

AGENDA

Meeting: Western Area Licensing Sub Committee
Place: Council Chamber - Council Offices, Bradley Road, Trowbridge,
BA14 0RD
Date: Wednesday 30 May 2012
Time: 10.30 am
Matter: Licence Review - Galaxy Caffe

Please direct any enquiries on this Agenda to Kirsty Butcher, of Democratic Services, County Hall, Bythesea Road, Trowbridge, BA14 8JN.

Press enquiries to Communications on direct lines (01225)713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership:

Cllr Allison Bucknell

Cllr Bill Roberts

Cllr Ernie Clark

AGENDA

1 **Election of Chairman**

To elect a Chairman for the meeting of the Sub-Committee.

2 **Procedure for the Meeting** (*Pages 1 - 8*)

The Chairman will explain the attached procedure for the members of the public present.

3 **Chairman's Announcements**

The Chairman will give details of the exits to be used in the event of an emergency.

4 **Declarations of Interest**

To receive any declarations of personal or prejudicial interests or dispensations granted by the Standards Committee.

5 **Licensing Application**

To consider and determine an Application by Richard Francis, Senior Environmental Health Officer, Public Protection, Wiltshire Council, for a Review of the Premises Licence in respect of Galaxy Caffe, 28 Roundstone Street, Trowbridge, BA14 8DE.

5a **Licensing Officer report - Application for review of Premises Licence** (*Pages 9 - 14*)

5b **Appendix 1 - Decision Notice from variation hearing 22 December 2011** (*Pages 15 - 16*)

5c **Appendix 2 - Current premises licence** (*Pages 17 - 22*)

5d **Appendix 3a - Application for review by Senior Environmental Health Officer** (*Pages 23 - 30*)

5e **Appendix 3b - supporting documentation - Environmental Health**

Officer report (*Pages 31 - 66*)

5f **Appendix 4 - representations** (*Pages 67 - 70*)

5g **Appendix 5 - location map of the premises and surrounding area**
(*Pages 71 - 72*)

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LICENSING COMMITTEE

PROCEDURAL RULES FOR THE HEARING OF LICENSING ACT 2003 REVIEW APPLICATIONS

1 Purpose

- 1.1 These rules have been prepared to facilitate proper consideration by the Licensing Committee and its Sub Committees of applications for Reviews of Premises Licences, made under the Licensing Act 2003.
- 1.2 The rules set out a framework for how applications are to be heard and explain the role of the participants at the Hearing.

2 Definitions

- 2.1 The following definitions describe the participants at and the subject matter of a Hearing:

“Review Applicant” means the person who has submitted an Application for a Review of a Premises Licence for consideration by the Sub-Committee.

“Review Premises” means the premises whose Premises Licence is subject to the Application.

“Review Applicant’s Representative” means a person attending a Hearing to assist or represent a Review Applicant including a lawyer.

“Application” means an application for the Review and any other decision to be made by the Committee/Sub-Committee in respect of a Licence.

“Chairperson” means the Member who is the Chairperson of the Committee for the particular Hearing.

“Committee” means the Council’s Licensing Committee and includes any Sub Committee of the Licensing Committee.

“Committee Lawyer” means the Council’s Lawyer (including an external Lawyer instructed by the Council’s Legal & Democratic Services Manager) who is present at a Hearing to advise the Chairperson and the Members.

“Committee Manager” means the Council’s Officer who is present at a Hearing to take minutes.

“Committee Report” means the Licensing Officer’s written report to the Committee concerning an Application, a copy of which has been previously made available to the Applicant or their Representative, a Responsible Authority or their Representative or an Interested Party or their Representative.

“Hearing” means a meeting of the Committee at which an Application is considered.

“Licence” means a Licence which the Committee has the power or duty inter alia to grant, transfer, suspend or revoke.

“Licensing Officer” means the Council’s Licensing Officer(s) who is/are present at a Hearing to present reports in respect of an Application and to give technical advice in respect of an Application to the Committee when requested.

“Licensing Authority” the Council in whose geographical area the subject matter of the Application relates to, and includes the Council’s Licensing Committee, any Sub Committee of the Licensing Committee and a Licensing Officer.

“Member” means a Member who is a Member of the Committee that is considering an Application.

“Responsible Authority” means a person who is present at a Hearing to make representations in respect of an Application in their capacity as Responsible Authority and includes any person who is present to assist or make representations on behalf of the Responsible Authority including a Lawyer.

“Interested Party” means a person who is present at a Hearing to make representations in respect of an Application in their capacity as an Interested Party, and includes any person who is present to assist or make representations on behalf of the Interested Party including a Lawyer.

3 Key Principles

- 3.1 The principles of ‘natural justice’, and Article 6 ‘Right to a Fair Trial’, which is one of the Convention Rights in the Human Rights Act 1998, require that there is a fair Hearing of Applications.
- 3.2 Natural justice is an umbrella term for the legal standards of basic fairness. This will include that:

- 3.2.1 All parties to the Hearing have an opportunity to make representations before a decision is made;
- 3.2.2 All parties to the Hearing have an adequate opportunity to consider and respond to any submissions made by a any other party;
- 3.3 It is also fundamental that there is an orderly presentation of submissions at a Hearing so that the relevant issues are properly understood, evidence is tested and that oral statements made at the Hearing are accurately recorded.
- 3.4 Ultimately the Chairperson determines the application of these rules, having regard to any submissions being made by those present and in particular the Committee Lawyer.

4 The Hearing

- 4.1 The Hearing shall take place in public, except that:-
 - 4.1.1 The Committee may exclude the public from all or part of the Hearing where it considers it to be in the public interest to do so. Public includes a party and any person assisting or representing a party.
 - 4.1.2 The Committee may require any person attending the Hearing who, in its opinion, is behaving in a disruptive manner, to leave the Hearing and may:
 - A refuse to permit them to return;
 - B permit them to return only on such conditions as the Committee may specify;
 - C in the event that a person is required to leave a Hearing that person may, before the end of the Hearing, submit to the Committee in writing any information which they would have given orally.
- 4.2 Prior to the Hearing commencing, the Chairperson shall advise the parties of the procedure it proposes to follow at the Hearing.
- 4.3 Where a party has previously requested permission for a person(s), other than their representative, to appear at the Hearing then the Committee shall consider whether to permit that request.
- 4.4 The Committee will allow the parties an equal maximum period of time in which to exercise their rights.
- 4.5 This equal maximum time may have been notified in advance of the Hearing;
- 4.7 Where there is a multiple of Interested Parties who have attended the Hearing to make the same representation then the Committee would normally require

that a spokesperson be appointed by them to make the representations on behalf of all of those Interested Parties.

5 Presentation of Submissions

5.1 The Chairperson will introduce the Application.

5.2 In the event that the Licensing Authority has given notice to a party requiring clarification on a point(s) then that party shall respond to the points raised by the Licensing Authority.

5.3 Submissions shall be made in the following order unless the Chairperson directs otherwise:

5.3.1 The Licensing Officer will orally present the Committee Report and will in particular advise the Committee as to:

- A the options available to it;
- B the considerations that are relevant in reaching its decision.

5.3.2 The Review Applicant (or the Review Applicant's Representative) will orally present its submission which may include:

- A presenting their case in accordance with the papers, which will have been circulated with Agenda papers;
- B confirming key information and answer pertinent questions; and
- C calling witnesses in support of the Application (see paragraph 4.3).

5.3.3 Any other Responsible Authority/Authorities and/or an Interested Party/Parties will orally present their representations in turn which shall include:

- A the grounds of the representation to the Application; and
- B any condition(s) that the Responsible Authority/Authorities and/or an Interested Party/Parties consider should be applied to the Premises Licence under review

5.3.4 The Premises Licence Holder and/or their representative will orally present their representations which shall include;

- A The response to the representations made by the Review Applicant, and any other Responsible Authority/Authorities and/or an Interested Party/Parties; and
- B Whether they would accept any modifications to the Licence as suggested by the Review Applicant, a Responsible Authority/Authorities and/or an Interested Party/Parties.

6 Questioning of Submissions

- 6.1 The Chairperson will regulate the order in which questions are asked by Members.
- 6.2 The Chairperson and Members, voiced through the Chairperson, may question any party following the completion of their submission.
- 6.3 The Chairperson will normally permit the Applicant, a Responsible Authority/Authorities or an Interested Party/Parties to ask questions through them of the other parties.
- 6.4 The Chairperson may direct that questions which are not relevant to the Application or one of the four Licensing Objectives are not formally put or answered.

7 Documentation

- 7.1 No party shall present new documentation to the Committee at the Hearing other than with the consent of all of the other parties. This does not preclude the Licensing Officer from correcting errors, providing updated information or an extract from a local map showing the Review Premises in the context of the surrounding premises and any Interested Party's premises. If any party is granted permission to present supplementary papers at the Hearing they shall provide at least 10 copies at the start of their submission.

8 Intervention

The Chairperson shall permit the following interventions at any point in the Hearing:

- 8.1 The Committee Lawyer to advise the Committee on issues of law, procedure and relevant considerations on decision making. If necessary, the Chairperson may require the Committee, the Committee Lawyer and the Committee Manager to leave the Hearing so that advice can be given.
- 8.2 The Committee Manager to advise the Committee on procedure generally, or to request that statements made are repeated for reasons of clarity and so that they can be properly recorded.
- 8.3 The Licensing Officer to seek to clarify statements that have been made in light of information held on their file.

9 Failure of Parties to Attend Hearing

- 9.1 If a party has informed the Licensing Authority that it does not intend to attend or be represented at a Hearing, the Hearing may proceed in its absence.

9.2 If a party has not indicated that it does not intend to attend or be represented at a Hearing and fails to attend or be represented at the Hearing then the Licensing Authority may:

9.2.1 where it considers it be necessary in the public interest, adjourn the Hearing to a specified date; or

9.2.2 hold the Hearing in the party's absence.

9.3 Where the Licensing Authority holds a Hearing in the absence of a party, it shall consider at the Hearing the application, representations or notice made by that party.

10 Closing Submissions

10.1 The Chairperson shall allow first, any other Responsible Authority/Authorities and the Interested Party/Parties (other than the Review Applicant) to make a closing oral submission(s) and secondly allow the Review Applicant or the Review Applicant's Representative an opportunity to make an oral closing submission in support of the Application and thirdly allow the Premises Licence Holder of the Review Premises to make an oral closing submission.

11 Decision

11.1 The Committee, the Committee Lawyer and the Committee Manager, shall retire so that the decision may be considered in private, and to consider any legal issues raised by the Members.

11.2 The decision and reasons for the decision, of the Committee shall be communicated orally by the Chairperson to the parties after the Committee has deliberated in private on the Application.

11.3 Written reasons shall be provided soon after the deliberations of the Application and in any event within the statutory time limits.

Hearing Procedure Summary

1. The Chairperson welcomes all those present and introduces the Application.
2. The Chairperson introduces the Applicant, Responsible Authority/Authorities and/or Interested Party/Parties.
3. The Chairperson outlines the Hearing Procedure.
4. The Licensing Officer presents the Committee Report.
5. The Applicant addresses the Committee.
6. Questions to the Applicant by Responsible Authority/Authorities and/or Interested Party/Parties.
7. Questions to the Applicant by Members of the Committee.
8. Comments by Responsible Authority/Authorities and/or Interested Party/Parties.
9. Questions by Applicant.
10. Questions to Responsible Authority/Authorities and/or Interested Party/Parties by Members of the Committee.
11. Summing up by Parties who have made representations.
12. Summing up by Applicant.
13. Committee retires with the Committee Lawyer and Committee Manager to consider its decision.
14. Committee returns and the Lawyer gives a summary of any legal advice that may have been given to the Committee, and invites the parties present to make any comments on that advice.
15. The Chairperson either gives the decision with reasons, or advises that it will be released in writing with reasons within the statutory time limits.

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WILTSHIRE COUNCIL

WESTERN AREA LICENSING SUB COMMITTEE

30 MAY 2012

Application for Review of a Premises Licence; Galaxy Caffe 28 Roundstone Street, Trowbridge BA14 8DE
Premises Licence Holders Sebastian & Damian Siegmuller

1. Purpose of Report

- 1.1 To determine an application for a Review of a Premises Licence in respect of the Galaxy Caffe 28 Roundstone Street, Trowbridge, made by the Wiltshire Council's Public Protection Team.

