

Statutory Licensing Sub-Committee

30th April 2019

Application for the grant of a Premises Licence

Ordinary Decision



Report of Ian Thompson, Corporate Director of Regeneration and Local Services

Councillor Brian Stephens, Cabinet Portfolio Holder for Neighbourhoods and Local Partnerships

Electoral division(s) affected:

Elvet and Gilesgate

Purpose of the Report

- 1 The Sub-Committee is asked to consider and determine the application for the grant of a premises licence for Barrio Comida, 31-33 Church Street, Durham. DH1 3DG received from Mr Shaun Emmett Hurrell.
- 2 A plan showing the location of the premises is attached at Appendix 2.

Executive summary

- 3 The application requests the granting of a new Premises Licence for a café bar and restaurant with an external seating area.
- 4 The application is for the Sale of Alcohol for consumption on and off the premises from 10:00 hrs until 22:00 hrs Monday to Sunday and the provision of Recorded Music from 08:00 hrs until 23:00 hrs Monday to Sunday. Both activities are also requested from the end of permitted hours on New Years Eve until the start of permitted hours on New Years Day.
- 5 Following mediation with Durham Constabulary, the applicant revised the conditions which were set out within the application.
- 6 Three objections from 'other persons' were received during the consultation period; one from Durham City Parish Council, one from Mr Lovell on behalf of Elvet Residents' Association and one from local residents Dr Wood and Dr Carey.

Recommendation(s)

- 7 The Sub-Committee is asked to determine the application with a view to promoting the licensing objectives.
- 8 The Sub-Committee is recommended to give appropriate weight to:
- (a) The steps that are appropriate to promote the licensing objectives;
 - (b) The representations (including supporting information) presented by all parties;
 - (c) The Durham County Council Statement of Licensing Policy. The relevant parts of the policy are attached at Appendix 7;
 - (d) The Guidance issued to local authorities under Section 182 of the Licensing Act 2003 (as amended April 2018). The relevant parts of the guidance are attached at Appendix 8.

Background

- 9 Background information

Applicants	Mr Shaun Emmett Hurrell	
Type of Application:	Date received:	Consultation ended:
New premises licence	7th March 2019	4th April 2019

Details of the application

- 10 An application for the grant of a premises licence was received by the Licensing Authority on 7th March 2019. A copy of the application is attached at Appendix 3.
- 11 The application is deemed by the Licensing Authority to be correctly served and advertised in accordance with the Licensing Act regulations.
- 12 The activities requested are as follows:

Licensable Activities	Days & Hours
Supply of Alcohol (consumption on and off the premises)	Monday to Sunday: 10:00 to 22:00 hrs. From end of permitted hours on New Years Eve until the start of permitted hours on New Years Day.

Recorded Music (Indoors)	Monday to Sunday: 08:00 to 23:00 hrs. From end of permitted hours on New Years Eve until the start of permitted hours on New Years Day.
Proposed Opening Times	Monday to Sunday: 08:00 to 23:00 hrs. From end of permitted hours on New Years Eve until the start of permitted hours on New Years Day.

- 13 The applicant has proposed conditions and the steps that they intend to take in order to promote the four licensing objectives, which are outlined within the application at Appendix 3.

- 14 On 19th March 2019, the applicant amended the application following mediation with Durham Constabulary and provided a revised operating schedule to substitute the operating schedule originally submitted with the premises licence application.

The revised operating schedule now includes conditions relating to:

- A Challenge 25 policy
- Staff training/refresher training
- Provision of a Refusals register

Full details of the revised conditions are attached at Appendix 4.

The Representations

- 15 The Licensing Authority received three representations during the consultation period from the following:
- Durham City Parish Council (Other persons)
 - Mr J Lovell, Elvet Residents' Association (Other person)
 - Dr A Wood and Dr P Carey (Other persons)
- 16 The Licensing Authority deemed the representations as relevant, relating to the following licensing objectives:
- Public Safety

- The Prevention of Public Nuisance

Copies of the representations are attached at Appendix 5.

- 17 Responses were received from the following Responsible Authorities, confirming that they had no comments to make in relation to the application:

- Durham County Council Public Health Department
- Durham County Council Planning Authority
- County Durham and Darlington Fire Safety Authority
- Durham County Council Environmental Health Authority

Copies of these responses are attached at Appendix 6.

The Parties

- 18 The Parties to the hearing will be:

- Mr Shaun Emmett Hurrell (Applicant)
- Ms Sarah Smith, Sintons Solicitors (Applicant's Solicitor)
- Durham City Parish Council (Other persons)
- Mr J Lovell, Elvet Residents' Association (Other person)
- Dr A Wood and Dr P Carey (Other persons)

Options

- 19 There are a number of options open to the Sub-Committee:

- (a) Grant the licence subject to conditions that are consistent with the operating schedule accompanying the application and the mandatory conditions set out in the Licensing Act 2003;
- (b) Grant the licence subject to modified conditions to that of the operating schedule where the committee considers it appropriate for the promotion of the licensing objectives and the mandatory conditions set out in the Licensing Act 2003;
- (c) To exclude from the scope of the licence any of the licensable activities to which the application relates;
- (d) To refuse to specify a person on the licence as the Designated Premises Supervisor;

- (e) To reject the application.

Main implications

Legal Implications

- 20 The Committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.

See Appendix 1.

Consultation

- 21 The premises licence application was subject to a 28 day consultation.

See Appendix 1

Conclusion

- 22 The Sub-Committee is asked to determine the application for the grant of a premises licence in light of the representations received.

Background papers

- Durham County Council's Statement of Licensing Policy
- Guidance issued under Section 182 of the Licensing Act 2003 (as amended April 2018)

Other useful documents

- None

Contact: Yvonne Raine

Tel: 03000 265256

Appendix 1: Implications

Legal Implications

The case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court (Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943, Before the Honourable Mrs Justice Black.

In this case it was summed up that:

A licensing authority must have regard to guidance issued by the Secretary of State under section 182. Licensing authorities may depart from it if they have reason to do so but will need to give full reasons for their actions.

Furthermore the Thwaites case established that only conditions should be attached to a licence with a view to promoting the Licensing objectives and that 'real evidence' must be presented to support the reason for imposing these conditions.

This judgement is further supported in the case of The Queen on the Application of Bristol Council v Bristol Magistrates' Court, CO/6920/2008 High Court of Justice Queen's Bench Division The Administrative Court, 24 February 2009, [2009] EWHC 625 (Admin) 2009 WL648859 in which it was said:

'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'.

In addition to this, it was stated that any condition attached to the licence should be an enforceable condition.

