, Pt II, art 1: see post, para 99.

A not vitiate the decision (post, paras 13–16, 23–24, 27, 31, 37–39, 46–48, 88–90, 94–97, 103).

*R (SB) v Governors of Denbigh High School* [2007] 1 AC 100, HL(E) applied.

Decision of the Court of Appeal in Northern Ireland [2005] NICA 35; [2006] NI 181 reversed.

The following cases are referred to in the opinions of the Committee:

B *A v Secretary of State for the Home Department* [2004] UKHL 56; [2005] 2 AC 68; [2005] 2 WLR 87; [2005] 3 All ER 169, HL(E)
*Buckley v United Kingdom* (1996) 23 EHRR 101
*Chapman v United Kingdom* (2001) 33 EHRR 399
*Connor's Application for Judicial Review, In re* [2004] NICA 45; [2005] NI 322, CA(NI)
*Fredin v Sweden* (1991) EHRR 784
C *Hatton v United Kingdom* (2003) 37 EHRR 611
*Huang v Secretary of State for the Home Department* [2007] UKHL 11; [2007] 2 WLR 581, HL(E)
*ISKCON v United Kingdom* (1994) 18 EHRR CD 133
*Jacobson v Sweden* (1989) 12 EHRR 56
*Kay v Lambeth London Borough Council* [2006] UKHL 10; [2006] 2 AC 465; [2006] 2 WLR 570; [2006] 4 All ER 128, HL(E)
D *McMichael v United Kingdom* (1995) 20 EHRR 205
*Quietlynn Ltd v Plymouth City Council* [1988] QB 114; [1987] 3 WLR 189; [1987] 2 All ER 1040, DC
*R v Director of Public Prosecutions, Ex p Kebilene* [2000] 2 AC 326; [1999] 3 WLR 972; [1999] 4 All ER 801, HL(E)
*R (SB) v Governors of Denbigh High School* [2005] EWCA Civ 199; [2005] 1 WLR 3372; [2005] 2 All ER 396, CA; [2006] UKHL 15; [2007] 1 AC 100; [2006] 2 WLR 719; [2006] 2 All ER 487, HL(E)
E *R (Williamson) v Secretary of State for Education and Employment* [2005] UKHL 15; [2005] 2 AC 246; [2005] 2 WLR 590; [2005] 2 All ER 1, HL(E)
*UK Waste Management Ltd's Application for Judicial Review, In re* [2002] NICA 8; [2002] NI 130, CA(NI)
*Wilson v First County Trust Ltd (No 2)* [2003] UKHL 40; [2004] 1 AC 816; [2003] 3 WLR 568; [2003] 4 All ER 97, HL(E)

F The following additional cases were cited in argument:

*Autronic AG v Switzerland* (1990) 12 EHRR 485
*Down Lisburn Health and Social Services Trust v H* [2006] UKHL 36, HL(NI)
*Markt Intern and Beermann v Germany* (1989) 12 EHRR 161
*Observer and Guardian v United Kingdom* (1991) 14 EHRR 153
*Öllinger v Austria* (Application No 76900/01) (unreported) 29 June 2006, ECtHR
G *R (London and Continental Stations and Property Ltd) v Rail Regulator* [2003] EWHC 2607 (Admin)
*R (Malster) v Ipswich Borough Council* [2001] EWCA 1715, CA
*R (ProLife Alliance) v British Broadcasting Corpn* [2003] UKHL 23; [2004] 1 AC 185; [2003] 2 WLR 1403; [2003] 2 All ER 977, HL(E)
*Reynolds v Times Newspapers Ltd* [2001] 2 AC 127; [1999] 3 WLR 1010; [1999] 4 All ER 609, HL(E)
H *Stewart's Application for Judicial Review, In re* [2003] NICA 4; [2003] NI 149

**APPEAL** from the Court of Appeal in Northern Ireland

This was an appeal by Belfast City Council by leave of the House of Lords (Lord Bingham of Cornhill, Lord Hope of Craighead and Lord Carswell) given on 30 January 2006 from the decision of the Court of Appeal in

Northern Ireland (Sir Brian Kerr LCJ, Sheil LJ and Hart J) on 15 September 2005 allowing an appeal by the applicant, Miss Behavin' Ltd, from a decision of Weatherup J [2004] NIQB 61. The judge, on 24 September 2004, had dismissed the applicant's application for judicial review of a decision of the council to refuse the applicant a sex establishment licence.

The facts are stated in the opinions of Lord Hoffmann and Lord Neuberger of Abbotsbury.

*Richard Gordon QC*, *John O'Hara QC* (of the Northern Ireland Bar) and *David Scoffield* (of the Northern Ireland Bar) for the council.

*John F Larkin QC* and *Mark Reel* (both of the Northern Ireland Bar) for the applicant.

Their Lordships took time for consideration.

25 April. **LORD HOFFMANN**

**1** My Lords, the end of the *Chatterley* ban and the Beatles' first LP marked a sudden loss of confidence in traditional British prudishness by legislators and jurors which made the law against obscene publications very difficult to enforce. As a result, the distribution of all but the most hard core pornography became, at least in practice, a lawful trade. This gave rise to unexpected social and environmental problems. It was unacceptable for vendors of pornography to flaunt their wares before the public at large. Ordinary newsagents who sold soft porn avoided outraging sensitive customers by putting it on high shelves. Shops which specialised in pornographic publications and videos, together with sex aids and other such articles, tended to have opaque windows, as much to protect the privacy of customers as the sensibilities of passers-by. They congregated in run-down areas of large towns, usually near the railway station, clustering together on the same principle that people carrying on similar businesses have always traded in close proximity to each other. But the other inhabitants of the locality, both commercial and residential, often objected to the proliferation of sex shops on a mixture of environmental, social, aesthetic, moral and religious grounds: fears about the kind of people who ran them and the customers they attracted; distaste or moral or religious objection to what was going on inside; concern that they lowered the tone of the neighbourhood and attracted other even less desirable trades such as prostitution and organised crime.

**2** All these concerns bubbled to the surface in the debate in the House of Commons in 1981 on the second reading of the Local Government (Miscellaneous Provisions) Bill, which contained elaborate provisions dealing with the licensing of premises supplying meals or refreshments, tattooing and ear-piercing (the piercing of other parts of the body does not appear to have been contemplated), acupuncture and electrolysis, but said nothing about sex shops. Honourable members wanted to know why not. The strength of feeling was such that the Government brought forward amendments at the report stage, introducing the system of local authority licensing which is now contained in section 2 of and Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. The Act applied only to England, but the identical system was extended to Northern Ireland by the Local Government (Miscellaneous Provisions) (Northern Ireland) Order

(1985 No 1208 (NI 15)). In the Order, the relevant provisions are article 4 and Schedule 2.

**3** Article 4 gives a council power to resolve that the licensing system contained in Schedule 2 should apply to its district. The Belfast City Council has so resolved. Paragraph 6 makes it unlawful to use premises as a sex shop without a licence. Paragraph 10 prescribes how an application for a licence should be made and sub-paragraphs (15) and (16) provides for representations by interested parties:

> "(15) Any person wishing to make any representation in relation to an application for the grant, renewal or transfer of a licence under this Schedule shall give notice to the council, stating in general terms the nature of the representation not later than 28 days after the date of the application.
>
> "(16) Where the council receives notice of any representation under sub-paragraph (15), the council shall, before considering the application, give notice of the general terms of the representation to the applicant."

**4** Paragraph 12 deals with grounds of refusal. Sub-paragraph (1) specifies certain grounds personal to the applicant on which refusal is mandatory; for example, the council cannot grant a licence to a person under 18, or a foreign company, or someone whose licence has been revoked by the council within the previous 12 months. Sub-paragraph (3) contains grounds on which the council may refuse, of which the one relevant for present purposes is (c): "that the number of sex establishments in the relevant locality at the time the application is made is equal or to exceeds the number which the council considers is appropriate for that locality."

**5** This must be read with sub-paragraphs (4) and (5):

> "(4) Nil may be an appropriate number for the purposes of sub-paragraph 3(c).
>
> "(5) In this paragraph 'the relevant locality' means—(a) in relation to premises, the locality where they are situated . . ."

**6** The effect of these rather convoluted provisions is that a council may refuse a licence for a sex shop in any locality on the ground it does not consider it appropriate to have sex shops in that locality. It was said that because the Order says that the council "may" refuse, this ground is "discretionary". But I am not sure whether that is a very helpful adjective. It would hardly be rational for the council to decide that the appropriate number of sex shops in the locality was nil, but that it would all the same exercise its discretion to grant a licence. I think it is more accurate to say that the question of how many sex shops, if any, should be allowed is a matter for the council's judgment. In this case the respondent company applied for a licence to run a sex shop at premises in Gresham Street and the council's health and environmental services committee, to which the application was referred, recommended refusal on the ground that the appropriate number of sex shops in the relevant locality was nil. In arriving at this decision, it said that it

> "gave consideration to the character of [the] locality, including the type of retail premises located therein, the proximity of public buildings such as the Belfast Public Library, the presence of a number of shops which

would be of particular attraction to families and children and the proximity of a number of places of worship . . ." A

7 This recommendation was adopted by the council and the application refused. The council also gave other reasons, personal to the applicant, but I shall confine myself to the question of whether the refusal under paragraph 12(3)(c) was valid.

8 In arriving at its decision, the council appears to have considered some representations and objections by members of the public which were made outside the 28-day period prescribed by paragraph 10(15). There was an argument about whether they were entitled to do so. Both the judge and a majority of the Court of Appeal said that the council had a discretion to consider late objections but the Court of Appeal, reversing the judge, said that the council had not purported to exercise such a discretion and was therefore wrong to have taken them into account. I do not agree. In my opinion, paragraph 10(15) is concerned only with the position of the objector. If he does not comply with the deadline, he cannot complain that the council did not take his objection into account. But paragraph 10(15) does not prohibit the council from taking all relevant matters into account, whether they have been communicated by objectors or others, early or late, or in any other way. It would be very strange if such a provision, designed to allow the council to carry on its business in an orderly and expeditious manner, had the effect of requiring it to shut its eyes to facts which it considered relevant to its decision. The only difficulty is sub-paragraph (16), which seems to suggest that only the terms of representations received within the 28-day period need be communicated to the applicant. Fairness obviously requires that the terms of any representations which the council proposes to consider should be communicated to the applicant so that he may have an opportunity to comment. But this general principle is in my opinion sufficient to supplement sub-paragraph (16) and keep the scheme fair and workable.

B C D E

9 As to the substance of the decision, both the judge and the Court of Appeal agreed that the council had acted fairly and properly exercised its powers under the Order. But they disagreed over whether the council had complied with the Human Rights Act 1998. The Court of Appeal said that the council, in exercising its statutory powers, had not sufficiently taken into account the applicant's right to freedom of expression under article 10 of the Convention and its right to the peaceful enjoyment of its possessions under article 1 of the First Protocol.

F

10 I am prepared to assume, without deciding, that freedom of expression includes the right to use particular premises to distribute pornographic books, videos and other articles and, rather more doubtfully, that a person who is denied the right to use his premises as a sex shop is thereby "deprived of his possessions": compare, however, *ISKCON v United Kingdom* (1994) 18 EHRR CD 133 and *In re UK Waste Management Ltd's Application for Judicial Review* [2002] NI 130. But both of these rights are qualified. The right to freedom of expression may be subject to such restrictions as are necessary in a democratic society "for the prevention of disorder or crime, for the protection of health or morals, for the protection of the . . . rights of others": article 10(2). The right to enjoyment of possessions is subject to the right of the state to "control the

G H

A use of property in accordance with the general interest": First Protocol, article 1(2).

**11** The Court of Appeal accepted that, in principle, the legislature was entitled to restrict both freedom of expression and the enjoyment of possessions by requiring that sex shops be licensed. The applicant has not argued the contrary. What it says is that, in exercising its judgment under article 12(3)(c) as to whether a sex shop was appropriate in the locality of B Gresham Street, the council ought to have had regard to its obligation under section 6 of the 1998 Act to respect Convention rights. Although the requirement of a licence was a restriction which pursued a legitimate aim, the council should not, by its decision to refuse a licence, have interfered with the applicant's rights more than was necessary and proportionate for the achievement of that aim.

C **12** My Lords, I would not dissent from this proposition, although for the reasons I shall mention later, I find it difficult to imagine a case in which a proper exercise by the council of its powers under the Order could be a breach of an applicant's Convention rights. If, however, the Court of Appeal had considered that the refusal of a licence was in this case a disproportionate interference with the human right of the respondent to sell D pornography in a place of its own choosing, it should have quashed the decision for that reason. I would have disagreed on the facts, but at least the judgment would have proceeded on orthodox grounds. But the Court of Appeal did not say that the applicant's human right to operate a sex shop in Gresham Street had been infringed. Instead, it said that its Convention rights had been violated by the way the council had arrived at its decision. In the reasons it gave, the council had not shown that it was conscious of the E Convention rights which were engaged. The decision was therefore unlawful unless it was inevitable that a reasonable council which instructed itself properly about Convention rights would have reached the same decision.

**13** This approach seems to me not only contrary to the reasoning in the recent decision of this House in *R (SB) v Governors of Denbigh High School* [2007] 1 AC 100 but quite impractical. What was the council supposed to F have said? "We have thought very seriously about your Convention rights but we think that the appropriate number of sex shops in the locality is nil"? Or: "Taking into account article 10 and article 1 of the First Protocol and doing the best we can, we think that the appropriate number is nil"? Would it have been sufficient to say that they had taken Convention rights into account, or would they have had to specify the right ones? A construction of G the 1998 Act which requires ordinary citizens in local government to produce such formulaic incantations would make it ridiculous. Either the refusal infringed the applicant's Convention rights or it did not. If it did, no display of human rights learning by the Belfast City Council would have made the decision lawful. If it did not, it would not matter if the councillors had never heard of article 10 or the First Protocol.

H **14** In the *Denbigh High School* case, the Court of Appeal likewise quashed the decision of a school not to allow a pupil to wear a religious form of dress on the ground that it had arrived at its decision on grounds which did not sufficiently show consciousness of the pupil's Convention right to manifest her religion. As in this case, the Court of Appeal did not say that the school had actually infringed her Convention right to wear the dress. It

demanded only that the school demonstrate a correct process of reasoning. Lord Bingham of Cornhill said, at pp 115–116:

> "the focus at Strasbourg is not and has never been on whether a challenged decision or action is the product of a defective decision-making process, but on whether, in the case under consideration, the applicant's Convention rights have been violated. In considering the exercise of discretion by a national authority the court may consider whether the applicant had a fair opportunity to put his case, and to challenge an adverse decision, the aspect addressed by the court in the passage from its judgment in [*Chapman v United Kingdom* (2001) 33 EHRR 399] quoted above. But the House has been referred to no case in which the Strasbourg court has found a violation of [a] Convention right on the strength of failure by a national authority to follow the sort of reasoning process laid down by the Court of Appeal. This pragmatic approach is fully reflected in the 1998 Act. The unlawfulness proscribed by section 6(1) is acting in a way which is incompatible with a Convention right, not relying on a defective process of reasoning, and action may be brought under section 7(1) only by a person who is a victim of an unlawful act."

**15** As Lord Bingham noted, some Convention rights may have a procedural content; most obviously article 6, but other rights as well. In such cases, a procedural impropriety may be a denial of a Convention right. Thus in *Hatton v United Kingdom* (2003) 37 EHRR 611, an article 8 case, the European Court of Human Rights considered not only the effect on the applicant's private life but whether he had had a fair opportunity to put his case. In such cases, however, the question is still whether there has actually been a violation of the applicant's Convention rights and not whether the decision-maker properly considered the question of whether his rights would be violated or not.

**16** The Court of Appeal, as I have said, did not decide whether refusal of a licence was a violation of the applicants's Convention rights or not. Weatherup J decided that it was not. I agree. If article 10 and article 1 of the First Protocol are engaged at all, they operate at a very low level. The right to vend pornography is not the most important right of free expression in a democratic society and the licensing system does not prohibit anyone from exercising it. It only prevents him from using unlicensed premises for that purpose. Even if the council considered that it was not appropriate to have a sex shop anywhere in Belfast, that would only have put its citizens in the same position as most of the rest of the country, in having to satisfy their demand for such products by internet or mail order or going to more liberally governed districts like Soho. This is an area of social control in which the Strasbourg court has always accorded a wide margin of appreciation to member states, which in terms of the domestic constitution translates into the broad power of judgment entrusted to local authorities by the legislature. If the local authority exercises that power rationally and in accordance with the purposes of the statute, it would require very unusual facts for it to amount to a disproportionate restriction on Convention rights. That was not the case here and I would therefore allow the appeal and dismiss the application for judicial review.

A **LORD RODGER OF EARLSFERRY**

**17** My Lords, I agree that the appeal should be allowed for the reasons given by my noble and learned friend, Lord Hoffmann. I add only a few observations on the Court of Appeal's conclusion that the council's decision should be quashed because they failed to consider the human rights issue properly.

B **18** The amended Order 53 statement on behalf of the applicant, Miss Behavin' Ltd, indicated that relief was sought on two broad grounds. The first related to natural justice. The second claimed that the Council's decision was "illegal" inter alia because it turned upon a decision that the appropriate number of sex establishments in the relevant locality was nil, "which was in breach of the European Convention on Human Rights". Two of the supposed reasons advanced by the applicant related to article 10 of the C Convention and one related to article 1 of the First Protocol.

**19** Mr Larkin, who appeared for the applicant, acknowledged that if he could not win on article 10 then he could not win at all on human rights. So he concentrated on article 10. In considering the position, I assume, without deciding, that the idea of freedom of expression in article 10(1) is wide enough to cover the use of premises to sell pornographic books, etc. Again, since the contrary was not suggested, I proceed on the basis that in an D appropriate case it may be necessary for a council to restrict this use of premises in order to protect health or morals, as envisaged in article 10(2). The applicant's initial position, at least, was that in the circumstances of this case, however, a restriction in the form of a refusal of a licence was not justified.

**20** In the Order 53 statement the first article 10 reason for illegality was E said to be that the denial of a licence amounted to a disproportionate interference with the applicant's right to freedom of expression. The second was that the council's decision was disproportionate since they were empowered, when granting a licence, to apply conditions which would have met their concerns, but they declined to do so. Before the House Mr Larkin presented no argument in support of either of these reasons. Matters of procedure were the order of the day.

F **21** Defects in procedure are, of course, very often a good reason for quashing a decision and requiring the relevant body to reconsider it. In its Order 53 statement the applicant mentioned various concerns about the procedure which the council had adopted, but it did not suggest that any procedural failing had given rise to a breach of article 10. So far as article 10 was concerned, the applicant relied on the effects of the refusal of a G licence: it meant that the applicant could not sell its books etc, in its shop in Gresham Street in Belfast and such a restriction was unnecessary for the protection of morals in a democratic society.

**22** Dealing with the issue as one of substance rather than procedure, Weatherup J concluded that the refusal of a licence had not violated any right to freedom of expression which the applicant might have under article 10. So he upheld the council's decision. The Court of Appeal H reversed him. They held that, since the council had not taken the applicant's right to freedom of expression into account when reaching their decision, it would have to be quashed, unless the court could say that the council would have reached the same decision if their deliberations "had taken place on an informed basis, taking into account the appellant's Convention rights".

