

**DECISION-MAKER** LICENSING (LICENSING & GAMBLING) SUB COMMITTEE

**SUBJECT** HEARING TO CONSIDER AN APPLICATION FOR SUMMARY REVIEW OF A PREMISES LICENCE –  
Iroko Lounge 11 Onslow Road Southampton SO14 0JD

**DATE OF HEARING** WEDNESDAY 23rd SEPTEMBER 2020 1300 Hours

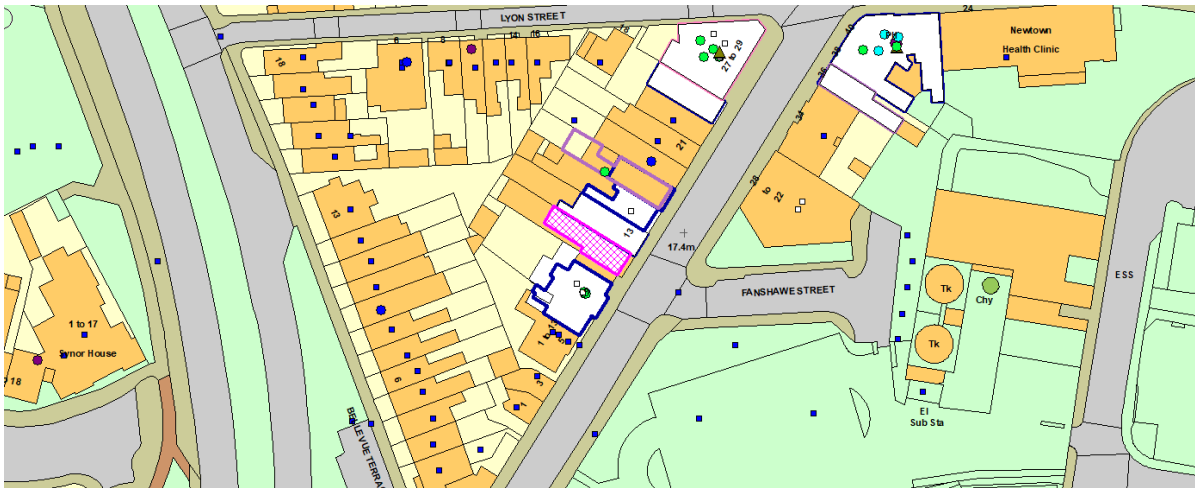
**REPORT OF** SERVICE DIRECTOR – COMMUNITIES, CULTURE AND HOMES

**E-mail** Licensing@southampton.gov.uk

Application Date: 28<sup>th</sup> August 2020                      Application Received 28<sup>th</sup> August 2020

Application Valid: 28<sup>th</sup> August 2020                      Reference :                      **2020/02681/01SSRP**

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### ***Representations from Responsible Authorities***

<b>Responsible Authority</b>	<b>Satisfactory?</b>
Safeguarding Children	No Response Received
Fire Service	No Response Received
Environmental Health - Licensing	Yes – Supporting application
Building Control	No Response Received
Public Health Manager	Yes – Supporting application

Planning & Sustainability - Development Control - Licensing	No Response Received	
Police - Licensing	Applicant	
Trading Standards	Yes – Supporting application	
Licensing Authority	Yes – Supporting application	
<b><i>Other Representations- Supporting Review</i></b>		
<b>Name</b>	<b>Address</b>	<b>Contributor Type</b>
Mr Leigh Stuart Chester	Flat 5, 19 Onslow Road, Southampton. SO14 0JD	Local Resident