Consultation

The premises licence application was subject to a 28 day consultation in accordance with the Licensing Act 2003 and its regulations.

The Responsible Authorities were consulted on the application.

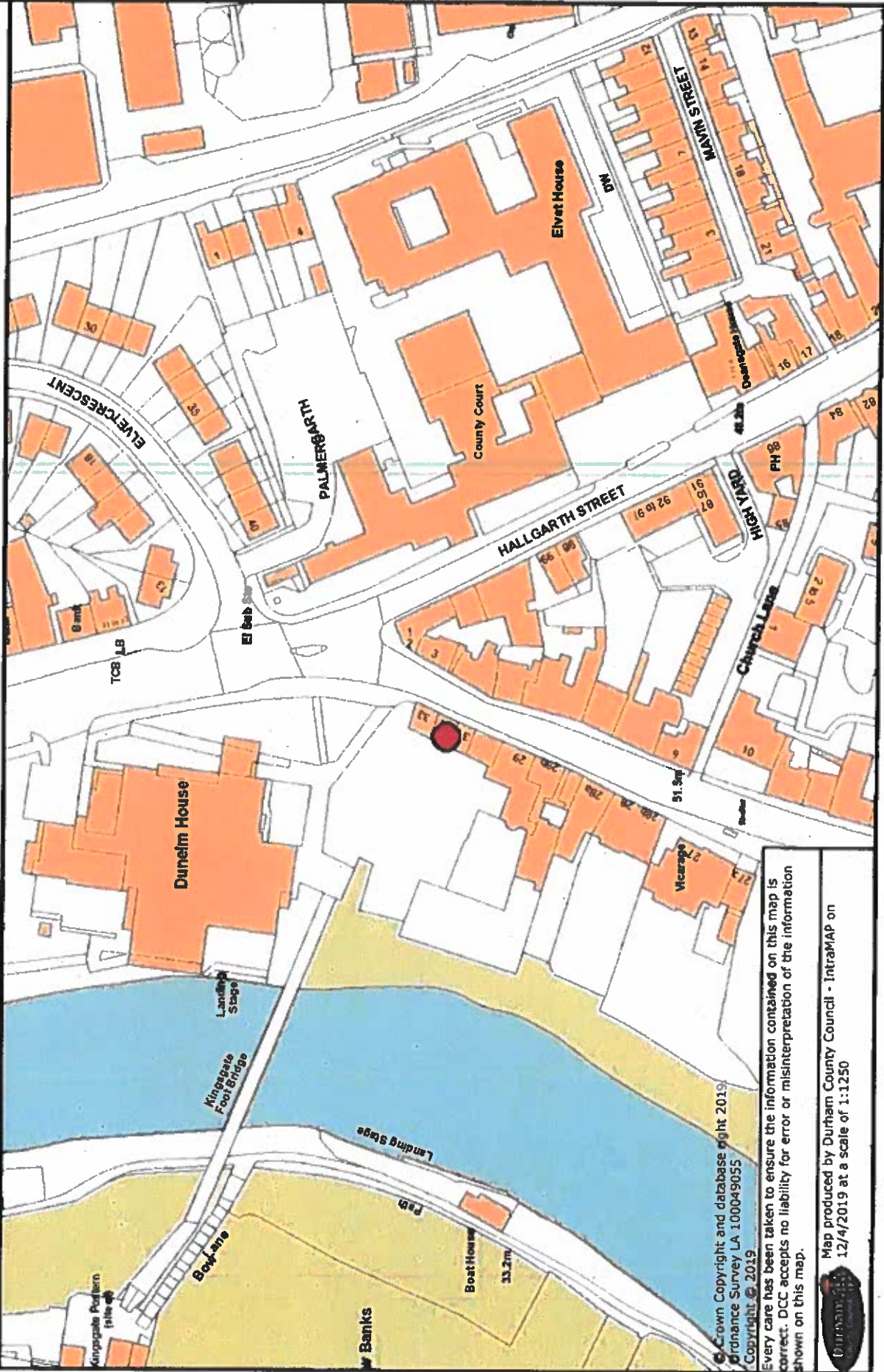
The notice of application was displayed on the premises for a period of 28 days.

Notice of the application was published in a newspaper which was circulated within the vicinity of the premises.

In addition, details of the application were available to view on the Council's website throughout the 28 day consultation period.

Appendix 2: Location Plan

Durham County Council - IntraMAP



Appendix 3: Application

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 SHAUN EMMETT HURRELL

(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 BARRIO COMIDA 31-33 CHURCH STREET			
Post town	DURHAM	Postcode	DH1 3DG

Telephone number at premises (if any)	TO BE CONFIRMED
Non-domestic rateable value of premises	£0

Part 2 - Applicant details

Please state whether you are applying for a premises licence as

Please tick as appropriate

- | | | |
|--|-------------------------------------|-----------------------------|
| a) an individual or individuals * | <input checked="" type="checkbox"/> | please complete section (A) |
| b) a person other than an individual * | | |
| i as a limited company/limited liability partnership | <input type="checkbox"/> | please complete section (B) |
| ii as a partnership (other than limited liability) | <input type="checkbox"/> | please complete section (B) |
| iii as an unincorporated association or | <input type="checkbox"/> | please complete section (B) |
| iv other (for example a statutory corporation) | <input type="checkbox"/> | please complete section (B) |
| c) a recognised club | <input type="checkbox"/> | please complete section (B) |
| d) a charity | <input type="checkbox"/> | 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 ☒

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 <input checked="" type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title (for example, Rev)	
Surname HURRELL			First names SHAUN EMMETT		
Date of birth		I am 18 years old or over <input checked="" type="checkbox"/>		Please tick yes	
Nationality: BRITISH					
Current residential address if different from premises address					
Post town				Postcode	
Daytime contact telephone number					
E-mail address (optional)					
Where applicable (if demonstrating a right to work via the Home Office online right to work checking service), the 9-digit 'share code' provided to the applicant by that service (please see note 15 for information)					

SECOND INDIVIDUAL APPLICANT (if applicable)

Mr <input type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title (for example, Rev)	
Surname			First names		
Date of birth		I am 18 years old or over		<input type="checkbox"/>	Please tick yes
Nationality					
Where applicable (if demonstrating a right to work via the Home Office online right to work checking service), the 9-digit 'share code' provided to the applicant by that service: (please see note 15 for information)					
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
Address
Registered number (where applicable)
Description of applicant (for example, partnership, company, unincorporated association etc.)

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

Part 3 Operating Schedule

When do you want the premises licence to start?

DD	MM	YYYY
3	1	0 3 2 0 1 9

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)
CAFÉ BAR AND RESTAURANT OPERATING OVER GROUND AND BASEMENT LEVELS WITH EXTERNAL SEATING AREA TO THE FRONT.