**23** The basis for the applicant's contention that the council's decision to refuse it a licence was illegal because of a violation of article 10 must be section 6(1) of the Human Rights Act 1998. In terms of that subsection the council's refusal was unlawful if it was incompatible with the applicant's right to freedom of expression. In other words, if their refusal was disproportionate—because it went too far in interfering with the applicant's right to sell its books or films—then it was unlawful. In that event it would still have been unlawful however much the council had analysed and agonised over the applicant's right to freedom of expression before refusing the licence. Equally, if the refusal did not interfere disproportionately with the applicant's right to freedom of expression, then it was lawful for purposes of section 6(1)—whether or not the council had deliberated on that right before refusing.

**24** This is just to apply what was said by Lord Bingham of Cornhill and Lord Hoffmann in *R (SB) v Governors of Denbigh High School* [2007] 1 AC 100, 114E–116H, paras 26–31, and 125D–126C, paras 66–68. The House had, of course, already adopted much the same approach when carrying out the related function of considering the proportionality of legislation. What matters is its impact in the relevant circumstances, not the quality of the debate which preceded its enactment, perhaps many years before. In *Wilson v First County Trust Ltd (No 2)* [2004] 1 AC 816, 843–844, Lord Nicholls of Birkenhead said:

> "In particular, it is a cardinal constitutional principle that the will of Parliament is expressed in the language used by it in its enactments. The proportionality of legislation is to be judged on that basis. The courts are to have due regard to the legislation as an expression of the will of Parliament. The proportionality of a statutory measure is not to be judged by the quality of the reasons advanced in support of it in the course of parliamentary debate, or by the subjective state of mind of individual ministers or other members. Different members may well have different reasons, not expressed in debates, for approving particular statutory provisions. They may have different perceptions of the desirability or likely effect of the legislation. Ministerial statements, especially if made ex tempore in response to questions, may sometimes lack clarity or be misdirected. Lack of cogent justification in the course of parliamentary debate is not a matter which 'counts against' the legislation on issues of proportionality. The court is called upon to evaluate the proportionality of the legislation, not the adequacy of the minister's exploration of the policy options or of his explanations to Parliament."

Similarly, Lord Hobhouse of Woodborough, at p 866, para 144, emphasised that the question of justification and proportionality has to be answered by reference to the time of the events to which the statutory provision was being applied:

> "Those who are seeking to justify the use of the statutory provision have to do so as at the time of that use. If they cannot justify it at that time, their use of it is a breach of the victim's 'Convention rights'. That is how the European Court would decide the question and it is also how the municipal court is required to look at it. In most cases the difference will probably be academic . . . But as circumstances change so the justification

A or the absence of it may change. Merely to examine the situation at the time the Act in question was passed and treat that as decisive is wrong in principle . . . just as the current state of the legislation at that time is what has to be the subject matter of the decision so also the circumstances and social needs existing at that time are what is relevant, not those existing at some earlier or different time. To look for justification only in the B Parliamentary debates at the time the statute was originally passed invites error."

**25** On behalf of the council Mr Gordon emphasised that the applicant had not alleged that any of the provisions on the licensing of sex establishments in Schedule 2 to the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 was incompatible with the C Convention. So its provisions must be regarded as having appropriately balanced the competing interests for Convention purposes, even though the Order was passed some 15 years before the 1998 Act came into force. It followed, he submitted, that any decision duly taken by a council applying the Order would be compatible with the right to freedom of expression of any applicant for a sex establishment licence. Such an approach may have its attractions in practice, but the court must always keep in mind that it is D not concerned with generalities about the legislation in question, but with whether the effect of the council's exercise of its statutory powers in the particular circumstances was in fact compatible with the Convention rights of the applicant for a licence.

**26** Of course, where the public authority has carefully weighed the various competing considerations and concluded that interference with a E Convention right is justified, a court will attribute due weight to that conclusion in deciding whether the action in question was proportionate and lawful. As Lord Bingham said in *R (SB) v Governors of Denbigh High School* [2007] 1 AC 100, 116, para 31:

> "If, in such a case, it appears that such a body has conscientiously paid attention to all human rights considerations, no doubt a challenger's task F will be the harder. But what matters in any case is the practical outcome, not the quality of the decision-making process that led to it."

Similarly, having observed that head teachers and governors could not be expected to make decisions with textbooks on human rights at their elbows, Lord Hoffmann observed, at p 126, para 68:

> G "The most that can be said is that the way in which the school approached the problem may help to persuade a judge that its answer fell within the area of judgment accorded to it by the law."

**27** In this case the council did not weigh the competing human rights and other considerations in that way. So, when deciding whether their refusal of a licence interfered disproportionately with the applicant's right to freedom of expression, the court had to go about its task without that H particular kind of assistance. Weatherup J concluded that, having regard to the various features of this particular locality which he mentioned, the refusal of a licence to sell pornography in the applicant's Gresham Street premises did not interfere disproportionately with its right to freedom of expression. Neither the Court of Appeal nor indeed Mr Larkin actually

challenged that conclusion on its merits. But, if it is sound—as I believe it is—then the council's decision was lawful in terms of section 6(1) of the 1998 Act and cannot be quashed on the ground of incompatibility with article 10.

**28** The Court of Appeal would also have quashed the council's decision on the separate ground that the applicant's article 10 right was a relevant consideration which the council had failed to take into account in reaching their decision. The court felt unable to say that, if the council had taken account of that right, they would have reached the same decision. This is back to a traditional judicial review point—but, significantly perhaps, not one which was advanced by the applicant in its Order 53 statement. At the meeting of the health and environmental services committee on 11 December 2002 the applicant's representative had referred to the right to freedom of expression of the applicant and of users of sex shops in Belfast. But he does not seem to have developed the point. Nor did the representative who appeared at the full council meeting on 3 March 2003. Nor again did Mr Larkin in the hearing before the House. All this is scarcely surprising since, in a case like the present, it is hard to see what anyone could have said beyond reciting the value of the right to sell and use the pornographic material. Similarly, the value of that right is all that the council could have been expected to consider. So, at most, the council are criticised for failing to take into account what can only be the modest value of that right. The basic pros and cons of having a right to sell and use pornography must surely have been well known, however, to the members of the council who took the decision. Unlike the Court of Appeal, I am accordingly satisfied that, even if they had had regard to the applicant's article 10 right in formulating their decision, it would still have been the same. There were, in any event, other special factors relating to the applicant which would have justified refusing the licence.

**29** For these reasons, as well as the others given by Lord Hoffmann, I would allow the appeal and restore the order of Weatherup J dismissing the application for judicial review.

**BARONESS HALE OF RICHMOND**

**30** My Lords, this case must take the prize for the most entertaining name of any that have come before us in recent years. It also takes the prize for exemplifying two of the most important questions which have so far arisen under the Human Rights Act 1998. But since the decision of the Northern Ireland Court of Appeal in this case, both have been effectively answered by this House, one in *R (SB) v Governors of Denbigh High School* [2007] 1 AC 100, the other in *Huang v Secretary of State for the Home Department* [2007] 2 WLR 581.

**31** The first, and most straightforward, question is who decides whether or not a claimant's Convention rights have been infringed. The answer is that it is the court before which the issue is raised. The role of the court in human rights adjudication is quite different from the role of the court in an ordinary judicial review of administrative action. In human rights adjudication, the court is concerned with whether the human rights of the claimant have in fact been infringed, not with whether the administrative decision-maker properly took them into account. If it were otherwise, every policy decision taken before the 1998 Act came into force but which engaged

A a Convention right would be open to challenge, no matter how obviously compliant with the right in question it was. That cannot be right, and this House so decided in *R (SB) v Governors of Denbigh High School*, in relation to the decisions of a public authority. To the same effect were *Wilson v First County Trust Ltd (No 2)* [2004] 1 AC 816 and *R (Williamson) v Secretary of State for Education and Employment* [2005] 2 AC 246, in relation to
B legislation passed before the 1998 Act came into force. In each of those cases, the House considered the justification for the policy or legislation in question on its merits, regardless of whether the decision-maker had done so.

**32** The second, and more difficult, question is the weight to be accorded to the views of the various public authorities involved in making the decision which is alleged to have infringed Convention rights. The recent decisions of
C this House in *Huang v Secretary of State for the Home Department* address this very point.

**33** In this case, there are arguably four levels of such decision-making. The first is the decision of the Northern Ireland legislature permit local authorities to prohibit the operation of sex establishments without a licence. No one has suggested that this decision in itself infringed Convention rights. Control of the use of land is permitted under article 1 of the First Protocol to
D the Convention and restrictions on freedom of speech are permitted under article 10. Having such a licensing regime is clearly consistent with the Convention rights, provided that it is operated consistently with those Convention rights. The question is how it is operated.

**34** The second level is the decision of Belfast City Council to adopt the licensing regime in its area. No one has suggested that this decision in itself
E infringed Convention rights, for the same reasons that the legislation itself does not do so.

**35** The third level is the decision of Belfast City Council that there should be no sex shops in this particular locality. That might have been taken as a policy decision which would dictate all subsequent decisions on individual applications. However, the legislation, as explained by my noble and learned friend, Lord Neuberger of Abbotsbury, indicates
F that the decision should be made in relation to each individual case. An application may—but not must—be turned down on the basis that the authority considers that there already are enough sex shops in the locality, enough being capable of being none: see the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, Schedule 2, paragraph 12(2)(3)(c)(4). The decision that the appropriate number in this
G locality was none appears to have been taken in response to individual applications rather than as a general policy. So, perhaps unusually, this third level of decision-making merges into the fourth.

**36** The fourth level is the decision on the individual application. Mr Gordon, on behalf of the council, argues that this decision cannot be attacked if the existence of the licensing regime itself cannot be attacked. I cannot agree. I do agree, of course, that there are situations in which the
H court is entitled to say that the legislation itself strikes a fair balance between the rights of the individual and the interests of the community, so that there is no room for the court to strike the balance in the individual case. That is what this House decided in *Kay v Lambeth London Borough Council* [2006] 2 AC 465. At issue there was whether a landowner with the right to

possession of land (in that case a public authority, but the same question would arise with a private landowner whose rights are protected under article 1 of the First Protocol) could be deprived of that right because to enforce it against the particular individual occupier would be a disproportionate interference with the occupier's right to respect for his home under article 8 of the Convention, even though he had no right in domestic law to be or to continue in occupation. The whole history of housing law since rent control began has been an attempt by the legislature to strike just that balance. In those circumstances, the courts are entitled to say that unless the legislation itself can be attacked, the issue cannot be raised in an individual case.

37 But this is not a case in which the legislation itself attempts to strike that balance. The legislation leaves it to the local authority to do so in each individual case. So the court has to decide whether the authority has violated the Convention rights. In doing so, it is bound to acknowledge that the local authority is much better placed than the court to decide whether the right of sex shop owners to sell pornographic literature and images should be restricted—for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights of others. But the views of the local authority are bound to carry less weight where the local authority has made no attempt to address that question. Had the Belfast City Council expressly set itself the task of balancing the rights of individuals to sell and buy pornographic literature and images against the interests of the wider community, a court would find it hard to upset the balance which the local authority had struck. But where there is no indication that this has been done, the court has no alternative but to strike the balance for itself, giving due weight to the judgments made by those who are in much closer touch with the people and the places involved than the court could ever be.

38 My Lords, there are far more important human rights in this world than the right to sell pornographic literature and images in the backstreets of Belfast city centre. Pornography comes well below celebrity gossip in the hierarchy of speech which deserves the protection of the law. Far too often it entails the sexual exploitation and degradation of women for the titillation of men. But there is always room for debate about what constitutes pornography. We can all think of wonderful works of literature which once were banned for their supposed immorality (my example would be *The Well of Loneliness* by Radclyffe Hall rather than *Lady Chatterley's Lover*, but the point is the same). No one is suggesting that pornographic literature and images (always supposing that it is lawful) should be inaccessible to those in Belfast who wish to gain access to them. The authors can publish their work in any other medium should they wish to do so, and the public can gain access to them there. Indeed, the city council has not, as far as we know, refused to license sex establishments elsewhere in the city. There were good reasons for refusing to license establishments in this street and even better ones for refusing this particular company a licence. The suggestion that this is a disproportionate limitation on the company's right to freedom of expression is to my mind completely untenable. The same applies, a fortiori, to the complaint under article 1 of the First Protocol.

39 For these reasons, and I believe in agreement with all of your Lordships, I would allow this appeal and restore the decision of Weatherup J.

A **LORD MANCE**

**40** My Lords, I have had the advantage of reading in draft the opinions of my noble and learned friends, Lord Hoffmann, Lord Rodger of Earlsferry, Baroness Hale of Richmond and Lord Neuberger of Abbotsbury. For the reasons given by Lord Hoffmann and Lord Neuberger, there is nothing in the complaint that the council should have declined to consider the late representations and objections.

B **41** In agreement with other members of the House, I would reject the Council's submission that, if the respondent company had any cause for complaint, it was inherent in the scheme of the relevant legislation so that, in the absence of any challenge to that scheme, the appeal should succeed on that ground alone. The present scheme is not analogous with *Kay v Lambeth London Borough Council* [2006] 2 AC 465. Here, the council had C a licensing jurisdiction, in the exercise of which it was both able and bound to act compatibly with the Convention: cf section 6 of the Human Rights Act 1998.

**42** I can for present purposes proceed on the basis that both freedom of expression under article 10 of the Convention and the enjoyment of possessions under the First Protocol were engaged by the exercise of that jurisdiction, albeit (as others have observed) hardly in a very compelling D sense. But both those interests may be restricted, in the former case for inter alia, the protection of health or morals and of the rights of others and in the latter case in accordance with the general interest. I agree that any complaint about restriction of the latter interest, assuming that it exists, can add nothing in the present context to any complaint about restriction of the former article 8 interest.

E **43** The Court of Appeal [2006] NI 181, para 55 cited *In re Connor's Application for Judicial Review* [2005] NI 322 for the uncontroversial proposition that the evaluation of the interests protected by the Convention was primarily one for the council. But it went on to rely on that case (decided in relation to article 8) for the proposition that:

> "Where no appraisal of the [relevant] interests had been made by the F public authority, the court could only conclude that the interference was justified if, on analysis, it determined that it was inevitable that the decision-maker would have decided that the article 8 rights of the individual would have to yield to protect the wider interests outlined in article 8(2)".

The Court of Appeal went on to apply that proposition in relation to both G article 1 of the First Protocol (para 56) and article 10 of the Convention (para 63). It said, in para 56:

> "The interference with the appellant's rights can only be justified, therefore, if either the public authority has decided that the general interest demands it or it is inevitable that it would have so decided had it been conscious of the interference with the appellant's rights that refusal H of the application entailed."

**44** Authority now shows that this is not the correct approach. The court's role is to assess for itself the proportionality of the decision-maker's decision: *R (SB) v Governors of Denbigh High School* [2007] 1 AC 100. The court will not require a decision-maker to put itself through the hoops of a

complex series of questions such as the Court of Appeal [2005] 1 WLR 3372 suggested in that case. In the *Denbigh High School* case, at para 31, Lord Bingham of Cornhill rejected the "new formalism" that the Court of Appeal's approach would have involved, and said that "what matters in any case is the practical outcome, not the quality of the decision-making process that led to it". A

**45** Lord Hoffmann, at para 68, also contrasted the position regarding judicial review, where "the court is usually concerned with whether the decision-maker reached his decision in the right way rather than whether he got what the court might think to be the right answer". This is not of course to say that the Convention contains no procedural rights; it clearly does—articles 5 and 6 contain the most obvious examples—but there is authority in the European Court of Human Rights that other provisions can implicitly involve ancillary procedural rights, e g, article 8: cf *McMichael v United Kingdom* (1995) 20 EHRR 205, paras 85–93; *Buckley v United Kingdom* (1996) 23 EHRR 101, para 76 and *Chapman v United Kingdom* (2001) 33 EHRR 399, para 92. B C

**46** The question may arise how the approach described in para 44 above interrelates with the courts' recognition of a "discretionary area of judgment" within which "the judiciary will defer, on democratic grounds, to the considered opinion of the elected body or person whose act or decision is said to be incompatible with the Convention": *R v Director of Public Prosecutions, Ex p Kebilene* [2000] 2 AC 326, 381, per Lord Hope of Craighead; *A v Secretary of State for the Home Department* [2005] 2 AC 68, paras 37–42 per Lord Bingham of Cornhill. The existence of a discretionary area of judgment means necessarily that there may be decisions which a court could regard as proportionate, whichever way they went. Lord Hope's dicta in *Ex p Kebilene* postulate a context in which the decision-maker has reached a "considered opinion", whatever the formal structure of his decision-making process. But, what is the position if a decision-maker is not conscious of or does not address his or its mind at all to the existence of values or interests which are relevant under the Convention? D E

**47** The court is then deprived of the assistance and reassurance provided by the primary decision-maker's "considered opinion" on Convention issues. The court's scrutiny is bound to be closer, and the court may, as Baroness Hale observes in para 37 of her opinion, have no alternative but to strike the balance for itself, giving due weight to such judgments as were made by the primary decision-maker on matters he or it did consider. F

**48** In the present case, however close the court's scrutiny, I have no hesitation in concluding that the council's decision was proportionate (and indeed inevitable) for the reasons relating to both the council's primary and its secondary grounds for refusal with which Lord Neuberger deals in paras 94–96, which are also consistent as I see it with those given by Lord Rodger in his para 28 and Baroness Hale in her para 38. I too would therefore allow this appeal and restore the decision of Weatherup J dismissing the respondent company's application. G H

**LORD NEUBERGER OF ABBOTSBURY**

**49** My Lords, this appeal concerns an application for a sex establishment licence in respect of Unit 2, 2–8 Gresham Street, Belfast ("the

premises"), made to the Belfast City Council under the provisions of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985.

*Schedule 2 to the 1985 Order*

**50** Article 4 of the 1985 Order provides, by paragraph (1), that a council "may resolve that Schedule 2 is to apply to its district". It then sets out the procedure to be adopted in such an event. Schedule 2 to the Order is headed "Licensing of Sex Establishments", and references hereafter to paragraphs are to paragraphs of that Schedule.

**51** Paragraph 2 provides that " 'sex establishment' means a sex cinema or a sex shop". The expression "sex shop" is defined in paragraph 4(1) as including premises:

> "used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating—(a) sex articles; or (b) other things intended for use in connection with, or for the purpose of stimulating or encouraging—(i) sexual activity; or (ii) acts of force or restraint which are associated with sexual activity."

By virtue of paragraphs 4(3) and (4), a "sex article" includes "any article containing or embodying matter to be read or looked at" and "any recording of vision or sound".

**52** Paragraph 6 precludes the use of any premises "in any district in which this Schedule is in force" "as a sex establishment except under and in accordance with the terms of a licence granted under this Schedule by the council for the district". Paragraph 7 enables a council "to waive the requirement of a licence" (sub-paragraph (1)) where "to require a licence would be unreasonable or inappropriate": sub-paragraph (4). Paragraph 8 empowers the council to grant, renew or transfer licences, and paragraph 9 is concerned with the duration of licences.

**53** Paragraph 10 deals with applications for licences. Sub-paragraphs (1) to (6) set out procedural requirements to be satisfied by applicants for licences. Sub-paragraphs (7) to (14) are concerned with publicising the existence of the application, and require an applicant to advertise his application in a newspaper within seven days of it having been made (sub-paragraph (7)), and to display a notice of the application in an appropriate location "for 21 days beginning with the date of the application" (sub-paragraph (10)).

