

Supplemental Information Submitted
on Behalf of Applicant

Official Copy of Register of Title

Annex 1



Official copy of register of title

Title number BGL80301

Edition date 26.04.2017

- This official copy shows the entries on the register of title on 11 MAR 2024 at 10:47:04.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 11 Mar 2024.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Birkenhead Office.

A: Property Register

This register describes the land and estate comprised in the title. Except as mentioned below, the title includes any legal easements granted by the registered lease but is subject to any rights that it reserves, so far as those easements and rights exist and benefit or affect the registered land.

HAMMERSMITH AND FULHAM

- 1 (09.03.2011) The Leasehold land shown edged with red on the plan of the above title filed at the Registry and being The Broadway Bar And Grill, 474-476 Fulham Road, London (SW6 1BY).
- 2 (09.03.2011) Short particulars of the lease(s) (or under-lease(s)) under which the land is held:
 Date : 31 January 2011
 Term : 35 years from 31 January 2011
 Parties : (1) MPG Pubs Limited Partnership (acting through its general partner MPG Pubs GP Limited)
 (2) Enterprise Inns Plc
- 3 (09.03.2011) The Lease prohibits or restricts alienation.
- 4 (09.03.2011) The title includes any legal easements referred to in clause LR11.1 of the registered lease but is subject to any rights that are granted or reserved by the lease and affect the registered land.
- 5 (09.03.2011) The landlord's title is registered.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (09.03.2011) PROPRIETOR: EI GROUP PLC (Co. Regn. No. 2562808) of 3 Monkspath Hall Road, Solihull, West Midlands B90 4SJ.

End of register

Copy of First & Last Page of Eduardo Dantas's
Tenancy Agreement
Annex 2

Stonegate Group

PUB PARTNERS

AGREEMENT FOR TENANCY AT WILL THE PARTICULARS

Tenancy at Will Dated	7 th November 2023
The Landlord	EI Group Ltd whose registered office is at 3 Monkspath Hall Road Solihull West Midlands B90 4SJ (Registered Number 02562808) ("We/Us/Our")
The Tenant & Tenants Address	Eduardo Lucena Dantas of [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Date of Birth	[REDACTED]
The Premises & Address	Broadway Bar & Grill 474-476 Fulham Road Fulham London SW6 1BY
The Date of Commencement	7 th November 2023
The Deposit	[REDACTED]
The Rent (Please note rent steps are NOT permitted)	[REDACTED]
Fixtures & Fittings Rental (25% of F&F Value)	[REDACTED]
Premises Licence	[REDACTED]
Building Insurance	[REDACTED]
Business Insurance	[REDACTED]
Cellar Cooling	[REDACTED]
Heating Maintenance	[REDACTED]
Compliance Testing	[REDACTED]

It is a condition of this agreement that rent and goods are paid by direct debit, please have your business account details available in order to complete a direct debit. The name of your business account must be in the name of the parties to the agreement. If You do not set up a direct debit with Us You will be charged an administration fee of [REDACTED] per calendar month. In addition to this, if any of Your payments are not honoured, You must pay Our administration charge of [REDACTED] per payment which is not honoured. These charges shall each be subject to an increase of [REDACTED] to be applied on 1st January every year.

Whilst you are subject to this tenancy, any investment in or improvements that you choose to make to the premises are made entirely at your own risk and you will not be reimbursed for any such investments and/or improvement works should either party elect to terminate this tenancy.

If you still intend to invest in or undertake improvement works to the premises, please ensure that you discuss your plans with either your Regional Manager or your Property Manager before you start any such programme. This must occur so that both we and you can establish whether any statutory approvals or consents are required and/or whether any superior landlord consent may be required for the investment/works proposed.

Please note We reserve the right to carry out a credit check on the tenants & guarantors listed on the front page of this agreement.

Pub Address: Broadway Bar & Grill 474-476 Fulham Road Fulham London SW6 1BY
Tenancy At Will Dated: 7th November 2023

I confirm that I have received the terms and conditions of the Tenancy at Will and I have read and understand them and agree to abide by the terms and conditions set out therein.

I confirm that I have received all Pub Factual information referred to in clause 14. Short Term Agreements of the Pubs Code 2016.

Publican (1) 
Eduardo Lucena Dantas

Witness Signature 

Witness Name DAVID HOLDER

Witness Address 

SIGNED on behalf of **EI Group Ltd** :

Signature 

Name ISKENTH

Position of Signatory REGIONAL MANAGER

Letter from Eduardo Dantas

Annex 3

4th March 2024

To Whom it may concern

My name is Eduardo Dantas and I am the tenant of the Broadway Bar & Grill, 474-476 Fulham Road, Fulham, London, SW6 1BY.

I have let the property from Ei Group Ltd on 07/11/2023. This property is a leasehold site with a superior Landlord.

I confirm I am fully supportive of the application for a shadow licence for both premises licences as this is standard practice for commercial properties where there is a superior landlord.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Eduardo Dantas', written in a cursive style.

Eduardo Dantas

Copy of Extreme Oyster
Annex 4

A Queen's Bench Division

**Regina (Extreme Oyster and another) v Guildford
Borough Council**

[2013] EWHC 2174 (Admin)

B 2013 June 6; Turner J
July 22

Licensing — Licensed premises — Application for premises licence — Claimant landlord and trading company applying for shadow licence for premises for which premises licence already held by tenant — Terms of shadow licence not identical to primary licence — Officer of licensing authority declining to consider application — Whether decision unlawful — Whether claimant's application for "licensable activities to which the application relates" — Whether officer having delegated authority to determine applications — Licensing Act 2003 (c 17), s 16(1)(a)

D The claimants were the landlord of two nightclub premises and the landlord's trading company. The premises were let to a tenant who held premises licences (the "primary licences") permitting certain licensable activities. The claimants applied to the defendant licensing authority under the Licensing Act 2003¹ for licences (informally described as "shadow" licences) in respect of the premises. An officer of the licensing authority declined to determine the applications on the ground that they did not meet the preconditions for consideration imposed by section 16 of the Act, in that they were not made by "a person who carries on, or proposes to carry on, a business which involves the use of the premises for the licensable activities to which the application relates" within the meaning of section 16(1)(a). The claimants sought judicial review challenging the lawfulness both of the decision and of the authority of E the individual officer to make it. The authority conceded that the claimant landlord was not precluded by section 16(1)(a) from making an application for a licence in identical terms to the primary licence in so far as it related to the licensable activities covered by the latter, but contended that it had been entitled to reject the applications because of differences between the activities to which the shadow applications related and those covered by the primary licences.