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)

☒

In all cases complete boxes K, L and M

A

Plays Standard days and timings (please read guidance note 7)			<u>Will the performance of a play take place indoors or outdoors or both – please tick</u> (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 4)		
Mon					
Tue					
			<u>State any seasonal variations for performing plays</u> (please read guidance note 5)		
Wed					
Thur					
			<u>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</u> (please read guidance note 6)		
Fri					
Sat					
Sun					

B

Films Standard days and timings (please read guidance note 7)			<u>Will the exhibition of films take place indoors or outdoors or both – please tick</u> (please read guidance note 3)		Indoors	<input type="checkbox"/>
					Outdoors	<input type="checkbox"/>
					Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 4)			
Mon						
Tue						
Wed			<u>State any seasonal variations for the exhibition of films</u> (please read guidance note 5)			
Thur						
Fri			<u>Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list</u> (please read guidance note 6)			
Sat						
Sun						

C

Indoor sporting events Standard days and timings (please read guidance note 7)			<u>Please give further details</u> (please read guidance note 4)
Day	Start	Finish	
Mon			
Tue			<u>State any seasonal variations for indoor sporting events</u> (please read guidance note 5)
Wed			
			<u>Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list</u> (please read guidance note 6)
Thur			
Fri			
Sat			
Sun			

D

Boxing or wrestling entertainments Standard days and timings (please read guidance note 7)			<u>Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick</u> (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 4)		
Mon					
Tue			<u>State any seasonal variations for boxing or wrestling entertainment</u> (please read guidance note 5)		
Wed					
Thur			<u>Non standard timings. Where you intend to use the premises for boxing or wrestling entertainment at different times to those listed in the column on the left, please list</u> (please read guidance note 6)		
Fri					
Sat					
Sun					

E

Live music Standard days and timings (please read guidance note 7)			<u>Will the performance of live music take place indoors or outdoors or both – please tick</u> (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 4)		
Mon					
Tue			<u>State any seasonal variations for the performance of live music</u> (please read guidance note 5)		
Wed			<u>Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list</u> (please read guidance note 6)		
Thur					
Fri					
Sat					
Sun					

F

Recorded music Standard days and timings (please read guidance note 7)			Will the playing of recorded music take place indoors or outdoors or both – please tick (please read guidance note 3)		Indoors	<input checked="" type="checkbox"/>
					Outdoors	<input type="checkbox"/>
					Both	<input type="checkbox"/>
Day	Start	Finish	Please give further details here (please read guidance note 4) RECORDED MUSIC MAY MAKE UP PART OF THE OFFERING FROM TIME TO TIME			
Mon	0800	2300				
Tue	0800	2300				
Wed	0800	2300	State any seasonal variations for the playing of recorded music (please read guidance note 5) AS SET OUT IN BOX J			
Thur	0800	2300				
Fri	0800	2300	Non standard timings. Where you intend to use the premises for the playing of recorded music at different times to those listed in the column on the left, please list (please read guidance note 6) AS SET OUT IN BOX J			
Sat	0800	2300				
Sun	0800	2300				

G

Performances of dance Standard days and timings (please read guidance note 7)			<u>Will the performance of dance take place indoors or outdoors or both – please tick</u> (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 4)		
Mon					
Tue			<u>State any seasonal variations for the performance of dance</u> (please read guidance note 5)		
Wed			<u>Non standard timings. Where you intend to use the premises for the performance of dance at different times to those listed in the column on the left, please list</u> (please read guidance note 6)		
Thur					
Fri					
Sat					
Sun					

H

Anything of a similar description to that falling within (e), (f) or (g) Standard days and timings (please read guidance note 7)			Please give a description of the type of entertainment you will be providing	
Day	Start	Finish	<u>Will this entertainment take place indoors or outdoors or both – please tick</u> (please read guidance note 3)	Indoors <input type="checkbox"/>
Mon				Outdoors <input type="checkbox"/>
				Both <input type="checkbox"/>
Tue			<u>Please give further details here</u> (please read guidance note 4)	
Wed				
Thur			<u>State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g)</u> (please read guidance note 5)	
Fri				
Sat			<u>Non standard timings. Where you intend to use the premises for the entertainment of a similar description to that falling within (e), (f) or (g) at different times to those listed in the column on the left, please list</u> (please read guidance note 6)	
Sun				

I

Late night refreshment Standard days and timings (please read guidance note 7)			Will the provision of late night refreshment take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 4)		
Mon					
Tue					
			<u>State any seasonal variations for the provision of late night refreshment</u> (please read guidance note 5)		
Wed					
Thur					
			<u>Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list</u> (please read guidance note 6)		
Fri					
Sat					
Sun					

J

Supply of alcohol Standard days and timings (please read guidance note 7)			<u>Will the supply of alcohol be for consumption – please tick</u> (please read guidance note 8)		On the premises	<input type="checkbox"/>
					Off the premises	<input type="checkbox"/>
					Both	<input checked="" type="checkbox"/>
Day	Start	Finish	<u>State any seasonal variations for the supply of alcohol</u> (please read guidance note 5) THE LICENSABLE ACTIVITIES SPECIFIED IN THIS LICENCE MAY BE PROVIDED FROM THE END OF THE SPECIFIED FINISH TIMES ON ANY DAY WHICH IS NEW YEAR'S EVE TO THE BEGINNING OF THE START TIMES ON THE FOLLOWING DAY (NEW YEAR'S DAY)			
Mon	1000	2200				
Tue	1000	2200				
Wed	1000	2200				
Thur	1000	2200				
Fri	1000	2200				
Sat	1000	2200				
Sun	1000	2200	<u>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</u> (please read guidance note 6) N/A			

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 SHAUN EMMETT HURRELL	
Date of birth	
Address	
Postcode	
Personal licence number (if known)	
Issuing licensing authority (if known)	

K

Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children (please read guidance note 9).

N/A

L

Hours premises are open to the public Standard days and timings (please read guidance note 7)			<u>State any seasonal variations</u> (please read guidance note 5) N/A
Day	Start	Finish	<u>Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list</u> (please read guidance note 6) N/A
Mon	0800	2300	
Tue	0800	2300	
Wed	0800	2300	
Thur	0800	2300	
Fri	0800	2300	
Sat	0800	2300	
Sun	0800	2300	

M

Describe the steps you intend to take to promote the four licensing objectives:

a) General – all four licensing objectives (b, c, d and e) (please read guidance note 10)

AS SET OUT IN THE OPERATING SCHEDULE SUBMITTED WITH THE APPLICATION.

b) The prevention of crime and disorder

AS SET OUT IN THE OPERATING SCHEDULE SUBMITTED WITH THE APPLICATION.

c) Public safety

AS SET OUT IN THE OPERATING SCHEDULE SUBMITTED WITH THE APPLICATION.

d) The prevention of public nuisance

AS SET OUT IN THE OPERATING SCHEDULE SUBMITTED WITH THE APPLICATION.

e) The protection of children from harm

AS SET OUT IN THE OPERATING SCHEDULE SUBMITTED WITH THE APPLICATION.