**54** Sub-paragraphs (15) to (18) of paragraph 10 are in these terms so far as relevant:

> "(15) Any person wishing to make any representation in relation to an application for the grant . . . of a licence . . . shall give notice to the council, stating in general terms the nature of representation not later than 28 days after the date of the application.
>
> "(16) Where the council receive notice of any representation under sub-paragraph (15) the council shall, before considering the application, give notice of the general terms of the representation to the applicant . . ."
>
> "(18) In considering any application for the grant . . . of a licence the council shall have regard to . . . any representations of which notice has been sent to it under sub-paragraph (15)."

**55** Paragraph 10(19) requires a council to give an applicant "an opportunity of appearing before and of being heard by the council . . . (a) before refusing to grant a licence, to the applicant . . .". A

**56** Paragraph 12(1) sets out the grounds upon which a council "shall refuse an application for the grant . . . of a licence". They include cases where the applicant is under 18, has had a licence revoked, has been refused a licence within the past 12 months, or is a foreign company. Paragraph 12(2) provides that a council "may refuse" to grant a licence on the grounds set out in paragraph 12(3), which are: B

> "(a) that the applicant is unsuitable to hold the licence by virtue of having been convicted of an offence or for any other reason; (b) that if the licence were to be granted . . . the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant . . . of such a licence if he made the application himself; (c) that the number of sex establishments in the relevant locality of the time the application is made is equal to or exceeds the number which the council considers is appropriate for that locality; (d) that the grant . . . of the licence would be inappropriate, having regard—(i) to the character of the relevant locality; or (ii) to the use to which any premises in the vicinity are put; or (iii) to the layout, character or condition of the premises . . . in respect of which the application is made." C D

**57** Paragraph 12(4) provides that "nil may be an appropriate number for the purposes of sub-paragraph (3)(c)". Paragraph 12(5) identifies "the relevant locality" as "(a) . . . the locality" in which the premises the subject of the relevant application "are situated". E

**58** Paragraph 20 states that a person who "(a) knowingly uses, or knowingly causes or permits the use of, any premises . . . contrary to paragraph 6 . . . shall be guilty of an offence". Paragraph 26 is concerned with the right of appeal of a disappointed applicant for a licence. It entitles such a person to appeal to the county court within 21 days of the licence being refused, save where the ground of refusal is under paragraph 12(3)(c) or (d). F

*The facts*

**59** In 1988, the council resolved, pursuant to article 4(1) of the 1985 Order, that Schedule 2 should apply to its district. In 1989, when considering an application for a sex establishment licence in respect of a property in the same locality as the premises ("the Gresham Street locality"), the council had determined that the appropriate number of sex establishments in that locality should be nil, a view that the council revisited and confirmed in February 1997. G

**60** On 13 May 2002, the respondent company, Miss Behavin' Ltd, applied to the council for a sex establishment licence to use the premises as a sex shop. This application was duly advertised, and resulted in 70 notices of objection, only one of which was received within the 28-day time-limit stipulated in paragraph 10(15). During September and October 2002, the council informed the respondent company of these objections, together with the grounds upon which they were based. H

A **61** At the time of the application, the premises had been operated as a sex shop without a licence, and therefore unlawfully, for a period before February 2001. During that period, the premises had been leased to a Mr Patrick McCaffrey. In 2001, he was successfully prosecuted for a number of offences arising out of his business at the premises. About one month prior to the application, the company was incorporated as a limited company with an issued capital of 99 shares, of which 40 had been allocated to Mr McCaffrey.

B **62** Together with five other applications for sex establishment licences in the Gresham Street locality and a neighbouring locality, the application came before the council's health and environmental services committee, whose functions include the consideration of such applications with a view to recommending to the full council whether they should be granted or refused.

C **63** The committee met on 18 November 2002 in order to consider the six applications. The respondent company had been invited to attend this meeting in order to present arguments as to why there should be a change in the nil determination—i e the determination that the appropriate number of sex establishments in the locality should be nil—and why the application should succeed. The meeting was abortive for present purposes, because of the company's expressed concern that certain documents had not been disclosed. Accordingly, it was adjourned to 2 December 2002.

D **64** Ahead of the 2 December 2002 meeting, the members of the committee were supplied with reports from Mr Crothers, a chartered surveyor, which dealt with the nature of the Gresham Street locality, and future developments therein, and from Mr Martin, the head of the council's building control services. Mr Martin referred to earlier decisions of the council and to the previous meetings of the committee at which it had been determined that the appropriate number of sex establishments in the Gresham Street locality should be nil. He reported that 70 objections had been received, and that "all but one of the letters was received outside the 28-day period", and he summarised the various different grounds of objection that had been raised. His report concluded by stating that there were two issues for the committee to decide, namely (1) if the nil determination was confirmed, then the application should be refused and (2) if the number was to be "other than nil", than it would be necessary to decide which of the applications to grant.

E **65** The meeting of 2 December overran, and was adjourned to the 11 December 2002, when the application was considered. The committee was addressed by Mr Fox, the respondent company's solicitor. The minutes record that Mr Fox "inquired whether the objections had been received within the statutory 28-day period". He is also recorded as having suggested that the committee reconsider and reverse the earlier nil determination, and having said that the company "together with those members of the public who used the sex shops which were currently operating illegally in Belfast, were entitled to freedom of expression" under the Human Rights Act 1998.

F **66** The committee deferred making the decision on the six applications to its meeting of 20 January 2003. The minutes of that meeting reveal that:

G "The committee gave consideration to the character of each locality, including the type of retail premises located therein, the proximity of

H

public buildings such as the Belfast Public Library, the presence of a number of shops which would be of particular attraction to families and children and the proximity of a number of places of worship, and agreed to recommend that the council, in its capacity as licensing authority, determine that the appropriate number of sex establishments in the Gresham Street and North Street localities be nil. The committee in recommending that the appropriate number of sex establishments be nil, acknowledged that these recommendations would not necessarily impact on its views in relation to the appropriate number of such establishments in other localities in the city."

The committee then went on to consider (and to recommend the refusal of) each of the six applications on their perceived merits; the relevant extracts from the minutes for present purposes are:

"In considering the above mentioned matter, the committee was mindful that the council might, if it so desired, decide that the appropriate number of sex establishments in the Gresham Street and/or North Street localities be other than nil. Accordingly, the committee agreed to consider the merits of each application. After discussion, the committee, having regard to the information contained in the report of the head of building control . . . agreed to recommend that the council . . . refuse the under-noted applications . . . for the following reasons . . .

"*Miss Behavin'*

"Unit 2, 2–8 Gresham Street

"(1) that the applicant had been operating a sex shop without a licence and in breach of the relevant legislation;

"(2) that an associated person, convicted of relevant offences, appeared to have an interest in the business carried out under the licence; and

"(3) that the company's formation appeared to have been for the purpose of making the application other than in the name of a convicted person."

**67** The six applications were accordingly remitted to the full council with a refusal recommendation. For reasons not germane to this appeal, the council at its monthly meeting of 3 February 2003 sent back the six applications to the committee for reconsideration. At its meeting of 10 February 2003, the committee:

"affirmed its decisions of 20 January to recommend that the council . . . determine that the appropriate number of sex establishments in the Gresham Street and North Street localities be nil and refuse the applications in respect of sex establishment licences for the reasons outlined in the minutes of that meeting."

**68** The six applications then came before the council at its monthly meeting on 3 March 2003. Before discussing those applications, the council afforded each of the applicants an opportunity to make representations. On this occasion, the respondent company was represented by Mr Reel of counsel, a summary of whose submissions is contained in the minutes of that meeting. The council then turned to the various applications, and resolved that "the minutes of the proceedings of the health and environmental services committee of 10 February 2003 be and they are hereby approved

and adopted". The decision of the council was communicated to the company in a letter dated 13 March 2003.

*The procedural history*

69 Pursuant to leave given by Weatherup J on 25 June 2003, the company applied to the High Court to quash the council's decision of 3 March 2003 to refuse the application. The company's case was based on a number of grounds, only two of which are now relevant, namely: (1) the council (through the committee) ought not to have taken into account the 69 objections which were out of time, or in the alternative ought not to have taken them into account without first considering whether to exercise their discretion to do so; (2) the decision of the council was flawed in that it infringed the company's rights under article 10 of the European Convention on Human Rights and under article 1 of the First Protocol to the Convention.

70 This application came before Weatherup J who dismissed it on all grounds. The company appealed to the Court of Appeal, who, on 15 September 2005, allowed the appeal. On the first issue, the majority, Kerr LCJ and Sheil LJ, held that it was, in principle, open to the council to take into account late objections, but their decision was flawed because the committee had not expressly considered and determined whether or not to exercise its discretion to take the late objections into account. Hart J held that, on a true construction of paragraph 10, it was not open to the committee to have taken into account late objections at all. The Court of Appeal unanimously considered that the committee should have taken into account the company's rights under article 10 and under article 1 of the First Protocol, and that for those reasons also, the company should succeed. Accordingly, the Court of Appeal decided that the council's refusal of the application should be quashed.

*The late notices of objection*

71 The first question is whether a council to whom an application for a sex establishment licence is made is entitled to take into account late objections, that is, objections received after the 28-day period referred to in paragraph 10(15). It would, in my judgment, be unrealistic and unjust if a council were absolutely precluded from taking into account such objections. If an objection which revealed to a council for the first time certain highly relevant information was received one day late, it would be a little short of absurd if it could not be taken into account. It might reveal, for instance, that a family with a large number of small children had moved into the flat above the subject property, or that the applicant had a string of relevant convictions. In such cases, it would be contrary to the purpose of the 1985 Order, and to the public interest generally, if the council was obliged to ignore the information. Furthermore, it would be the duty of council officers to open and read any letter received; such an officer would be placed in an impossible situation if she or he had read a late letter of objection, with new and important information, but was effectively precluded from communicating this information to council members.

72 Indeed, unless the 1985 Order provided otherwise in very clear terms, it would seem to me that, if a council received significant relevant

information in a late objection, there could be circumstances in which its failure to take that information into account would itself be judicially reviewable. Of course, much would depend on the circumstances of the particular case. It may very well be right to disregard a late objection if it was intentionally last-minute, or if it was received so late that taking it into account would lead to unfairness to the applicant (because he would not have had the chance to consider it) or to unacceptable disruption to the council's business. Accordingly, one would expect the effect of article 10 to be that late objections could, but need not, be taken into account.

73 In my view, that is indeed the effect of the provisions of paragraphs 10(15)–10(18). Paragraph 10(18) is merely concerned with identifying what a council is obliged to take into account; it says nothing about what the council is entitled to take into account. Accordingly, nothing in paragraph 10(18) would exclude the consideration of late objections. Once one appreciates that that is the effect of paragraph 10(18), the meaning of paragraph 10(15) seems clear. Its effect is that, if an objector wishes to have his objection taken into account as of right under the terms of Schedule 2, then he has to ensure that it is sent to the council within the 28-day period. In other words, what those two sub-paragraphs are concerned with for present purposes is to make it clear that, if an objection is received within 28 days, the council has an obligation to take it into account, and the objector has a right to expect it to be taken into account. Neither sub-paragraph says anything about the parties' respective rights and duties in relation to a late objection. A late objection is therefore governed by general administrative law principles: it is a matter for the council whether to take it into account, and the court will not interfere with its decision in that regard, save on classic administrative law principles, i e unless the decision took into account irrelevant factors or failed to take into account relevant factors or was a decision which no reasonable council could, in all the circumstances, have made.

74 It might be said that the notion that the council can take into account late objections is inconsistent with paragraph 10(16), which appears to require the council to give notice to the applicant of only in-time objections. It does not seem to me that that presents any difficulties. Paragraph 10(16) is just like paragraph 10(15) and paragraph 10(18) in that it is only concerned with in-time objections. In the same way as the right and duty to consider late objections are governed by general administrative law principles rather than by paragraph 10, so is the question of whether the contents of late objections have to be communicated to the applicant. In that connection, it seems to me that the answer is clear: if such a late objection is to be taken into account by the council, then the applicant must be informed as to its contents in good time so as to be able to consider it and deal with it appropriately.

75 It is right to mention that this point is not without authority. The provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (which are to all intents and purposes identical to those of Schedule 2 to the 1985 Order) have been considered in a number of cases culminating in *Quietlynn Ltd v Plymouth City Council* [1988] QB 114. In that case, at pp 133A–134E, the Divisional Court considered and, in my view rightly, rejected the submission that a council could not take into account late objections.

A 76 That brings me to the second question, namely whether the decision of the council in the present case was none the less flawed because the committee did not expressly direct its mind to the question of whether or not to take into account late objections. In my judgment, there are two reasons why there is nothing in that point.

77 First, on the facts of this case, it seems to me that the committee could not have reached any conclusion other than that the late objections B should be admitted. Given that there is no suggestion of the objections being late for lack of good faith, the only reasons for not admitting the late objections would have been prejudice to the applicant or disruption to the council's business. Neither suggestion could possibly have been raised in this case, and indeed neither suggestion was raised. The respondent company had ample notice of the contents of all 70 objections, and their C effect had been fully reported to the committee. Even if there had been a failure by the committee to consider the issue, it could not have caused detriment to the company.

78 Secondly, on a fair reading of the documents, the committee did in fact properly and sufficiently address the question of whether or not to admit the late objections. As I have mentioned, the committee had Mr Martin's report which stated in terms that all but one of the objections D were received out of time, and the point was specifically raised before the committee by Mr Fox on behalf of the company. In those circumstances, I think it is unrealistic to suggest that the committee did not effectively address its mind to the question of whether to take into account the late objections. There could have been no point in Mr Martin and Mr Fox referring to the fact that objections had been received late, unless that was E a factor to be taken into account. On the facts of this case, at any rate, it seems to me unrealistic, at least in the absence of evidence in support, to conclude that the members of the committee were unaware of the existence of time-limits.

79 In some cases, the facts may be such that one would expect fuller consideration to have been given to the issue of whether to consider late objections. Here, however, as already mentioned, there was no question of F tactical lateness on the part of the objectors, or prejudice to the company or disruption to the council as a result of taking the late objections into account, so the consideration given to this issue was, in my view, quite sufficient.

80 There may well be two other reasons for reaching this conclusion. First, the company has effectively waived its right to take the point. It was G represented by a solicitor before the committee and by a barrister before the council, and they were clearly aware of the fact that 69 of the 70 objections had been received out of time. Yet on neither occasion was it argued that those late objections should not be taken into account. Secondly, even if the council should not have taken into account the late objections, it appears highly unlikely (to put it at its lowest) that it would have granted the H application if it had disregarded the late objections. Given that these two reasons were only touched on in argument, and do not need to be ruled on in order to determine this appeal, I shall say no more about them.

81 Accordingly, in respectful disagreement with the Court of Appeal, I consider that Weatherup J was right to dismiss the company's case on this issue.

*Article 10 of the Convention*

**82** My Lords, in my judgment, it is, necessary to answer three questions of principle in relation to the applicability of article 10 where a council refuses an application for a licence, and then to apply the answers to those questions to the facts of the present case.

**83** The first question which has to be considered is whether article 10 is engaged at all. Mr Richard Gordon, who appeared for the council, contended that it was not. Article 10 provides:

> "*Freedom of expression.*
>
> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority . . .
>
> "2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society . . . for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others . . ."

In my judgment, both as a matter of language and as a matter of principle, article 10 is indeed engaged in this case, albeit at a relatively low level, so far as the proposed use of the premises was for the sale of books, magazines and DVDs and the like. In addition to the respondent company's right to seek to disseminate such articles, the compilers, whether they are writers, photographers, film-makers or actors, are entitled to seek to express themselves through the medium of these articles; indeed members of the public wishing to buy and look at these articles have the right to seek to do so. The fact that some people may well find some or all of the articles in question offensive or damaging to public morality is catered for by the second part of article 10. Like many other fundamental rights, the right to freedom of expression must not be abused and can be subject to appropriate restriction. Indeed, when it comes to restrictions on the dissemination of pornographic material, the margin of appreciation afforded to member states must, it appears to me, be wide.

**84** Having decided that article 10 is, in principle, engaged in a case such as this, the second question is how it is engaged. Mr Gordon contended that the sole question of principle is whether the legislation in question, in this case the 1985 Order, complies with article 10. If it does comply, then it is not open to a disappointed applicant, such as the applicant in the present case, to raise an article 10 argument in relation to his own particular application. If that is right, then the applicant in the present case has effectively "sold the pass" by not contending that the 1985 Order does not comply with article 10.

**85** There is no doubt that in relation to some legislation the approach urged on us on behalf of the council is appropriate: see, for example, the view of the majority in *Kay v Lambeth London Borough Council* [2006] 2 AC 465, para 110. However, that does not seem to me to be the appropriate approach in the present case.

**86** *Kay* was a case concerned with the impact of article 8 (right to respect for private and family life) on the domestic law which gave a public authority landlord an unqualified right to possession of property occupied

A by temporarily homeless people and by gypsies. By a bare majority, your Lordships decided that, unless it could be shown that the domestic law did not achieve fair balance between the competing interests of occupiers of land and landowners, it would be compatible with article 8.

87 In my judgment, the present case is very different. It is not concerned with the property rights of a local authority, but with the exercise of a
B licensing jurisdiction which has been delegated by the legislature, through the medium of the 1985 Order, to a local authority which decides to adopt the provisions of Schedule 2. In other words, when exercising its functions under Schedule 2, a council is carrying out what may be characterised as a public administrative function; in that capacity, a council should carry out its functions in a manner, and to achieve a result, which is compatible with the Convention. That seems to me to follow from the provisions of section 6
C of the Human Rights Act 1998, which renders it "unlawful for a public authority to act in a way which is incompatible with a Convention right": section 6(1).

88 The third question to be considered is what the engagement of article 10 means in practice. In my judgment, it means that any decision reached by a council in relation to an application for a licence must comply
D with the Convention, and that, where a decision is challenged in this connection, it is a matter for the court to decide whether it does so comply. That seems to me to follow from the decision of this House in *R (SB) v Governors of Denbigh High School* [2007] 1 AC 100, a case concerned with article 9 of the Convention.

89 In that case Lord Bingham of Cornhill said, at paras 29 and 30:

E "29 . . . the focus at Strasbourg is not and has never been on whether a challenged decision or action is the product of a defective decision-making process, but on whether, in the case under consideration, the applicant's Convention rights have been violated . . .

"30 . . . the court's approach to an issue of proportionality under the Convention must go beyond that traditionally adopted to judicial review in a domestic setting . . . There is no shift to a merits review, but the
F intensity of review is greater than was previously appropriate . . . The domestic court must now make a value judgment, an evaluation, by reference to the circumstances prevailing at the relevant time . . . Proportionality must be judged objectively, by the court . . ."

To the same effect my noble and learned friend, Lord Hoffmann, said, at
G para 68:

"68 . . . In domestic judicial review, the court is usually concerned with whether the decision-maker reached his decision in the right way rather than whether he got what the court might think to be the right answer. But article 9 is concerned with substance, not procedure. It confers no right to have a decision made in any particular way. What matters is the
H result: was the right to manifest a religious belief restricted in a way which is not justified under article 9(2)?"