On the claim—

F *Held*, allowing the claim and remitting the matter to the licensing authority for reconsideration, (1) that the Licensing Act 2003 was not intended to support a regime based on a narrow and restrictive approach to licensing and a broad interpretation of section 16(1) was to be preferred; that an applicant had to demonstrate a sufficient nexus between its business and the relevant licensable activity; but that section 16(1)(a) of the 2003 Act did not restrict applications for second or subsequent licences to those that were identical or nearly identical to the primary licences; that G applications for such "shadow" licences were not to be automatically excluded from consideration under section 16(1)(a) merely because they contained details of the relevant licensable activity that were not included in the primary licence; that the reasons for any differences between the terms of a shadow application and those contained in the primary licence should be considered on their merits based on an assessment of what would be necessary for the promotion of the licensing objectives in the light of representations made; that so long as the extent of the shadow licence application did not stray beyond the parameters of the premises used by the applicant H as a business and that the matching categories of licensable activities were carried out under the primary licences relating thereto then the threshold of section 16(1)(a) was surmounted; and that, accordingly, the licensing authority had been wrong to decide

¹ Licensing Act 2003, s 16: see post, para 13.

that section 16(1)(a) of the 2003 Act applied so as to exclude the claimants' applications from further consideration (post, paras 44, 46–50, 55, 57, 60). A

(2) That the licensing committee had not authorised the individual officer, as it could have done, to determine applications for a premises licence where no representations had been made; that the officer's decision on section 16 of the 2003 Act had therefore been made in breach of the licensing authority's delegation policy; and that, accordingly, his decisions would be quashed on that ground also (post, paras 80, 81). B

The following cases are referred to in the judgment of Turner J:

Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB 223; [1947] 2 All ER 680, CA
Hall & Woodhouse Ltd v Poole Borough Council [2009] EWHC 1587 (Admin); [2010] PTSR 741; [2010] 1 All ER 425, DC
Mainwaring v Trustees of Henry Smith's Charity [1998] QB 1; [1996] 3 WLR 1033; [1996] 2 All ER 220, CA
R (Daniel Thwaites plc) v Wirral Borough Magistrates' Court [2008] EWHC 838 (Admin); [2009] PTSR 51; [2009] 1 All ER 239 C

No additional cases were cited in argument.

The following additional case, although not cited, was referred to in the skeleton arguments: D

Patel v Keles [2009] EWCA Civ 1187; [2010] Ch 332; [2010] 2 WLR 1159, CA

CLAIM for judicial review

By a claim form the claimants, Extreme Oyster and Star Oyster Ltd, sought judicial review of the decision of the defendant licensing authority, Guildford Borough Council, to refuse their applications under the Licensing Act 2003 for "shadow" premises licences in respect of two nightclub premises. The grounds of claim were, inter alia, that: (1) the authority was wrong in law to declare the applications invalid; and (2) that the question of whether the applications were invalid was, in any event, a question of fact which should have been made by the licensing sub-committee having heard evidence upon the matter, and not unilaterally by a person in the licensing department without reference to the claimants. E F

The facts are stated in the judgment.

James Rankin (instructed under *Bar Direct Access Scheme*) for the claimants.

James Findlay QC (instructed by *Head of Legal and Democratic Services, Guildford Borough Council, Guildford*) for the licensing authority. G

The court took time for consideration.

22 July 2013. TURNER J handed down the following judgment.

Introduction

1 The second claimant, Star Oyster Ltd ("Star"), is the freehold owner of two nightclub premises in Guildford: the "Casino and Players Lounge" and "Bar Mambo". Both premises are covered by licences granted in respect of "licensable activities" under the Licensing Act 2003. The tenant of the clubs, and holder of these licences, is Luminar Leisure Ltd ("Luminar"). H

A The two club premises, although presently run as distinct undertakings, are housed within the same building.

2 The first claimant, Extreme Oyster Ltd (“Extreme”) is the trading company of Star. Extreme ran Bar Mambo prior to Luminar taking over on 13 May 2012. Extreme continues to be an active trading company employing staff and receiving income from the rental of the premises from Star. It pays all of Star’s running costs and expenses.

B 3 On 2 May 2012 the claimants applied to the defendant, Guildford Borough Council (“Guildford”) for “shadow” licences in respect of these two premises and areas within them. The term shadow licence is not defined in either statute or regulations but is a convenient shorthand way of describing a licence which has been obtained by one party in respect of premises in relation to which another licence (to which I propose to refer as the “primary licence”) has already been granted to someone else. In short, the claimants wished, for commercial reasons, to have the benefit of licences operating in parallel to those held by Luminar.

C 4 Guildford refused the claimants’ applications on the basis that they had failed to satisfy the terms of section 16 of the 2003 Act compliance with which is a precondition of the consideration of any application for a premises licence. The claimants now seek to challenge the legality of this decision by way of judicial review.

The disputes

E 5 Guildford accepts that circumstances may arise in which a shadow licence can lawfully be granted but contends that such circumstances do not arise on the facts of this case. Of more generic importance is the question as to just how wide is the category of applicants which the law permits to apply for such a licence. The claimants advocate a broad approach; Guildford a narrow one.

F 6 Further issues fall to be addressed. The first pertains to the lawfulness of the process by which Guildford purported to reject the application. The decision had been purportedly delegated to Mr Curtis-Botting, Guildford’s licensing services manager. The claimants contend that this delegation was unlawful and that any decision should have been taken by the licensing sub-committee. The second issue relates to Guildford’s refusal to return to the claimants the fees which they had paid in respect of the failed applications.

G 7 An unhappy aspect of this case is what could be described, perhaps euphemistically, as a lack of empathy between Mr Michael Harper, the owner of Star, and Mr Curtis-Botting. This case is not, however, about personalities and, although I have read with care the evidence relating to the background history, I must remind myself that there are no express allegations of bias, in the legal sense, against Mr Curtis-Botting and that his decisions must stand or fall on their own merits.