Checklist:**Please tick to indicate agreement**

- I have made or enclosed payment of the fee. ☒
- I have enclosed the plan of the premises. ☒
- I have sent copies of this application and the plan to responsible authorities and others where applicable. ☒
- I have enclosed the consent form completed by the individual I wish to be designated premises supervisor, if applicable. ☒
- I understand that I must now advertise my application. ☒
- I understand that if I do not comply with the above requirements my application will be rejected. ☒
- [Applicable to all individual applicants, including those in a partnership which is not a limited liability partnership, but not companies or limited liability partnerships] I have included documents demonstrating my entitlement to work in the United Kingdom or my share code issued by the Home Office online right to work checking service (please read note 15). ☒

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

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	<ul style="list-style-type: none">• [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).• 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
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OPERATING SCHEDULE

BARRIO COMIDA, 31-33 CHURCH STREET, DURHAM, DH1 3DG

1. The operator shall ensure that at all times when the premises are open for any licensable activity there are sufficient, competent staff on duty at the premises for the purpose of fulfilling the terms and conditions of the licence and for preventing crime and disorder.
2. The operator and designated premises supervisor shall conduct a risk assessment for the general operation of the premises and in the case of individual bespoke events.
3. Alcohol may only be consumed on the premises by persons seated at a table (save for when alcohol is sold to persons attending bona fide functions at the premises in which case this condition will not apply in the part of the premises in which the function is taking place).
4. Food and beverages will not be consumed in the external seating area after 21.00 hours daily.
5. A CCTV system must be designed, installed and maintained in proper working order, to the satisfaction of Durham Police. Such system must:-
 - (i) ensure coverage of all entrances and exits of the licensed premises and coverage of all such areas as may be required by Durham Police.
 - (ii) provide continuous recording for each camera to a standard for identification and the recording be retained for a minimum of 28 days.
 - (iii) be in operation at all times the premises are in use and made available to the Police on request.
 - (iv) always be accessible by a supervisor who is sufficiently trained in the operation of the system.
6. Substantial food and non-alcoholic beverages shall be available throughout permitted hours.
7. The maximum number of persons permitted on the premises at any one time shall not exceed the safe capacity as prescribed by fire safety legislation.
8. The designated premises supervisor shall ensure that there are effective management arrangements in place to enable him/her to know how many people there are in the premises at times prescribed within the management risk assessment.
9. No glass or material or bottles shall be deposited in any skip, bin or other container of a like nature, located in the open air outside of the premises between the hours of 2300 hours and 0800 hours and any such skip, bin or container shall not be removed from the premises between those hours.
10. Noise from the licensed premises, including noise from patrons, amplified music and live music, shall not be audible beyond the boundary of the premises so as to cause nuisance to nearby residents or other uses of the complex.

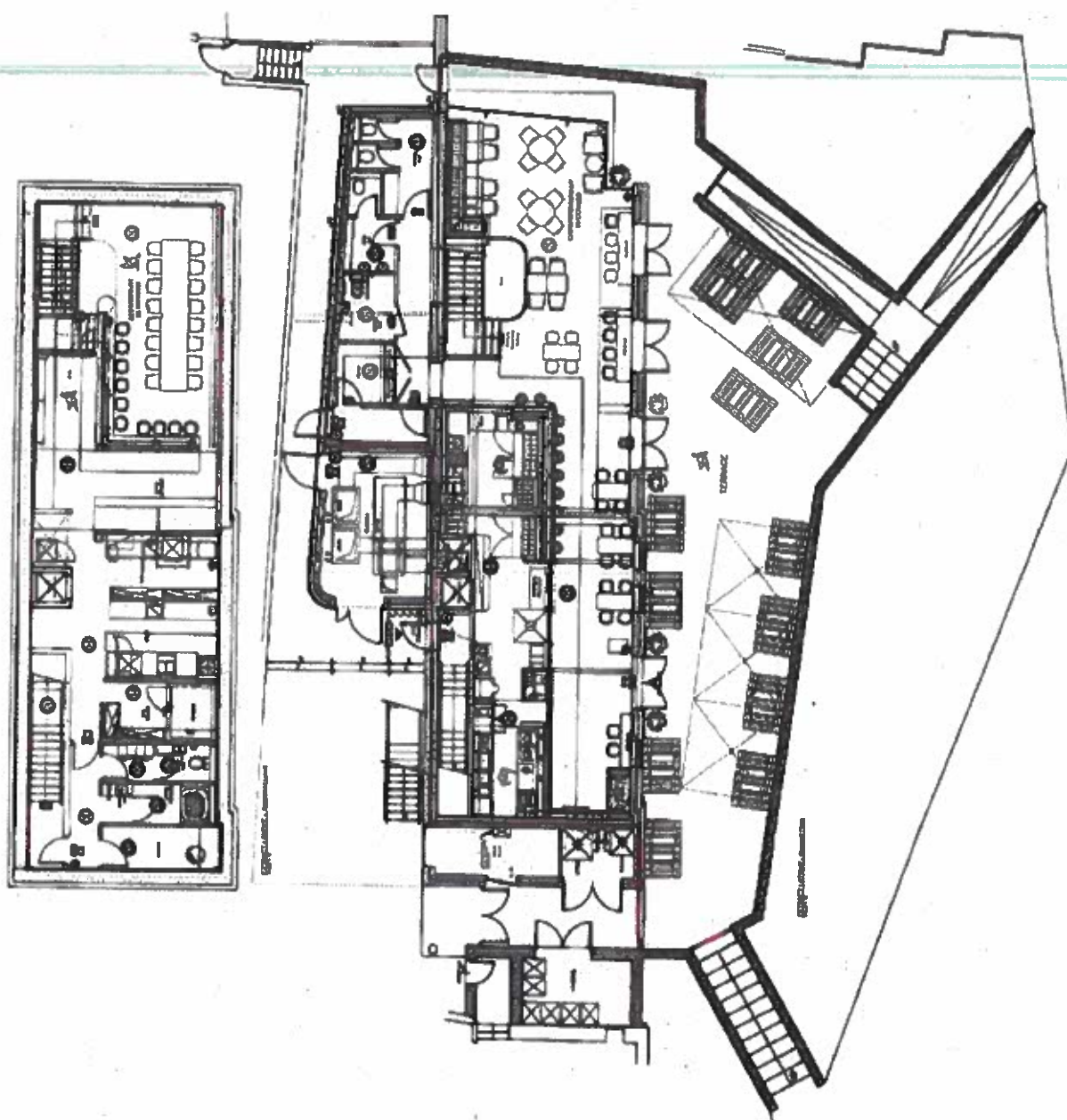
11. **When regulated entertainment involving the playing of recorded music and live music is taking place, all windows, entrance and lobby doors shall be kept closed except for the purposes of access and egress.**
 12. **All members of staff at the premises including door supervisors shall seek "credible photographic proof of age evidence" from any person who appears to be under the age of 21 years and who is seeking access to the premises or is seeking to purchase or consume alcohol on the premises. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence or proof of age card carrying a "PASS" logo.**
-