Article 9 is very similar to article 10, both in the nature of the topic with which it is concerned (freedom of thought, conscience and religion, a substantive right), and in the way it is structured (in two parts, the first of

which is concerned with identifying the right, and the second of which is concerned with permitted restrictions on the right). A

**90** In my view, therefore, the contention advanced by Mr Larkin, on behalf of the respondent company (which was accepted by the Court of Appeal), namely that, because article 10 is engaged, the council's decision was irretrievably flawed because it failed to take the company's article 10 rights into account when considering the application, is incorrect. The right issue to be considered, and which is to be determined by the court, is whether, in all the circumstances of this case, the council's decision to refuse the application infringed the company's article 10 rights. In connection with that issue, I respectfully agree with the analysis in para 37 and paras 45–47 of the speeches of my noble and learned friends, Baroness Hale of Richmond and Lord Mance, which I have had the benefit of reading in draft. B

**91** Because the issue involves careful scrutiny by the court of the decision, a council faced with an application for a sex establishment licence would be well advised to consider expressly the applicant's right to freedom of expression, and to take it into account when reaching a decision as to whether to grant or refuse the licence. While the fact that a council has expressly taken into account article 10 when reaching a decision cannot be conclusive on the issue of whether the applicant's article 10 rights have been infringed, it seems to me, consistently with what Lord Bingham and Lord Hoffmann said in the *Denbigh High School* case, at paras 31 and 68, that where a council has properly considered the issue in relation to a particular application, the court is inherently less likely to conclude that the decision ultimately reached infringes the applicant's rights. C D

**92** It is fair to say that it may not always be easy to see, or at least to express in clear terms, how an applicant's article 10 rights can satisfactorily be weighed against a council's decision to refuse a licence (or, indeed, could be factored in to a council's decision-making process when deliberating on whether to grant a licence). In the present case, what was at any rate the primary reason for refusing the application was the nil determination. It can be said with considerable apparent force that, where a council has made a nil determination in respect of a locality on environmental and social grounds, it is hard to see how the applicant's article 10 rights could justify the grant of a licence. I accept that this would be correct in the majority (possibly the great majority) of cases. However, the nil determination is a discretionary, and not a mandatory, ground of refusal, because it is within paragraph 12(2)(3), not paragraph 12(1). One can imagine circumstances where, for instance, the demand is so great, the level of objections is so low, the articles proposed to be sold are relatively inoffensive to any but the most prudish, and a nil determination is issued for every locality in the whole city or district, that article 10 considerations in a particular case could outweigh the effect of the nil determination. E F G

**93** I turn now to apply these conclusions to the facts of the present case. On a fair reading of the minutes, it seems clear that, in the last two meetings to which I have referred, the Committee decided to recommend rejection of the application for two reasons; the primary reason was in order to give effect to the nil determination; the second reason, which only applied in the event that the nil determination was either resisted or not put into effect, was that the application should be refused for the three-pronged reason of the respondent company being in breach of the legislation, Mr McCaffrey, who H

had been convicted of a relevant offence, having an interest in the company, and the company having been formed in order to make the application in place of Mr McCaffrey.

**94** In these circumstances, it seems to me positively fanciful to suggest that the decision to refuse the application could conceivably have infringed the company's article 10 rights. Assuming for the moment in favour of the company that the council's decision to refuse the application on the primary ground might have been incompatible with the company's article 10 rights, it seems to me inconceivable that the secondary grounds could possibly be similarly assailed. I arrive at this conclusion by taking into account the nature of the articles, namely pornographic books, magazines and videos, whose sale from the premises is precluded by the refusal of the application (and the consequent low level at which article 10 is engaged), and the three secondary grounds for refusing the licence, which speak for themselves.

**95** Turning to the primary ground for the refusal of the licence in this case, it appears to me clear that the assumption upon which the analysis in the previous paragraph proceeded was over-generous to the respondent company. In my judgment on the facts of the present case, the primary reason given by the council for refusing the application cannot possibly be said to fall foul of the company's article 10 rights. The reason put forward by the committee, as adopted by the council, for the nil determination for the Gresham Street locality, namely the proximity of certain public buildings and shops of particular attraction to children, and of places of worship, appears to me to represent a rational ground for making and adhering to a nil determination: indeed it is just the sort of assessment that a local authority is best able to judge. Article 10 is, as mentioned, engaged at a low level, and no special facts were advanced for departing from this determination by allowing the application. The effect of the refusal of the application was merely to prevent the sale taking place, at best, from buildings within the Gresham Street locality: it is not as if it has been suggested that the general policy of the council was to prevent the sale of pornographic articles anywhere in Belfast.

**96** It is not even as if the question of freedom of speech was wholly overlooked by the council (as the Court of Appeal appears to have thought). As already explained, the solicitor representing the respondent company told the committee that the right to free speech under the Convention was engaged by the application, and the minutes of the meeting record that what had been said on behalf of the company had been taken into account. While that cannot be said to suggest any sort of careful consideration of article 10, it does indicate that some regard was had to it. However, for reasons already given, that is not the essential point. The essential point is that, particularly when one looks at the reasons for refusing the application as a whole, and the fact that the company has not argued that there are any special features in this case (which might conceivably have justified a different result), such as, for instance, a policy on the part of the council which resulted in there being no sex shops anywhere in Belfast, there cannot be said to have been any article 10 infringement.

**97** Accordingly, it seems to me that Weatherup J reached the right conclusion on this issue also. The Court of Appeal appears to have reached the opposite conclusion, not so much on the basis that the council's refusal of the application represented a substantive breach of the company's

article 10 rights, but more on the basis that in failing to consider the company's article 10 rights, the refusal was, in effect, procedurally defective. Apart from the facts that it is at least arguable that the council did in fact consider and take into account the company's article 10 rights (albeit only cursorily), and that I would not accept that the Court of Appeal's conclusion follows from its premises, it seems to me that this analysis fell foul of the proper approach as laid down by this House in *R (SB) v Governor of Denbigh High School* [2007] 1 AC 100 (and it should be added that the decision of the Court of Appeal in this case predated your Lordships' decision that case).

*Article 1 of the First Protocol*

**98** In his submissions for the company, Mr Larkin, who appeared with Mr Reel, realistically accepted that, if he could not persuade your Lordships to uphold the decision of the Court of Appeal under article 10, then he would be bound to fail, essentially for the same reasons, in so far as his case rested on article 1 of the First Protocol.

**99** Article 1 of the First Protocol provides:

> "*Protection of property.*
>
> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law . . .
>
> "The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest . . ."

In my judgment, it is highly questionable whether the respondent's case can even get as far on article 1 of the First Protocol as it gets on article 10. In this case, your Lordships are concerned with the third limb of that article, control of use, in relation to which it is well established that member states are accorded a wide margin of appreciation when striking the balance between the general interest of the community and the requirement of the protection on an individual's rights under the Article: see for instance the observations of the Strasbourg court in *Jacobson v Sweden* (1989) 12 EHRR 56, para 55.

**100** While article 1 of the First Protocol is, as I see it, engaged in the present case, I find it impossible to conceive of circumstances in which a disappointed applicant for a sex establishment licence who could not show that a refusal contravened his article 10 rights could none the less succeed on the ground that it infringed his rights under article 1 of the First Protocol. It would be wrong to express a concluded view to that effect, because experience shows that circumstances can arise which are not foreseen by judges.

**101** None the less, it is appropriate briefly to refer to two decisions in this connection. The first is *ISKCON v United Kingdom* (1994) 18 EHRR CD 133, where the Commission, in a decision that the application in question was inadmissible, observed

> "that, as a general principle, the protection of property rights ensured by article 1 of Protocol Number 1 . . . cannot be used as a ground for claiming planning permission to extend permitted use of property".

A Secondly, there is the reasoning of the Court of Appeal in *In re UK Waste Management Ltd's Application for Judicial Review* [2002] NI 130, where the Court of Appeal similarly held that a refusal of planning permission could not give rise to an infringement of article 1 of the First Protocol. Carswell LCJ, giving the judgment of the court, said, at p 143F, that the applicant's "peaceful enjoyment of its property has not been disturbed" and that "still less is it a deprivation of [its] possessions". He also stated that, if B there had been any relevant interference "it was in the public interest and proportionate".

**102** It is perhaps also worth mentioning the decision of the Strasbourg court in *Fredin v Sweden* (1991) 13 EHRR 784 which concerned the revocation of an existing licence to extract gravel from land owned by the applicant. It was held that this did not infringe the applicant's rights under C article 1 of the First Protocol on the grounds that, even though the applicant suffered a substantial financial loss as a result of the revocation, and received no compensation therefore, the revocation, which was for environmental reasons, was within the wide margin of appreciation afforded to the state under the third limb of the article. Of course each case turns on its own facts, but if the revocation of an existing licence, with its substantial financial detrimental effect on the landowner, can be justified, it is indeed D hard to conceive circumstances in which the refusal of the grant of a licence for the use of a property for the selling of pornographic articles on any of the grounds set out in paragraph 12 could fall foul of the property owner's rights under article 1 of the First Protocol.

**103** In this case, I consider that the company's case on article 1 of the First Protocol is hopeless. That was the view of Weatherup J, but the Court E of Appeal, again approaching the issue in the wrong way (for the reasons given in *R (SB) v Governor of Denbigh High School* [2007] 1 AC 100), held that the decision of the council was flawed because it had not specifically addressed the respondent's rights under article 1 of the First Protocol. I am bound to add that, even if that had been a good point, it would seem to me fanciful to think that the council would (or even could) have come to a different conclusion from that which it did, if it had taken into account those F rights.

*Conclusion*

**104** In all these circumstances, I would allow the appeal and restore the order of Weatherup J dismissing the respondent company's application for judicial review.

G

*Appeal allowed with costs in House of Lords and Court of Appeal in Northern Ireland.*

*Solicitors: Director of Legal Services, Belfast City Council, Belfast; Fox & Associates, Belfast.*

H

M G

# R. (on the application of TC Projects Ltd) v Newcastle Justices

## 2006 WL 6619805

CO/2618/2006

Neutral Citation Number: [2006] EWHC 1018 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

THE ADMINISTRATIVE COURT

Royal Courts of Justice

Strand

London WC2

Wednesday, 26th April 2006

B E F O R E:

MR JUSTICE GIBBS

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THE QUEEN ON THE APPLICATION OF TC PROJECTS LIMITED

(CLAIMANT)

-v-

NEWCASTLE JUSTICES

(DEFENDANT)

(1) GROSVENOR CASINOS LIMITED

(2) STANLEY CASINOS LIMITED

(INTERESTED PARTIES)

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MR JOHN HOWELL QC (instructed by Berwin Leighton Paisner) appeared on behalf of the CLAIMANT

MR KEVIN DE HAAN QC (instructed by Joelson Wilson) appeared on behalf of the 1ST INTERESTED PARTY

- - - - - - -

J U D G M E N T

(As Approved by the Court)

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1. MR JUSTICE GIBBS: This is an application for permission by the claimant, as I shall call them, namely TC Projects Ltd, for judicial review of a decision of the Newcastle Justices made on 14 March 2006. This hearing was directed to be a hearing of the application for permission, to be followed, if appropriate, by the substantive hearing of the judicial review claim. By agreement between all the parties, I have proceeded to hear full argument on the claim itself since it concerns two discrete inter-related points.

2. The defendants are the Newcastle Justices. They have indicated that they do not wish to be heard by this court. The proceedings under review concerned the claimant's application for a casino licence to the defendants. There were two sets of objectors, the claimant and an organisation known as Stanley Casinos Limited. They have indicated to the court that they do not wish to make submissions in opposition to this claim. Accordingly, therefore, the effective contest in this claim is between the claimant and Grosvenor Casinos Limited, one of the interested parties, to whom I shall refer simply as "the interested party".

3. On 20 January 2006 the claimant applied for a casino licence to the Newcastle Justices. That application was governed by the provisions of Schedule 2 to the Gaming Act 1968, and in particular by paragraph 6 of that schedule. The schedule itself provides:

"(1) Not later than fourteen days after the making of any such application to the licensing authority, the applicant shall cause notice of the making of the application to be published by means of an advertisement in a paper circulating in the licensing authority's area.

(2) A notice published in pursuance of this paragraph shall specify the name of the applicant, the name of the club and the location of the relevant premises, shall indicate whether the application is for a bingo club licence or for a licence under this Act other than a bingo club licence, and shall state that any person who desires to object to the grant of a licence should send to the proper officer of the licensing authority, before such date (not being earlier than fourteen days after the publication of the advertisement) as may be specified in the notice, two copies of a brief statement in writing of the grounds of his objection."

4. The claimant's notice pursuant to that paragraph was published in the Newcastle Journal on

26 January 2006. It contained these words:

"Any person who desires to object to the grant of the licence should send to the clerk of the said gaming licensing committee before 9 February 2006 two copies of a brief statement in writing of the grounds of his objection."

5. I should perhaps add, although it is of limited consequence in the case, that the claimant had requested the Newcastle Journal to publish the notice on 25 January 2006. Had they done so, a significant amount of litigation might have been saved.

6. At the directions hearing, which took place on 14 March 2006, two objectors, namely the interested party and Stanley Casinos Limited, contended that the date specified in the notice should have been no earlier than 10 February 2006, ie one day later. It was submitted, therefore, and successfully submitted, that the defect in the notice rendered the proceedings a nullity and/or deprived the justices of jurisdiction to hear the application. The justices agreed with that submission, and it is the justices' decision in that regard that is challenged before this court.

7. The claimant submits by way of written argument, and by way of detailed submissions from Mr Howell QC before this court, that the notice in fact complied with the statutory requirement. A simple argument is advanced in support of this. 9 February was in fact the 14th day after publication of the advertisement. It cannot therefore by definition be a date earlier than 14 days after the publication.

8. The submission made by the interested party, so Mr Howell argues, that 14 clear days should elapse between the date of the publication of notice and the date specified in the notice cannot be sustained. It is true that, as Mr Howell concedes, there is a category of case in which 14 days may as a general rule be construed as 14 clear days. That category comprises those provisions which specify a minimum period that must elapse before something may be done. However, it is submitted that that is quite different from the situation in this case in which an objector is given a particular period within which to advance an objection.

9. The interested party's argument on the principle of reductio ad absurdum on the basis of substituting, by way of example, one day for the 14 days in the statutory provision is, it is argued by Mr Howell, simply not applicable to the facts of this case; it does not arise. Alternatively, Mr Howell submits that, even taking the example of one day, an objector would not in fact be deprived of the opportunity of putting forward an objection, although, as he concedes, it would of course be absurd for statute to provide such a short objection period.

10. Mr de Haan elaborates the arguments in favour of requiring 14 clear days' notice. Those arguments are set out in the statement of Mr David Clifton, which have been filed on behalf of the interested party and which I have read with care. Mr de Haan submits that, by specifying 9 February, the claimant was effectively giving the public only 13 days in which to object. The message conveyed was that 8 February was the last day upon which an objection could be sent. In principle, it is submitted that, in an important public notice giving the opportunity to object to the grant of a licence, 14 days should mean 14 clear days. He has referred me to legislation that preceded the Schedule under consideration, which makes it unequivocally clear

on any view that at least 14 clear days was required under that previous legislation, and submits that there is no reason to think that the intention of Parliament was to alter that position by the substituted present statutory provisions.

11. The submission is made that a 14-day period is in itself a short one for objections and should not be further truncated. For those principal reasons, and others developed in oral argument, the submission is made on behalf of the interested party that the notice was defective.

12. Further submissions were made on the assumption that the notice was defective. I hope I will be forgiven for not repeating extensively the arguments of counsel on that second issue.

13. In brief, however, Mr Howell submits that, even if the date specified was a day too early, the justices should not consider themselves as having been deprived of jurisdiction to determine the claimant's application. He submits that, whatever the position might have been in the past where such defects arose, the modern approach to such defects would be to consider the justice of the case, and as to whether, in particular, it can have been the intention of Parliament that the defect in question would be fatal to the proceedings. Based on such a test, Mr Howell submits that the answer to that must be a resounding "no".

14. Mr de Haan, on the contrary, refers the court to the older case law which makes it clear that the procedural provisions in the relevant schedule, and those which preceded it, should be regarded as a comprehensive code. He submits that, subject to certain very limited exceptions, a breach of that code should be fatal to the proceedings. He points out that proceedings such as these can easily be discontinued and fresh proceedings commenced, having regard to the fact that the licensing sessions take place quarterly, at least, in the course of each year.

15. Mr de Haan concedes that the modern approach to procedural defects is significantly more liberal than that which applied at the time of the earlier decisions, but submits that, even applying modern principles, the failure in this case is significant enough to render the proceedings a nullity.

16. I turn now to the statutory provisions insofar as they are material to the present application.

17. By paragraph 2A of the Schedule, it is provided as follows.

"(1) Each licensing authority shall for each year fix a day on each of the months of-

(a) January, April, July and October if the authority is in England or Wales ...

as a day on which, subject to paragraphs 7 and 13 of this Schedule, they will hold a meeting for the purpose of considering any application for the grant or renewal of a licence under this Act then awaiting consideration."

18. Sub-paragraph (2) provides for the holding of additional meetings. Sub-paragraph (3) provides for a certificate of consent to be issued for the purposes of an application for a licence. That certificate is required to identify a fit and proper person to hold the licence, and the provisions in that paragraph set out in detail the qualities of such a person. By paragraph 5

it is provided that an application for the grant of a licence under the Act may be made at any time.

19. By sub-paragraph (3) it is provided as follows:

"(3) Not later than seven days after the date on which the application is made, the applicant shall send a copy of the application-

(a) to the Board;

(b) to the appropriate officer of police;

(c) to the appropriate local authority;

(d) to the appropriate fire and rescue authority, if that authority is not the same body as the appropriate local authority; and

(e) to the appropriate collector of duty."

It is not here suggested that there was any failure in performance of that duty.

20. Paragraph 6 is the paragraph upon which this application turns and I have already quoted it in full earlier in the judgment.

However, in addition to that provision, paragraph 6 contains the following:

"(3) Not later than fourteen days before the date specified in the notice in accordance with the preceding sub-paragraph the applicant shall cause a like notice to be displayed outside the entrance to the relevant premises; and the applicant shall take such steps as he reasonably can to keep that notice so displayed until that date.

(4) A notice published or displayed under this paragraph shall not include any matter which is not required by the preceding provisions of this paragraph to be included in it."

That part of paragraph 6 was complied with because the notice was put up on 25 January.

21. Paragraph 7 provides for notice to be given by the licensing authority for the consideration of the application. That notice is to contain in writing the date, time and place of the meeting of the authority at which the application will be considered. Importantly, it is provided by that paragraph that notice be sent to the following:

"(a) to the applicant;

(b) to all the persons and bodies specified in paragraph 5(3) of this Schedule; and

(c) if the proper officer has received from any other person an objection in writing which has not been withdrawn and the address of that person is known to the proper officer, to that person."

22. It is significant here to note, first, that the persons and bodies specified in paragraph 5(3) are statutory consultees already mentioned in this judgment; and secondly that notice of the meeting has to be sent by the proper officer to objectors, whether or not their objection was

sent before the date specified in the notice under paragraph 6.

23. Provision is also made for the display of a further public notice of the hearing. By paragraph 14 it is provided as follows:

"(2) Except as provided by the preceding sub-paragraph, on any such application any of the following persons, that is to say-

(a) the applicant;

(b) any person from whom an objection in writing which has not been withdrawn was received by the proper officer of the licensing authority before the date on which he sent to the applicant the notice required by paragraph 7(2) ... or (as the case may be) the copy of that objection required to be sent to him by paragraph 13(5) of this Schedule; and

(c) the person making any other objection which the authority have decided under paragraph 15 of this Schedule that they will hear,

shall be entitled to be heard either in person or by counsel or a solicitor ..."