H *Shadow licences: the legal background*

8 Under betting legislation, it was (and still is) only ever permissible for there to be one licence at any one time in respect of any given set of premises. Section 152(1)(b) of the Gambling Act 2005 provides: “A premises

licence . . . (b) may not be issued in respect of premises if a premises licence already has effect in relation to the premises . . .” A

9 The position under the Licensing Act 2003 is, however, less strict and allows for the existence of more than one licence in respect of the same premises. Section 2 of the 2003 Act provides:

“Authorisation for licensable activities and qualifying club activities

“(1) A licensable activity may be carried on— (a) under and in accordance with a premises licence (see Part 3), or (b) in circumstances where the activity is a permitted temporary activity by virtue of Part 5. B

“(2) A qualifying club activity may be carried on under and in accordance with a club premises certificate (see Part 4).

“(3) Nothing in this Act prevents two or more authorisations having effect concurrently in respect of the whole or a part of the same premises or in respect of the same person.” C

10 The Department for Culture Media and Sport (“DCMS”) is required by section 182 of the 2003 Act to publish guidance indicating how the Act will be administered by the licensing sub-committees of the local authorities who now exercise the relevant jurisdiction over the grant, refusal, variation and review of licences for premises that offer regulated entertainment and licensable activities. D

11 Section 4 of the 2003 Act provides:

“General duties of licensing authorities”

“(3) In carrying out its licensing functions, a licensing authority must also have regard to . . . (b) any guidance issued by the Secretary of State under section 182.” E

12 The applicable DCMS guidance (*Amended guidance issued under section 182 of the Licensing Act 2003* (June 2013)) provides, at para 8.18: “. . . There is nothing in the 2003 Act which prevents an application being made for a premises licence at premises where a premises licence is already held.”

13 Nevertheless, an applicant for a licence must qualify under one or more of the gateway criteria imposed by section 16 of the 2003 Act (of which there are ten). Only the first of these is directly material to this application: F

“Applicant for premises licence

“(1) The following persons may apply for a premises licence— (a) a person who carries on, or proposes to carry on, a business which involves the use of the premises for the licensable activities to which the application relates . . .” G

The explanatory notes refer to this as the “principal category” in this section. However, they provide no further guidance as to its interpretation.

14 *Paterson’s Licensing Acts* 120th ed (2012), vol 1, para 1.321 provides the following commentary on section 16: H

“Who may apply?”

“Whereas a justices’ licence could be granted to any person whom the justices thought fit and proper, under the new legislation section 16 specifies a restricted list of persons who may apply for a premises licence.

A The most common applicant will be ‘a person who carries on, or proposes to carry on, a business which involves the use of the premises for the licensable activities . . .’ It is suggested that the use of the term ‘involves’ might denote a broad range of businesses including that of a landlord receiving a rent from a premises being used for such a purpose (this interpretation cited and approved by the district judge and subsequently Richards LJ at para 24 of his judgment in *Hall & Woodhouse Ltd v Poole Borough Council* [2010] PTSR 741) as well as an owner of such a business, a local authority, the holder of a franchise or a tenant.”

And, at para 1.3515, footnote 3:

C “. . . Quære whether eg a developer of a site who intends to construct premises to be used for the sale of alcohol would be able to apply. It could be argued the business involvement in the use of the licensed premises is too remote. This could be an issue for developers who have historically put licences in place at an early stage in a project, albeit often only on an outline basis under section 6(5) of the Licensing Act 1964. For those persons the procedure afforded by the Licensing Act 2003 (which also presents difficulties) might be the more appropriate route. For a case which raised similar issues arising under the Gambling Act 2005 see *Betting Shop Services Ltd v Southend-on-Sea Borough Council* [2007] STC 1425 . . . In that instance it was held that guidance published by the Gambling Commission dealing with the point was inconsistent with the true construction of the Act. Where the applicant fulfilled the other statutory criteria, an application for a premises licence might be granted in respect of premises not yet ready for gambling (in that they had not been fully constructed or were to be altered). The claimant had met the relevant statutory criteria for its application and the authority was therefore obliged to consider it.”

F 15 *Hall & Woodhouse Ltd v Poole Borough Council* [2010] PTSR 741, to which Paterson refers, involved a criminal prosecution under section 136(1)(a) of the 2003 Act. The defendant, Hall, was the owner of the Stepping Stones public house in Poole. It let the premises to one Cartlidge under a tenancy agreement. He, in turn, employed one Ferguson to be the manager and designated premises supervisor. Hall had obtained the relevant premises licence.

G 16 In the early months of 2007 it became clear that those responsible for running the Stepping Stones were ignoring the terms of the licence in a number of respects. In particular, they were serving drinks after hours and failing to maintain adequate protection against the risk of fire.

H 17 Charges were brought against Cartlidge and Ferguson under section 136(1) of the 2003 Act alleging that they had knowingly allowed a licensable activity to be carried on at the public house otherwise than under and in accordance with an authorisation. They duly pleaded guilty.

18 Hall was also prosecuted on the basis that, in the words of the section, it “[had carried] on . . . a licensable activity on . . . premises otherwise than under and in accordance with an authorisation . . .”

19 When the matter came before the deputy district judge (magistrates' court), he applied the following reasoning: A

“(1) Section 16 of the Licensing Act 2003 specifies a restricted list of persons who may apply for a premises licence. The only basis on which the defendant could apply was as a person who carries on, or proposes to carry on, a business which involves use of the premises for the licensable activities to which the application relates. B

“(2) I was satisfied that use of the term ‘involves’ denotes a broad range of business including that of a landlord receiving rent from premises being used for such a purpose, as in this case.

“(3) In making the application for the licence, the defendant must have considered itself to be carrying on a business which involves use of premises for licensable activities. C

“(4) The grant of premises licences and enforcement of any conditions in them are fundamental to the licensing system and enforcement of it. To find otherwise would be to undermine the whole basis of the licensing regime and to negate the effect of the offences in section 136(1).” (See para 7 of the judgment.)