## **Application for Summary Review**

1. Hampshire Constabulary has applied for a summary review of the premises licence for Iroko Lounge 11 Onslow Road Southampton SO14 0JD.
2. Iroko Lounge 11 Onslow Road Southampton SO14 0JD has a premises licence which permits:  
Supply by retail of alcohol  
(for consumption on the premises) Monday – Saturday 10:00 to 02:00 Sunday 12:00 -02:00  
Provision of late night refreshment Monday – Sunday 23:00 to 02:00  
Opening hours of premises Monday – Saturday 10:00 to 02:00 Sunday 12:00 - 02:30
3. The licence has been held by Mr Haydar Rahman & Mr Mahram Miah since 28<sup>th</sup> September 2005.
4. A copy of the current Licensing Act premises licence appears in the appendix of this report.
5. Superintendent Kelly Whiting of Hampshire Constabulary has formed the opinion that the premises are associated with serious crime and has provided a certificate to that effect to the Licensing Manager at 1330 hours on Friday 28<sup>th</sup> August 2020.
6. Superintendent Kelly Whiting's certificate, together with the application for summary review, associated documents and a copy of the current premises licence are contained in this report.
7. In accordance with sections 53A and 53B of the Licensing Act 2003, the Sub Committee is required to consider, within 48 hours of receipt of the application for review, whether it is necessary to take interim steps pending the determination of the review of the premises licence.
8. An interim steps hearing was held on 1<sup>st</sup> September 2020. The applicant Hampshire Constabulary and the premises licence holders Mr Haydar Rahman & Mr Mahram Miah were invited to attend the hearing.

9. The Sub-Committee heard the application presented by Hampshire Constabulary. Neither of the premises licence holders were in attendance.

The Sub-Committee determined to impose the following interim steps:

- a) To suspend the premises licence with immediate effect in accordance with Section 53B of the Licensing Act 2003 pending consideration of the Summary Review of the Premises licence at a later date.

The decision notice of the interim steps hearing appears in this report.

We have received one representation from a local resident who supports the Hampshire Constabulary review application. Public Health, Environmental Health, Trading Standards and the Licensing Authority all support the application.

## **Legal Implications**

10. Sections 53A, 53B and 53C of the Licensing Act 2003 provide the police with powers of summary review of premises licences in cases of serious crime or serious disorder (or both), where the premises licence authorises the sale by retail of alcohol.
11. Serious crime is defined as an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more.
12. A senior member of the police (of the rank of Superintendent or above) may apply for a summary review of a premises licence in an area if the premises licence authorises the sale by retail of alcohol and that police officer provides a certificate stating that they are of the opinion that the premises are associated with serious crime and/or serious disorder.
13. The Licensing Authority is then required, within 48 hours (two working days), to give notice of the review accompanied by the application and the certificate to the premises licence holder and the Responsible Authorities.

## **Interim Steps**

14. In addition to the review hearing, the Sub Committee must consider whether to take interim steps pending the determination of the review. The consideration by the Sub Committee of the interim steps can take place without notice to the premises licence holder
15. The interim steps which the licensing authority must consider taking include:
  - modification of the current conditions of the premises licence
  - exclusion of the sale of alcohol from the current permissions of the premises licence
  - removal of the DPS from the licence

- suspension of the licence.

### **Representations on Interim Steps**

16. The licence holder, on being notified of the interim steps determined by the Sub Committee, may make representations which must be considered within 48 hours (two working days) of their receipt.

### **Notice of Summary Review**

17. As licensing authority, the Council must, within 48 hours of receiving the application for summary review, display a prescribed notice of the review on the outside or adjacent to the premises; the notice must remain on display for ten working days and any interested party in the vicinity or the responsible authorities may make representations in that period. In addition, the Council must also give notice of the review to the licence holder and each of the responsible authorities.

### **Subsequent Summary Review Hearing**

18. The Council is required, within 28 days of receipt of the notice of application from the police, to hold a review hearing to consider:

- the application for summary review
- any relevant representations
- such steps as it considers necessary for the promotion of the licensing objectives:
  - The prevention of crime and disorder
  - Public safety
  - The prevention of public nuisance
  - The protection of children from harm

19. The summary review hearing will be the subject of a separate report.

20. In considering what interim steps to take the Sub Committee are obliged to consider applications in accordance with both the Licensing Act 2003 (Hearings) Regulations 2005, and amending secondary legislation and the rules of natural justice. The practical effect of this is that the Sub Committee must make its decision based on evidence submitted in accordance with the legislation and give adequate reasons for reaching its decision.

21. The Sub Committee must also have regard to: -

#### *Crime and Disorder Act 1998*

Section 17 of the Crime and Disorder Act 1998 places the council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

#### *Human Rights Act 1998*

The Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the council to act

in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the council which affect another's rights must be no more onerous than is necessary in a democratic society. The matters set out in this report must be considered in light of the above obligations.