24. It is to be noted that the effect of this last provision is that any objector within sub-paragraph 2(b) is required to be heard on the application, whether or not that objection was lodged within the time specified in the paragraph 6 notice.

25. Paragraph 15 provides a more general discretion to allow the authority to entertain an objection received subsequent to the notice being sent. No doubt such discretion would be exercised in the interests of justice, provision being made by paragraph 15(b) to safeguard the interests of the applicant in the face of late objections.

26. I have considered with care the arguments put forward on both sides and I deal with the first issue: was the date specified in the claimant's notice a day too early? I approach that question initially in this way: the notice was published on 26 January 2006. For this purpose I disregard that day. The 9 February 2006 was the date specified in the notice before which objections should be sent. The 9 February 2006 was in fact the 14th day after 26 January and disregarding 26 January. The notice in abbreviated terms is required to state that "any person ... should send ... before such date (not being earlier than 14 days after the publication of the advertisement) as may be specified in the notice, two copies ... of the grounds of his objection".

27. It seems to me that 9 February is a date which complies with that statutory provision. It is not "earlier" than 14 days after 26 January. It is actually 14 days after 26 January. I am reinforced in this view by the fact that here the date specified was not in the context of a period on expiration of which an act may be done. In such cases I accept that the period is usually, although not invariably, measured in terms of clear days. That is to ensure that the person deriving benefit from the delay may enjoy the clear and full advantage of it.

28. In other categories of case, however, of which this is one, in my judgment the period is generally, although not invariably, considered as excluding the first day of the period, but including the final day. That approach, adopted in this case, would mean that the date specified

complied with paragraph 6 (see Halsbury's Laws Vol 45, para 235 under the title, "Period within which an act must be done". See also remarks at the commencement of the judgment of Lord Parker CJ in R v Long [1960] 1 QB 681 at page 683).

29. I therefore hold that the defendant was in error in declaring the proceedings a nullity or finding that they had no jurisdiction in the matter. However, extensive and helpful argument has been deployed before me on the second issue, ie if the date of the notice was a day too early, were the justices deprived of jurisdiction to determine the claimant's application? It seems to me useful, therefore, to give my view on the second issue, which of course arises only if I am wrong on the first.

30. Earlier decisions under previous legislation have described the statutory provisions as a comprehensive code, any significant breach of which would render the process a nullity and/or deprive the court of jurisdiction to hear the application in which the breach arises (see for example R v Leicester Gaming Committee ex parte Shine [1971] 1 WLR 1216 at page 1220, a judgment of Lord Widgery CJ).

31. Exceptions were made in very limited circumstances where there had been substantial performance and where the defect consisted of a slight error or mischance (see the judgment of Lord Denning in R v Newcastle-upon-Tyne Gaming and Licensing Committee ex parte White Hart Enterprises Limited [1977] 3 All ER 961).

32. It may be that the specification of a period for objection, which is too short by one day, could be described at any rate in many circumstances as more than a slight error or mischance. But I accept the submission of Mr Howell that times have changed. A new approach was hinted at by Wien J in R v Bournemouth Gaming Licensing Committee ex parte Dominion Leisure Limited, a case heard on 18 October 1978 (reference 295/78 at page 11, letter D). He posed the question whether the court would still be bound by earlier relevant decisions under more recent approaches to these matters.

33. There is no doubt that the law has significantly changed in relation to procedural breaches. Not least of the authoritative examples of the new approach are the cases of R v Sekhon and Others [2003] 1 WLR 1655, and the case of R v Secretary of State for the Home Department ex parte Jeyeanthan and Others [2000] 1 WLR 354. It may be helpful to cite from the latter decision, to which reference has been made by both counsel, part of the leading judgment of Lord Woolf:

"What should be the approach to procedural irregularities?

The issue is of general importance and has implications for the failure to observe procedural requirements outside the field of immigration. The conventional approach when there has been non-compliance with a procedural requirement laid down by a statute or regulation is to consider whether the requirement which was not complied with should be categorised as directory or mandatory. If it is categorised as directory it is usually assumed it can be safely ignored. If it is categorised as mandatory then it is usually assumed the defect cannot be remedied and has the effect of rendering subsequent events dependent on the requirement a nullity or void or as being made without jurisdiction and of no effect. The position is more

complex than this and this approach distracts attention from the important question of what the legislator should be judged to have intended should be the consequence of the non-compliance. This has to be assessed on a consideration of the language of the legislation against the factual circumstances of the non-compliance. In the majority of cases it provides limited, if any, assistance to inquire whether the requirement is mandatory or directory. The requirement is never intended to be optional if a word such as 'shall' or 'must' is used.

A requirement to use a form is more likely to be treated as a mandatory requirement where the form contains a notice designed to ensure that a member of the public is informed of his or her rights, such as a notice of a right to appeal. In the case of a right to appeal, if, notwithstanding the absence of the notice, the member of the public exercises his or her right of appeal, the failure to use the form usually ceases to be of any significance irrespective of the outcome of the appeal. This can confidently be said to accord with the intention of the author of the requirement.

There are cases where it has been held that even if there has been no prejudice to the recipient because, for example, the recipient was aware of the right of appeal but did not do so, the non-compliance is still fatal. The explanation for these decisions is that the draconian consequence is imposed as a deterrent against not observing the requirement. However even where this is the situation the consequences may differ if this would not be in the interests of the person who was to be informed of his rights.

Because of what can be the very undesirable consequences of a procedural requirement which is made so fundamental that any departure from the requirement makes everything that happens thereafter irreversibly a nullity it is to be hoped that provisions intended to have this effect will be few and far between. In the majority of cases, whether the requirement is categorised as directory or mandatory, the tribunal before whom the defect is properly raised has the task of determining what are to be the consequences of failing to comply with the requirement in the context of all the facts and circumstances of the case in which the issue arises. In such a situation that tribunal's task will be to seek to do what is just in all the circumstances..."

There then follows a list of cases in which the issue was considered, and some further examples given by Lord Woolf.

34. In this case, the statutory provisions use words equivalent to "shall" or "must". No express mention is to be found in the statute of the consequences of non-compliance. Approaching this case with those remarks in mind and with the modern approach to defects in procedure generally in mind, I come to the following views.

(1) The purpose of the legislation now being considered was substantially, although not fully, achieved by the specification in the notice of a date which was one day too early.

(2) It is an important consideration, although not the only one, that, in theory at any rate, a member of the public might have been discouraged from exercising a right to object.

(3) No member of the public can be shown to have been so discouraged. No objectors have

emerged in fact in response either to the newspaper notice or the site notice.

(4) It is, on the facts, highly improbable that a genuine objector would have been deterred from advancing his or her objection on 9 February, having discovered his right on that day.

(5) In the again highly unlikely event of a genuine objector finding out about the proposed application on 9 February, it is overwhelmingly probable that that objector would have pursued the objection notwithstanding the terms of the notice. Had he done so, he would have been permitted to. I have to enter one caveat to that last proposition. He would have been entitled to advance his objection by right, up to the date of notification of the hearing of the claimant's application. Thereafter, it would have been a matter of discretion for the justices. Despite all best endeavours by counsel and others on both sides, it has not been possible to find the date upon which notice of hearing was given to the parties. It is likely to have been after 9 February, but no one can be absolutely sure.

(6) The shortfall of one day was not deliberate and not even significantly culpable on the part of the claimant. It arose apparently from an error on the part of the paper in which the advertisement was reserved.

(7) Notwithstanding the importance of giving objectors proper right to object, the situation which arises in this case is, in my judgment, significantly different from that which arises where notice is given to a litigant of a right of appeal. In such a case, the court, and the process of litigation, is properly concerned with the preservation or restoration of the individual rights of the litigant which have either been refused or removed, or are likely to be refused or removed, by a finding against him in those proceedings. A significant distinction, in my judgment, can be drawn between the position of such a litigant and that of a potential objector to a licence.

35. In conclusion, the points just enumerated arise on the particular facts of this case. Therefore the view that I have formed about them is not necessarily intended as a guide to the effect of procedural defects in other situations. It is plain from the extract from the judgment of Lord Woolf cited above that the Tribunal in a particular case must approach it in the context of the individual facts and circumstances of that case. It may well be that procedural defects more serious than this, particularly if they are deliberate or flagrant defects, will be significant enough to deprive the Tribunal in question of jurisdiction. In my judgment, however, the defect in this case does not approach that degree or status. It can properly be regarded as a defect which has prejudiced nobody and probably never gave rise even to the real possibility of prejudicing anybody.

36. For all those reasons I conclude the second issue in favour of the claimant, as well as the first. I therefore grant the application for permission and grant the substantive claim for judicial review.

37. MR HOWELL: My Lord, I would like your Lordship to make a quashing order in respect of the magistrates' decision, which is the consequence. My Lord, I would also invite your Lordship to make an order for costs in favour of the claimant against the interested party. A schedule of costs has been delivered. I do not think my learned friend has any problems with that.

38. MR JUSTICE GIBBS: Mr de Haan, do you have any problems with the principle or detail of that?

39. MR DE HAAN: The detail obviously. In terms of the principle I would make these remarks. Your Lordship rightly remarked at the beginning that if a couple of days either side had been allowed, one would not be here because to some extent the claimants are the author of their own misfortune.

40. The other point I would make is that this was an important point in the public interest, because these date points are very relevant and do raise their heads in these proceedings. My Lord, as far as the quantum is concerned, I would only say that it is twice the amount of the schedule that was put in by the interested party here. It does seem quite high, I think.

41. MR JUSTICE GIBBS: I think I have had the schedule delivered to me.

42. MR DE HAAN: Your Lordship should have both.

43. MR JUSTICE GIBBS: Yes, I do. Are there any particular items to which you take objection, apart from the general point about the size. The claimant's costs are generally rather greater than a defendant or an interested party.

44. MR DE HAAN: In principle, yes. Perhaps not as great in the circumstances. Would your Lordship give me a moment?

45. MR JUSTICE GIBBS: Yes.

46. MR DE HAAN: My Lord, I am not going to be very popular with my learned friend. Counsel's fees, I am instructed, are quite high in comparison with those of the interested party.

47. MR JUSTICE GIBBS: Yes. Any other matters?

48. MR DE HAAN: My Lord, no.

49. MR JUSTICE GIBBS: Essentially this is always done on the basis of a broad brush approach. I am sure that, particularly at this stage, Mr Howell's fees are considered more than good value for money. But nevertheless I shall assess the overall total at £40,000.

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## Gilchrist Sally - HQ Directorate of Legal Services

**From:** Business Licence [business.licence@brent.gov.uk]

**Sent:** 07 June 2018 12:10

**To:** Chan, Esther; LSCB Brent; ENS Food Safety; ENS Noise Team; ENS Public Safety; ENV Trading Standards Brent & Harrow; Figueiredo, Susana; Fire; Licorish, John; Miller-Johnson, Lavine; Patel, Yogini; Pest Control; Planning Enforcement Team; Planning North Team; Planning South Team; Licensing - QK; publichealthlicensing; Home Office

**Cc:** Legister, Linda

**Subject:** Application REINSTATED: New Premises - 5 Heather Park Parade, Heather Park Drive, HA0 1SL - 11841

Dear all,

Please note this application has been reinstated and will proceed to hearing.

Kind Regards,

Vanesha Seegoolam
Administration Officer
Planning, Licensing & Transportation
Brent Council

(020) 8937 5359

www.brent.gov.uk
@Brent_Council

**From:** Business Licence
**Sent:** 22 May 2018 15:26
**To:** Chan, Esther <Esther.Chan@brent.gov.uk>; LSCB Brent <brent.lscb@brent.gov.uk>; ENS Food Safety <ens.foodsafety@brent.gov.uk>; ENS Noise Team <ens.noiseteam@brent.gov.uk>; ENS Public Safety <ens.publicsafety@brent.gov.uk>; ENV Trading Standards Brent & Harrow <TradingStandardsBrent&Harrow@brent.gov.uk>; Figueiredo, Susana <Susana.Figueiredo@brent.gov.uk>; Fire <FSR-AdminSupport@london-fire.gov.uk>; Licorish, John <John.Licorish@brent.gov.uk>; Miller-Johnson, Lavine <Lavine.Miller-Johnson@brent.gov.uk>; Patel, Yogini <Yogini.Patel@brent.gov.uk>; Pest Control <Pest.Control@brent.gov.uk>; Planning Enforcement Team <planningenforcement@brent.gov.uk>; Planning North Team <planningnorth@brent.gov.uk>; Planning South Team <planningsouth@brent.gov.uk>; Police <licensing-qk@met.pnn.police.uk>; publichealthlicensing <publichealthlicensing@brent.gov.uk>; Home Office <alcohol@homeoffice.gsi.gov.uk>
**Subject:** Application REJECTED: New Premises - 5 Heather Park Parade, Heather Park Drive, HA0 1SL - 11841

Dear all,

This application has been rejected due to inconsistent information provided on the application form.

Please do not consult on this application. It has been returned to the applicant.

Kind Regards,

Vanesha Seegoolam
Administration Officer
Planning, Licensing & Transportation
Brent Council

(020) 8937 5359

www.brent.gov.uk
@Brent_Council

**From:** Business Licence
**Sent:** 01 May 2018 15:50
**To:** Chan, Esther <Esther.Chan@brent.gov.uk>; LSCB Brent <brent.lscb@brent.gov.uk>; ENS Food Safety <ens.foodsafety@brent.gov.uk>; ENS Noise Team <ens.noiseteam@brent.gov.uk>; ENS Public Safety <ens.publicsafety@brent.gov.uk>; ENV Trading Standards Brent & Harrow <TradingStandardsBrent&Harrow@brent.gov.uk>; Figueiredo, Susana <Susana.Figueiredo@brent.gov.uk>; Fire <FSR-AdminSupport@london-fire.gov.uk>; Licorish, John <John.Licorish@brent.gov.uk>; Miller-Johnson, Lavine <Lavine.Miller-Johnson@brent.gov.uk>; Patel, Yogini <Yogini.Patel@brent.gov.uk>; Pest Control <Pest.Control@brent.gov.uk>; Planning Enforcement Team <planningenforcement@brent.gov.uk>; Planning North Team <planningnorth@brent.gov.uk>; Planning South Team <planningsouth@brent.gov.uk>; Police <licensing-qk@met.pnn.police.uk>; publichealthlicensing <publichealthlicensing@brent.gov.uk>
**Subject:** CONSULT: New Premises - 5 Heather Park Parade, Heather Park Drive, HA0 1SL - 11841

LICENSING ACT 2003
Licence: New Premises
Reference: 11841

Dear Sir/Madam,

Applicant: **Mrs Bindal Givan Velgi**
Premises: **DIU Restaurant, 5 Heather Park Parade, Heather Park Drive, HA0 1SL**

An application was made to Brent Council under the Licensing Act 2003 by the above-named applicant. If you would like to make a representation please respond by return. Representations must specify in detail the grounds of opposition and must relate to the promotion of the licensing objectives.

In order that consideration of the application may not be delayed, it will be appreciated if a reply can be sent to us by **29 May 2018.**

Kind Regards,

Vanesha Seegoolam
Administration Officer
Planning, Licensing & Transportation
Brent Council

(020) 8937 5359

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@Brent_Council

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**Sent:** 22 May 2018 15:26

**To:** Chan, Esther; LSCB Brent; ENS Food Safety; ENS Noise Team; ENS Public Safety; ENV Trading Standards Brent & Harrow; Figueiredo, Susana; Fire; Licorish, John; Miller-Johnson, Lavine; Patel, Yogini; Pest Control; Planning Enforcement Team; Planning North Team; Planning South Team; Licensing - QK; publichealthlicensing; Home Office

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Kind Regards,

Vanesha Seegoolam
Administration Officer
Planning, Licensing & Transportation
Brent Council

(020) 8937 5359

www.brent.gov.uk
@Brent_Council

**From:** Business Licence
**Sent:** 01 May 2018 15:50
**To:** Chan, Esther <Esther.Chan@brent.gov.uk>; LSCB Brent <brent.lscb@brent.gov.uk>; ENS Food Safety <ens.foodsafety@brent.gov.uk>; ENS Noise Team <ens.noiseteam@brent.gov.uk>; ENS Public Safety <ens.publicsafety@brent.gov.uk>; ENV Trading Standards Brent & Harrow <TradingStandardsBrent&Harrow@brent.gov.uk>; Figueiredo, Susana <Susana.Figueiredo@brent.gov.uk>; Fire <FSR-AdminSupport@london-fire.gov.uk>; Licorish, John <John.Licorish@brent.gov.uk>; Miller-Johnson, Lavine <Lavine.Miller-Johnson@brent.gov.uk>; Patel, Yogini <Yogini.Patel@brent.gov.uk>; Pest Control <Pest.Control@brent.gov.uk>; Planning Enforcement Team <planningenforcement@brent.gov.uk>; Planning North Team <planningnorth@brent.gov.uk>; Planning South Team <planningsouth@brent.gov.uk>; Police <licensing-qk@met.pnn.police.uk>; publichealthlicensing <publichealthlicensing@brent.gov.uk>
**Subject:** CONSULT: New Premises - 5 Heather Park Parade, Heather Park Drive, HA0 1SL - 11841

LICENSING ACT 2003
Licence: New Premises
Reference: 11841

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Premises: **DIU Restaurant, 5 Heather Park Parade, Heather Park Drive, HA0 1SL**

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In order that consideration of the application may not be delayed, it will be appreciated if a reply can be sent to us by **29 May 2018.**

Kind Regards,

Vanesha Seegoolam
Administration Officer
Planning, Licensing & Transportation
Brent Council

(020) 8937 5359

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TERRITORIAL POLICING

**The Licensing Authority**
*Brent Civic Centre*
*Engineers Way*
*Wembley*
*Middlesex*
*HA9 0FJ*

**Your ref: 11841**

**Our ref:** 01QK/203/18/157

**Brent Borough Licensing Department**
*Wembley Police Station*
*603 Harrow Road*
*Wembley*
*HA0 2HH*
**Tel:** 07824868710
**Email:** nicola.mcdonald@met.police.uk
**Web:** www.met.police.uk

**Date:** 22/06/2018

**Police representation to Premises Licence application for 'Diu Restaurant' 5 Heather Park Parade, Wembley, HA0 1SL.**

I certify that I have considered the application shown above and **I wish to make representations** that the likely effect of the grant of the application is detrimental to the Council's Licensing Objectives for the reasons indicated below.

Officer: **Nicola McDonald**
**Licensing Constable PC 157QK**

An officer of the Metropolitan Police, in whose area the premises are situated, who is authorised for the purposes of exercising its statutory function as a 'Responsible Authority' under the Licensing Act 2003.
The application has been made for a premises licence under section 17 of the act.

The Police representations are concerned with Crime and disorder, public nuisance and public safety licensing objectives.

Police representations to this application fall outside the 28 day consultation period. This is because police were misdirected by the licensing authority on 22nd May, informed this application had been rejected. Police were informed by the licensing authority on 7th June (outside the consultation period) that the application had been reinstated and it would proceed to a hearing.