20 There is a due diligence defence under section 139 of the 2003 Act on which Hall did not rely. In consequence, the district judge convicted. Hall appealed to the Divisional Court. D

21 The Divisional Court [2010] PTSR 741 held that section 136(1)(a) of the 2003 Act is directed at persons who *as a matter of fact* actually carry on or attempt to carry on a licensable activity on or from premises. Being a licence holder does not make a person automatically liable in respect of licensable activities carried on or from the premises. E

22 One of the arguments rejected by the Divisional Court was that the language of section 136 should be equated with that of section 16. The prosecution had contended that a licence holder who applies for a premises licence will only qualify under the relevant part of section 16(1)(a) of the 2003 Act if he is a person carrying on a licensable activity. From this, it would have followed that passing through this section 16 gateway would automatically mean that the successful applicant was to be taken, for the purposes of section 136, to be carrying on the activity thereafter. Richards LJ considered this argument to be fundamentally misconceived. He held: F

“24. Under section 16(1)(a) [of the 2003 Act] an application for a premises licence may be made by ‘a person who carries on, or proposes to carry on, a business which involves the use of the premises for the licensable activities to which the application relates’. Carrying on such a business is self-evidently different from carrying on the licensable activities themselves, and the fact that a person’s actual or proposed business involves the use of the premises for licensable activities does not mean that he necessarily carries on the licensable activities themselves at the premises for which the licence is granted. The commentary on section 16 in *Paterson’s Licensing Acts*, 117th ed (2009) vol 1, para 1.3515 states, at note 3: ‘It is suggested that the use of the term “involves” might denote a broad range of businesses including that of a landlord receiving a rent from a premises being used for such a purpose, G H

A an owner of such a business, a local authority, the holder of a franchise or
a tenant.’ I agree that the statutory expression is broad enough to cover
the case where a freehold owner carries on the business of letting premises
to tenants on the basis that the tenant will carry on licensable activities at
the premises. But the landlord’s business in such a case is, in principle,
distinct from the activities carried on by the tenant, and I regard it
B as a complete fallacy to merge the two elements together and to treat
the landlord as automatically carrying on the licensable activities at
the premises.

“25. I should note that the June 2007 revised guidance issued by the
Secretary of State for Culture, Media and Sport under section 182 of the
[2003 Act] states, at para 8.20, that in the case of public houses it would
be easier for a tenant to demonstrate that it has carried on a business
C within section 16(1)(a) than it would be for a pub-owning company that
does not itself carry on licensable activities. That may or may not be so.
The language used in that paragraph might be thought to support my
construction of section 136(1)(a), but in any event what is said in the
guidance does not affect the view I have expressed about the meaning and
effect of section 16(1)(a) or the distinction to be drawn between that
provision and section 136(1)(a). I expressly reject Mr Light’s submission
D that the premise of the legislation is that the person granted a premises
licence is himself necessarily carrying on such licensable activities as are
carried on on or from the premises to which the licence relates.

“26. It is, of course, possible for a landlord to carry on a licensable
activity at premises notwithstanding that the premises have been let and
notwithstanding the existence of the landlord/tenant relationship, but
E whether he does so or whether, as an alternative possibility, he knowingly
allows a licensable activity to be carried on at the premises has to be
determined as a question of fact. Nor do I see how the mere inclusion in
the tenancy agreement of obligations aimed at ensuring that the premises
are managed properly and in compliance with the Act could *of itself*
warrant the finding that licensable activities carried on there are carried
F on by the landlord.” (Original emphasis.)

The factual background

23 The licence applications to which this claim relates are eight in
number. Four were made by Star and four by Extreme. Between them they
covered different permutations of the physical extent of the premises to
which they were intended to apply. Those numbered 92057 and 105889
G were, for reasons which will be examined later in this judgment, to assume
particular prominence during the course of oral submissions.

24 Three of the eight applications were listed to be heard by the
licensing sub-committee. The first of these hearings was to take place at
2p m on Tuesday 24 July 2012.

25 However, by e-mail sent at about 5p m on Thursday 19 July 2012,
one Sophie Butcher, Committee Member for Legal and Democratic Services,
H wrote to Star’s solicitors to say that the hearings had been “cancelled” on
the basis that the applications did not comply with section 16 of the 2003 Act.
In addition no further arrangements were to be made to convene hearings in
respect of the other outstanding applications. Full and detailed reasoning
was promised for the following Monday. During the course of submissions,

I elicited from counsel for Guildford that the decision on which this e-mail was based had earlier been reached, but not contemporaneously recorded, by Mr Curtis-Botting. A

26 This e-mail prompted a response from Star’s solicitors expressing surprise and dismay at the decision and pointing out that, since the decision had not been taken by the sub-committee, there was no statutory right of appeal and thus the only route of legal challenge would be by way of judicial review. B

27 On 23 July the promised letter containing Guildford’s reasons was sent by one Mr Gerrard, Interim Head of Legal and Democratic Services. With respect to the legal position, having set out the terms of section 16(1)(a) of the 2003 Act, it said:

“The licensing authority’s view is that none of the above companies now fall within this definition. Luminar Group Ltd are carrying on the licensable activities. Whilst the [*Hall* case] indicated that a landlord could fall within the definition by virtue of carrying on a business of collecting rent, this only applies if the landlord applies for a licence in respect of the licensable activities carried on by the tenant. In the case of the above applications, they are in respect of a business which would be carried on by the companies themselves and do not relate to Luminar Group Ltd’s licensable activities.” C

28 The letter went on to say:

“The licensing authority have [sic] considered whether the above companies can fall within the definition of proposing to carry on a business. On the facts of this case, it is not considered that they can. It will be five years before the lease comes to an end. If the three-year break clause is invoked the premises will have to be redeveloped, in which case further licence applications would be required in any event. Counsel’s view is that any plans that the companies may have to carry out licensable activities in the future are at most a consideration of a proposal and do not fall within section 16(1)(a) [of the 2003 Act].” D

Terminology E

29 Guildford takes issue with the use of the term “shadow” licence and challenges the claimants’ assertion that such arrangements are and were commonplace. Ultimately, however, so long as the term shadow licence is treated as being no more than a convenient label, and not one to be accorded any special legal status, then I see no harm in using it. This is particularly so in the light of the fact that the claimants do not contend that every shadow licence application will automatically comply with section 16(1)(a) and Guildford do not contend that every shadow licence will automatically fall foul of it. Each case will fall to be decided on its own facts. F

Interpretation of section 16(1)(a) G

30 In the *Hall* case [2010] PTSR 741 the court was not dealing with circumstances in which it was proposed that two premises licences would be held by two persons in respect of the same premises. In the instant case, there was disagreement between counsel as to whether or not applications for shadow licences had now become standard practice within the industry. H

A In the event, I do not find that this is an issue which it is necessary to resolve. Orthodoxy is no more proof of legality than novelty is of illegality.