	proof of entitlement to work, or have conducted an online right to work check using the Home Office online right to work checking service which confirmed their right to work (please see note 15)
Signature	
Date	6 th March 2019
Capacity	SOLICITOR AND AGENT FOR THE APPLICANT

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) SARAH SMITH SINTONS THE CUBE BARRACK ROAD			
Post town	NEWCASTLE UPON TYNE	Postcode	NE4 6DB
Telephone number (if any)			
If you would prefer us to correspond with you by e-mail, your e-mail address (optional)			

[illegible]

Appendix 4: Applicant's revised operating schedule

From: Sarah Smith
Sent: 19 March 2019 13:55
To: Helen Johnson - Licensing Team Leader (N'hoods)
Subject: Barrio Comida [SINTONS-LLP.FID125614]

Dear Helen

As requested I attach a revised operating schedule to substitute with that submitted with the application.

This adds in the Challenge 25 policy, includes MOD ID as a valid ID and adds the conditions on staff training and refusals register.

Can you let me know if we currently have any objections to this application?

Kind regards

Sarah

Sarah Smith | Sintons LLP
Partner

Direct Dial:
Switchboard:
Email:

Linked  **twitter** 



OPERATING SCHEDULE

BARRIO COMIDA, 31-33 CHURCH STREET, DURHAM, DH1 3DG

1. The operator shall ensure that at all times when the premises are open for any licensable activity there are sufficient, competent staff on duty at the premises for the purpose of fulfilling the terms and conditions of the licence and for preventing crime and disorder.
2. The operator and designated premises supervisor shall conduct a risk assessment for the general operation of the premises and in the case of individual bespoke events.
3. Alcohol may only be consumed on the premises by persons seated at a table (save for when alcohol is sold to persons attending bona fide functions at the premises in which case this condition will not apply in the part of the premises in which the function is taking place).
4. Food and beverages will not be consumed in the external seating area after 21:00 hours daily.
5. A CCTV system must be designed, installed and maintained in proper working order, to the satisfaction of Durham Police. Such system must:-
 - (i) ensure coverage of all entrances and exits of the licensed premises and coverage of all such areas as may be required by Durham Police.
 - (ii) provide continuous recording for each camera to a standard for identification and the recording be retained for a minimum of 28 days.
 - (iii) be in operation at all times the premises are in use and made available to the Police on request.
 - (iv) always be accessible by a supervisor who is sufficiently trained in the operation of the system.
6. Substantial food and non-alcoholic beverages shall be available throughout permitted hours.
7. The maximum number of persons permitted on the premises at any one time shall not exceed the safe capacity as prescribed by fire safety legislation.
8. The designated premises supervisor shall ensure that there are effective management arrangements in place to enable him/her to know how many people there are in the premises at times prescribed within the management risk assessment.
9. All staff responsible for selling age restricted goods to be trained to implement the age verification policy. Staff training to include the risk from proxy sales. (This is alcohol purchased or obtained for young people by relatives or older friends). Training records for staff to be maintained and refresher training to be provided annually.
10. The premises licence holder shall ensure that a refusals register is in operation to log incidents where a sale of alcohol is refused (if a person appears intoxicated or appears to be under 18). The register is to be kept on the premises and made available to the police on request.

10. No glass or material or bottles shall be deposited in any skip, bin or other container of a like nature, located in the open air outside of the premises between the hours of 2300 hours and 0800 hours and any such skip, bin or container shall not be removed from the premises between those hours.
11. Noise from the licensed premises, including noise from patrons, amplified music and live music, shall not be audible beyond the boundary of the premises so as to cause nuisance to nearby residents or other uses of the complex.
12. When regulated entertainment involving the playing of recorded music and live music is taking place, all windows, entrance and lobby doors shall be kept closed except for the purposes of access and egress.
13. All members of staff at the premises including door supervisors shall seek "credible photographic proof of age evidence" from any person who appears to be under the age of 25 years and who is seeking access to the premises or is seeking to purchase or consume alcohol on the premises. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence, Ministry of Defence ID or proof of age card carrying a "PASS" logo.

Rev A

Appendix 5: Representations

City of Durham Parish Council response to Licensing consultation

Application Summary

Applicant: Shaun Emmett Hurrell

Address: Barrio Comida 31-33 Church Street, Durham. DH1 3DG

License type: New premises license application

Consultee Details

Name: (on behalf of) City of Durham Parish Council – Adam Shanley (Clerk)

Address:

Email:

27th March 2019

With reference to the above Licensing application, the City of Durham Parish Council wishes to object to this application under the objective of preventing a public nuisance.

The Parish Council wishes to highlight that this premises is within very close proximity to residential properties. The playing of recorded music from 8am until 11pm is therefore deemed to represent a public nuisance for nearby residents. The Parish Council wishes to request that a condition be applied to this application that windows be closed whilst music is playing. It is noteworthy that this premises is also based within the locality of a world heritage site and therefore the potential impact of noise from recorded music within this area is deemed unacceptable.

The Parish Council notes the applicant's intention to sell alcohol on and off the premises and is concerned about the potential tipping of glass bottles after 11pm and the noise from this also likely representing a public nuisance to residents living nearby. The Parish Council therefore wishes to request that a condition be attached to this application that there be no tipping of glass bottles between the hours of 8pm and 9am.

It is also noteworthy that this premises does not have its own parking and therefore the need to receive deliveries to the premises is likely to represent a nuisance to nearby residents and road users.

Furthermore, the Parish Council wishes to request that a condition be applied to the application that no outdoor cooking take place at all and that there be no al fresco eating or drinking permitted outside the premises after 6pm, to further mitigate from the potential of this premises being a public nuisance to local residents.