### *Equality Act 2010*

Section 149 of the Equality Act 2010 requires the Council to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act. It also requires the Council to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. This means having due regard to the need to removing or minimising disadvantages suffered, taking steps to meet the needs of persons, encouraging persons to participate in public life, tackling prejudice and promoting understanding. The relevant protected characteristics are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

- Application of summary review
- Superintendent's Certificate
- Current Premises Licence
- Notice on Premises
- Interim Steps Decision Notice
- Supporting review representations
- Premises licence holders correspondence
- Hearing Procedure

FORM FOR APPLYING FOR A SUMMARY LICENCE REVIEW

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

Southampton and Eastleigh Licensing Partnership  
Southampton City Council  
PO Box 1767  
Southampton  
SO18 9LA

**Application for the review of a premises licence under section 53A of the Licensing Act 2003 (premises associated with serious crime or disorder)**

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 the 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.**

I Superintendent 98 WHITING [on behalf of] the chief officer of police for the Hampshire Constabulary police area apply for the review of a premises licence under section 53A of the Licensing Act 2003.

**1. Premises details:**

Postal address of premises, or if none or not known, ordnance survey map reference or description:

**Iroko Lounge  
11 Onslow Road**

Post town: Southampton

Post code (if known): **SO14 0JD**

**2. Premises licence details:**

Name of premises licence holder (if known): Marham MIAH & Haydar RAHMAN

Number of premises licence holder (if known): 2005/00846/01SPRC

**3. Certificate under section 53A(1)(b) of the Licensing Act 2003 [Please read**

guidance note 1]:

I confirm that a certificate has been given by a senior member of the police force for the police area above that in his opinion the above premises are associated with serious crime or disorder or both, and the certificate accompanies this application.

*(Please tick the box to confirm)*

**4. Details of association of the above premises with serious crime, serious disorder or both:**

[Please read guidance note 2]

**Coronavirus was deemed a pandemic and the Government gave direction for pubs and restaurants to close on 20th March 2020. The Coronavirus Health Protection Regulations 2020 came into force on 26th March 2020. This has been high profile across the news and all social media and currently night clubs are not permitted to operate**

**Subsequently the Coronavirus Act 2020, and more significantly Schedule 22 of the act, details what measures the Secretary of State can and has proposed in relation to events, gatherings and premises was introduced**

**This expedited review is being sought under the grounds of serious crime for the offence of Public Nuisance.**

**The common law offence of public nuisance carries a penalty of up to life imprisonment and so becomes a serious crime offence under RIPA, fitting the legal obligations for Sec 53(a)**

**It has been defined as follows: A person is guilty of a public nuisance (also known as common nuisance), who:**

**(a) does an act not warranted by law,**

**or (b) omits to discharge a legal duty, if the effect of the act or omission is to endanger the life, health, property or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's subjects.**

**The Mode of trial and sentence for public nuisance is triable either way: that is to say, either in the Crown Court or in a magistrates' court. As in all common law offences where statute does not provide to the contrary, when it is tried in the Crown Court there is an unlimited power of imprisonment.**

**At 01:15 on 23rd August, a routine mobile police patrol was near to the restaurant. It stopped due to the amount of persons within the road works that are currently the length of Bevois Valley. Other than a nearby well managed night club (Suburbia) there are no other late night venues in the immediate area.**

**It quickly transpired that the persons were coming from a small restaurant called Iroko and so asked for more police units to deal with the emerging antisocial / disorder.**

**Police licensing officers arrived and observed approximately 25-30 persons converging outside the venue. They were continually entering and exiting the venue. As they did so, music was clearly audible from inside. Flashing disco lights were also visible through the frosted front windows.**

**Entering the venue utilising section 179 and 180 of the licensing Act 2003 it**

soon became evident that the venue was not operating as a restaurant. Entry could not be fully gained into the main area due to the numbers of persons inside dancing in immediate proximity to each other.

From inside, a Malcom Forbes identified himself as being in charge and both the premises licence holder and DPS. In relation to a dynamic Covid risk assessment, it was unsafe to enter.