2. Background Information

- 2.1 An application for the Review of the Galaxy Caffe's Premises Licence for the supply of alcohol, regulated entertainment & late night refreshment, has been made by Wiltshire Council's Public Protection Team in their capacity as the local authority with responsibility for environmental health. Following advertisement of the application, two further representations from interested parties have been received.

- 2.2 Wiltshire Council (as the Licensing Authority) must hold a hearing to consider the application having regard to the representations. In accordance with Section 52 (3) of The Licensing Act 2003, the Licensing Sub Committee is required to take such steps as it considers necessary for the promotion of the licensing objectives.

- 2.3 The licensing objectives are:

- i) The Prevention of Crime and Disorder;
- ii) Public Safety;
- iii) The Prevention of Public Nuisance; and
- iv) The Protection of Children from Harm.

- 2.4 Such steps are:

- i) To modify the conditions of the licence.
- ii) To exclude a licensable activity from the scope of the licence.
- iii) To remove the designated premises supervisor.
- iv) To suspend the licence for a period not exceeding three months.
- v) To revoke the licence.
- vi) To determine that no steps are necessary

Government Guidance issued under s.182 of the Licensing Act states that:

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

- 2.5 Since June 2011 the premise benefits from a Premises Licence issued under the Licensing Act 2003. The original application for licensable activities operating from 1000 to 2300 hours Monday to Sunday, defined the premises as a restaurant. The licensable activities applied for and subsequently granted, were for the supply of alcohol (on the premises) and recorded music, described as quiet romantic music, background. The premises at this time were to be know as ‘The Little Daisy’.
- 2.6 An application to vary the Premises Licence was submitted in October 2011. The variation was for the inclusion of plays, live music, performance of dance, karaoke, facilities for dancing, late night refreshment. It also requested extending the hours for all licencesable activities until 0200 the following day. The application also specified a change of name of the premises to the ‘Galaxy Caffe’.
- 2.7 The application was subsequently granted at a hearing of the application in December 2011. The hearing being called following an objection on the grounds of public nuisance by an officer of Wiltshire Council, with responsibility for environmental health acting as a Responsible Authority as defined in the Licensing Act legislation. A copy of the decision notice is attached as **Appendix 1**.
- 2.8 The premises are operating as a café during the day and evenings, as a late night entertainment venue with its own customer base.
- 2.9 The current Premises Licence is attached at **Appendix 2**.

3. Details of the Grounds for Review

- 3.1 On the 10 April 2012, an application for a review of the Premises Licence was served on the premises and the Licensing Authority. The review of the licence has been requested by Richard Francis, Senior Environmental Health Officer, Public Protection, Wiltshire Council, Bradley Road, Trowbridge on the grounds of the premises causing public nuisance. The grounds for review are:

Following the grant of a licence for the Galaxy Caffe in December 2011 the Public Protection department of Wiltshire council received a number of complaints relating to the provision of regulated entertainment in the form of amplified music.

An investigation into the complaints confirmed the existence of a nuisance and subsequently it is the officers opinion that the prevention of public nuisance licensing objective is currently not being met.

- 3.2 The application for review is attached as **Appendix 3(a)**. The evidence relied upon by the Senior Environmental Health Officer in support of the application is contained within **Appendices 3(b)**.

4. Consultation and Representations

- 4.1 The review process requires a public notice to be posted on the premises for a period of 28 days, together with a copy of the notice posted at the offices of Wiltshire Council, 165 Bradley Road, Trowbridge, Wiltshire, BA14 0RD. During the consultation period two further representations have been received and accepted from the following Interested Parties:

Ms N Owen, The Polebarn Hotel, Polebarn road, Trowbridge
Mr Y C Lee, Ho Wah 29 Roundstone Street, Trowbridge

Also received is an email from two of Mr Lee's customers outlining their observations with regard to noise issues they have witnessed whilst dining at his premises.

The two further representations and the email from Mr Lee's customers are attached as **Appendix 4**.

- 4.2 The Sub Committee can take into account documentary or other information presented at the hearing with the consent of all other parties.
- 4.3 The Senior Environmental Health Officer's case:

The officer has specified the following as the reasons for calling the review:

- 4.3.1 A premises licence application for The Little Daisy Deli, 28 Roundstone Street, Trowbridge, Wiltshire was received by the council in May 2011, the applicants being Sebastian and Damian Siegmuller. The application related to a restaurant only and no provision of regulated entertainment was requested at that time.
- 4.3.2 In September 2011 concerns were made regarding the potential provision of recorded and live music at the premises, which had changed its name to Galaxy Caffe. Discussions with the premises licence holders revealed that there was no intention to provide regulated entertainment at the venue, however following this conversation an application to vary the licence was received by the Council on 31 October 2011. The variation was to include live music, recorded music and anything of a similar description.
- 4.3.3 On 06 November 2011 an out of hours call was received by the Public Protection department about noise from recorded music at the premises. In this instance an officer witnessed excessive noise levels from the venue.

- 4.3.4 Having been informed of excessive levels due to amplified music I had concerns about the acoustic properties of the premises, and subsequently I met with the applicants on a number of occasions to discuss my concerns. At the time I did not feel that the prevention of public nuisance licensing objective could be achieved and therefore I made a representation to the licensing authority dated 24 November 2011.
- 4.3.5 In addition a representation was made from an Interested Party regarding this variation. An Area Licensing Sub Committee meeting was held on 22 December 2011 to hear the application in full. Whilst I again raised concerns about the acoustic properties of this premises a licence was granted permitting recorded music until midnight Monday- Sunday and live music until midnight Monday- Sunday.
- 4.3.6 On the 18 January 2012 a number of complaints were received regarding loud music coming from the Galaxy Caffe. On 19 January 2012 a letter was sent to Mr Sebastian Siegmuller and Mr Damian Siegmuller advising that complaints had been received. The Council continued to receive complaints and Wiltshire Council licensing officers witnessed excessive noise levels from the premises on 28 January 2012. In view of the continued complaints and the officer observations noise abatement notices were served on Mr Sebastian Siegmuller and Mr Damian Siegmuller under Section 80 of the Environmental Protection Act 1990 on 17 February 2012.
- 4.3.7 On 25 February 2012 at 2220 Susie Vowles, Public Protection Officer witnessed excessive noise levels coming from the Galaxy Caffe. The noise witnessed constituted a breach of the noise abatement notices and also clearly demonstrated that the prevention of public nuisance licensing objective was not being met.
- 4.3.8 On 10 March 2012 from 2200 onwards myself and Susie Vowles witnessed a number of further breaches of the noise abatement notices and again the prevention of public nuisance licensing objective was not being met.
- 4.3.9 Following the service of the notices and officers having witnessed a number of breaches I am satisfied that the prevention of public nuisance licensing objective has been and continues to be ignored by the two holders of the premises licence, Mr Sebastian Siegmuller and Mr Damian Siegmuller. Therefore I have no other option than to request a review of the premises licence.
- 4.3.10 It is clearly evident that the premises are unsuitable for the provision of recorded and live music and as such I would request that these provisions be removed from the premises licence.

Note: The Officer may not raise matters at the hearing unless they have already referred to them in the review application. The Licensing Authority may nevertheless take into account documentary or other information produced by the Public Protection Officer in support of their application, if it is provided to the Licensing Authority before the hearing, or at the hearing with the consent of all the other parties.

4.4 A location map of the premises and surrounding area is attached as **Appendix 5**.

5. Legal Implications

5.1 This Hearing is governed by the Licensing Act 2003 (Hearings) Regulations. These provide that hearings should be held in public unless the Licensing Authority considers that the public interest in excluding the public outweighs the public interest in the hearing taking place in public.

6. Officer Recommendations

6.1 Officers are not permitted to make a recommendation – the decision is to be reached by the members of the Licensing Sub Committee.

7. Right of Appeal

7.1 It should be noted that the Premises Licence Holder and the Responsible Authority may appeal the decision made by the Licensing Sub Committee at the Magistrates Court. The appeal must be lodged with the Magistrates Court within 21 days of the notification of the decision.

7.2 In the event of an appeal being lodged, the decision made by the Licensing Sub Committee is suspended until any appeal is heard and any decision made by the Magistrates Court.

7.3 The Premises Licence Holder and all Interested Parties have been informed of the date, time and location of the Hearing and their right to attend and be represented.

Report Author: Maggie Jones
Licensing Officer - Licensing Team – West Hub

16 May 2012

Background Papers Used in the Preparation of this Report

- **The Licensing Act 2003**
- **The Licensing Act (Hearings) Regulations 2005**
- **Guidance issued under Section 182 of the Licensing Act 2003**
- **Wiltshire Council Licensing Policy**

Appendices

- 1 Decision Notice**
- 2 Current Premises Licence**
- 3a Application for Review**

- 3b Evidence in support of Application for Review**
- 4 Additional representations and email**
- 5 Location plan of the premises and surrounding area.**

DECISION NOTICE

Western Area Licensing Sub Committee

Decision made on 22 December 2011

In respect of an application for a Variation of a Premises Licence made by Galaxy Caffe, 28 Roundstone Street, Trowbridge, Wiltshire, BA14 8DE

Decision:

The Western Area Licensing Sub Committee has resolved to grant the application for a variation of the Premises Licence for Galaxy Caffe, 28 Roundstone Street, Trowbridge, as amended and detailed below:

Sale of Alcohol (on sales)

Monday to Sunday 10.00 to 01.30

Recorded Music (indoors)

Monday to Sunday 10.00 to 00.00

Live Music (amplified)

Monday to Sunday 10.00 to 00.00

Live Music (acoustic)

Monday to Sunday 10.00 to 01.00

Late Night Refreshment

Monday to Sunday 23.00 to 01.30

And subject to the following additional conditions:

1. No karaoke on the premises at any time.
2. No glasses, bottles or food to be taken outside the front of the premises at any time, or into the garden area at the rear of the premises after 21.00.
3. Doors and windows are to be kept closed when amplified music is performed.
4. A nominated member of staff to monitor noise in the vicinity of the premises, both to the front and the rear, with particular regard to changes of volumes when

the doors are opened. Action to be taken if necessary. A log book to be kept to include the time and date of checks, name of staff and action taken.

Reasons:

1. The reduction in hours for both recorded and live music, was considered necessary to address concerns regarding public nuisance, in particular noise.
2. The conditions on the restriction of removal of glasses, bottles and food from the premises were considered necessary to reduce the levels of noise arising from persons congregating at the front of the premises and in the rear area late in the evening.

The Sub Committee considered the written representations from the Environmental Health Officer, Wiltshire Police, and Natasha Owen of the Polebarn Hotel presented in the agenda, together with the oral representations given at the hearing on behalf of the Applicant and the Public Protection Team.

In reaching its decision the Sub Committee has considered the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 35); the guidance issued under Section 182 of the Act and the Licensing Policy of Wiltshire Council.

Right to Appeal

All parties have the right to appeal to the Magistrates Court within 21 days of receipt of this decision. Any Responsible Authority or Interested Party has the right to request a Review of the Licence.

**Licensing Act 2003
Premises Licence**

Premises Licence number

WW1100136LAPRVA

Wiltshire Council
Licensing Team West
165 Bradley Road
Trowbridge
BA14 0RD

Tel 0300 4560100

Premises details

Postal address of premises or, if none, Ordnance Survey map reference or description

Galaxy Caffe
28 Roundstone Street

Post town

Trowbridge

Post code

BA14 8DE

Telephone number

01225 768222

Licensable activities authorised by the licence

Sale of alcohol (on sales)
 Live Music & Recorded Music (indoors)
 Plays (indoors) Performance of dance (indoors)
 Anything of a similar description (indoors)
 Provision of facilities for making music (indoors)
 Late night refreshments

Where the licence is time limited, the dates

This licence was originally valid from 2 June 2011
 This version of the premises licence is valid from 22 December 2011

The times authorised by the licence for the carrying on of licensable activities

Sale of alcohol (on sales) Monday – Sunday	10.00 – 01.30 (following day)
Live Music (amplified) & Recorded Music (indoors) Monday – Sunday	10.00 – 00.00
Live Music (acoustic) Monday – Sunday	10.00 – 01.00 (following day)
Plays (indoors) Performance of dance (indoors) Provision of facilities for making music (indoors) Monday – Sunday	10.00 – 02.00 (following day)
Late night refreshments Monday – Sunday	23.00 – 01.30 (following day)

Non standard timings:
 New Years Eve until 02.00 New Years Day.