Diu Restaurant has been recognised over the last 3 years as Dui Bar ltd and Diu Clubs ltd, the owner of these companies is/was Mr Priteche VELGI who is the husband of the applicant Mrs Bindal Givan VELGI.

Police have had numerous dealings with Priteche VELGI since his time of operating 5 Heather Park Parade in June 2016. He has numerous**********
On **24th October 2017** Diu Bar Ltd was dissolved by companies house and subsequently the premises licence was suspended by the licensing authority.
However from this time Police have received complaints from local residents with regard to noise from the premises, that the premises was still opening to the public and providing licensable activities however customers were entering from the rear of the premises not the front.

These complaints were reinforced when on **17th March 2018** at 1700 hours I visited the venue in full uniform in company with PC Cowley. The front of the premises was all locked up, and the shutters down. I went to the rear of the premises and found the fire exit door unlocked and slightly ajar. I pulled it open and discovered eight Asian males inside. Four of the males were smoking (breaching Health Act legislation). Only two of the males were willing to speak with me, one gave his name as [redacted] and the other [redacted]. I was informed the boss was Priteche Velgi. There was a male in the kitchen preparing and cooking food, as well as eat in, customers turn up and the rear of the premises and collect take aways. Two males in the venue drinking from bottles of Carlsburg larger. The bar was open lights on and fully stocked with alcohol. There is a large flat screen TV showing TV2 sport channel from either Spain or Portugal (Valencia V Alves). There were numerous health and safety issues around cooking equipment, smokers and customers locked inside the venue. The only exit route via the rear door was passed the entrance to the kitchen. I advised the males of this and informed them that no licensable activities must take place. There was a large amount of rubbish and waste at the rear of the premises including alcoholic drinks containers. My details provided for Mr Velgi to contact me.

**On 20th March 2018** I had a meeting with Priteche Velgi the Licensing manager for Brent and Mr Suruendran VALLI a friend of Mr Velgi and also acting as his accountant.
Mr Valli explained that companies house had dissolved Diu bar Ltd because Mr Velgi owes monies and he had failed to submit his accounts. Mr Valli was attempting to get the company re-instated once Mr Velgi had paid all his debts.

On **Tuesday 27th March 2018** **********

**1st May 2018** this application was received for a new premises licence application

On **19th May 2018** Police had a meeting at Brent Civic Centre with the applicant Bindal and her husband Priteche to discuss the application.

My initial obvious were that Bindal remained quiet to all questions. Piteche was forthcoming with information that he owns a 25 year lease for the premises, the free holder is [redacted] and he pays £1500 rent per month and £12,000 annual business rates. Piteche is no longer dealing with his accountant Mr Valli and the company Diu Bar Ltd has not been re-instated, hence this new Premises licence application. He was unwilling to discuss and financial matters and when I asked about the showing of Sky TV without correct authority he became agitated and told me he was not willing to discuss further.

I verbally confirmed with the couple that the applicant was in fact Bindal and directed further questions to Bindal. She was very nervous and constantly looked towards Priteche for confirmation of her answers. It very quickly became obvious that Bindal had not had any involvement in the application process. She explained the venue as a family restaurant selling Indain and Portuguese food, opening from 1000 hours to 2300 hours daily. When asked about the supply of alcohol she said 'just normal times'. When asked about entertainment and what would be provided she said 'I don't know'. When asked if she would permit children on the premises she said 'yes until 11pm when we close'. She said she has two female Portuguese chefs (family members) and another female member of staff [redacted] (however she is not a personal licence holder). I asked if she was aware of any planning permissions she would be breaching by operating at such early hours of the morning, she looked confused but said 'no we won't be open after 11pm'. It also became apparent that Bingal has two small children and is currently working in a restaurant called Zaika in Knightsbridge. It is unknown if she will give up other work when DIU restaurant opens.

Priteche VELGI is aware he is not a fit and proper person to operate a licensed premise, therefore he has made this application in his wife's name. He remains the leaseholder. He is manipulating the application process, she will be in name only yet the daily running and decision making will be Priteche VELGI.
I strongly suspect that the new applicant is simply acting at the wishes of her husband.

**As such, the grant of this new application would undermine the licensing objectives and Police ask it be refused.**

**However if the committee chose to grant this licence Police require the following in order to promote the licensing objectives:**

**Excessive hours**
This address is located in a small parade of shops in a residential area, including residential buildings above. Police have received complaints of noise. Can the applicant provide planning consent to show the premises can open to the public until the very early hours of the morning as applied for?
**Police request the seasonal variations be removed from the application.**
During my meeting with the applicant she told me the premises was a family restaurant opening until 2300 hours. The application states 'a restaurant'.
**Police request the timings of licensable activities cease at 2230hours and then as suggested by the applicant close to the public at 2300 hours. A temporary event notice can be submitted for any exceptional activities.**

**Police request the following conditions be attached to annex 2 of the premises licence if licensable activities are permitted after 2230hours:**

Door supervisors of a sufficient number and gender mix, shall be employed from 2200 hours on any day when the premises are open after 2300 hours.

Door supervisors shall wear clothing that can be clearly and easily identified on CCTV.

A register/log containing the names, badge number, dates & times of duty of security staff and any incidents that occur shall be kept and made available to the Police and Licensing Authority.

**Police request the following conditions be attached to Annex 2 if the committee grant the licence regardless of authorised hours:**

CCTV shall be installed to Home Office Guidance standards and maintained in a good working condition and recordings shall be kept for 31 days and shall be made available to police and authorised Officers from Brent Council upon request.

CCTV cameras shall be installed to cover the entrance of the premises

A personal Licence holder shall be present on the premises and supervise the sale of alcohol throughout the permitted hours for the sale of alcohol.

Any staff directly involved in selling alcohol for retail to consumers, staff who provide training and all managers will undergo regular training of Licensing Act 2003 legislation. This will be documented and signed for by the DPS and the member of staff receiving the training. This training log shall be kept on the premises and made available for inspection by police and relevant authorities upon request.

Customers shall not be permitted to take open vessels outside the premises as defined on the plan submitted to and approved by the Licensing Authority.

Children shall not be permitted on the premises unless accompanied by a responsible adult. All children shall leave the premises by 2300 hours.

All doors and windows shall remain closed during any licensable activity

An incident log shall be kept at the premises, and made available for inspection on request to an authorised officer of Brent Council or the Police, which will record the following:

(a) all crimes reported to the venue
(b) all ejections of patrons
(c) any complaints received
(d) any incidents of disorder
(e) all seizures of drugs or offensive weapons
(f) any faults in the CCTV system or searching equipment or scanning equipment
(g) any refusal of the sale of alcohol
(h) any visit by a relevant authority or emergency service.

The supply of alcohol at the premises shall only be to a person seated taking a table meal there and for the consumption by such a person as ancillary to their meal.

The supply of alcohol shall be by waiter or waitress service only.

Customers should not be allowed to sit, stand or be served from the bar area.

Yours Sincerely

**Nicola McDonald PC 157QK**
**Licensing Constable Brent Police**

**Agenda Item 7**

**Application for a New Premises Licence by Mr Priteche Velgi for the premises known as Fudam Restaurant (238A Ealing Road Wembley HA0 4QL), pursuant to the provisions of the Licensing Act 2003**

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Brent Civic Centre
Engineers Way
Wembley
Middlesex HA9 0FJ
TEL 020 8937 5641
EMAIL paul.harris@brent.gov.uk
WEB www.brent.gov.uk

To Brent Licensing by email

14 June 2018

**Licensing Representation to the Application for the new Premises Licence for Fudam Restaurant 238a Ealing Road, Wembley, HA0 4QL ref 11822.**

I certify that I have considered the application shown above and I wish to make a representation as an:

**officer of Brent and Harrow Trading Standards Service, Brent Civic Centre, Wembley HA9 OFJ, in whose area the premises are situated, which is authorised for the purposes of exercising its statutory function as a 'Responsible Authority' under the Licensing Act 2003.**

The application has been made for a new premises licence under section 17 of the Act.

The Brent and Harrow Trading Standards Service representation is concerned with the licensing objective;

- the prevention of crime and disorder;

**REPRESENTATION**

Background History to licence application ref 11822 – Priteche Velgi at Fudam Restaurant, 238A Ealing Road, Wembley HA0 4QL.

23/12/2016 A complaint was received by Brent and Harrow Trading Standards Service from a resident about a business premises at 226 Ealing Road, Wembley HA0 4QL alleging it was selling single cigarettes to children before and after school.

18/1/2017- Trading Standards (TS) Officers Paul Harris and Ali Bandukwalla visited the premises at Unit A, 226 Ealing Road, Wembley HA0 4QL. The staff member, who was present stated that the business didn't sell tobacco. A man who identified himself as **Mr Pritesh Valgi** and the owner of the business arrived during the visit. He said he was the director of Diubazar Ltd which ran the business. He gave his address at a flat in west London. He said his date of birth was [redacted]. He said his mobile phone number was [redacted]

During this visit TS Officers seized 122 x 10g unit packs and 23 x 20g unit packs of chewing tobacco, two unit packs of cigarettes that had been opened and four unit packs of cigarettes. None of the products had the statutory health warnings on them. There were no business ownership details on display. Paul Harris

asked for the invoices for the illicit tobacco to be supplied as these would have been used to pursue any leads to the potential supplier.

Subsequent to the visit it was noted that Diubazar Ltd had been dissolved at a prior date on 20/9/2016 and that the director was recorded as **Priteche Velgi**. Paul Harris phoned the contact known as Pritesh Valgi on 18/1/2017 to clarify the position. The contact said the intention was to restart the Limited company. He said at present he was the sole owner of the business with no other partners. Paul Harris asked if he had obtained the invoices. He said he would send them.

On 19/1/2017 Paul Harris phoned the contact to confirm the spelling of his name and was told that the spelling of the name was **Pritesh Velgi**. He said he would supply invoices for the tobacco products by 23/1/17.

As no invoices were supplied by 23/1/17 and because Pritesh Velgi said he was the owner of the business a Letter of Warning was issued to Mr Pritesh Velgi on 27/2/2017. This stated that having tobacco products without the statutory health warnings for supply and not displaying business ownership details were criminal offences against the Tobacco and Related Products Regulations 2016 and the Companies Act 2006. The letter provided a link to guidance on compliance with tobacco packaging. **Document 1.**

On 17/3/17 Pritesh Velgi signed a disclaimer of the property seized on 18/1/17 for destruction. **Document 2.**

On 28/6/17- TS officers, Paul Harris and Ali Bandukwalla, carried out a follow up visit to the premises at Unit A, 226 Ealing Road, Wembley HA0 4QL to check if the business had stopped selling illicit tobacco and to see if ownership details had been displayed.

The person behind the counter in the shop put Paul Harris on the phone to Pritesh Velgi. Pritesh Velgi said he was the manager. He said he didn't have details of a director.

During the visit the following were found and seized because they did not have the correct statutory health warnings on them:

98 unit packs of tobacco products for smoking – 42 pack of cigs, 56 beedies.

833 unit packs of smokeless tobacco products – approximate weight 26Kg

19 Nicotine Inhaling products (NIPS).

The retail value of the smokeless tobacco was estimated as £1,169. The estimated retail value of the smoking products was £75 (£3 for 25) for cigarettes, £31 for beedies (£1 each). The estimated retail value of the NIPS was £152 (£8 each). The total estimated retail value was £1,427.

No business ownership details were on display.

See **Document 3** for confirmation of the visit being a copy of the witness statement by Paul Harris dated 15/11/17 produced for the prosecution of Pritesh Velgi by Brent and Harrow Trading Standards.

Checks on the records of Companies House showed that a firm called Diubazzar Ltd [redacted] was incorporated on 19/1/2017 with a Mr Vijaykumar Velgi as the sole Director and a registered address of 226 Ealing Road. The certificate of incorporation said the sole shareholder was Mr Vijaykumar Velgi and gave a a separate address for him. **Document 4.**

An application for an alcohol licence for 226 Ealing Road premises had been made in the name of Diubazzar Ltd. During the visit the DPS applicant, Mrs Bindal Givan Velgi arrived. The shop was not selling alcohol at that time. She said she did not have details of the director. **Document 5.**

On 11/7/17 a letter to Vijaykumar Velgi asking him to attend an interview under caution to answer questions on the matters arising from the TS visit on 28/6/17 was hand delivered to the registered address of Diubazzar Ltd at 226 Ealing Road. **Document 6.**

On 21/7/17 as there was no reply a follow up letter was sent in the post. **Document 7.**

On 10/8/17 it was noted that the licence application for 226 Ealing Road had restarted. On 11/8/17 Paul Harris phoned the third party agent for the application and agreed to send copies of the invitations to interview under caution to be forwarded to Vijaykumar Velgi. These were sent by email to the agent on 11/8/17. **Document 8.**

On 11/9/17 Paul Harris called the agent as there had been no reply. The agent said the husband of the DPS applicant had told him that Vijaykumar Velgi was not the current owner.

It was noted that Pritesh Velgi had stated he had a controlling association with the business and Bindal Givan Velgi had attended during the TS visit and had applied to be the DPS for the premises. Her address as the DPS applicant was stated to be the same as the shareholder's address (that is Vijaykumar Velgi) of Diubazzar Ltd. She was therefore linked to the Diubazzar Ltd's sole director, Vijaykumar Velgi, who had provided the same address on the certificate of incorporation. As there had been no response from the director of the company and because of the links between the DPS to the licence applicant, attempts were therefore made to contact Bindal Givan Velgi to attend an interview under caution about the matters of 28/6/17. In addition attempts were made to contact Pritesh Velgi to attend an interview under caution as he had said he had a controlling role in the business both at the time of the original visit and on 28/6/17.

On 13/9/17 Paul Harris called the mobile number we had on record for Pritesh Velgi but was unable to connect. On 14/9/17 Paul Harris called and was able to leave a message for Pritesh Velgi to contact him. No reply was received

On 18/9/17 Paul Harris sent letters to Pritesh Velgi at 226 Ealing Road and the home address given by Pritesh Velgi in January 2017 inviting him to attend an interview under caution. **Documents 9 and 10.**

On 18/9/17 Paul Harris sent letters to Bindal Givan Velgi at 226 Ealing Road and to the address shown on her DPS application and shared with sole shareholder of the firm Diubazzar Ltd, Vijaykumar Velgi, inviting her to attend an interview under caution. **Documents 11 and 12.**

By 10/10/17 no reply was received to these letters so the premises at 226 Ealing Road was revisited. During this visit 4 open tins of tobacco (50g each ) with incorrect health warnings were seized. Mrs Bindal Velgi arrived in the shop as she said the staff had phoned her. She did not have contact details of Vijaykumar Velgi. She said he did not live at the address given by her on her DPS application. She said

Pritesh Velgi was her husband and he was the manager. She said Pritesh Velgi did have the contact details and would be able to contact Vijaykumar Velgi but Pritesh Velgi was out of the country for a couple of days. Paul Harris asked for Pritesh Velgi to contact him within two days with contact details for Vijaykumar Velgi. There was still no business name on display.

No subsequent contact was made by Vijaykumar Velgi, Pritesh Velgi or Bindal Velgi.

On 11/10/2017 an attempt was made to test purchase tobacco paan from 226 Ealing Road was made by a TS officer but no tobacco was sold.

This Service prosecuted Mr Pritesh Velgi on 6 February 2018 for offences under The Tobacco and Related Products Regulations 2016 for the seizures made on 28/6/17 and 10/10/17 where tobacco and nicotine inhaling products did not have the correct health warnings on them. He pleaded guilty to the charges and therefore confirmed he was the controlling mind for the business.

**Objection**

It is our contention that the applicant Priteche Velgi is an alias for Pritesh Velgi on the grounds that the date of birth and phone number supplied by Pritesh Velgi are the same as the applicant for the licence at Fudam Restaurant.

Brent and Harrow Trading Standards would object to the granting of the Alcohol Licence to Priteche Velgi in terms of the following licensing objective:

1) Prevention of Crime and Disorder

Priteche Velgi has had a business under his control, under various names and legal entities, in which on three visits by Trading Standards there has been found illegal tobacco products and on one occasion illegal nicotine inhaling products.

He ignored an advisory letter not to have such material on a business premises under his control.

Priteche Velgi and the associated names in the business at 226 Ealing Road did not respond to the requests for interviews. He therefore failed to engage with Trading Standards to explain the source of the illicit tobacco and why it was on the business premises. This indicated that the controlling elements of the business did not regard the prevention of crime as a priority and did not seek to assist in pursuing the supply chain of this material. This raises concerns of the ability and willingness of Priteche Velgi to co-operate and assist authorties in the control of alcohol if he was granted a licence.

As Priteche Velgi has been willing to provide an ongoing supply of illegal tobacco it would not be appropriate to grant a licence where he would be in a position to supply alcohol which can also be sourced for supply on an illegal basis

The persistant presence of illegal products for supply in the businesses at 226 Ealing Road run by Priteche Velgi indicates that there was a determined effort to commit crime rather than prevent crime and disorder.

Priteche Velgi failed to display the business ownership details of a business under his control as confirmed by three visits by Trading Standards. This is an offence in itself and it is also an indication that Priteche Velgi did not want to indicate to Trading Standards or his customers who the owner of his business was. This continuous non disclosure indicates that Priteche Velgi was prepared to operate outside the law despite being told it was a requirement and was prepared to attempt to obscure the person responsible for the business.

This view is supported by the indication that at one stage a business at 226 Ealing Road was registered as a limited company where the director did not reply to Trading Standards attempts to contact him and when an application for a premises licence was made in the name of the limited company the DPS did not know the details of the director despite having a shared address link. During this time Priteche Velgi was the controlling element of the business.

We believe that given the evidence of a lack of prevention of crime at a business under his control; the lack of engagement with Trading Standards; and the failure to follow advice; placing conditions on a licence would not be effective in the prevention of crime and disorder and we recommend that a licence should not be issued in this instance.

**List of Documents** - Previous addresses and non relevant names have been obscured.

Document 1 Copy of letter of warning from TS, 27/2/17 to Pritesh Velgi to have correctly labelled tobacco products and display business ownership notices with advice.

Document 2 Copy of disclaimer of seized property by Pritesh Velgi.

Document 3. Copy of witness statement by Paul Harris dated 15/11/17. **NB this refers to exhibits and evidence numbers which were used in the prosecution of Pritesh Velgi and are not produced for this representation.**

Document 4. Copy of cert of incorporation for Diubazzar Ltd 10573334.

Document 5. Copy of licence application by Diubazzar Ltd for a premises licence at 226 Ealing Road with a DPS of Mrs Bindal Givan Velgi.

Document 6. Copy of letter 11/7/17 to Vijaykumar Velgi to attend interview under caution following seizures on 28/6/17 from 226 Ealing Road.

Document 7. Copy of letter 21/7/17 to Vijaykumar Velgi to attend interview under caution following seizures on 28/6/17 from 226 Ealing Road.

Document 8. Copy of email 11/8/18 to licence agent for licence application at 226 Ealing Road.

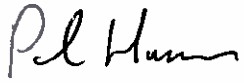
Document 9. Copy of letter 18/9/17 to Pritesh Velgi to attend interview under caution following seizures on 28/6/17 from 226 Ealing Road.

Document 10. Copy of letter 18/9/17 to Pritesh Velgi to attend interview under caution following seizures on 28/6/17 from 226 Ealing Road.