B 31 Despite the strongly opposed position of the parties on a number of issues, there were, nevertheless, some areas of agreement between the parties. In particular, counsel for Guildford, Mr James Findlay QC conceded, importantly, that Guildford could not legitimately have found that Star, as landlord, was precluded by section 16(1)(a) from making an application for, what he described as, a “mirror” licence. Such a licence, he explained, is a licence in identical terms to the primary licence in so far as it relates to the “licensable activities” covered by the latter. His concession was based on the approach of Richards LJ in the *Hall* case.

C 32 Of the eight applications which are the subject matter of this case, it is applications 92057 and 105889 made by Star (to which I have already made passing reference) which were the most closely equivalent in scope and content to the existing licences held by Luminar. They related to the “Mambo” and “Casino and Players Lounge” premises respectively. Counsel for Guildford conceded that, if the claimants’ applications had related to exactly the same activities in scope and form in respect of premises exactly as delineated in the Luminar licences, then the section 16 gateway would have been open to the claimants and Guildford could have had no legitimate basis on which to refuse to proceed to determine the applications on their substantive merits.

D 33 However, Mr Findlay went on to assert that Guildford was entitled to reject the applications because of differences between the activities to which the shadow applications related and those covered by the primary licences.

E 34 When, in response to these submissions, I inquired just what these differences actually were, Mr Findlay was unable to provide me with a full answer. I therefore permitted him a short adjournment to find out the answer from Mr Curtis-Botting who was in attendance at the hearing. Copies of the Luminar licences for comparison were not immediately to hand, not having been included in the trial bundle.

F 35 After the adjournment, Mr Findlay identified the following differences between the terms of the primary licence and the proposed terms of the shadow licences: (1) Application 92057 provided for the showing of films not suitable for children and for tableside and show dancing. The corresponding Luminar licence did not. Star’s application also purported to cover a small and roughly square area which, although falling within the footprint of both premises as a whole, had not been included in the equivalent Luminar licence. In all other particulars the activities were identical as, indeed, were the operating times. (2) Star’s application 105889 was different to its Luminar counterpart to the extent that there was no specific provision for door supervisors and there were differences in relation to the permitted scope of lap dancing activities and the provision of CCTV surveillance. On inquiry as to the actual nature and extent of the differences relating to lap dancing and CCTV, Mr Findlay was unable to offer further assistance and said that he would be prepared to base his case on this issue with reference to the provision of doormen alone.

H 36 Of the differences relied upon, it must be said that none of them had ever been referred to in any communication written or oral from Guildford to the claimants. None of them was mentioned in Mr Curtis-Botting’s

witness statement, a document not otherwise short on detail. Furthermore each and every one of them could have been addressed at the sub-committee hearings which had been listed and the sub-committee would have been able (had it considered it to be necessary for the promotion of the licensing objectives in the light of material representations) to impose conditions which would have removed or mitigated these differences.

37 Mr Findlay assured me that, despite all of the above, Mr Curtis-Botting had, indeed, considered these very factors in reaching his decision. I accepted this assurance.

38 I then inquired of Mr Findlay whether his case was that an application for a shadow licence must fail under section 16(1)(a) of the 2003 Act unless the licensable activities identified therein were identical in every single respect to those contained in the primary licence. This was the stance which he initially adopted but, thereafter, he conceded that not every difference no matter how small would have this effect and argued that the differences had to be “material”. Even accepting that Mr Curtis-Botting had applied his mind to these differences, there was no evidence as to which of them he had considered to be “material” or on what basis.

39 I was and remain concerned that Mr Curtis-Botting made a mere mental note of these limited discrepancies and, thereafter, peremptorily cancelled (or refused any further consideration of) these applications without ever volunteering which discrepancies he had identified. I am not persuaded by the argument that the nature of the discrepancies was not communicated to the claimants because their challenge by way of judicial review was insufficiently focused and that this justified Guildford’s silence on the point. It will be recalled that the letter of 23 July 2012, which Guildford had said in the earlier e-mail would contain “full and detailed reasoning”, dealt with the point in the following way:

“[The *Hall* case [2010] PTSR 741] only applies if the landlord applies for a licence in respect of the licensable activities carried on by the tenant. In the case of the above applications, they are in respect of a business which would be carried on by the companies themselves and do not relate to Luminar Group Ltd’s licensable activities.”

40 A reasonable interpretation of this passage would, in my view, have been that Guildford’s objection was not that there was a material difference between the licensable activities referred to in the claimant’s applications and those contained in the primary licence but that the shadow licence applications related to free-standing activities which were within the claimants’ contemplation to carry out themselves and not through mere involvement in a business carried out by Luminar. In other words, the objectionable factor was that, in order to comply with section 16(1)(a) of the 2003 Act, the claimants’ applications should have been entirely parasitic on the activities of Luminar and should not have reflected any future contemplated activities of the claimants themselves. However, this objection, if valid, would have applied equally to an application drafted in terms identical to those of the primary licence and thus is inconsistent with the concession made by Mr Findlay in his submissions. Nevertheless, despite any perceived contrast between the wording of the letter and the submissions now relied on by Guildford, I approach the determination of the issue de

A bene esse as if the letter articulated unambiguously the same analysis as that on which it now relies.

41 Ultimately, the resolution of this issue depends on the interpretation of the words “the licensable activities to which the application relates” in section 16(1)(a) of the 2003 Act. The narrow interpretation favoured by Guildford is that such licensable activities should be materially identical in content to the primary licence with specific reference to the scope of the plan and operating schedule which must accompany the shadow application.