The opening hours of the premises

Monday – Sunday

10.00 – 02.00 (following day)

Non standard timings:

New Years Eve until 02.00 New Years Day.

Where the licence authorises the sale of alcohol whether these are on [and / or] off sales

On sales

Name, (registered) address, telephone no and email (if relevant) of holder of premises licence

Mr Sebastian Siegmuller
43 Catherine Street
Frome
Somerset
BA11 1DB

Mr Damian Siegmuller
Flat 2,
30 Catherine Street
Frome
Somerset
BA11 1DB

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

N/A

Name, address and telephone number of designated premises supervisor where the premises licence authorises the sale of alcohol

Mr Damian Siegmuller
Flat 2, 30 Catherine Street
Frome
Somerset
BA11 1DB

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

PELO 0551 granted by Mendip District Council

Mandatory conditions**Alcohol**

Where this Licence authorises the supply of alcohol:

1. No supply of alcohol may be made under this Licence:
 - a. At a time when there is no Designated Premises Supervisor in respect of it
 - b. At a time when the Designated Premises Supervisor does not hold a Personal Licence.
2. Every retail sale or supply of alcohol made under this licence must be made or authorised by a person who holds a Personal Licence.

Irresponsible Promotions (On Sales Only)

3. (1) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

3. (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children—

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;

(d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on—

(i) the outcome of a race, competition or other event or process, or

(ii) the likelihood of anything occurring or not occurring;

(e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.

Dispensing Alcohol Directly into the Mouth (On Sales Only)

4. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

Free Tap Water (On Sales Only)

5. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

Age Verification Policy

6. (1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

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

Drink Volume Measures (On Sales Only)

7. The responsible person shall ensure that–

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures–

(i) beer or cider: ½ pint;

(ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and

(iii) still wine in a glass: 125 ml; and

(b) customers are made aware of the availability of these measures.

Door Supervision

Individuals who are present to guard against a, b or c must be licensed by the Security Industry Authority:

- a. Unauthorised access or occupation (eg through door supervision)
- b. Outbreaks of disorder
- c. Damage

Conditions and restrictions from transferred licences

N/A

Conditions consistent with the operating schedule

Staff will be trained in the law and practice of the Licensing Act 2003, with particular regard to the prevention of underage sales and other relevant legislation including fire safety and health & safety.

Proof of age will be required from any person seeking to purchase or consume alcohol who appears to be under the age of 21. This evidence shall be photographic,

such as a passport or photographic driving licence, until other effective identification technology (for example, finger print or pupil recognition) is adopted by the licence holder.

A CCTV system with recording capability shall be installed to cover all areas of the premises used under the terms of the Licence. The system shall be maintained in full functioning order and used at all times when the premises are open. The images produced shall be of sufficient quality so as to enable identification. Images to be retained for a minimum of 30 days and be made readily available to any authorised Officer of the Council or Police Officer on duty.

Conditions attached after a hearing by the licensing authority

1. No karaoke on the premises at any time.
2. No glasses, bottles or food to be taken outside the front of the premises at any time, or into the garden area at the rear of the premises after 21.00 hours.
3. Doors and windows are to be kept closed when amplified music is performed
4. A nominated member of staff to monitor noise in the vicinity of the premises, both to the front and the rear, with particular regard to changes of volumes when the doors are opened. Action to be taken if necessary. A log book to be kept to include the time and date of checks, names of staff and action taken.

Plans

The attached plans form part of this licence and are stamped with the licence number and the date it was granted

Signed

Licensing Officer
Wiltshire Council

This licence was originally valid from 2 June 2011
This premises licence valid from 22 December 2011

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Agenda Item 5d

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

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

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

You may wish to keep a copy of the completed form for your records.

I Wiltshire Council Public Protection

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Galaxy Caffe 28 Roundstone Street Trowbridge	
Post town Wiltshire	Post code (if known) BA14 8DE
Name of premises licence holder or club holding club premises certificate (if known) Mr Sebastian Siegmuller and Mr Damiani Siegmuller	
Number of premises licence or club premises certificate (if known) WW1100136LAPRVA	

Part 2 - Applicant details

I am

Please tick yes

- 1) an interested party (please complete (A) or (B) below)
- a) a person living in the vicinity of the premises
 - b) a body representing persons living in the vicinity of the premises
 - c) a person involved in business in the vicinity of the premises
 - d) a body representing persons involved in business in the vicinity of the premises
- 2) a responsible authority (please complete (C) below)

3) a member of the club to which this application relates (please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick

Mr

Mrs

Miss

Ms

Other title

(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick yes

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Richard Francis Senior Environmental Health Officer Public Protection Wiltshire Council Bradley Road Trowbridge Wiltshire BA14 0RD
Telephone number (if any) 01225 776655
E-mail address (optional) richard.francis@wiltshire.gov.uk

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

Please tick one or more boxes

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

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

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

Following the grant of a licence for the Galaxy Caffe in December 2011 the Public Protection department of Wiltshire Council received a number of complaints relating to the provision of regulated entertainment in the form of amplified music.

An investigation into the complaints confirmed the existence of a nuisance and subsequently it is my opinion that the prevention of public nuisance licensing objective is currently not being met.

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

A premises licence application for The Little Daisy Deli, 28 Roundstone Street, Trowbridge, Wiltshire was received by the council in May 2011, the applicants being Sebastian and Damian Siegmuller. The application related to a restaurant only and no provision of regulated entertainment was requested at that time.

In September 2011 concerns were made regarding the potential provision of recorded and live music at the premises, which had changed its name to Galaxy Caffe. Discussions with the premises licence holders revealed that there was no intention to provide regulated entertainment at the venue, however following this conversation an application to vary the licence was received by the Council on 31 October 2011. The variation was to include live music, recorded music and anything of a similar description.

On 06 November 2011 an out of hours call was received by the Public Protection department about noise from recorded music at the premises. In this instance an officer witnessed excessive noise levels from the venue.

Having been informed of excessive levels due to amplified music I had concerns about the acoustic properties of the premises, and subsequently I met with the applicants on a number of occasions to discuss my concerns. At the time I did not feel that the prevention of public nuisance licensing objective could be achieved and therefore I made a representation to the licensing authority dated 24 November 2011.

In addition a representation was made from an Interested Party regarding this variation. An Area Licensing Sub Committee meeting was held on 22 December 2011 to hear the application in full. Whilst I again raised concerns about the acoustic properties of this premises a licence was granted permitting recorded music until midnight Monday - Sunday and live music until midnight Monday - Sunday.

On 18 January 2012 a number of complaints were received regarding loud music coming from the Galaxy Caffe. On 19 January 2012 a letter was sent to Mr Sebastian Siegmuller and Mr Damian Siegmuller advising that complaints had been received. The Council continued to receive complaints and Wiltshire Council licensing officers witnessed excessive noise levels from the premises on 28 January 2012. In view of the continued complaints and the officer observations noise abatement notices were served on Mr Sebastian Siegmuller and Mr Damian Siegmuller under Section 80 of the Environmental Protection Act 1990 on 17 February 2012.

On 25 February 2012 at 2220 Susie Vowles, Public Protection Officer witnessed excessive noise levels coming from the Galaxy Caffe. The noise witnessed constituted a breach of the noise abatement notices and also clearly demonstrated that the prevention of public nuisance licensing objective was not being met.

On 10 March 2012 from 2200 onwards myself and Susie Vowles witnessed a number of further breaches of the noise abatement notices and again the prevention of public nuisance licensing objective was not being met.

Following the service of the notices and officers having witnessed a number of breaches I am satisfied that the prevention of public nuisance licensing objective has been and continues to be ignored by the two holders of the premises licence, Mr Sebastian Siegmuller and Mr Damian Siegmuller and therefore I have no other option than to request a review of the premises licence.

It is clearly evident that the premises are unsuitable for the provision of recorded and live music and as such I would request that these provisions be removed from the premises licence.

Please tick yes

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

If yes please state the date of that application

Day Month Year

--	--	--	--	--	--	--	--

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

Yes - a representation was made at the hearing on 22 December 2011 in relation to the variation application dated 24 November 2011.

Please tick yes

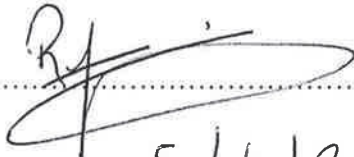
- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant's solicitor or other duly authorised agent (See guidance note 4). **If signing on behalf of the applicant please state in what capacity.**

Signature



Date

5 / 4 / 2012

Capacity Senior Environmental Health Officer

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

Notes for Guidance

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

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Application for Review of a Premises Licence; Galaxy Caffè 28 Roundstone Street, Trowbridge BA14 8DE

1. Background

1.1 My name is Richard Francis and I am a Senior Environmental Health Officer within the Environmental Protection Team, of Wiltshire Council. I have been working for the council for 3 years and 10 months and prior to that I worked at South Gloucestershire Council for 10 years as an Environmental Health Officer (EHO) and a Senior Licensing Officer. I have a post graduate diploma in acoustics and noise control and I am a corporate member of the Chartered Institute of Environmental Health.

1.2 In December 2012 I made a representation to a variation of the Galaxy Caffè premises licence. I made a representation as I didn't believe that the premises was suitable to hold live and recorded music and I was of the opinion that if the licence variation was granted it would result in a breach of the licensing objective "Prevention of Public Nuisance". I enclose a copy of this in **Appendix 1**.

2. The location of the premise

2.1 The premise is situated on the ground floor rank of a terrace with mixed use shops at ground floor and residential flats at first floor. The Galaxy Caffè and the first floor flat are in the same ownership. To the left of the premises is situated the Ho Wah restaurant, which is a licensed premise where people are able to sit at a table and enjoy a meal. Approximately 25 meters away is the Polebarn hotel which has both living accommodation for the family owners and 12 rooms for guests. Within 50 meters of the front of the premises are at

least 6 residential addresses. A map of the location of the Galaxy cafe showing its position in relation to its neighbours can be found at **Appendix 2**.

2.2 The premise has three large single glazed windows to the front of the cafe looking out on to Roundstone Street and a single door entrance, with no lobby. When either live music or amplified music is played at the premises it is easily transmitted through the windows out into the street, in addition when the door opens and closes to allow patrons to enter and exit the music level constantly increases and decreases considerably and escapes out into the street. This gives an effect of a constant alternating level of music being emitted from the premise. I have included photographs of the premise in relation to its neighbours in **Appendix 3**.

3. Grounds for Review

3.1 On the 18th of January 2012 two complaints were received regarding loud music coming from the Galaxy Cafe. On the 19th January 2012 a letter was sent to the occupiers Mr Sebastian Siegmuller and Mr Damian Siegmuller advising them that complaints had been received. Within this letter was a reminder of the conditions that were placed on the licence as a result of the December hearing. This letter can be found in **Appendix 4**.

3.2 On the 28th January 2012 Wiltshire Council Licensing Enforcement Officers witnessed loud music being played at the Galaxy Caffe and have provided a statement of their visit detailing what they heard and witnessed. A copy of Linda Holland (Senior Licensing Officer) is provided as evidence and is included in **Appendix 5**.

3.3 In view of the evidence provided by Linda Holland (Senior Licensing Officer) and the two complaints it was deemed necessary to serve a Noise Abatement Notice. This was served on the 17th February 2012 on both Mr Sebastian Siegmuller and Damian Siegmuller . A copy of this noise abatement notice can be found as **Appendix 6**.

3.4 On the 25th February 2012 Susie Vowles (Public Protection Officer) witnessed loud music coming from the Galaxy Caffe and in her opinion the levels were in breach of the requirements of the noise abatement notice and demonstrated that the requirements of the licensing objective Prevention of Public Nuisance was not being met. A copy of Susie Vowles witness statement (Public Protection Officer) is provided as evidence and can be found as **Appendix 7**.