Yours sincerely,

Adam Shanley

Clerk to City of Durham Parish Council

Yvonne Raine

From: J. Lovell
Sent: 20 March 2019 15:55
To: AHS Licensing
Subject: New premises licence application for Barrio Corrida 31-33 Church Street DH1 3DG

I write on behalf of Elvet Residents' Association [ERA] to register with DCC licensing authority an objection to the above.

ERA and other immediate residents are concerned about this application for music from 8.00-23.00hrs and alcohol on and off the premises from 10.00-22.00hrs every day of the week and all night at New Years Eve.

While ERA welcomed the possibility of a daytime cafe for all to enjoy, the proposed hours are considered to be unreasonable. In addition, should 'take-away' be contemplated at 31-33 Church Street, ERA is mindful of the near-impossibility of parking close to these premises, bearing in mind that permission was refused for a takeaway catering establishment at 28 New Elvet a year or two back partly because parking for that would have been fraught with danger. Local objection was supported by the police.

yours sincerely

J. Lovell

Yvonne Raine

From: P Carey
Sent: 26 March 2019 07:20
To: Yvonne Raine; AHS Licensing
Subject: New premises licence application for Barrio Corrida 31-33 Church Street DH1 3DG
Attachments: LicenceMar19final.doc

Dear Ms Raine

Please find attached our comments/objection to this licence application. A hard copy is also on its way in the post. We would of course be happy to attend any meeting to put forward our position in person.

Kind regards

P & A Carey
Church Street
DH1 3DG

Durham County Council

26 MAR 2019

Adult & Health Services

**Church Street
Durham
DH1 3DG**

24 March 2019

Dear Sir / Madam

Re: New Premises Licence Application Barrio Comida, 31-33 Church Street, Durham DH1 3DG

We wish to object to this Licence application. We are the nearest permanent residents to this building. Our garden is within 10 metres of the rear of the building, and close to the proposed outside seating area.

When the original planning application for this new build was approved, we had been led to believe by the developer that this would be a daytime café. We are therefore very disappointed that a large restaurant open all hours is in fact now planned. This seems out of keeping with what is still a residential area at a main entrance in to the World Heritage site.

When we moved here 20 years ago, we knew we would be living in a student area and close to Durham University Union. Although the Union does now have an extended licence and can be noisy at times, this is very intermittent and limited to term time. Approval of this application would cause noise and disturbance all day, every day of the year.

Despite a meeting supposed to reassure residents, the applicant has not taken into account any concerns expressed there regarding opening hours, and did not mention the New Year's Eve element or the off sale of alcohol during the meeting.

We believe this application will be an infringement of our privacy and that of our neighbours as well as being out of keeping with the Heritage site, and will contravene the licensing act 2003.

We have the following additional specific objections:

1. Opening Hours: Monday to Sunday: 08:00 – 23:00 hrs; from the end of permitted hours on New Years Eve to the beginning of permitted hours on New Years Day
These hours are excessive, providing no time for residents without all the associated disturbances of noise, bright lights, constant arrival and departure of customers, and all the additional impact of offering take away food and alcohol until late. The opening at New Year is especially excessive in a residential area and would be better suited to an establishment in central Durham. Assuming deliveries are made early in the morning or later at night to minimise other risks this will have an

impact on residents at relatively unsocial hours, especially at weekends.

2. Activity: Playing of Recorded Music (indoors) Monday to Sunday: 08:00 – 23:00 hrs; from the end of permitted hours on New Years Eve to the beginning of permitted hours on New Years Day

Noise carries and with windows/ doors open in the warmer weather and the constant serving at outside tables means the music will not, in fact, be limited to indoors and will be audible in the surrounding areas including our garden. Given that it will not be possible to limit music to inside only, we object to any music licence if there is outside seating in use or if windows are open. As there is already considerable noise on occasions from the Union and the colleges over the river when they have functions on, the addition of this noise every day is excessive and will cause a public nuisance.

3. Activity: Supply of Alcohol (on and off sales) Monday to Sunday: 10:00 – 22:00 hrs; from the end of permitted hours on New Years Eve to the beginning of permitted hours on New Years Day

We object to the " off " sale of alcohol at any time, and also to the hours included in the onsite application especially in relation to functions when the sale is separate to food so is in fact the same as a bar.

Risks to Public safety: there is no specific parking for the premises in the area. Parking is already challenging for the current residents and local businesses. Although many customers may be on foot, any additional local traffic and the deliveries will be a risk. This in particular applies to the sale of take away food and alcohol. The site is adjacent to traffic lights. There are many cyclists, the pavements are narrow and busy especially with pedestrians, so any additional traffic will the risk of accidents. Where will delivery vans park without causing additional hazards?

The hours of alcohol sales are excessive. Should the council be encouraging drinking at 10am, and throughout the night at New Year? There are public safety and health risks from people under the influence of alcohol. The licence includes sales for functions so in fact it will operate as a bar as well as a restaurant.

Prevention of Public Nuisance: Noise from customers, deliveries, the day to day running of the business; antisocial behavior from alcohol disturbances from customers collecting take away food; debris from take away food left in the street, are all issues that will be exacerbated by granting this licence. We already have a problem with food waste, vomit and bottles left on our doorstep in the street, and disruptive behavior late at night. All the neighbours with gardens on this side of the street have had intruders, thefts and vandalism, which often seems to be associated with the intake of excess alcohol. This establishment is so close to the gardens that we believe this will increase the risk of such incidents.

We therefore object to the current application and would wish to see it

substantially reduced in both the hours and days of opening, limitations to music and alcohol sales, and with no take away food / alcohol at all, to take into account the impact on the local residential area, and to be more appropriate at the entry to the world heritage site.

Yours faithfully

Dr. A Wood and Dr. F Carey

Appendix 6: Responses from Responsible Authorities

Carol Graham - Licensing Assistant (N'hoods)

From: Sean Barry
Sent: 12 March 2019 09:40
To: Carol Graham - Licensing Assistant (N'hoods)
Cc: AHS Licensing
Subject: RE: Licensing - new premises licence application received - Barrio Comida, Durham

Good Morning

I have received a new licence application for the establishment: Barrio Comida, 31-33 Church Street, Durham. DH1 3DG

I have no comments or objections to make on behalf of County Durham Public Health.

My Ref: PH/2019/026

Thanks
Sean

Carol Graham - Licensing Assistant (N'hoods)

From: Paul Hopper
Sent: 25 March 2019 08:52
To: Carol Graham - Licensing Assistant (N'hoods)
Subject: CON28/19/00692 31 - 33 Church Street Durham

Hi Carol,

The Local Planning Authority has no comment to make on the above licence application.