B 42 Guildford advances three specific policy bases in support of its approach. It contends that: (a) section 16 of the 2003 Act does not provide for a free for all. In restricting the pool of possible applicants Parliament clearly considered there was benefit in so doing; (b) numerous licences make enforcement more difficult—clarity of responsibility is important as noted
C by the current guidance, at para 8.17; and (c) unrestricted applications place an undue burden on licensing authorities.

43 Contention (a) does not, in my view, advance Guildford’s case. No one suggests that section 16 provides a “free for all”. It is self-evident that Parliament would not have imposed the section 16 gateways unless it considered that some benefit would thereby be achieved. This, however,
D begs the question as to where the line is to be drawn. The existence of the line cannot, of itself, determine its position.

44 Contentions (b) and (c), on the other hand, relating to difficulties in enforcing multiple licences and the burden of dealing with them, are not without some weight. Nevertheless, this weight is not sufficient in my view to preclude a broad interpretation of section 16(1) of the 2003 Act. The potential deleterious consequences must be balanced against the following factors: (1) The holder of a premises licence is under duties imposed by section 57 of the 2003 Act (breach of any one of which is an offence) in respect of keeping, displaying and producing such a licence. These obligations apply equally to holders of a shadow licence. There is, therefore, a level of well defined statutory control over the risk of confusion arising over the existence and parameters of any given licence. I accept that this does not remove all risk that, in any given case, the position may be less clear than if only one licence holder were permitted but the position is, at least, mitigated by the formalities of section 57 and, if the risk of confusion were to be prioritised as a factor in the threshold test, Parliament could have made express provision for this in the wording of the statute. It did not.

(2) The broader interpretation of section 16(1) continues to preserve the important control measure that any given applicant must demonstrate a sufficient nexus between its business and the relevant licensable activities. Accordingly, those operating businesses with a more tenuous link, such as developers, may well be excluded from using this gateway. Borderline cases will have to be decided on their own facts. (3) A further disincentive to the making of multiple applications is that a fee is payable in respect of each of them. In this case the level of fee was £625 per application. (4) Situations may arise, in any event, in which one set of premises is covered by a number of licences. Even on a narrow approach, a multiplicity of licences is not precluded in respect of any given premises. Simply by limiting applications in relation to existing businesses where the licensable activities are virtually identical to those already carried on will not obviously achieve a substantial reduction in the number of multiple applications made.

45 On the other hand, there are a number of factors which provide support for a broader interpretative approach. A

46 Firstly, the 2003 Act was not intended to support a regime based on a narrow and restrictive approach to licensing. As Black J observed in *R (Daniel Thwaites plc) v Wirral Borough Magistrates' Court* [2009] PTSR 51, para 13:

“The Licensing Act 2003 was intended to provide a ‘more efficient’ ‘more responsive’ and ‘flexible’ system of licensing which did not interfere unnecessarily. It aimed to give business greater freedom and flexibility to meet the expectations of customers and to provide greater choice for consumers whilst protecting local residents from disturbance and anti-social behaviour.” B

And, at para 42: “the 2003 Act anticipates that a ‘light touch bureaucracy’—a phrase used in para 5.99 of the guidance—will be applied to the grant and variation of premises licences.” A wider approach to the interpretation of section 16(1)(a) facilitates these policy aims. The narrow one advocated by Guildford does not. C

47 Secondly, the applicant for a shadow licence may have very good and perfectly legitimate business, or other, reasons to include some details of the relevant licensable activity not included in the original primary licence. The automatic exclusion of such applications from further consideration under section 16(1)(a) of the 2003 Act would celebrate the triumph of bureaucracy over common sense. D

48 Thirdly, if, in any given case, there were sound policy reasons for taking issue with any differences between the terms of the shadow application and those contained in the primary application, then these could be considered at the hearing and dealt with on their merits based on an assessment of what would be necessary for the promotion of the licensing objectives in the light of representations made. It is far better that the proper control mechanism for such applications should involve the considered application of policy rather than the operation of a mechanistically applied threshold condition. Any frivolous, vexatious or repetitious applications could always be dealt with by way of delegation to a single officer and, in obvious cases, be disposed of in a proportionately summary fashion. E F

49 Fourthly, if Parliament had wished to preclude the making of second or subsequent licence applications on anything but identical or near identical bases to those contained in first licences, then this could have been made clear in the guidance. It was not.

50 Fifthly, section 17 of the 2003 Act treats the “relevant licensable activities” as enjoying a separate conceptual existence from, for example, “the times during which it is proposed that the relevant licensable activities are to take place”. It follows that “a business which involves the use of the premises for the licensable activities to which the application relates” (section 16(1)) does not cease to be such a business merely because the application relates, for example, to operating hours which are different from those covered by the primary licence. The licensable activities remain the same even when the times over which they are permitted do not. G H

51 There are provisions in the 2003 Act on which Guildford rely which allow an owner to apply for the transfer of the original licence back from the tenant in the event of insolvency or surrender or because the tenant had

A given up occupation but these are circumscribed by time restraints and depend in part on the co-operation of the tenant which may not always be forthcoming.

52 Having concluded that a narrow test is not appropriate, it is necessary to consider the parameters of a broader interpretation. In my view, the answer lies in the legislation itself. Section 1(1) of the 2003 Act categorises licensable activities thus:

B “For the purposes of this Act the following are licensable activities—
(a) the sale by retail of alcohol, (b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club, (c) the provision of regulated entertainment, and (d) the provision of late night refreshment.”

This categorisation provides a logical and straightforward basis on which to apply section 16(1)(a) of the 2003 Act.

C 53 Where the shadow application is limited to actual (as opposed to proposed) use, a sequential analysis would involve the following steps: (1) Is the applicant a person who carries on a business? If not, he does not satisfy section 16(1)(a) and the application must fail. If he does, then go to (2). (2) Does that business involve the use of the premises to which the application relates for licensed activities? If not, it does not satisfy section 16(1)(a) and the application must fail. If it does, then go to (3). (3) Identify the categories of licensable activities as listed under section 1 of the 2003 Act for which the premises are used. Go on to (4). (4) Does the application relate to any category or categories of licensable activity not identified under (3) above? If so, the applicant does not satisfy section 16(1)(a) and the application must fail in so far as it purports to apply to those activities. If not, section 16(1)(a) of the 2003 Act is satisfied.