3.5 On the 10th March 2012 I undertook a joint evening visit with my colleague Susie Vowles (PPO). At approximately 10.00 p.m. I visited the Polebarn hotel. On arrival I looked across at the Galaxy Cafe and there was a small crowd of around 10 people outside smoking on the pavement. They were talking very loudly and the music was very loud even though the door was closed. When the door opened up to allow another patron outside to smoke the music level increased considerably. I entered the Polebarn hotel and stood in the kitchen, whilst discussing the music with Mrs Owen the owner, the level of music and in particular the beat could be heard above our conversation. I sat in the lounge and noticed the music was very loud as this room was closer to the Galaxy Cafe. I opened one of the sash windows by 4 inches, the voices of the crowd outside were very audible and the music was reverberating around the lounge. Every time the door opened music became

louder and clearer and more disturbing. Whilst sat in the lounge a guest rang down from one of the guest rooms and complained about the level of music and believed it was coming from a neighbouring guests room and wanted something done about it, I could clearly see that Mrs Owen was distressed about receiving this telephone call and was worried about the impact this music would have on her business. I left Polebarn hotel at 10.55 p.m. and the music bass was still very loud. At 11.15 p.m. I walked past the front of the Galaxy Caffe and there was approximately 7 people outside smoking and chatting. I then walked away from the Galaxy Caffe towards the Tanning shop approximately 50 meters away and stood in the car park immediately behind the Polebarn hotel, the music was very evident and the bass was very noticeable. I then walked past the front of the Galaxy Caffe and looked in through the window, the Caffe was full of people both dancing and sitting around tables, the music was very loud and the place was lit up with flashing disco lights. I asked a patron outside the club what was going on and she said there was a DJ playing music, I asked her if it was through the Television and she said no. As I walked back to my car approximately 125 meters away and outside the Police station I could still hear the music. In my opinion the music and in particular the bass level was a statutory noise nuisance and was a breach of the noise abatement notice served by the Council.

3.6 On the 14th of April 2012 at 11.15 p.m. I visited the area surrounding the Galaxy Caffe with my colleague Susie Vowles to see if they were playing loud music in breach of their noise abatement notice. I parked outside the Police station and I could hear amplified music being played and it was coming from

the direction of the Galaxy Caffe which is approximately 125 meters away. I walked up to the cafe and stood on the opposite side of the road, I could see a single performer singing into a microphone and playing a saxophone whilst walking around the cafe. The glass windows were giving little acoustic protection to stop the music being transmitted into the street and the music could clearly be heard in the street. It is my opinion that the music at these levels was causing a public nuisance to the surrounding residential properties. In addition the levels were in breach of the noise abatement notice.

3.7 On the 10th of April 2012 I submitted an application for review of the Galaxy Caffe premises licence to the Licensing department of Wiltshire Council. In addition a copy of the review application was hand delivered to the Galaxy Caffe by Susie Vowles, Public Protection Officer. A copy of this application for the review of premise licence can be found as **Appendix 8**.

4. Recommendations

4.1 In my opinion the evidence demonstrates that the owners have no intention in complying with either the Noise abatement Notice or protecting the licensing objective of the Prevention of Public Nuisance. Both the Polebarn Hotel and Wo Hah restaurant experience music noise on most Saturday nights through to the early hours of Sunday morning. In order to ensure that the licensing objective of the Prevention of Public nuisance is protected and the premises music no longer cause a nuisance to the neighbouring residential and commercial properties I believe that that the Licensing committee should consider the following:

(i) Remove both live and amplified music from the premise licence.

OR

(ii) Restrict the times that live and amplified music can be played at the premise in that no live and amplified music shall be played after 7.30 p.m. Monday through to Sunday.

10 April 2012

Public Protection Services
165 Bradley Road
Trowbridge
Wiltshire
BA14 0RD

Mr Sebastian Siegmuller &
Mr Damian Siegmuller
Galaxy Caffe
28 Roundstone Street
Trowbridge
Wiltshire
BA14 8DE

Our Ref: 12/00105/NOMUS/SV/
Your Ref:

Dear Messrs Siegmuller

Environmental Protection Act 1990
Licensing Act 2003
Environmental Protection Act 1990
Galaxy Caffe, 28 Roundstone Street, Trowbridge, Wiltshire, BA14 8DE

Further to the notice that was served on yourselves on 17 January 2012, we have continued to receive complaints with regards to loud music.

I believe that you are not meeting the licensing objectives set out in your licence and I have therefore requested a review of the premises licence under the Licensing Act 2003. We may also take action under the Environmental Protection Act 1990.

I have enclosed the relevant document which I have also hand delivered to the Galaxy Caffe.

Yours sincerely,

Mrs Susie Vowles
Public Protection Officer

tel number: 01225 776655 ext 15295

e-mail: susie.vowles@wiltshire.gov.uk

Appendix

Appendix 1	Copy of Environmental Protection the representation to variation November 2011
Appendix 2	Location Map of the Galaxy Cafe and surrounding streets
Appendix 3	Photographs of the Galaxy Caffe and surrounding area
Appendix 4	Letter to Galaxy Cafe owners making them aware of the music complaint
Appendix 5	Statement of Linda Holland (Senior Licensing Officer)
Appendix 6	Noise abatement Notice
Appendix 7	Statement of Susie Vowles (Public Protection Officer)
Appendix 8	Application for the review of premise licence

Memo

To: Maggie Jones
Licensing Officer

From: Richard Francis
Environmental Health Officer

cc:

Your Ref:

Date: 24/11/2011

Our Ref: 11/03028/LICONP/RF/lw1.11

Tel N°:

**Consultation on Licensing Application – Variation
Galaxy Cafe 28 Roundstone Street Trowbridge**

I wish to object to the application to vary the premises licence for the Galaxy Cafe.

I make my objection in order to protect the licensing objective of Prevention of Public Nuisance.

The application is to extend the hours for live Music, recorded music, karaoke, provisions of facilities for making music, late night refreshment, alcohol and the opening hours of the premises.

The location

The premise is situated on the ground floor in a rank of terraced mixed use shops at ground floor and residential flats at first floor. Above the premises at first floor level is a private dwelling. I believe that both the cafe and the dwelling are in the same ownership.

The premise has three large single glazed windows to the front of the cafe and a single door entrance. Every time the door is opened and closed the music will transmit out onto the street, there is no lobby leading into the premises.

The windows will only reduce the levels of noise generated by the music marginally and any music events held at the premises are likely to generate a public noise nuisance to neighbouring premises

I am of the opinion that in order to protect the occupants of the flats from noise associated with the both music and people, a substantial investment would have to be made to the building structure to achieve the noise insulation required to protect the dwelling from the licensed premise activities.

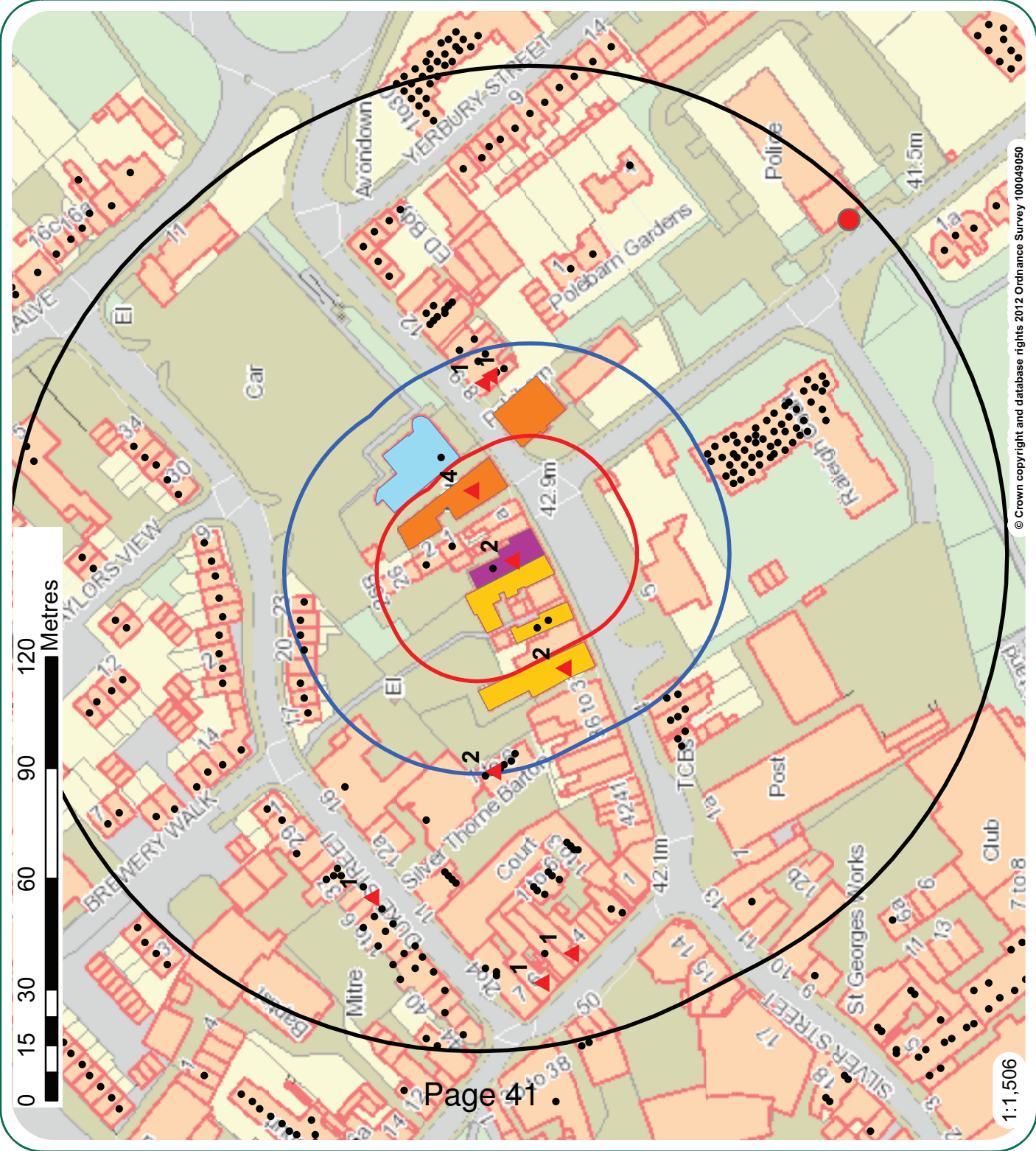
As a minimum an acoustic report would be required from a recognised acoustic engineer detailing the predicted noise readings expected in the flat and at neighbouring residential properties and any recommended measures required to protect the flat and neighbouring properties from noise, if required.

However, I am of the opinion that the works required to eliminate nuisance noise at all neighbouring properties would be cost prohibitive to the applicant, and may also be unachievable and could in fact lead to an unsatisfactory noise climate within the venue itself.











Smoking Scene

There is no designated area for patrons to smoke at the premises. At present the patrons have to step out onto the pavement to have a cigarette. My experience with licensed premises' are that if the smoking activity is not conditioned a separate social scene can be established outside the premises and generate a public nuisance, as a result of the drinking and smoking outside. In order to prevent a public nuisance from this activity I feel that a condition should be placed upon the licence prohibiting alcoholic drinks being taken outside.

Galaxy Cafe 25 Roundstone Street Trowbridge BA14 8SD



Key to Map

-  Galaxy Cafe 25m Buffer
-  Galaxy Cafe 50m Buffer
-  Galaxy Cafe 125m Buffer
-  Alcohol Sales
-  Club Registration
-  Late Night Refreshment
-  Late Night Venue
-  Noise from Music Complaints (3 year)
-  Residential Address
-  Monitoring Location



Photograph 1 – Galaxy Caffe, showing front windows and entrance. The door shown is the entrance to the upstairs living accommodation.



Photograph 2 – Looking at Galaxy Caffe from the living room of the Polebarn Hotel



Photograph 3 – looking at Galaxy Caffe from flats towards Polebarn Hotel



Photograph 4 – Ho Wah Chinese located next door



Photograph 5 – looking at Galaxy Caffe from Polebarn Road, the police station is approximately 20 metres behind where the photo is taken.