Document 11. Copy of letter 18/9/17 to Bindal Givan Velgi to attend interview under caution following seizures on 28/6/17 from 226 Ealing Road.

Document 12. Copy of letter 18/9/17 to Bindal Givan Velgi to attend interview under caution following seizures on 28/6/17 from 226 Ealing Road.

Paul Harris



Senior Enforcement Officer

DOCUMENT 1

Mr Pritesh Velgi
Diu Pan Parlour
226 Ealing Road
Wembley
HA0 4QL

Date 27th February 2017
Our Ref: 73/16

**Tobacco and Related Products Regulations 2016**
**The Companies Act 2006.**

Dear Mr Velgi,

I am writing to you following our investigation concerning the seizure of tobacco without the correct health warnings and the failure to display ownership details at the business premises of Diu Pan Parlour.

Trading Standards Officers carried out an inspection of the trading address of the business on 18th January 2017. The officers found 122 x 10g unit packs of chewing tobacco, 23 x 20g unit packs of chewing tobacco, and 4 packets of 20 cigarettes, 1 packet of 14 cigarettes and 1 packet of 6 cigarettes that did not have statutory health warnings on them. This is an offence under Regulation 48 of the Tobacco and Related Products Regulations 2016.

There was no display of business ownership details in the shop. This in an offence under sections 1202 and 1205 of the Companies Act 2006.

Having read through the Investigating Officer's report in relation to this matter, I have given this case careful consideration, and decided that on this occasion, we will not institute legal proceedings against you.

Nevertheless, I must advise you that a serious view is taken of any infringements under the above mentioned legislation and, as such, any repetition could result in legal proceedings being taken against you without any further warning.

The requirements for tobacco packaging changed in May 2016 and reference should be made to the guidance found at https://www.gov.uk/government/publications/packaging-of-tobacco-products to ensure that the tobacco products supplied by the business are compliant.

The business ownership details must be displayed for the public to see in the shop and on business documents including invoices and receipts. Further guidance can be found at https://www.businesscompanion.info/en/quick-guides/business-information-other/company-and-business-names#Displayingcompanyinformation

Yours sincerely

Anu Prashar
Senior Prosecutor
Standards and Enforcement

Document 2.

Brent

Harrow COUNCIL
LONDON

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EMAIL paul.harris@brent.gov.uk
WEB www.brentharrow.gov.uk

**Contact:** Paul Harris
**Tel:** 020 8937 5641
**Fax No:** 020 8937 5544
**E-Mail:** paul.harris@brent.gov.uk
**My Ref:** 73/16
**Date:** 27th February 2017

**DISCLAIMER OF PROPERTY**

I, Mr Pritosh Volgi

of Flat [redacted], trading as Diu Pan Parlour at 226 Ealing Road, Wembley HA0 4QL,

having been satisfied that the following property offends the requirements of the Tobacco and Related Products Regulations 2016,

hereby assign the property listed below to the Trading Standards Service for disposal and disclaim all rights to it.

**Details of the Property (description and number of items)**

Smokeless tobacco products and Cigarettes

122 x 10g unit packs, 23 x 20g unit packs of chewing tobacco, 4 packets of 20 cigarettes, 1 packet of 14 cigarettes and 1 packet of 6 cigarettes.

Signature:
Date:
Witness:
of the London Boroughs of Brent and Harrow Trading Standards Service.

LONDON BOROUGHS OF BRENT AND HARROW Document 3

TRADING STANDARDS SERVICE

# Witness Statement

(C.J.Act 1967 - S.9, M.C. Act 1980 – ss5A(3)(a) and 5B, M.C. Rules 1981 r.70)

Statement of: Paul Harris

Age if under 18: Over 18

Occupation: Enforcement Officer

This statement (consisting of 7 pages signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated 15th November 2017

Signature PL Harris .....

My name is Paul Harris. I am a Senior Enforcement Officer with Brent and Harrow Trading Standards Service. I am authorised to enforce, The Consumer Rights Act 2015, The Tobacco and Related Products Regulations 2016, The Standardised Packaging of Tobacco Products Regulations 2015 and The Companies Act 2006.

On 28th June 2017 I visited a retail unit in 226 Ealing Road HA0 4QL to carry out an inspection to check compliance with the requirement to have correct warnings on tobacco and related products and standard packaging for smoking tobacco. The unit I visited was at the front of a shop that has been divided into separate sections. The visit was a follow up to one I had made to a premises called Diu Pan Parlour on 18th January 2017 when I had seized non-compliant smoking and non-smoking tobacco products with incorrect warnings.

I entered the premises at 12:25pm with my colleague Ali Bandukwalla, an assistant enforcement officer from Brent and Harrow Trading Standards. There was a man behind the

Signature PL Harris .....

counter. I introduced myself to him, showed him my warrant and explained the purpose of my visit. He said he was called [redacted]. He went on his mobile telephone and handed it to me to speak to a man who said he was Pritesh Velgi. During my visit on 18th January 2017 I had met a man who said he was Pritesh Velgi who had told me he was the director of Diu Bazar Ltd trading as Diu Pan Parlour. On 28th June 2017, Pritesh Velgi told me he was the manager. He said he did not have the details of the director. I noticed that there was a statutory tobacco notice on display. There was no notice on display showing the business ownership details as required by the Companies Act 2006.

After talking to Pritesh Velgi on the telephone I issued a notice to [redacted] at 12:44pm explaining his rights as the occupier and my rights to conduct the search and to seize items. Ali Bandukwalla and I then started to search the premises. I saw examples of non-smoking and smoking tobacco products that did not have correct statutory health warnings on them and smoking tobacco products that were not in the correct statutory standardised packaging and nicotine inhaling products that did not have the correct statutory health warnings on them. Ali Bandukwalla and I seized the items that were non-compliant. Ali Bandukwalla recorded the items onto a record of exhibits form.

There were 98 unit packs of tobacco products for smoking; 833 unit packs of smokeless tobacco products; and 19 Nicotine Inhaling products. The infringing items were placed in bags that I sealed with the seals numbered; cc0009571, cc0009563, E01863 and cc0009566. I wrote these on a receipt, numbered PRH/0241 and issued this to [redacted]

Signature PR Harris

During the visit a woman arrived who said she was Mrs Bindal Givan Velgi. She was the designated premises supervisor applicant for an alcohol licence at the premises. She told me she didn't have the details of the director of the company.

I noted the finish time on the notice of powers form and left a top copy of it at 14:21. I then left with Ali Bandukwalla. On our return to our offices I booked the sealed bags; cc0009571, cc0009563, E01863 and cc0009566 into secure storage. ~~I have exhibited and produce as evidence the sealed bag cc0009571, containing the items seized as **PRH/DB/1**. I have exhibited and produce as evidence the sealed bag, cc0009563, containing the items seized as **PRH/DB/2**. I have exhibited and produce as evidence the sealed bag, E01863 containing the items seized as **PRH/DB/3**. I have exhibited and produce as evidence the sealed bag cc0009566 containing the items seized as **PRH/DB/4**.~~

After my visit on 28th June 2017 I checked that the company trading at the front unit was called Diubazzar Limited (company number 10573334) and had been incorporated on 19th January 2017. The company director was Vijaykumar VELGI and the registered office was 226 Ealing Road HA0 4QL. I have produced an extract from the Companies House website made by me on 11th September 2017 showing this information and I produce it as evidence exhibited as **PRH/DB/11** This differed from the information I had been given on 18th January 2017 when I spoke in person to a man who told me he was Mr Pritesh Velgi and he was the director of Diu Bazar Ltd trading as Diu Pan Parlour. A search of companies house showed there had been a company called Diubazar Ltd (company number 9526808) which was dissolved on 20th September 2016 and whose director was Priteche Velgi of [redacted] The date of birth for Priteche Velgi was [redacted]

Signature PL Harris

On 18th January 2017 Pritesh Velgi had told me his address was [redacted] and the same date of birth. ~~I have produced an extract from the Companies House website made by me on 14th November 2017 showing the information for Diubazar Ltd and I produce it as evidence exhibited as PRH/DB/12.~~

On 11th July 2017 I wrote to Vijaykumar VELGI as the director of Diubazzar Limited to invite him to attend for a recorded interview invite to discuss the incidents arising from my visit of 28th June 2017. I asked him to contact me by 19th July 2017. I did not receive a reply so I wrote to him on 21st July 2017. I did not receive a reply to this letter. I have produced copies of these letters as evidence with the exhibit number **PRH/DB/5**.

On 10th August 2017 I noted that an application for an alcohol licence at 226 Ealing Road which had originally been made on 4th June 2017 had been restarted. I have produced as evidence a copy of parts of the application form with the exhibit number **PRH/DB/6**. These show the licence application name of Diubazzar Limited at 226 Ealing Road; the details of the designated premises supervisor (DPS) as Mrs Bindal Givan Velgi of [redacted] and the licence application agent details of Mr Noel Samaroo of NTAD Consultants Ltd, [redacted]

On 11th August 2017 I telephoned the agent handling the licence application, NTAD Consultants Ltd, as I had not heard from Vijaykumar VELGI. I spoke to Noel Samaroo and told him that Vijaykumar VELGI had not made contact with me and as there was no response to criminal activity by the licence applicant I would make a representation against the application in regard to the matters of 28th June 2017 on the grounds of the prevention of crime. He said he would try and get Vijaykumar VELGI to contact me and asked me to

Signature .....

forward the invitation to interview letters to him. I sent these to him by email on 11th August 2017 and I have produced as evidence a copy of the email with the exhibit number **PRH/DB/7**. On 11th September 2017 I telephoned the agent again as I had not had contact from Noel Samaroo. He told me that did not have contact with Vijaykumar VELGI and that in his communications with the applicant for DPS he had spoken to Pritesh Velgi, the husband of the DPS and he was told that Vijaykumar VELGI was a previous owner and was not in the UK.

A check of the Brent business rates records showed that Diubazzar Limited was the liable company from 19th January 2017.

On 18th September 2017 I wrote to the DPS applicant, Mrs Bindal Givan Velgi, at the addresses of 226 Ealing Road and [redacted] asking her to attend for a recorded interview under caution as she might have been liable for the infringements I had identified on 28th June 2017. I have produced as evidence a copy of these letters with the exhibit number **PRH/DB/8.** I also wrote to Mr Pritesh Velgi at the addresses of 226 Ealing Road and [redacted] asking him to attend for a recorded interview under caution as he might have been liable for the infringements I had identified on 28th June 2017. I have produced as evidence a copy of these letters with the exhibit number **PRH/DB/9**. I asked for a response to these letters by 26th September 2017. I did not receive a reply.

As I had not heard from anybody related to the business on 10th October 2017 I re-visited the premises to check compliance. I entered at 10:40am with Ali Bandukwalla. I showed my warrant to a man behind the counter. He told me his name was [redacted] I issued

the notice of entry form and notice of powers and rights to occupier form to him at 10:41am. When I asked him what his role was for the form he said he was "staff". There was no business ownership notice on display. I then searched the premises. During the search I saw on the counter 4 unit packs of smokeless tobacco. These were 50g tins that had been opened. They did not have the statutory health warning on them. Ali Bandukwalla put tape over the tins to keep the lids on and I put them into a bag that I sealed with the seal numbered cc0009575. I recorded this on a receipt with the reference PRH/0249. [redacted] said the owner of the business was Pritesh Velgi.

At 11:35am Mrs Bindal Givan Velgi arrived. She said her husband, Pritesh Velgi was the manager. She did not have the contact number for Vijaykumar VELGI. She told me that Pritesh Velgi had this but that he was out of the country. I asked Mrs Bindal Givan Velgi to give my number to Pritesh Velgi so he could get Vijaykumar VELGI to contact me within the next two days. She said that Vijaykumar VELGI was a relative but was not able to specify to what degree. She said that Vijaykumar VELGI did not live at [redacted] but he did visit there.

I finished the notice of powers and rights to occupier form at 11:50 and left a top copy with [redacted] I then left with Ali Bandukwalla. On my return to our office I booked the sealed bag cc0009575 into secure storage. I have produced this as evidence with the exhibit number **PRH/DB/10**.

On 11th October 2017 I asked another Brent and Harrow Officer to attempt to purchase tobacco paan from Diubazzar Limited. No tobacco paan was sold.

Signature .....

To date I have not been contacted by Vijaykumar VELGI.

140

Signature .....

DOCUMENT 4

**FILE COPY**

LONDON BOROUGHS OF
BRENT & HARROW
TRADING STANDARDS SERVICE
249 WILLESDEN LANE, NW2 5JH
EXHIBIT No PRH/PP/11
OFFICER PRH
DATE
SIGNATURE

# CERTIFICATE OF INCORPORATION OF A PRIVATE LIMITED COMPANY

Company Number **10573334**

The Registrar of Companies for England and Wales, hereby certifies that

**DIUBAZZAR LIMITED**

is this day incorporated under the Companies Act 2006 as a private company, that the company is limited by shares, and the situation of its registered office is in England and Wales

Given at Companies House, Cardiff, on **19th January 2017**

* N10573334D *

Companies House

THE OFFICIAL SEAL OF THE REGISTRAR OF COMPANIES

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1072 of the Companies Act 2006

Companies House

# IN01 (ef)

**Application to register a company**

*Received for filing in Electronic Format on the:* **18/01/2017**

X5VDX9QA

| | |
|---|---|
| *Company Name in full:* | **DIUBAZZAR LIMITED** |
| *Company Type:* | **Private company limited by shares** |
| *Situation of Registered Office:* | **England and Wales** |
| *Proposed Registered Office Address:* | **226 EALING ROAD**<br>**WEMBLEY**<br>**UNITED KINGDOM HA0 4QL** |
| *Sic Codes:* | **46900** |

*I wish to entirely adopt the following model articles:* **Private (Ltd by Shares)**

## *Proposed Officers*

### *Company Director* 1

| | |
|---|---|
| *Type:* | **Person** |
| *Full Forename(s):* | **MR VIJAYKUMAR** |
| *Surname:* | **VELGI** |
| *Former Names:* | |
| *Service Address:* | **recorded as Company's registered office** |
| *Country/State Usually Resident:* | **UNITED KINGDOM** |

*Date of Birth:* ****/01/1962** *Nationality:* **POTUGAL**

*Occupation:* **DIRECTOR**

*The subscribers confirm that the person named has consented to act as a director.*

## *Statement of Capital (Share Capital)*

| | | | |
|---|---|---|---|
| *Class of Shares:* | 1 | *Number allotted* | 1 |
| *Currency:* | GBP | *Aggregate nominal value:* | 1 |
| *Prescribed particulars* | | | |

**EACH SHARE HAS FULL RIGHTS IN THE COMPANY WITH RESPECT TO VOTING, DIVIDENDS AND DISTRIBUTIONS.**

## Statement of Capital (Totals)

| | | | |
|---|---|---|---|
| *Currency:* | GBP | *Total number of shares:* | 1 |
| | | *Total aggregate nominal value:* | 1 |
| | | *Total aggregate unpaid:* | 1 |

# *Initial Shareholdings*

*Name:* **VIJAYKUMAR VELGI**

*Address*

| | |
|---|---|
| *Class of Shares:* | **1** |
| *Number of shares:* | **1** |
| *Currency:* | **GBP** |
| *Nominal value of each share:* | **1** |
| *Amount unpaid:* | **1** |
| *Amount paid:* | **1** |

# *Persons with Significant Control (PSC)*

**Statement of no PSC**

**The company knows or has reason to believe that there will be no registerable Person with Significant Control or Relevant Legal Entity (RLE) in relation to the company**

## *Statement of Compliance*

*I confirm the requirements of the Companies Act 2006 as to registration have been complied with.*

*Name:* VIJAYKUMAR VELGI
*Authenticated* YES

## *Authorisation*

*Authoriser Designation:* subscriber *Authenticated* YES

# COMPANY HAVING A SHARE CAPITAL

## Memorandum of association of

## DIUBAZZAR LIMITED

Each subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company and to take at least one share

| Name of each subscriber | Authentication |
| --- | --- |
| vijaykumar vaga | Authenticated Electronically |

Dated: 18/01/2017

DOCUMENT 5

Brent

LONDON BOROUGHS OF BRENT & HARROW
TRADING STANDARDS SERVICE
PO WILLESDEN LANE, NW2 5HT

FROM M. PRH/DT/6
OFFICER PRH
DATE 10/8/17
SIGNATURE

**Application for a premises licence to be granted**

**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/We DIUBAZZAR LIMITED (10573334)**

*(Insert name(s) of applicant)*

**apply for a premises licence under section 17 of the Licensing Act 2003 for the premises described in Part 1 below (the premises) and I/we are making this application to you as the relevant licensing authority in accordance with section 12 of the Licensing Act 2003**

**Part 1 – Premises details**

| Postal address of premises or, if none, ordnance survey map reference or description | | | |
|---|---|---|---|
| **226 Ealing Road**<br>**Wembley**<br>**Middlesex**<br>**HA0 4QL** | | | |
| **Post town** | **LONDON** | Postcode | **HA0 4QL** |

| | |
|---|---|
| Telephone number at premises (if any) | |
| Non-domestic rateable value of premises | £ |

**Part 2 - Applicant details**

| Please state whether you are applying for a premises licence as | | Please tick as appropriate |
|---|---|---|
| a) | an individual or individuals * | ☐ please complete section (A) |
| b) | a person other than an individual * | |
| i | as a limited company/limited liability partnership | X please complete section (B) |
| ii | as a partnership (other than limited liability) | ☐ please complete section (B) |
| iii | as an unincorporated association or | ☐ please complete section (B) |
| iv | other (for example a statutory corporation) | ☐ please complete section (B) |

| | | |
|---|---|---|
| c) | a recognised club | ☐ please complete section (B) |
| d) | a charity | ☐ please complete section (B) |
| e) | the proprietor of an educational establishment | ☐ please complete section (B) |
| f) | a health service body | ☐ please complete section (B) |
| g) | a person who is registered under Part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital in Wales | ☐ please complete section (B) |
| ga) | a person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 (within the meaning of that Part) in an independent hospital in England | ☐ please complete section (B) |
| h) | the chief officer of police of a police force in England and Wales | ☐ please complete section (B) |

* If you are applying as a person described in (a) or (b) please confirm (by ticking yes to one box below):

| | |
|---|---|
| I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities; or | X |
| I am making the application pursuant to a statutory function or | ☐ |
| a function discharged by virtue of Her Majesty's prerogative | ☐ |

**(A) INDIVIDUAL APPLICANTS** (fill in as applicable)

| | | | | | |
|---|---|---|---|---|---|
| Mr ☐ | Mrs ☐ | Miss ☐ | Ms ☐ | Other Title (for example, Rev) | |
| **Surname** | | | | **First names** | |
| **Date of birth** | | I am 18 years old or over ☐ Please tick yes | | | |
| **Nationality** | | | | | |
| Current residential address if different from premises address | | | | | |
| Post town | | | | Postcode | |
| **Daytime contact telephone number** | | | | | |
| **E-mail address (optional)** | | | | | |

**SECOND INDIVIDUAL APPLICANT** (if applicable)

| | | | |
|---|---|---|---|
| Mr ☐ Mrs ☐ Miss ☐ Ms ☐ | | Other Title (for example, Rev) | |
| **Surname** | | **First names** | |
| **Date of birth** | I am 18 years old or over ☐ Please tick yes | | |
| **Nationality** | | | |
| Current residential address if different from premises address | | | |
| Post town | | Postcode | |
| **Daytime contact telephone number** | | | |
| **E-mail address (optional)** | | | |

**(B) OTHER APPLICANTS**

**Please provide name and registered address of applicant in full. Where appropriate please give any registered number. In the case of a partnership or other joint venture (other than a body corporate), please give the name and address of each party concerned.**

| |
|---|
| Name<br>**DIUBAZZAR LIMITED (10573334)** |
| Address<br><br>**226 Ealing Road**<br>**Wembley**<br>**Middlesex**<br>**HA0 4QL** |
| Registered number (where applicable)<br><br>**10573334** |
| Description of applicant (for example, partnership, company, unincorporated association etc.)<br><br>**PRIVATE LIMITED COMPANY** |
| Telephone number (if any) |
| E-mail address (optional) |

**Part 3 Operating Schedule**

When do you want the premises licence to start?