E 54 It would follow that the landlord of a public house (the tenant of which held the primary licence to sell alcohol) would not be precluded from applying for a shadow licence also for the retail sale of alcohol even if, for example, the standard days and timings in the shadow application differed from those permitted under the primary licence. The category of licensable activity would remain the same. By way of contrary example, the shadow application could not, however, satisfy the requirements of section 16(1)(a) if it were made in respect of regulated entertainment where the primary licence did not include provision for regulated entertainment. In such a case the applicant, in order to bring itself within the subsection, would have to demonstrate that it actually proposed to carry on a business at the premises which involved regulated entertainment.

G 55 Applying this approach to the circumstances of this case, it follows that Guildford was wrong to decide that section 16(1)(a) applied so as to exclude application 105889 from further consideration. The differences relied on did not relate to the categories of licensable activity but merely to details such as the provision of doormen and the like.

H 56 Application 92057 is different to the extent that the area covered in the shadow application is not coterminous with that to which the primary licence relates. However, the discrepant area still falls within premises used by Star as landlord but is merely covered by a different primary licence held by Luminar.

57 In my view, it matters not for the purposes of the application of section 16(1)(a) whether the shadow licence application covers an area

entirely coincident with any given primary licence. So long as the extent of the shadow licence application does not stray beyond the parameters of the premises used by the applicant as a business and that the matching categories of licensable activities are carried out under the primary licences relating thereto then the threshold of section 16(1)(a) is surmounted.

58 Again, in the event that there were any legitimate policy concern over the proposed physical area of the premises covered by the shadow application, this could be addressed at the substantive hearing.

59 It therefore follows that Guildford was wrong to conclude that section 16(1)(a) of the 2003 Act precluded application 92057 from further consideration.

60 I would therefore order Guildford to proceed with these two applications on the basis that they pass through the section 16(1)(a) gateway.

61 With respect to the remaining Star applications, I quash Guildford's decisions and require it to approach the issue as to whether they qualify under section 16 afresh applying the law as I have ruled it to be.

Proposed carrying on of business

62 In case I am wrong about my interpretation of section 16 of the 2003 Act in so far as it relates to existing (rather than proposed) use, it is necessary to consider whether, even if Star could not bring itself into the category of carrying on a business within the scope of section 16(1)(a) it could still rely on the assertion that it *proposed to carry on* a business which involved the use of the premises for the licensable activities to which the application related (to which, for ease of reference, I will refer as "the alternative limb").

63 Star contends that its intentions in respect of the future of its business at the premises were sufficient to comply with the alternative limb. These intentions were: (i) to protect Star in the event that its tenants went into liquidation or surrendered its licence, or was the subject of review proceedings; (ii) to protect Star in the event that its tenants failed to pay/were late paying their rent; (iii) in the event that Star gave its tenants notice to quit and retake possession pending redevelopment of the premises, to enable it to run the premises in the meantime; and (iv) to enable Star to market the premises or parts of the premises should the tenants stay in possession for the full term.

64 Guildford rejects this approach and submits that "proposes" is a normal English word which should be given its normal meaning, subject to any special meaning that may be attributable to its particular statutory context.

65 Guildford contends that the approach of the Court of Appeal in *Mainwaring v Trustees of Henry Smith's Charity* [1998] QB 1, a case determined under the Landlord and Tenant Act 1987, is equally applicable to the Licensing Act 2003. Sir Thomas Bingham MR held, at p 18E:

"It is in our view clear that the expression 'proposes' describes a state of mind somewhere between mere consideration of a possible course of action at one extreme and a fixed and irrevocable determination to pursue that course of action at the other. As Lord Denning MR observed in *Trustees of the Magdalen and Lasher Charity, Hastings v Shelower*

A (1968) 19 P & CR 389, 392, contrasting different expressions to be found in the Landlord and Tenant Act 1954, ‘The word “proposes” is different from the word “intends”. A man may propose to do a thing without having formed a fixed and settled intention to do it.’ A ‘proposal’ under the Act means that a project must have moved out of ‘the zone of contemplation . . . into the valley of decision’: *Cunliffe v Goodman* [1950] 2 KB 237, 254, per Asquith LJ.”

B 66 Star cautions against the suggestion that the interpretation of “proposes” in the policy context of the provisions of the 1987 Act should be translated directly into the context of the 2003 Act.

C 67 For my own part, I do not consider that there is anything in the quoted passage from Sir Thomas Bingham MR’s judgment in *Mainwaring’s* case which could, in any event, be interpreted as giving the word “proposes” anything other than its ordinary English meaning. He certainly did not consider that it was necessary to give the word any purposive (let alone strained) interpretation to achieve a just determination of the cause before him. On the contrary, he concluded that, in the circumstances of that case, “it is impossible to feel any doubt”. He acknowledged, however, at p 19: “Cases could well arise in which it might be very doubtful whether a landlord’s plans had hardened sufficiently to be regarded as a proposal . . .”

D 68 I resist the temptation to provide any further judicial gloss on the proper interpretation of the word “proposes”.

E 69 In this case, however, regardless of the proper interpretation of the word “proposes”, Mr Curtis-Botting made a mistake. When deciding whether Star was able to bring itself within the alternative limb he was under the mistaken impression that the lease contained a three-year break clause when, in fact, it was a one-year break clause. This, in my view, amounted to a material misdirection.

F 70 On this basis, I would have quashed his decision on the alternative limb in any event. I do not, however, find that a decision adverse to the claimants on this issue, had it been based on accurate primary facts, would automatically have been *Wednesbury* unreasonable: see *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223. This is a court of review and not of appeal.

Extreme Oyster

G 71 The role of Extreme is referred to in para 2 of this judgment. In summary, it receives income from the rental of the premises from Star. It pays all of Star’s running costs and expenses.

H 72 Extreme is not, however, the landlord of the premises or any part of them and arguably operates at a further stage removed from the business which actually uses the premises for the licensable activities to which the application relates. This does not mean that Extreme’s applications must automatically be excluded from consideration by the operation of section 16(1)(a) of the 2003 Act but it does mean that this is an issue on which the decision-maker and not the court should be the final arbiter (acting, of course, within the constraints of public law).