19 January 2012

Public Protection Services
165 Bradley Road
Trowbridge
Wiltshire
BA14 0RD

Mr Sebastian Siegmuller &
Mr Damian Siegmuller
Galaxy Caffe
28 Roundstone Street
Trowbridge
Wiltshire
BA14 8DE

Our Ref: 12/00105/NOMUS/SV/sg15.1
Your Ref:

Dear Messrs Siegmuller

**Environmental Protection Act 1990
Licensing Act 2003
Complaint of alleged noise nuisance from loud music
Galaxy Caffe, 28 Roundstone Street, Trowbridge, Wiltshire, BA14 8DE**

I regret to inform you that I have recently received a complaint alleging that noise from loud music has caused some disturbance to people living near you.

You may not be aware that this has affected anybody else, and I am taking this opportunity to advise you of our noise complaints procedure.

This Council investigates all such complaints to determine if they are justified and to assess whether the noise amounts to a 'nuisance'. 'Nuisance' is a legal term which means that a noise interferes with someone's right to enjoy their house and garden. A number of factors are taken into consideration by the Environmental Protection Officers, including how often the noise occurs, its volume, character and time of day. Noise can cause a nuisance during the day as well as the night and the law does not set any limits. Generally speaking, the more often a noise occurs then the more likely this is to be judged a nuisance.

Action is taken where noise nuisance can be confirmed by direct observation by officers. In some circumstances evidence obtained from monitoring equipment can also be used to support formal action. This monitoring will be carried out within three months from the date of this letter.

If an Officer is satisfied that a nuisance exists then a legal Notice may be served requiring the noise to stop or be reduced. If the noise continues after such a Notice has been served then further legal action may be taken through the Courts. It is an offence not to comply with such a notice, the maximum fine for which, on summary conviction in a Magistrates' Court, is £20,000.

You also have a number of conditions on your premises licence issued under the Licensing Act 2003 which you must comply with. The conditions are as follows:

1. Doors and windows are to be kept closed when amplified music is performed
2. A nominated member of staff to monitor noise in the vicinity of the premises, both to the front and the rear, with particular regard to changes of volumes when the doors are opened. Action to be taken if necessary. A log book to be kept to include the time and date of checks, names of staff and action taken.

If you fail to comply with these conditions then it is possible for your licence to be reviewed which could result in your licence being withdrawn. You could also be prosecuted for not complying with your licence.

If you think there may be any justification for the complaint then I would appreciate your co-operation in this matter. I would be pleased to discuss this matter with you should you wish to do so, please contact me.

Yours sincerely,

Mrs Susie Vowles
Public Protection Officer

tel number: 01225 776655 ext 15295

e-mail: susie.vowles@wiltshire.gov.uk

Witness Statement

(CRIMINAL PROCEDURE RULES, PART 27)

Statement of Witness

(Criminal Procedure Rules, r27.1(1)):

Criminal Justice Act 1967, s.9, Magistrates' Courts Act 1980, s.5B)

STATEMENT OF: LINDA VANESSA HOLLAND

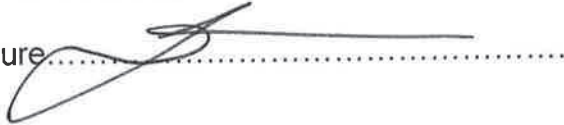
Age of witness: over 18

Occupation of witness: Public Protection Officer - Licensing

This statement (consisting of 3 pages each 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 the 15th May 2012

Signature



1. My name is Linda Holland and I am a Senior Licensing Officer within the Licensing Team, of Wiltshire Council. I have been working for the council for 22 years with 19 years of this working as a Licensing Officer. I am an authorised officer of Wiltshire Council **Exhibit 1**.
2. On the 28th / 29th January 2012 I was carrying out late night Inspection visits of Trowbridge licensed premises with Mrs Margaret Jones Licensing Officer and Mrs Pippa McVeigh Public Protection Manager Safer Communities and Licensing Manager who had accompanied Mrs Jones and me to observe our inspections.

Signature



dated

15 MAY 2012

On parking our car in Lovemead Carpark, The Halve, Trowbridge we exited it into Roundstone Street at 21:15 via the stone steps, on reaching ground level music could be clearly heard, though no words were audible, we walked along Roundstone street towards the town centre. We stopped at the 7 day shop at 10/11 Roundstone Street to carry out an inspection, on leaving the premises the volume of the music had increased but at that time I was unable to identify its source, only the direction. Walking further down the street the music volume continued to increase and upon reaching PetCare and Aquatics 9 Roundstone Street, I could identify the source of the music as coming from The Galaxy Cafe 28 Roundstone Street Trowbridge both words and music were clearly audible, the music was being played at a high volume, I could not identify the songs due to the lyrics being unrecognisable.

3. We moved to stand opposite the Galaxy Cafe for 5 minutes where through the large clear glass window at the front of the building flashing lights and a disco could be observed. There were a number of patrons stood on the pavement and step outside the premises smoking and talking, some had glasses or bottles in their hands. As each patron left or returned to the premise on opening the door the volume of music significantly increased.

Signature



dated

15th MAY 2012

4. We carried out a number of inspection visits of licensed premises in the town and returning to the carpark at 22:15 to leave to carry out inspections in Warminster, we had to pass by The Galaxy Cafe, the disco was still in progress loud music was audible, and patrons were still gathered on the pavement.

5. We returned to Trowbridge at 23:50 to carry out a late inspection on a nightclub and again observed The Galaxy Cafe on route to the nightclub, the disco was still in progress and the premises was noisy from both the music and patrons gathering outside.

6. On returning to the car at 00:45 we again passed the Galaxy Cafe at this time the premise was quiet no music or disco lights, a few customers still inside the premise.

7. As a Licensing Officer with 19 years experience of carrying out numerous licensing inspection / enforcement visit both during the day and night time in my opinion the volume of the disco music being played at the Galaxy Cafe on the night of 28th January 2012 constituted a public nuisance due to the distance at which the music could be clearly heard.

Signature



dated

15 MAY 2012 .

INSTRUMENT OF APPOINTMENT

I hereby certify that **LINDA HOLLAND**

Is an inspector/authorised officer of Wiltshire Council (the Council) for the purpose of

1. the following Acts and,
 - a) any Orders or Regulations made thereunder or relating to any of the foregoing or having effect by virtue of the European Communities Act 1972, and
 - b) any modification or re-enactment of the same

Animal Boarding Establishments Act 1963
Animal Health Act 1981
Animal Health and Welfare Act 1984
Animal Welfare Act 2006
Antisocial Behaviour Act 2003
Breeding of Dogs Act 1973 and 1991
Caravan Sites & Control of Development Act 1960
Caravan Sites Act 1968
Cinemas Act 1985
Crime and Disorder Act 1996
Criminal Justice & Public Order Act 1994
Dangerous Dogs Act 1991
Dangerous Wild Animals Act 1976
Dogs (Fouling of Land) Act 1996
Gambling Act 2005
Gaming Act 1968
Guard Dogs Act 1975
Health Act 2006
Licensing Act 2003
Local Government (Miscellaneous Provisions) Act 1976 and 1982
Lotteries and Amusement Act 1976
Performing Animals (Regulations) Act 1925
Pet Animals Act 1951
Police and Criminal Evidence Act 1984
Private Places of Entertainment Act 1967
Riding Establishment Act 1964 and 1970
Scrap Metal Dealers Act 1964
Shops Act 1950 and 1965
Sunday Trading Act 1994
Theatres Act 1968
Town Police Clauses Act 1847
Zoo Licensing Act 1981

The said officer is further authorised to make, on the Council's behalf, such purchases of goods and to secure the provision of such services, accommodation or facilities as the Council are empowered to make in pursuance of the aforementioned enactments.

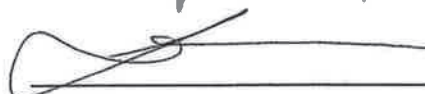
Mandy Bradley, Service Director

A. J. Bradley

Date

1st April 2009

Signature of Officer



17 February 2012

Mr Sebastian Siegmuller
Galaxy Caffe
28 Roundstone Street
Trowbridge
Wiltshire BA14 8DE

Public Protection Services
165 Bradley Road
Trowbridge
Wiltshire
BA14 0RD

Our Ref: 12/00105/NOMUS/SV/sg25.2

Dear Mr Siegmuller

Environmental Protection Act 1990
Complaint of Noise Nuisance from Loud Music
Galaxy Caffe, 28 Roundstone Street, Trowbridge

THIS LETTER DOES NOT FORM PART OF THE ENCLOSED NOTICE

I refer to my letter dated 19 January 2012 regarding noise from loud music.

I regret to inform you that since this time I have collected evidence which substantiates that the noise from your premises amounts to a statutory noise nuisance. I have, therefore, enclosed a Notice served under the above Act which requires you to abate the nuisance. This notice takes effect in 7 days. There is a right of appeal against this notice and I would draw your attention to the appeal notes attached to the notice.

Officers from the Council have previously expressed concerns about the type of regulated entertainment provided at the premises and the suitability of the building. I would reiterate this concern and would suggest that either the level of music be turned down to an acceptable volume or that the services of an acoustic specialist be sought and any appropriate measures be implemented.

If the noise nuisance continues then this Authority may apply for a warrant to seize any items used to cause a nuisance. This could include CD's, tapes and records as well as any musical instruments, televisions, computers and stereo equipment. This Authority may then apply to the Magistrates Court for a Forfeiture Order which means that any items seized may be confiscated permanently. You may also be prosecuted and fined, on summary conviction in a Magistrates Court, up to £20,000.

As I mentioned in my previous letter you have a responsibility under the Licensing Act 2003 to prevent a public nuisance. The fact that an abatement notice has been served clearly indicates that you are currently not meeting this objective. If further evidence of a problem is obtained then the Council will consider reviewing the premises licence. You must ensure that you are complying with the premises licence at all times.

I would appreciate your co-operation in order to prevent further action from being necessary.

Yours sincerely

Mrs Susie Vowles
Public Protection Officer
Tel 01225 776655 ext 15295
E mail Susie.vowles@wiltshire.gov.uk

ENVIRONMENTAL PROTECTION ACT 1990, Section 80 Appendix 6

Abatement Notice in respect of Statutory Nuisance

To: Mr Sebastian Siegmuller
Galaxy Caffé
28 Roundstone Street
Trowbridge
Wiltshire
BA14 8DE

COPY

TAKE NOTICE pursuant to Section 80(1) of the Environmental Protection Act 1990
WILTSHIRE COUNCIL being satisfied of the existence and likely recurrence of a statutory nuisance under Section 79(1)(g) of that Act at neighbouring premises including The Polebarn Hotel, Polebarn Road and 29 Roundstone Street, Trowbridge within the district of Wiltshire Council arising from the playing of amplified music from audio and/or audio-visual equipment

HEREBY REQUIRE YOU as the person responsible for the said nuisance within 7 days from the service of this Notice, to abate the same and also

HEREBY PROHIBIT the recurrence of the same and for that purpose require you to abate the nuisance.

IN the event of an appeal this Notice shall NOT be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council, the nuisance to which this Notice relates is such that the expenditure which would be incurred by any person in carrying out works in compliance with this Notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance

IF without reasonable excuse you contravene or fail to comply with any requirement of this Notice you will be guilty of an offence under Section 80(4) of the Environmental Protection Act 1990 and on summary conviction will be liable to a fine not exceeding £5,000 together with a further fine of an amount equal to one-tenth of that level (£500) for each day on which the offence continues after conviction. In the cases of offences committed on industrial, trade or business premises you will be liable to a fine not exceeding £20,000.

The Council may also take proceedings in the High Court for securing the abatement, prohibition or restriction of the nuisance pursuant to Section 81(5). Further, if you fail to execute all or any of the works in accordance with this Notice, the Council has power under Section 81(3) and (4) to execute the works and recover from you the necessary expenditure incurred.