Kind regards

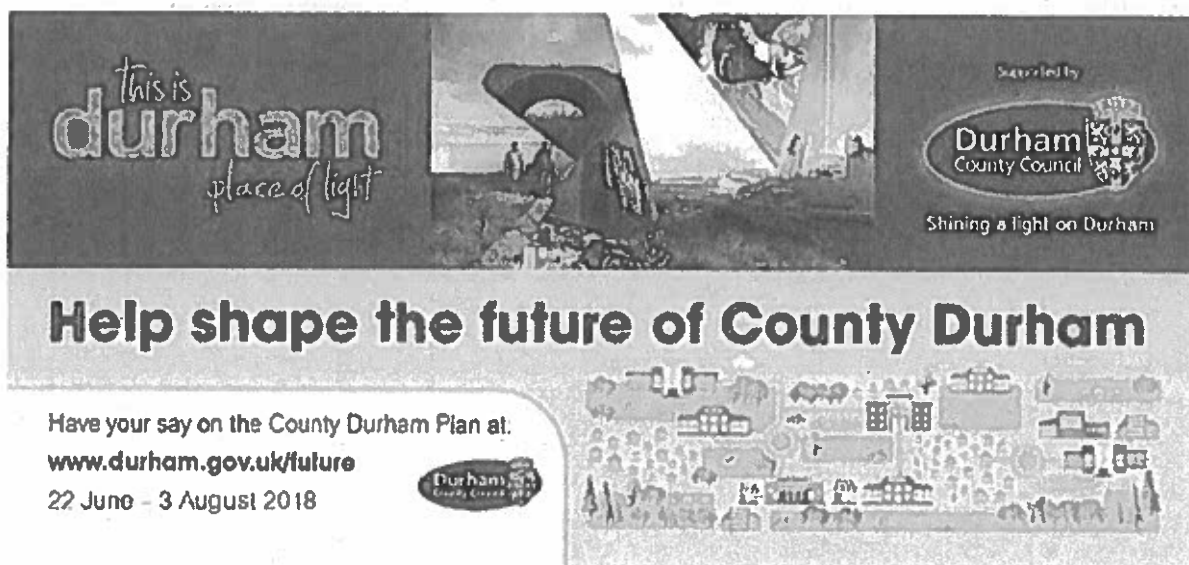
Paul Hopper
Senior Planning Officer
Durham County Council Central and East Area Office
Regeneration and Local Services
Tel:
Email:



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The banner features a dark background with a central image of a large, stylized 'D' shape. To the left of the 'D' is the text 'this is durham place of light' in a light, handwritten-style font. To the right of the 'D' is the Durham County Council logo, which includes the text 'Sponsored by Durham County Council' and 'Shining a light on Durham'. Below the banner, the text 'Help shape the future of County Durham' is prominently displayed in a bold, sans-serif font. Underneath this text, it says 'Have your say on the County Durham Plan at: www.durham.gov.uk/future' and '22 June - 3 August 2018'. A small Durham County Council logo is also present in the bottom right corner of the banner area.

Help shape the future of County Durham

Have your say on the County Durham Plan at:
www.durham.gov.uk/future
22 June - 3 August 2018



Chief Fire Officer: Stuart Errington

Fire and Rescue Service Headquarters,
Belmont Business Park, Durham, DH1 1TW

Date: 25 March 2019

This matter is being dealt with by: Daniel Thompson

Our Ref: 7D40850530

Your Ref:

Direct Dial Telephone:

E-mail:

Carol Graham
Durham County Council
Annand House
Meadowfield
Durham
DH7 8RS

Dear Madam

Licensing Act 2003

Regulatory Reform (Fire Safety) Order 2005

Barrio Comida, 31- 33 Church Street, Durham, DH1 3DG

I acknowledge your application dated 7 March 2019 for a Premises Licence under The Licensing Act 2003 in respect of the above-named premises.

No representations will be made to the Licensing Authority subject to the responsible person for the above premises ensuring compliance with the requirements of the Regulatory Reform (Fire Safety) Order 2005. **However, it will need to be confirmed that the fire alarm is interlinked with the sleeping accommodation above the premises.**

A suitable and sufficient fire safety risk assessment must be carried out in order to comply with the above Order.

For further guidance please refer to <https://www.gov.uk/workplace-fire-safety-your-responsibilities/fire-safety-advice-documents> which provides information about the Regulatory Reform (Fire Safety) Order 2005.

Should you require any further information please do not hesitate to contact me on the telephone number or e-mail address shown above or visit our website www.ddfire.gov.uk and follow the link to Fire safety at work.

Yours faithfully

Daniel Thompson
Fire Safety Section



www.ddfire.gov.uk

Carol Graham - Licensing Assistant (N'hoods)

From: Ted Murphy
Sent: 28 March 2019 12:32
To: Carol Graham - Licensing Assistant (N'hoods)
Subject: RE: Licensing - new premises licence application received - Barrio Comida, Durham

Hi Carol,

I have no representation to make on this application for a premises licence.

Regards

Ted Murphy
Senior Environmental Health Officer
Regeneration and Local Services

T:

E:

Web: www.durham.gov.uk

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Appendix 7: Statement of Licensing Policy

DURHAM COUNTY COUNCIL STATEMENT OF LICENSING POLICY

8.0 Public Safety

8.1 The Act covers a wide range of premises that require Licensing. Each of these types of premises presents a mixture of risks, with many common to most premises, and others unique to specific operations. It is essential that applicants acknowledge these risks and that premises are constructed or adapted and operated to safeguard occupants.

8.2 Applicants are advised to seek advice on such matters from the Council's Occupational Safety and Health team, Health and safety Executive, Durham Constabulary and the Durham and Darlington Fire and Rescue Service, and incorporate any recommendations in their Operating Schedule before submitting their applications.

- ☐ First Aid
- ☐ Public security
- ☐ Event control
- ☐ Polycarbonate Glass
- ☐ Fire Safety
- ☐ Electrical safety
- ☐ Building safety
- ☐ Transport
- ☐ Drink driving issues
- ☐ Occupancy levels

9.0 Prevention of Public Nuisance

9.1 Licensed premises, especially those operating late at night and in the early hours of the morning, can cause a range of nuisances impacting on people living, working or sleeping in the vicinity of the premises.

9.2 The concerns relate, amongst other things, to litter, light pollution, noxious odours and noise nuisance resulting from music, human voices, ventilation equipment and vehicles. The Licensing Authority will expect applicants to demonstrate that suitable and sufficient measures have been identified, and will be implemented and maintained, with the intention of preventing public nuisance relevant to the individual style, location and characteristics of the premises and events.