73 The reasons given in the decision letter for finding that Extreme did not satisfy the threshold criteria of section 16(1)(a) are flawed. The decision with respect to whether Extreme was carrying on a business which involved

the use of the premises for the licensable activities to which the application relates (as articulated in Guildford’s submissions to me) was wrongly based on the assumption that there had to be virtual equivalence between the scope of the activities actually carried out and those in respect of which the application was made. The decision on the alternative limb was also flawed by Mr Curtis-Botting’s error relating to the timing of the break clause. The decisions relating to the Extreme applications are, therefore, quashed and must be considered afresh applying the law as I have held it to be.

Delegation

74 The decision to rule against all of the claimants’ applications was taken by Mr Curtis-Botting alone and not by the sub-committee. The powers of sub-delegation under the 2003 Act are contained within section 10 which provides (as amended by section 22(1) of the Violent Crime Reduction Act 2006):

“Sub-delegation of functions by licensing committee etc

“(1) A licensing committee may arrange for the discharge of any functions exercisable by it— (a) by a sub-committee established by it, or (b) subject to subsection (4), by an officer of the licensing authority.

“(2) Where arrangements are made under subsection (1)(a), then, subject to subsections (4) and (5), the sub-committee may in turn arrange for the discharge of the function concerned by an officer of the licensing authority.

“(3) Arrangements under subsection (1) or (2) may provide for more than one sub-committee or officer to discharge the same function concurrently.

“(4) Arrangements may not be made under subsection (1) or (2) for the discharge by an officer of— (a) any function under— (i) section 18(3) (determination of application for premises licence where representations have been made), (ii) section 31(3) (determination of application for provisional statement where representations have been made), (iii) section 35(3) (determination of application for variation of premises licence where representations have been made), (iv) section 39(3) (determination of application to vary designated premises supervisor following police objection), (v) section 44(5) (determination of application for transfer of premises licence following police objection), (vi) section 48(3) (consideration of police objection made to interim authority notice), (via) section 53A(2)(a) or 53B (determination of interim steps pending summary review), (vii) section 72(3) (determination of application for club premises certificate where representations have been made), (viii) section 85(3) (determination of application to vary club premises certificate where representations have been made), (ix) section 105(2) (decision to give counter notice following police objection to temporary event notice), (x) section 120(7) (determination of application for grant of personal licence following police objection), (xi) section 121(6) (determination of application for renewal of personal licence following police objection), or (xii) section 124(4) (revocation of licence where convictions come to light after grant etc), (b) any function under section 52(2) or (3) (determination of application for review of premises licence) in a case where relevant representations (within the

A meaning of section 52(7)) have been made, (ba) any function under section 53C (review following review notice), in a case where relevant representations (within the meaning of section 53C(7)) have been made, (c) any function under section 88(2) or (3) (determination of application for review of club premises certificate) in a case where relevant representations (within the meaning of section 88(7)) have been made, or (d) any function under section 167(5) (review following closure order), in a case where relevant representations (within the meaning of section 167(9)) have been made.

“(5) The power exercisable under subsection (2) by a sub-committee established by a licensing committee is also subject to any direction given by that committee to the sub-committee.”

C 75 The amended guidance contains a table of “Recommended Delegation of Functions” but this takes the issue no further to the extent that it does not state whether or not it is generally appropriate for a decision under section 16 of the 2003 Act to be delegated to an officer.

D 76 I am satisfied that Guildford would not have acted in breach of the provisions of section 10 if it had actually authorised the licensing committee to arrange for the relevant function (ie to determine whether or not a prospective applicant falls within the scope of section 16) to be delegated to an officer of the licensing authority such as Mr Curtis-Botting. However, to examine whether such delegation actually took place or was compliant with Guildford’s policy on the matter, it is necessary to have regard to Guildford’s “Delegation to Officers” document which is accessible on its website.

E 77 This document, rather than listing, as does the Act, those decisions which are *not* to be delegated to officers, lists those decisions which *are* to be so delegated. Guildford relies on category 8 in the list in the delegation document which, it contends, empowered Mr Curtis-Botting to make the decision. It provides that such a delegation is permitted: “To determine all applications for a premises licence . . . where no representations have been made.”

F 78 During submissions, I was first informed on behalf of Guildford that in respect of some of the eight relevant applications no representations had been made but in respect of others representations had been made. Further inquiry revealed, however, that this was wrong and that representations had, in fact, been made in respect of all eight applications.

G 79 When pressed on this issue, Guildford’s argument was to the effect that I should treat the case as if no representations had been made (even though they had) on the basis that the issue under section 16 of the 2003 Act was to be looked at sequentially before the determination of an application because, if the proposed applicant fell outside the terms of section 16, then the issue of whether or not representations had been made would fall out of the equation.

H 80 I disagree with this analysis. Section 10 of the 2003 Act prohibits the delegation of any function under section 18(3) (determination of application for premises licence where representations have been made). Thus the committee was entitled to permit a determination under section 18(3) where no representations had been made. However, it simply did not go on, as it could have done, to authorise the single officer to determine issues arising under section 16(1).

81 There was no justification for Guildford to act in breach of its delegation policy. The public and the claimants had a legitimate expectation that this policy would be followed. I am, therefore, satisfied that the decision on section 16 is one that ought not to have been determined by Mr Curtis-Botting alone and would quash his decisions on this basis also. I would add that the answer to the question whether, in any given case, there is a sufficient nexus between an existing business and the licensable activities to which an application is made may not always be straightforward and that it would not be generically inappropriate for policies to provide for licensing sub-committees to make the relevant determination rather than to delegate it to an individual officer.

Fees

82 A subsidiary issue arose relating to the fees paid by the claimants in respect of their applications. In summary they contended that it was unlawful for Guildford to retain fees paid in respect of applications which had been rejected without any substantive consideration of the merits. In the light of my findings with respect to the status of Guildford decisions relating to such fees I find it unnecessary to adjudicate on this issue.

Consequences

83 In summary, therefore, this court makes a declaration that Star's applications 92057 and 105889 are compliant with section 16(1)(a) of the 2003 Act and must be allowed to proceed to substantive determination and that Guildford's decisions on the remaining applications from Star and Extreme are quashed and are to be revisited on the legal basis I have ruled upon.

Claim allowed.

BENJAMIN WEAVER ESQ, Barrister