DATED 17 February 2012

Signed
Environmental Health Officer

Address for all communications:-
Wiltshire Council
Bradley Road
TROWBRIDGE Wilts BA14 0RD

NB The person served with this Notice may appeal against the Notice to a Magistrates' Court within twenty-one days beginning with the date of service of the Notice. See notes on the reverse of this form.
**Currently £5,000 subject to alteration by Order

EP032

12/00105/NOMUS/SV/sg27.2

The Statutory Nuisance (Appeals) Regulations 1995 provide as follows:-

APPEALS UNDER SECTION 80(3) OF THE ENVIRONMENTAL PROTECTION ACT 1990 ("the 1990 Act")

- 2 (1) The provisions of this regulation apply in relation to an appeal brought by any person under Section 80(3) of the 1990 Act (appeals to magistrates) against an abatement notice served upon him by a local authority.
- (2) The grounds on which a person served with such a notice may appeal under Section 80(3) are any one or more of the following grounds that are appropriate in the circumstances of the particular case.
- (a) that the abatement notice is not justified by Section 80 of the 1990 Act (summary proceedings for statutory nuisances);
- (b) that there has been some informality, defect, or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the abatement notice served under section 80A(3) (certain notices in respect of vehicles, machinery or equipment);
- (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time, or where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
- (e) where the nuisance to which the notice relates -
- (i) is a nuisance falling within Section 79(1)(a),(d),(e)(f) or (g) of the 1990 Act and arises on industrial, trade, or business premises; or
- (ii) is a nuisance falling within Section 79(1)(b) of the 1990 Act and the smoke is emitted from a chimney; or
- (iii) is a nuisance falling within Section 79(1)(ga) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes.
- (f) that, in the case of a nuisance under Section 79(1)(g) or (ga) of the 1990 Act (noise emitted from premises), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of -
- (i) any notice served under Section 60 or 66 of the Control of Pollution Act 1974 ("the 1974 Act") (control of noise on construction sites and from certain premises); or
- (ii) any consent given under Section 61 or 65 of the 1974 Act (consent for work on construction sites and consent for noise to exceed registered level in a noise abatement zone); or
- (iii) any determination made under Section 67 of the 1974 Act (noise control of new buildings);
- (g) that, in the case of a nuisance under Section 79(1)(ga) of the 1990 Act (noise emitted from or caused by vehicles, machinery or equipment), the requirements imposed by the abatement notice by virtue of Section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of Schedule 2 to the Noise and Statutory Nuisance Act 1993 (loudspeakers in streets or roads);
- (h) that the abatement notice should have been served on some person instead of the appellant, being -
- (i) the person responsible for the nuisance; or
- (ii) the persons responsible for the vehicle, machinery or equipment; or
- (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises; or
- (iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;
- (i) that the abatement notice might lawfully have been served on some person instead of the appellant, being -
- (i) in the case where the appellant is the owner of the premises, the occupier of the premises; or
- (ii) in the case where the appellant is the occupier of the premises, the owner of the premises, and that it would have been equitable for it to have been so served;
- (j) that the abatement notice might lawfully have been served on some person in addition to the appellant, being -
- (i) a person also responsible for the nuisance; or
- (ii) a person who is also owner of the premises; or
- (iii) a person who is also an occupier of the premises; or
- (iv) a person who is also the person responsible for the vehicle, machinery or equipment, and that it would have been equitable for it to have been so served.
- (3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the notice served under Section 80A(3), the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.
- (4) Where the grounds upon which an appeal is brought include a ground specified in paragraph 2(i) or (j) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and the case of any appeal to which these regulations apply he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.
- (5) On the hearing of the appeal the court may -
- (a) quash the abatement notice to which the appeal relates; or
- (b) vary the abatement notice in favour of the appellant in such manner as it thinks fit; or
- (c) dismiss the appeal;
- and an abatement notice that is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.
- (6) Subject to paragraph (7) below, on the hearing of an appeal the court may make such order as it thinks fit.
- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work; or
- (b) as to the proportions in which any expenses which may become recoverable by the Authority under Part III of the 1990 Act are to be borne by the appellant and by any other person.
- (7) In exercising its powers under paragraph (6) above the court -
- (a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required; and
- (b) shall be satisfied before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

SUSPENSION OF NOTICE

- 3 (1) Where -
- (a) an appeal is brought against an abatement notice served under Section 80 or Section 80A of the 1990 Act; and
- (b) either -
- (i) compliance with the abatement notice would involve any person in expenditure on the carrying out of the works before the hearing of the appeal; or
- (ii) in the case of a nuisance under Section 79(1)(g) or (ga) of the 1990 Act, the noise to which the abatement notice relates is noise necessarily caused in the course of the performance of some duty imposed by law on the appellant; and
- (c) either paragraph (2) does not apply, or it does apply but the requirements of paragraph (3) have not been met, the abatement notice shall be suspended until the appeal has been abandoned or decided by the court.
- (2) The paragraph applies where -
- (a) the nuisance to which the abatement notice relates -
- (i) is injurious to health; or
- (ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect; or
- (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.
- (3) Where paragraph (2) applies the abatement notice -
- (a) shall include a statement that paragraph (2) applies and that as a consequence it shall have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court; and
- (b) shall include a statement as to which of the grounds set out in paragraph (2) apply.

ENVIRONMENTAL PROTECTION ACT 1990, Section 80 **Appendix 6**

Abatement Notice in respect of Statutory Nuisance

To: Mr Damian Siegmuller
Galaxy Caffe
28 Roundstone Street
Trowbridge
Wiltshire
BA14 8DE

COPY

TAKE NOTICE pursuant to Section 80(1) of the Environmental Protection Act 1990
WILTSHIRE COUNCIL being satisfied of the existence and likely recurrence of a statutory nuisance under Section 79(1)(g) of that Act at neighbouring premises including The Polebarn Hotel, Polebarn Road and 29 Roundstone Street, Trowbridge within the district of Wiltshire Council arising from the playing of amplified music from audio and/or audio-visual equipment

HEREBY REQUIRE YOU as the person responsible for the said nuisance within 7 days from the service of this Notice, to abate the same and also

HEREBY PROHIBIT the recurrence of the same and for that purpose require you to abate the nuisance.

IN the event of an appeal this Notice shall NOT be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council, the nuisance to which this Notice relates is such that the expenditure which would be incurred by any person in carrying out works in compliance with this Notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance

IF without reasonable excuse you contravene or fail to comply with any requirement of this Notice you will be guilty of an offence under Section 80(4) of the Environmental Protection Act 1990 and on summary conviction will be liable to a fine not exceeding £5,000 together with a further fine of an amount equal to one-tenth of that level (£500) for each day on which the offence continues after conviction. In the cases of offences committed on industrial, trade or business premises you will be liable to a fine not exceeding £20,000.

The Council may also take proceedings in the High Court for securing the abatement, prohibition or restriction of the nuisance pursuant to Section 81(5). Further, if you fail to execute all or any of the works in accordance with this Notice, the Council has power under Section 81(3) and (4) to execute the works and recover from you the necessary expenditure incurred.

DATED 17 February 2012

Signed
Environmental Health Officer

Address for all communications:-
Wiltshire Council
Bradley Road
TROWBRIDGE Wilts BA14 0RD

NB The person served with this Notice may appeal against the Notice to a Magistrates' Court within twenty-one days beginning with the date of service of the Notice. See notes on the reverse of this form.
**Currently £5,000 subject to alteration by Order

EP032

12/00105/NOMUS/SV/sg26.2

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- (2) The grounds on which a person served with such a notice may appeal under Section 80(3) are any one or more of the following grounds that are appropriate in the circumstances of the particular case.
- (a) that the abatement notice is not justified by Section 80 of the 1990 Act (summary proceedings for statutory nuisances);
- (b) that there has been some informality, defect, or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the abatement notice served under section 80A(3) (certain notices in respect of vehicles, machinery or equipment);
- (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time, or where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
- (e) where the nuisance to which the notice relates -
- (i) is a nuisance falling within Section 79(1)(a),(d),(e)(f) or (g) of the 1980 Act and arises on industrial, trade, or business premises; or
- (ii) is a nuisance falling within Section 79(1)(b) of the 1990 Act and the smoke is emitted from a chimney; or
- (iii) is a nuisance falling within Section 79(1)(ga) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes.
- (f) that, in the case of a nuisance under Section 79(1)(g) of (ga) of the 1990 Act (noise emitted from premises), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of -
- (i) any notice served under Section 60 or 66 of the Control of Pollution Act 1974 ("the 1974 Act") (control of noise on construction sites and from certain premises); or
- (ii) any consent given under Section 61 or 65 of the 1974 Act (consent for work on construction sites and consent for noise to exceed registered level in a noise abatement zone); or
- (iii) any determination made under Section 67 of the 1974 Act (noise control of new buildings);
- (g) that, in the case of a nuisance under Section 79(1)(ga) of the 1990 Act (noise emitted from or caused by vehicles, machinery or equipment), the requirements imposed by the abatement notice by virtue of Section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of Schedule 2 to the Noise and Statutory Nuisance Act 1993 (loudspeakers in streets or roads);
- (h) that the abatement notice should have been served on some person instead of the appellant, being -
- (i) the person responsible for the nuisance; or
- (ii) the persons responsible for the vehicle, machinery or equipment; or
- (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises; or
- (iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;
- (i) that the abatement notice might lawfully have been served on some person instead of the appellant, being -
- (i) in the case where the appellant is the owner of the premises, the occupier of the premises; or
- (ii) in the case where the appellant is the occupier of the premises, the owner of the premises, and that it would have been equitable for it to have been so served;
- (j) that the abatement notice might lawfully have been served on some person in addition to the appellant, being -
- (i) a person also responsible for the nuisance; or
- (ii) a person who is also owner of the premises; or
- (iii) a person who is also an occupier of the premises; or
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- (4) Where the grounds upon which an appeal is brought include a ground specified in paragraph 2(i) or (j) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and the case of any appeal to which these regulations apply he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.
- (5) On the hearing of the appeal the court may -
- (a) quash the abatement notice to which the appeal relates; or
- (b) vary the abatement notice in favour of the appellant in such manner as it thinks fit; or
- (c) dismiss the appeal;
- and an abatement notice that is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.
- (6) Subject to paragraph (7) below, on the hearing of an appeal the court may make such order as it thinks fit.
- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work; or
- (b) as to the proportions in which any expenses which may become recoverable by the Authority under Part III of the 1990 Act are to be borne by the appellant and by any other person.
- (7) In exercising its powers under paragraph (6) above the court -
- (a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required; and
- (b) shall be satisfied before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

SUSPENSION OF NOTICE

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- (a) an appeal is brought against an abatement notice served under Section 80 or Section 80A of the 1990 Act; and
- (b) either -
- (i) compliance with the abatement notice would involve any person in expenditure on the carrying out of the works before the hearing of the appeal; or
- (ii) in the case of a nuisance under Section 79(1)(g) or (ga) of the 1990 Act, the noise to which the abatement notice relates is noise necessarily caused in the course of the performance of some duty imposed by law on the appellant; and
- (c) either paragraph (2) does not apply, or it does apply but the requirements of paragraph (3) have not been met, the abatement notice shall be suspended until the appeal has been abandoned or decided by the court.
- (2) The paragraph applies where -
- (a) the nuisance to which the abatement notice relates -
- (i) is injurious to health; or
- (ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect; or
- (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.
- (3) Where paragraph (2) applies the abatement notice -
- (a) shall include a statement that paragraph (2) applies and that as a consequence it shall have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court; and
- (b) shall include a statement as to which of the grounds set out in paragraph (2) apply.