9.3 If an external structure or area is to be used by customers, whether for consumption of alcohol or for smoking, the applicant will be expected to offer measures designed to minimise its impact on local residents in respect of both public nuisance and crime and disorder. These measures may include a restriction on hours that areas / structures will be used, appropriate signage requesting customers to consider local residents and monitoring of such areas by staff.

9.4 The placement of tables and chairs outside of licensed premises may give rise to public nuisance including noise and litter. When tables and chairs are situated on the public highway relevant consents will often be required. Enquiries for such consents should be made to the Council's Highway's Section of the Regeneration and Economic Development Department. In predominantly commercial areas such as shopping centres the Licensing Authority, the use of tables and chairs outside may be allowed however, the Council will normally expect them to be removed before the premises close, and any resulting litter/ debris cleared away.

9.5 Applicants should give consideration to reducing potential noise nuisance by, for example (this list is not exhaustive):

- ☐ Assessment of likely noise levels in the premises.
- ☐ Assessment of likely noise levels if outdoor drinking is allowed.
- ☐ The sound insulation the building would provide (e.g. double glazing, double doors / lobbies to entrances, windows used for ventilation).
- ☐ The distance and direction to the nearest noise sensitive premises.
- ☐ Likely noise sources outside of the premises (e.g. emptying bottle bins, taxis, unruly customers leaving the premises).
- ☐ Dispersal of patrons – where necessary the Licensing Authority will expect a dispersal policy for patrons at the end of the evening. The policy will specify such issues as alterations to the style and volume of music played, public address announcements and use of appropriate signage at exits.
- ☐ Ways to limit noise / disorder from patrons leaving the premises.

9.6 The extent to which the above matters will need to be addressed will be dependent on the nature of the area where the premises are situated, the type of premises concerned, the licensable activities to be provided, operational procedures and the needs of the local community.

9.7 Applicants are advised to seek advice from Durham County Councils Environmental Health Team and incorporate any recommendations in their Operating Schedule before submitting their applications.

9.8 Takeaways and fast-food outlets: The Licensing Authority expects takeaways and late night refreshment premises to take reasonable steps in clearing litter from outside their premises and along the pavement in either direction as necessary, whilst the premises are open and at the end of the working day. These premises should maintain clean, dirt or grease free frontages. Such premises should also provide notices displayed advising customers of the location of bins and patrons should use the bins any provided.

Appendix B. Framework Licensing Hours - recommended hours for the operation of licensable activities (the sale of alcohol and the provision of late night refreshment) for categories of licensed premises situated within the County of Durham.

Category of Premise	Weekdays (Sunday to Thursday)	Weekends (Friday night into Saturday morning and Saturday night into Sunday morning)	Bank Holidays
For premises licences and club premises certificates authorising the sale or supply of alcohol for consumption on or off the premises	07.00 to 00.00	07.00 to 01.00	Good Friday Plus 1 Hour For all other bank holidays, an additional hour be added to the terminal hour of the day preceding the bank holiday (i.e. if the Monday is the bank holiday, the Sunday is normal trading plus 1 hour).
For licences not including the sale or supply of alcohol	07.00 to 23.30	07.00 to 00.30	Good Friday Plus 1 Hour For all other bank holidays, an additional hour be added to the terminal hour of the day preceding the bank holiday (i.e. if the Monday is the bank holiday, the Sunday is normal trading plus 1 hour).
For licences not including the sale or supply of alcohol (community centres, village halls)	07.00 to 00.00	07.00 to 01.00	Good Friday Plus 1 Hour For all other bank holidays, an additional hour be added to the terminal hour of

			<p>the day preceding the bank holiday</p> <p>(i.e. if the Monday is the bank holiday, the Sunday is normal trading plus 1 hour).</p>
For licences authorising late night refreshment as the primary licensable activity (takeaways)	01.00	02.00	<p>Good Friday Plus 1 Hour</p> <p>For all other bank holidays, an additional hour be added to the terminal hour of the day preceding the bank holiday</p> <p>(i.e. if the Monday is the bank holiday, the Sunday is normal trading plus 1 hour).</p>

Appendix 8: Section 182 Guidance

Public safety

2.7 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

2.8 A number of matters should be considered in relation to public safety. These may include:

- Fire safety;
- Ensuring appropriate access for emergency services such as ambulances;
- Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts (see paragraph 2.4 above);
- Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;
- Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);
- Ensuring appropriate and frequent waste disposal, particularly of glass bottles;
- Ensuring appropriate limits on the maximum capacity of the premises (see paragraphs 2.12-2.13, and Chapter 10; and
- Considering the use of CCTV in and around the premises (as noted in paragraph 2.3 above, this may also assist with promoting the crime and disorder objective).

2.9 The measures that are appropriate to promote public safety will vary between premises and the matters listed above may not apply in all cases. As set out in Chapter 8 (8.38-8.46), applicants should consider when making their application which steps it is appropriate to take to promote the public safety objective and demonstrate how they achieve that.

Ensuring safe departure of those using the premises

- 2.10 Licence holders should make provision to ensure that premises users safely leave their premises. Measures that may assist include:
- Providing information on the premises of local taxi companies who can provide safe transportation home; and
 - Ensuring adequate lighting outside the premises, particularly on paths leading to and from the premises and in car parks.

Maintenance and repair

- 2.11 Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be inappropriate for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if appropriate, checks on this equipment to be conducted at specified intervals and for evidence of these checks to be retained by the premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for licensing authorities, if they receive relevant representations from responsible authorities or any other persons, to attach conditions which require equipment of particular standards to be maintained on the premises. Responsible authorities – such as health and safety authorities – should therefore make their expectations clear in this respect to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules.

Safe capacities

- 2.12 “Safe capacities” should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.
- 2.13 The permitted capacity is a limit on the number of persons who may be on the premises at any time, following a recommendation by the relevant fire and rescue authority under the Regulatory Reform (Fire Safety) Order 2005. For any application for a premises licence or club premises certificate for premises without an existing permitted capacity where the applicant wishes to take advantage of the special provisions set out in section 177 of the 2003 Act¹, the applicant should conduct their own risk assessment as to the appropriate capacity of the premises. They should send their recommendation to the fire and rescue authority which will consider it and decide what the “permitted capacity” of

¹ S 177 of the 2003 Act now only applies to performances of dance.

those premises should be.

- 2.14 Public safety may include the safety of performers appearing at any premises, but does not extend to the prevention of injury from participation in a boxing or wrestling entertainment.

Public nuisance

- 2.15 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- 2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.
- 2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 2.18 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.

- 2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.
- 2.20 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.
- 2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.
-