DD MM YYYY
0 5 0 7 2 0 1 7

If you wish the licence to be valid only for a limited period, when do you want it to end?

DD MM YYYY

Please give a general description of the premises (please read guidance note 1)

SMALL GROUND FLOOR SHOP FRONT PREMISES

If 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend.

What licensable activities do you intend to carry on from the premises?

(please see sections 1 and 14 and Schedules 1 and 2 to the Licensing Act 2003)

| Provision of regulated entertainment (please read guidance note 2) | Please tick all that apply |
|---|---|
| a) plays (if ticking yes, fill in box A) | ☐ |
| b) films (if ticking yes, fill in box B) | ☐ |
| c) indoor sporting events (if ticking yes, fill in box C) | ☐ |
| d) boxing or wrestling entertainment (if ticking yes, fill in box D) | ☐ |
| e) live music (if ticking yes, fill in box E) | ☐ |
| f) recorded music (if ticking yes, fill in box F) | ☐ |
| g) performances of dance (if ticking yes, fill in box G) | ☐ |
| h) anything of a similar description to that falling within (e), (f) or (g) (if ticking yes, fill in box H) | ☐ |

**Provision of late night refreshment** (if ticking yes, fill in box I) ☐

**Supply of alcohol** (if ticking yes, fill in box J) X

**In all cases complete boxes K, L and M**

**A**

| **Plays** Standard days and timings (please read guidance note 7) | | | **Will the performance of a play take place indoors or outdoors or both – please tick** (please read guidance note 3) | Indoors | ☐ |
|---|---|---|---|---|---|
| Day | Start | Finish | | Outdoors | ☐ |
| | | | | Both | ☐ |
| Mon | | | **Please give further details here** (please read guidance note 4) | | |
| Tue | | | | | |
| Wed | | | **State any seasonal variations for performing plays** (please read guidance note 5) | | |
| Thur | | | | | |
| Fri | | | **Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list** (please read guidance note 6) | | |
| Sat | | | | | |
| Sun | | | | | |

J

| Supply of alcohol Standard days and timings (please read guidance note 7) | | | Will the supply of alcohol be for consumption – please tick (please read guidance note 8) | | |
|---|---|---|---|---|---|
| Day | Start | Finish | | On the premises | X |
| | | | | Off the premises | ☐ |
| | | | | Both | ☐ |
| Mon | 10:00 | 23:00 | State any seasonal variations for the supply of alcohol (please read guidance note 5) | | |
| Tue | 10:00 | 23:00 | | | |
| Wed | 10:00 | 23:00 | | | |
| Thur | 10:00 | 23:00 | Non standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list (please read guidance note 6) | | |
| Fri | 10:00 | 23:00 | | | |
| Sat | 10:00 | 23:00 | | | |
| Sun | 10:00 | 23:00 | | | |

**State the name and details of the individual whom you wish to specify on the licence as designated premises supervisor (Please see declaration about the entitlement to work in the checklist at the end of the form):**

| | |
|---|---|
| Name | MRS BINDAL GIVAN VELGI |
| Date of birth | |
| Address | [redacted] |
| Postcode | [redacted] |
| Personal licence number (if known) | [redacted] |
| Issuing licensing authority (if known) | LONDON BOROUGH OF [redacted] |

☐☐☐☐

**IT IS AN OFFENCE UNDER SECTION 24B OF THE IMMIGRATION ACT 1971 FOR A PERSON TO WORK WHEN THEY KNOW, OR HAVE REASONABLE CAUSE TO BELIEVE, THAT THEY ARE DISQUALIFIED FROM DOING SO BY REASON OF THEIR IMMIGRATION STATUS. THOSE WHO EMPLOY AN ADULT WITHOUT LEAVE OR WHO IS SUBJECT TO CONDITIONS AS TO EMPLOYMENT WILL BE LIABLE TO A CIVIL PENALTY UNDER SECTION 15 OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 AND PURSUANT TO SECTION 21 OF THE SAME ACT, WILL BE COMMITTING AN OFFENCE WHERE THEY DO SO IN THE KNOWLEDGE, OR WITH REASONABLE CAUSE TO BELIEVE, THAT THE EMPLOYEE IS DISQUALIFIED.**

**Part 4 – Signatures** (please read guidance note 11)

**Signature of applicant or applicant's solicitor or other duly authorised agent** (see guidance note 12). **If signing on behalf of the applicant, please state in what capacity.**

| | |
|---|---|
| **Declaration** | • [Applicable to individual applicants only, including those in a partnership which is not a limited liability partnership] I understand I am not entitled to be issued with a licence if I do not have the entitlement to live and work in the UK (or if I am subject to a condition preventing me from doing work relating to the carrying on of a licensable activity) and that my licence will become invalid if I cease to be entitled to live and work in the UK (please read guidance note 15).<br><br>• The DPS named in this application form is entitled to work in the UK (and is not subject to conditions preventing him or her from doing work relating to a licensable activity) and I have seen a copy of his or her proof of entitlement to work, if appropriate (please see note 15) |
| Signature |  |
| Date | **04 JUNE 2017** |
| Capacity | **DULY AUTHORISED AGENT** |

**For joint applications, signature of 2nd applicant or 2nd applicant's solicitor or other authorised agent** (please read guidance note 13). **If signing on behalf of the applicant, please state in what capacity.**

| | |
|---|---|
| Signature | |
| Date | |
| Capacity | |

| Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 14) | | | |
|---|---|---|---|
| **MR NOEL ANTHONY SAMAROO (Mfol.)** [redacted] | | | |
| Post town | [redacted] | Postcode | [redacted] |
| Telephone number (if any) | [redacted] | | |
| If you would prefer us to correspond with you by e-mail, your e-mail address (optional) [redacted] | | | |

**Notes for Guidance**

1. Describe the premises, for example the type of premises, its general situation and layout and any other information which could be relevant to the licensing objectives. Where your application includes off-supplies of alcohol and you intend to provide a place for consumption of these off-supplies, you must include a description of where the place will be and its proximity to the premises
2. In terms of specific regulated entertainments please note that:
   - Plays: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500.
   - Films: no licence is required for 'not-for-profit' film exhibition held in community premises between 08.00 and 23.00 on any day provided that the audience does not exceed 500 and the organiser (a) gets consent to the screening from a person who is responsible for the premises, and (b) ensures that each such screening abides by age classification ratings.
   - Indoor sporting events: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000.
   - Boxing or Wrestling Entertainment: no licence is required for a contest, exhibition or display of Greco-Roman wrestling, or freestyle wrestling between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000. Combined fighting sports – defined as a contest, exhibition or display which combines boxing or wrestling with one or more martial arts – are licensable as a boxing or wrestling entertainment rather than an indoor sporting event.
   - Live music: no licence permission is required for:
     - a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises.
     - a performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
     - a performance of amplified live music between 08.00 and 23.00 on any day, in a workplace that is not licensed to sell alcohol on those premises, provided that the audience does not exceed 500.
     - a performance of amplified live music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.
     - a performance of amplified live music between 08.00 and 23.00 on any day, at the non-residential premises of (i) a local authority, or (ii) a school, or (iii) a hospital, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance on the

DOCUMENT 6

Brent

Harrow COUNCIL
LONDON

Standards and Enforcement
Brent Civic Centre
Engineers Way
Wembley HA9 0FJ
TEL 020 8937 5641
FAX 020 8937 5544
EMAIL paul.harris@brent.gov.uk
WEB www.brent.gov.uk

Mr Vijaykumar Velgi
Diubazzar Ltd
226 Ealing Road
Wembley
HA0 4QL

LONDON BOROUGHS OF
BRENT & HARROW
TRADING STANDARDS SERVICE
249 WILLESDEN LANE, NW2 5JH

EXHIBIT No PNH/VR/5
OFFICER PNH
DATE 11/7/17 + 11/7/17
SIGNATURE VR

Date 11th July 2017
Our Ref: 513904

**The Tobacco and Related Products Regulations 2016**
**Companies Act 2006**

Dear Mr Velgi

On 28th June 2017 officers from Brent and Harrow Trading Standards visited the business premises of Diubazzar Ltd. Whilst there they found and seized tobacco products and nicotine inhaling products that did not have the correct statutory health warnings on them. In addition, there was no sign on display showing the business ownership details.

As a director of the firm you may have committed offences against the above legislation. The Company itself may also committed the offences.

I therefore want to interview you under caution at the above office about these matters. The interview will be recorded in accordance with the Police and Criminal Evidence Act 1984 codes of practice. You may seek legal advice and have a solicitor present during the interview if you wish to do so. Costs for legal advice must be met by you.

If you wish to instruct a solicitor please show him/her this letter. If you want to bring a solicitor to the interview please note that the interview will be booked to begin at a set time. The solicitor should contact me prior to that time for any pre interview briefings so that the interview can start at its allocated time. You should bring any paperwork/records that you want to refer to in the interview.

If you require an interpreter we will provide one for you. If you need an interpreter please let me know the language required.

Please contact me by 19th July 2017 at the latest so that we arrange the date for the interview.

Yours sincerely

Paul Harris
Senior Enforcement Officer

Document 7

Brent

Harrow COUNCIL
LONDON

Standards and Enforcement
Brent Civic Centre
Engineers Way
Wembley HA9 0FJ
TEL 020 8937 5641
FAX 020 8937 5544
EMAIL paul.harris@brent.gov.uk
WEB www.brent.gov.uk

Mr Vijaykumar Velgi
Diubazzar Ltd
226 Ealing Road
Wembley
HA0 4QL

Date 21st July 2017
Our Ref: 513904

**The Tobacco and Related Products Regulations 2016**
**Companies Act 2006**

Dear Mr Velgi

Further to my letter of 28th June 2017 I have not received a reply from you to arrange an interview. A report will now be submitted for the offences alleged against you and referred to in my previous letter. As you have chosen not to attend an interview the report will not have your input.

I take this opportunity to remind you that offences against the above noted legislation can be prosecuted in the courts and are criminal offences. Failure to attend an interview may be interpreted as declining the opportunity for an interview. A report will now be submitted to the Senior Regulatory Service Manager for prosecution without your input.

**In these circumstances I must draw your attention to Section 34 of the Criminal Justice and Public Order Act 1994 which states, amongst other things, that when a person is officially informed that he may be prosecuted for a criminal offence, and fails to mention any fact which in the circumstances existing at the time he could reasonably have been expected to mention when so informed, then a court may draw such inferences from the failure as appear proper.**

**You may take this letter as official notification that you and Diubazzar Ltd may be prosecuted for offences committed under the above mentioned legislation.**

Yours sincerely

Paul Harris
Senior Enforcement Officer

DOCUMENT 8

LONDON BOROUGHS OF BRENT & HARROW
TRADING STANDARDS SERVICE
249 WILLESDEN LANE, NW2 5JH

EXHIBIT No PNH/DP/7
OFFICER PNH
DATE 11/8/17
SIGNATURE

**Harris, Paul**

**From :** Harris, Paul
**Sent:** 11 August 2017 14:14
**To:** 'info@ntad.co.uk'
**Cc:** Power, Denise
**Subject:** Licence application for Diubazzar Ltd 223725106 - interview
**Attachments:** Pace invite to director - Diu.pdf; Pace invite to director 2 - Diu.pdf

TS ref 513904

Dear Noel,

Furth er to our phone conversation today I attach a copies of the letters I have sent to Mr V Velgi, the Director of Diubazzar to set up an interview. I have had no reply to these.

If possible please get Mr Velgi to speak to me today so I can arrange an interview with him. If not please ask him to contact Denise Power denise.power@brent.gov.uk 020 8937 6197 next week, commencing 14/8/17.

As discussed if Mr Velgi does not arrange an interview with us to discuss the seizure from his business it would be appropriate for us to make a representation that the alcohol licence application for the firm should be withdrawn on the grounds of the prevention of crime.

Paul Harris
Senior Enforcement Officer
Regeneration and Environment Services
Brent Council

020 8937 5641
07867 186 762

www.brent.gov.uk
@Brent_Council

DOCUMENT 9

Brent

Harrow LONDON

Standards and Enforcement
Brent Civic Centre
Engineers Way
Wembley HA9 0FJ
TEL 020 8937 5641
FAX 020 8937 5544
EMAIL paul.harris@brent.gov.uk
WEB www.brent.gov.uk

LONDON BOROUGHS OF
BRENT & HARROW
TRADING STANDARDS SERVICE
249 WILLESDEN LANE, NW2 5JH

EXHIBIT No. PHH/OR/9
OFFICER PHH
DATE 18/9/17
SIGNATURE

Mr Pritesh Velgi
Diubazzar Ltd
226 Ealing Road
Wembley
HA0 4QL

Date 18th September 2017
Our Ref: 513904

**The Tobacco and Related Products Regulations 2016**
**Companies Act 2006**

Dear Mr Velgi

On 28th June 2017 officers from Brent and Harrow Trading Standards visited the business premises of Diubazzar Ltd. Whilst there they found and seized tobacco products and nicotine inhaling products that did not have the correct statutory health warnings on them. In addition, there was no sign on display showing the business ownership details. I spoke to you on the phone during the visit. I subsequently wrote to Mr Vijaykumar Velgi who is listed as the Director of Diubazzar Ltd inviting him to attend an interview. To date I have had no reply.

As I dealt with you as the owner of the business at the same premises when tobacco was seized on 18th January 2017 and as I spoke to you as the manager of the business on 28th June 2017, I wish to speak to you in regard to the control of the business and the seizure of tobacco and nicotine products.

As a person in control of the business you may have committed offences against the above legislation.

I therefore want to interview you under caution at the above office about these matters. The interview will be recorded in accordance with the Police and Criminal Evidence Act 1984 codes of practice. You may seek legal advice and have a solicitor present during the interview if you wish to do so. Costs for legal advice must be met by you.

If you wish to instruct a solicitor please show him/her this letter. If you want to bring a solicitor to the interview please note that the interview will be booked to begin at a set time. The solicitor should contact me prior to that time for any pre interview briefings so that the interview can start

at its allocated time. You should bring any paperwork/records that you want to refer to in the interview.

If you require an interpreter we will provide one for you. If you need an interpreter please let me know the language required.

Please contact me by 26th September 2017 at the latest so that we can arrange the date for the interview.

Yours sincerely

Paul Harris
Senior Enforcement Officer

DOCUMENT 10

Brent

Harrow COUNCIL
LONDON

Standards and Enforcement
Brent Civic Centre
Engineers Way
Wembley HA9 0FJ
TEL 020 8937 5641
FAX 020 8937 5544
EMAIL paul.harris@brent.gov.uk
WEB www.brent.gov.uk

Mr Pritesh Velgi
[redacted]

Date 18th September 2017
Our Ref: 513904

**The Tobacco and Related Products Regulations 2016**
**Companies Act 2006**

Dear Mr Velgi

On 28th June 2017 officers from Brent and Harrow Trading Standards visited the business premises of Diubazzar Ltd. Whilst there they found and seized tobacco products and nicotine inhaling products that did not have the correct statutory health warnings on them. In addition, there was no sign on display showing the business ownership details. I spoke to you on the phone during the visit. I subsequently wrote to Mr Vijaykumar Velgi who is listed as the Director of Diubazzar Ltd inviting him to attend an interview. To date I have had no reply.

As I dealt with you as the owner of the business at the same premises when tobacco was seized on 18th January 2017 and as I spoke to you as the manager of the business on 28th June 2017, I wish to speak to you in regard to the control of the business and the seizure of tobacco and nicotine products.

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Paul Harris
Senior Enforcement Officer

DOCUMENT 11

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LONDON BOROUGHS OF BRENT & HARROW
TRADING STANDARDS SERVICE
249 WILLESDEN LANE, NW2 5JH
EXHIBIT No PNH/MP/8
OFFICER PNH
DATE 13/11/17
SIGNATURE

Mrs Bindal Givan Velgi
Diubazzar Ltd
226 Ealing Road
Wembley
HA0 4QL

Date 18th September 2017
Our Ref: 513904

**The Tobacco and Related Products Regulations 2016**
**Companies Act 2006**

Dear Mrs Velgi

On 28th June 2017 officers from Brent and Harrow Trading Standards visited the business premises of Diubazzar Ltd. Whilst there they found and seized tobacco products and nicotine inhaling products that did not have the correct statutory health warnings on them. In addition, there was no sign on display showing the business ownership details. You came into the shop during the visit. I subsequently wrote to Mr Vijaykumar Velgi who is listed as the Director of Diubazzar Ltd inviting him to attend an interview. To date I have had no reply.

As you applied to be the Designated Premises Supervisor in relation to an alcohol licence for the business and I have had no response from the Director, I wish to speak to you in regard to the control of the business and the seizure of tobacco and nicotine products.

As a person in control of the business you may have committed offences against the above legislation.

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Paul Harris
Senior Enforcement Officer

DOCUMENT 12

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Mrs Bindal Givan Velgi
[redacted]

Date 18th September 2017
Our Ref: 513904

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**Companies Act 2006**

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Yours sincerely

Paul Harris
Senior Enforcement Officer

**From:** Figueiredo, Susana
**Sent:** 22 June 2018 10:39
**To:** 'Manpreet Kapoor'
**Cc:** Business Licence
**Subject:** CONSULT: New Premises - 238A Ealing Road, Wembley, HA0 4QL - 11822

Dear Mr Kapoor,

Further to your email, I can confirm withdrawal of my representation based on your clients agreement to the proposed conditions.

Kind Regards

Susana Figueiredo
Licensing Enforcement Officer
Planning, Transportation & Licensing
Brent Council
**********

**From:** Manpreet Kapoor
**Sent:** 07 June 2018 14:52
**To:** Figueiredo, Susana
**Cc:** Business Licence
**Subject:** RE: CONSULT: New Premises - 238A Ealing Road, Wembley, HA0 4QL - 11822

Dear Susana,

Having discussed with applicant they have agreed to the proposed conditions.

Kind Regards

Manpreet Singh Kapoor BA(Hons)
Licensing Consultant

Personal Licence Courses uk ltd, Infotree House, Newport Road, Hayes, UB4 8JX
**********

**From:** Figueiredo, Susana
**Sent:** 06 June 2018 07:03
**To:** Business Licence
**Cc:** 'info@personallicencecourses.com'
**Subject:** CONSULT: New Premises - 238A Ealing Road, Wembley, HA0 4QL - 11822

Dear Sir/Madam,

Please can you confirm whether you agree to the attached conditions which were submitted on the 14th May 2018.

Kind Regards

Susana Figueiredo
Licensing Enforcement Officer
Planning, Transportation & Licensing
Brent Council

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