Witness Statement

(CRIMINAL PROCEDURE RULES, PART 27)

Statement of Witness

(Criminal Procedure Rules, r27.1(1)):

Criminal Justice Act 1967, s.9, Magistrates' Courts Act 1980, s.5B)

STATEMENT OF: SUSIE VOWLES

Age of witness: over 18

Occupation of witness: Public Protection Officer

This statement (consisting of 3 pages each 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 the 17th day of May, 2012

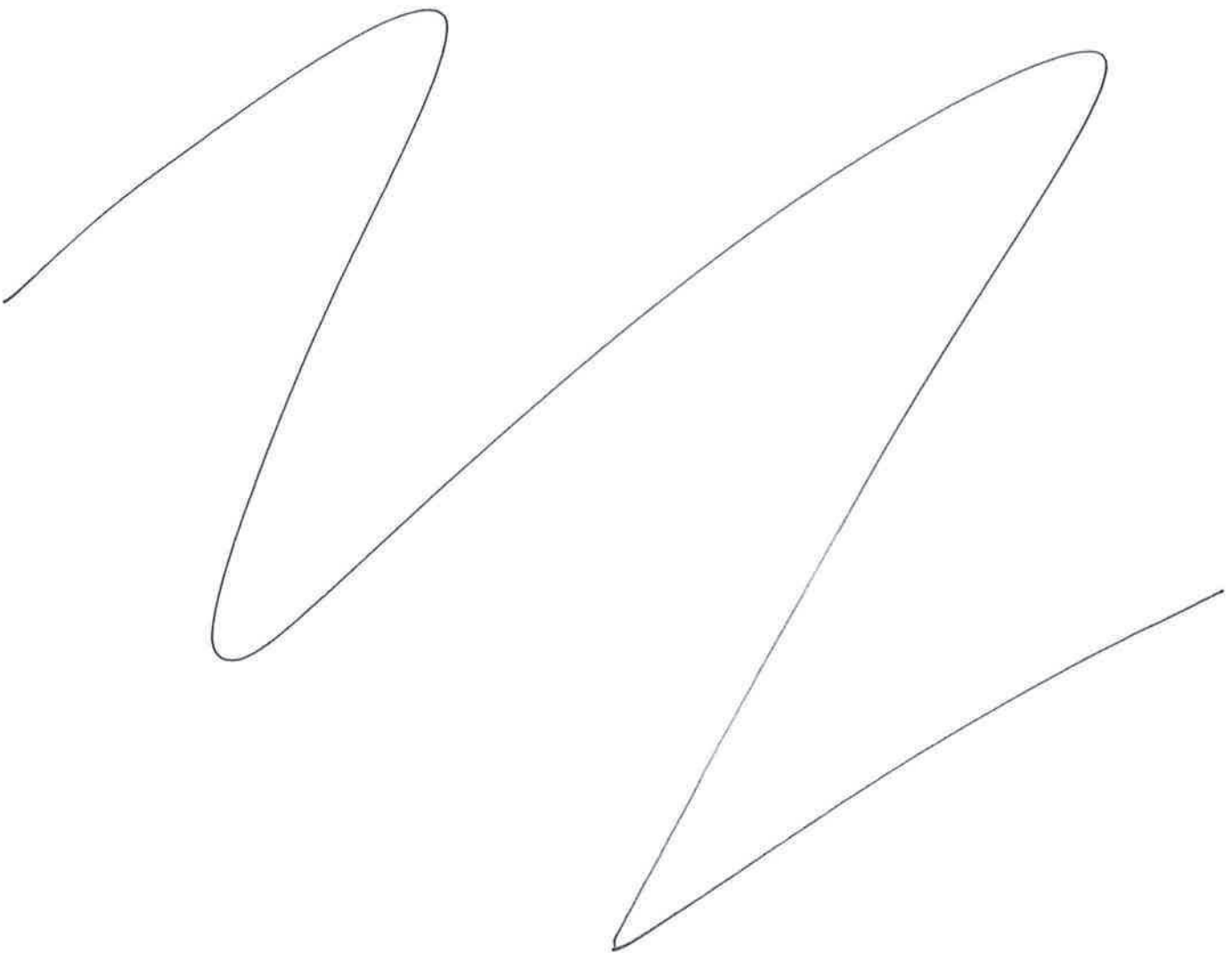
Signature..........

1. My name is Susie Vowles and I am a Public Protection Officer within the Public Protection Team, I have been working for Wiltshire Council for 10 years and 8 months and as a Public Protection Officer (PPO) for 4 months.
2. On 25 February 2012 at 22.10 whilst carrying out late night monitoring visits I went to the Galaxy Caffe. I parked close to the Police Station in Polebarn Road and walked towards the Galaxy Caffe at 22.20. I stood outside of the Galaxy Caffe and the music was clearly audible. I walked back down Polebarn Road towards my car and I could still hear music at the entrance to Raleigh Court in Polebarn Road, approximately 50 metres away. I repeatedly

Signature  dated 17 May 2012

observed a man walking around singing and carrying a saxophone. The music was loud and clearly audible outside.

5. In my opinion on each of the visits on the 25th February 2012, 10th March 2012 and the 14th of April 2012 the music levels was in breach of the noise abatement notice served upon the 17th February 2012 and resulted in the licensing objective Prevention of Public Nuisance not being achieved.



Signature *J. Nates* dated 17 May 2012

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

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

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

You may wish to keep a copy of the completed form for your records.

I Wiltshire Council Public Protection

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description

Galaxy Caffe
28 Roundstone Street
Trowbridge

Post town Wiltshire

Post code (if known) BA14 8DE

Name of premises licence holder or club holding club premises certificate (if known)

Mr Sebastian Siegmuller and Mr Damian Siegmuller

Number of premises licence or club premises certificate (if known)

WW1100136LAPRVA

Part 2 - Applicant details

I am

Please tick yes

- 1) an interested party (please complete (A) or (B) below)
- a) a person living in the vicinity of the premises
- b) a body representing persons living in the vicinity of the premises
- c) a person involved in business in the vicinity of the premises
- d) a body representing persons involved in business in the vicinity of the premises
- 2) a responsible authority (please complete (C) below)

3) a member of the club to which this application relates (please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick

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

Surname

First names

I am 18 years old or over

Please tick yes

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Richard Francis Senior Environmental Health Officer Public Protection Wiltshire Council Bradley Road Trowbridge Wiltshire BA14 0RD
Telephone number (if any) 01225 776655
E-mail address (optional) richard.francis@wiltshire.gov.uk

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

Please tick one or more boxes

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

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

Following the grant of a licence for the Galaxy Caffe in December 2011 the Public Protection department of Wiltshire Council received a number of complaints relating to the provision of regulated entertainment in the form of amplified music.

An investigation into the complaints confirmed the existence of a nuisance and subsequently it is my opinion that the prevention of public nuisance licensing objective is currently not being met.

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

A premises licence application for The Little Daisy Deli, 28 Roundstone Street, Trowbridge, Wiltshire was received by the council in May 2011, the applicants being Sebastian and Damian Siegmuller. The application related to a restaurant only and no provision of regulated entertainment was requested at that time.

In September 2011 concerns were made regarding the potential provision of recorded and live music at the premises, which had changed its name to Galaxy Caffe. Discussions with the premises licence holders revealed that there was no intention to provide regulated entertainment at the venue, however following this conversation an application to vary the licence was received by the Council on 31 October 2011. The variation was to include live music, recorded music and anything of a similar description.

On 06 November 2011 an out of hours call was received by the Public Protection department about noise from recorded music at the premises. In this instance an officer witnessed excessive noise levels from the venue.

Having been informed of excessive levels due to amplified music I had concerns about the acoustic properties of the premises, and subsequently I met with the applicants on a number of occasions to discuss my concerns. At the time I did not feel that the prevention of public nuisance licensing objective could be achieved and therefore I made a representation to the licensing authority dated 24 November 2011.

In addition a representation was made from an Interested Party regarding this variation. An Area Licensing Sub Committee meeting was held on 22 December 2011 to hear the application in full. Whilst I again raised concerns about the acoustic properties of this premises a licence was granted permitting recorded music until midnight Monday - Sunday and live music until midnight Monday - Sunday.

On 18 January 2012 a number of complaints were received regarding loud music coming from the Galaxy Caffe. On 19 January 2012 a letter was sent to Mr Sebastian Siegmuller and Mr Damian Siegmuller advising that complaints had been received. The Council continued to receive complaints and Wiltshire Council licensing officers witnessed excessive noise levels from the premises on 28 January 2012. In view of the continued complaints and the officer observations noise abatement notices were served on Mr Sebastian Siegmuller and Mr Damian Siegmuller under Section 80 of the Environmental Protection Act 1990 on 17 February 2012.

On 25 February 2012 at 2220 Susie Vowles, Public Protection Officer witnessed excessive noise levels coming from the Galaxy Caffe. The noise witnessed constituted a breach of the noise abatement notices and also clearly demonstrated that the prevention of public nuisance licensing objective was not being met.

On 10 March 2012 from 2200 onwards myself and Susie Vowles witnessed a number of further breaches of the noise abatement notices and again the prevention of public nuisance licensing objective was not being met.

Following the service of the notices and officers having witnessed a number of breaches I am satisfied that the prevention of public nuisance licensing objective has been and continues to be ignored by the two holders of the premises licence, Mr Sebastian Siegmuller and Mr Damian Siegmuller and therefore I have no other option than to request a review of the premises licence.

It is clearly evident that the premises are unsuitable for the provision of recorded and live music and as such I would request that these provisions be removed from the premises licence.

Please tick yes

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

If yes please state the date of that application

Day Month Year

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

Yes - a representation was made at the hearing on 22 December 2011 in relation to the variation application dated 24 November 2011.

Please tick yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant’s solicitor or other duly authorised agent (See guidance note 4). **If signing on behalf of the applicant please state in what capacity.**

Signature

.....

Date

.....

Capacity Senior Environmental Health Officer

.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)

.....

Post town	Post Code
------------------	------------------

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

Agenda Item 5f

8 MAY 2012

Handled
into
Reception

Ho Wah,
29, Roundstone Street,
Trowbridge.
Wiltshire.
BA14 8DE

5th May 2012

Ms Maggie Jones,
Licensing Officer,
Wiltshire Council,
165, Bradley Road,
Trowbridge.
BA14 0RD

Your Ref :-12/00105/NOMUS/SAV1.5

Environmental Protection Act 1990

Complaint of loud music - Galaxy Caffe, 28, Roundstone Street, Trowbridge, Wiltshire. BA14 8DE

Dear Madam,

Thank you for your letter of 2nd May further to the above issue.

Sadly, despite our initial complaint & your officers investigation, the problem has increased since Christmas, especially at the weekends. Volume builds up during the evening with a heavy booming bass that reverberates throughout the entire property.

Several customers have complained, & indeed left my restaurant without ordering as they couldn't stand the noise, some inevitably never to return. This is normally my busiest period, so this is a considerable loss.

The invaluable help of my kind daughter at these times cannot continue as the sound is magnified upstairs in the rooms where we would normally put her small baby to bed whilst she was helping us.

Recently the situation deteriorated to a level where police were called, & public order issues arose; this is of much concern to me & once again most damaging to my business & to the council's efforts to build a thriving & prosperous town.

I do hope that this matter can be speedily resolved & look forward to hearing further from you.

Yours sincerely



Y.C Lee

CC: Ms Susie Vowles

From:
Sent: 09 May 2012 14:27
To: Jones, Maggie
Subject: Ho Wah Restaurant, Trowbridge.

TO:- maggie.jones@wiltshire.gov.uk

Dear Ms Jones,

We have been regular customers at the Ho Wah restaurant for over 30 years & have enjoyed many happy evenings there.

Unfortunately we have recently been forced to complain to Mr Lee about the intrusion of very loud noise (hammering bass sound) from the neighbouring establishment.

He has most politely told us that you are investigating (& given us your email), since we feel that you should be aware of the loss that this well established, popular & invaluable business is suffering as a result of this terrible din.

Sadly several regular customers, whom we would often meet, no longer seem to be visiting, & recently we saw a party leaving before they had ordered - very sad.

We are sure that this level of noise must be injurious to the health of those in the café - let alone to this area of Trowbridge!

We hope that we are in time for our observations on this matter to be considered during your investigations.

Yours sincerely

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For more information please visit <http://www.symanteccloud.com>



5th May 2012

Licensing Department
Wiltshire Council
Trowbridge
Wiltshire

RE: Galaxy Caffe licence review

Dear Maggie,

I am writing in this instance to comment on the effect of the late music licence granted in December 2011 at the Galaxy Caffe in Roundstone Street opposite my property.

When The Galaxy Caffe was first opened, I was very pleased that the investment was made and they made a great job of developing their cafe. I did not object to their application for an alcohol licence as they assured me it was not going to be a late night drinking venue but a cafe/restaurant.

Since the late licence was granted it has become a popular Saturday nightclub.

When the application for a late licence was first made, I sent an objection letter detailing my concern and predicted the effect that the late licence would have. The licensee convinced the council that he was wishing to have music to accompany the food element of his restaurant. The licence was granted against the professional advice of the Environmental Health Department (with a clause not to include Karaoke which is not the only source of loud music) and we have now suffered the consequences.

I would like to add that both The Malt House public house and The Carpenters Arms public house on the same street have both had dealings with Environmental Health and the Licensing Department with regard to noise and public disturbance. The Malt House was ordered to close for a period of 3 months during which they worked very hard to conform to the requests of the licensing department and now run their business in such a way that does not cause a nuisance to others. The Carpenters Arms had their music licence removed and can now only play music from their jukebox which cannot be heard outside their premises.

The fact that the Galaxy Caffe has had their licence granted after the others have had theirs revoked is grossly unfair on those other businesses and is not in keeping with the residential nature of this area.

On most Saturday nights, The Galaxy Caffe has played loud music, disco style, which is so loud that I cannot hear my television properly and the repetitive bass shakes my windows. The music often doesn't start until 10pm at which point it gets turned up very loud and continues past 2am. Favourite songs are often put on repeat. My children and I are often woken by the sound of the music which becomes even louder each time someone walks into or out of the premises. This is a frequent occurrence as there is no dedicated smoking area and people congregate outside in the street to smoke.

This in turn creates a secondary noise scene whereby people are chatting, drinking and smoking outside and contributing to the overall noise. As the evening gets later and people consume more alcohol, the talking becomes shouting, singing and general drunken behaviour. When the music stops somewhere between 2 and 3am, the people are still gathered and slowly disperse into the night, singing, shouting and chanting often till after 4am. In this way it is run as a nightclub and not a cafe/restaurant.

I have complained to the Environmental Health Department who have been inside my home and witnessed this for themselves.

My home is also my business, a small family run hotel. My business is being affected by the music. On one occasion, a couple who were staying at the hotel were unable to sleep. They came to my private living area and asked to be moved to another room, they found that the other rooms were no quieter and opted to stay where they were. The lady was pregnant and was quite frustrated. Although they were very pleasant, I was unable to charge them for their stay as they were unable to sleep and that is the fundamental point of my business – a bed to sleep in for a night. By giving the room for free, I am operating a damage limitation policy whereby they are less likely to give a poor review online, detailing the late, loud nightclub.

Another guest commented that the “internet did not mention the nightclub outside” and they would not have stayed if they had known it was there. I cannot afford to give rooms for free, the summer season is coming up and the potential for my business to be ruined is evident. I am also suffering from stress and anxiety every Saturday. I am so worried about my customers complaining, I cannot sleep and I stay awake listening to the revelling across the street from my bedroom and my heart is pounding. I find it difficult to then face my guests in the morning at breakfast and ask them if they had a good night.

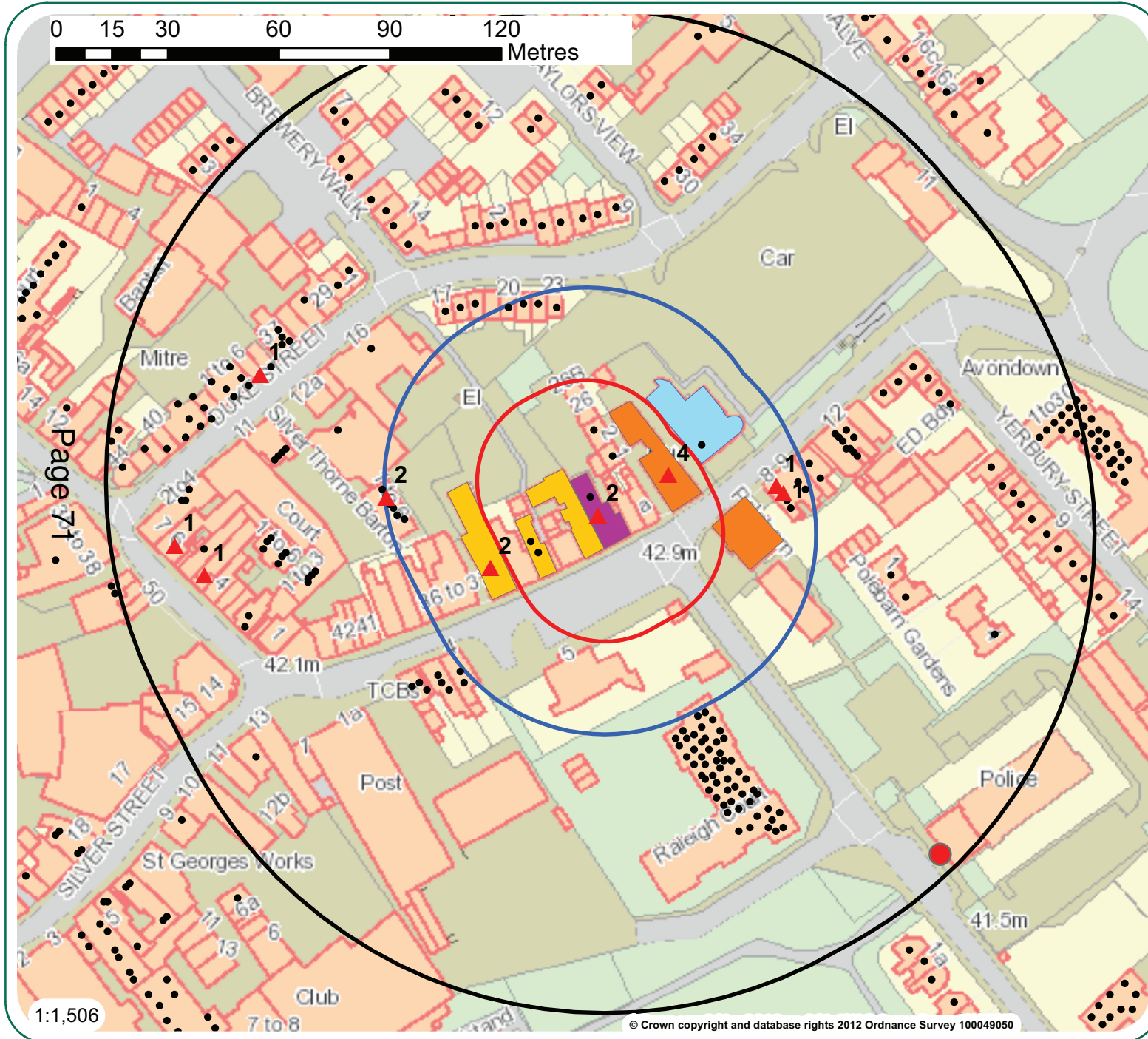
My hotel, like any other is subject to independent reviews by the people who stay here. They post accounts of their experiences online for potential guests to read. I have two online reviews detailing the music from the Galaxy Caffe warning people who might be considering staying here of the potential for disturbed sleep – it’s not good for my business or my health or that of my family.

I have invested a considerable amount of money, time and passion into The Polebarn Hotel, in growing the business against harsh economic times and more to come. It is my family home and my livelihood. I pay domestic rates to live here as well as business rates. I have always believed in supporting local businesses and do most of my trade in this town. I am a staunch supporter of Trowbridge Town Centre and hope it will support me. I do not run my business in a way that will affect my neighbours and would hope that my neighbours would offer me the same courtesy.











I appeal to the council to consider the wider effects of their decision to grant the licence and consider a more sensible approach whereby any music ceases at 11pm which is a reasonable time and a fair compromise. If, as originally planned, the music is to accompany people eating at the cafe, they would more than likely have finished eating by that time. An alternative would be to ask The Galaxy Caffe to provide full soundproofing and regular decibel monitoring as is standard for any new late night music venue and to limit the amount of people outside and their behaviour using security staff at the door, again, as standard.

Yours Sincerely,

Premises Hearing Ref 11/00273/LAPRRV
Galaxy Cafe 25 Roundstone Street Trowbridge BA14 8SD

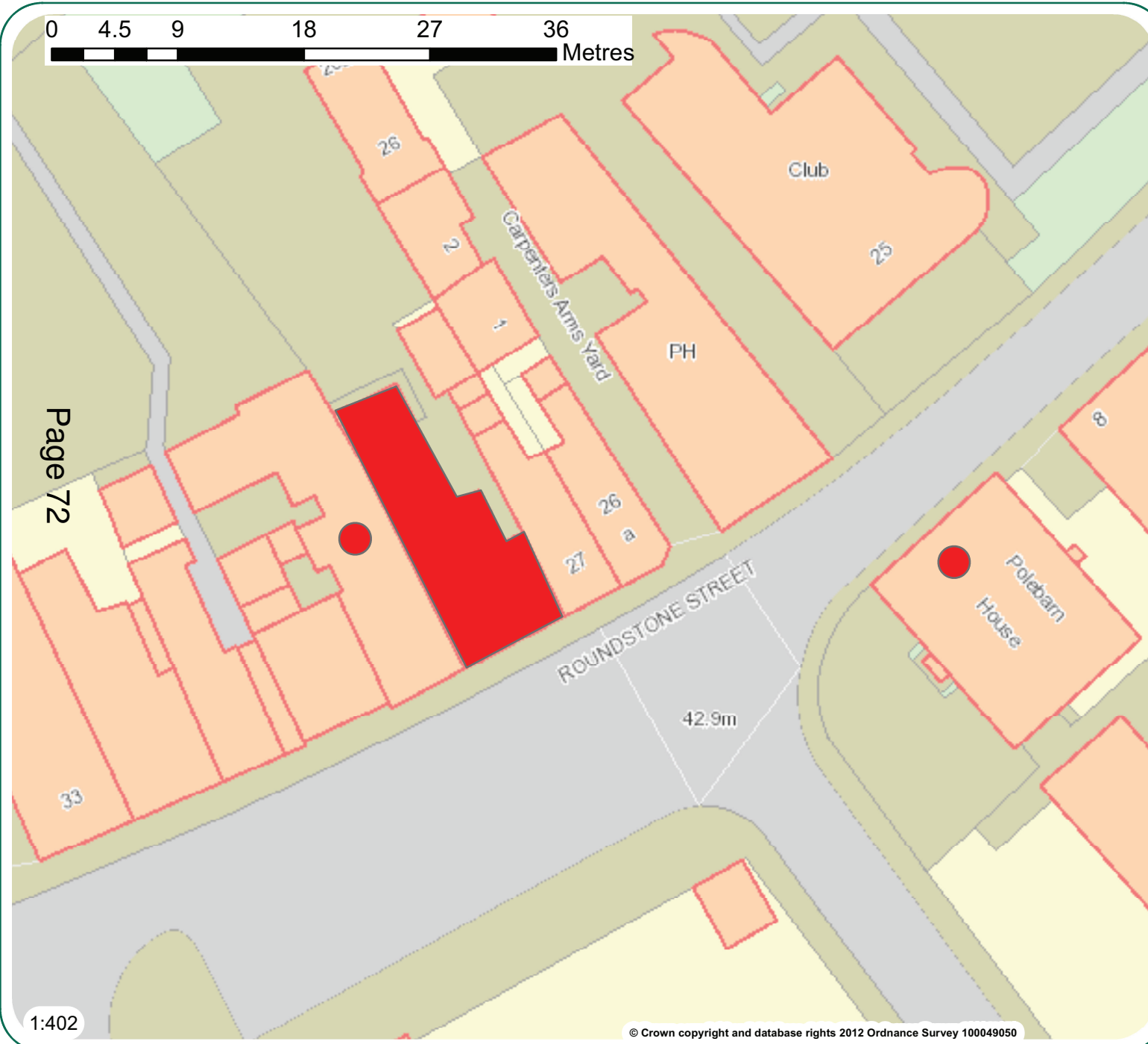


Key to Map



-  Galaxy Cafe 25m Buffer
-  Galaxy Cafe 50m Buffer
-  Galaxy Cafe 125m Buffer
-  Alcohol Sales
-  Club Registration
-  Late Night Refreshment
-  Late Night Venue
-  Noise from Music Complaints (3 year)
-  Residential Address
-  Monitoring Location

Premises Hearing Ref 11/00273/LAPRRV

Galaxy Cafe 25 Roundstone Street Trowbridge BA14 8SD



Key to Map

-  Objector
-  Galaxy Cafe