Forbes explained that the event was a private party and that he was doing nothing wrong. He would not except that clearly having over 100 persons inside what is a very small confined space that prior to Covid should in my opinion not have had more than 60 persons inside was wrong.

Eventually the music was turned off and the lighting levels raised which had the effect of causing a mass egress. For the next 30-45 minutes the police, with additional resources had to deal with continued anti-social behaviour from the 100 strong group as they blocked the road and refused to disperse.

Finally it was safe to enter and as I did, I counted 28 persons plus 3 staff still remaining inside, this in itself goes against the maximum number of 30 people allowed to gather.

My attention was immediately drawn to the hundreds of chrome nitrous oxide canisters that littered the floor and fixed bench seating. It's the most canisters I have seen in a venue save for festivals. In such a small venue it would have been impossible for Forbes not to witness the inhaling of the gas.

There were insufficient tables and chairs for the venue to operate as a restaurant and the kitchen itself was dirty with a lack of food. It had clearly not been used for some time.

Within the restaurant is a small bar serverly. It was well stocked with all manner of alcoholic beverages. There was a till that when opened contained numerous PDQ till receipts from throughout the evening. There were further piles of such receipts scattered around the bar. The restaurant was clearly selling alcohol and therefore operating under its premises licence.

The Covid risk assessment for the restaurant was requested from Forbes. He could not supply one. The track and trace details were also requested, but again none could be provided.

Once back outside, a nearby resident approached me and explained that the parties were a continuing problem from the restaurant since the easing of lockdown. He is constantly kept awake with the music and the noise of the partygoers.

The restaurant has three licence conditions. 1 is an outdated imbedded condition. 2 relates to seasonal hours and 3 states:

The premises shall be structurally adapted and bona fide used for the purpose of habitually providing the customary main meal at midday or in the evening, or both, for the accommodation of persons frequenting the premises; and Alcohol shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary to his meal.

Clearly this was being breached.

The premises Licence holder and DPS is Haydar RAHMAN. Having spoken to



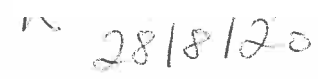
him on the phone, he initially explained that he is self-isolating due to a family household member showing symptoms. However he explained that he had been to the restaurant at 23:00 on Saturday, some 2 hours prior to our attendance and found nothing wrong... I find this hard to believe.

He also explained that FORBES was running the restaurant for him and he was not aware of any of the unlawful activities. He could not even explain where all the tables and chairs from the restaurant had gone.

It is the belief of the Chief Officer of Police that all those with the legal responsibilities under the Licensing Act 2003 have been complicit in this incident.

This has been the worst breach in Hampshire and the Isle of Wight of the Covid regulations and Health Protection Act since their inception in March. There have also been offences committed under section 136 of the LA2003 by way of unlicensable activities and breaches of the premises licence.

As such we request the interim steps of suspension of the premises licence to seek full revocation in a formal hearing.

Signature of applicant: 

Date:

Capacity: Superintendent

**Contact details for matters concerning this application:**

Address:

**PC 2903 Brian Swallow**

**Licensing and Alcohol Harm Reduction Team**

**Southampton Central neighbourhood Police Office**

**Southampton City Council**

**Civic Centre**

**Southampton**

**SO14 7LY**

Telephone number(s): 02380

Email:

Notes for guidance:

1. A certificate of the kind mentioned in the form must accompany the application in order for it to be valid under the terms of the Licensing Act 2003. The certificate must explicitly state the senior officer's opinion that the premises in question are associated with serious crime, serious disorder or both.

Serious crime is defined by reference to section 81 of the Regulation of Investigatory Powers Act 2000. In summary, it means:

- conduct that amounts to one or more criminal offences for which a person who has attained the age of eighteen and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; or
- conduct that amounts to one or more criminal offences and involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

Serious disorder is not defined in legislation, and so bears its ordinary English meaning.

2. Briefly describe the circumstances giving rise to the opinion that the above premises are associated with serious crime, serious disorder, or both.

## **CERTIFICATE UNDER SECTION 53A(1)(b) OF THE LICENSING ACT 2003**

I hereby certify that in my opinion the premises described below are associated with serious crime / serious disorder / both serious crime and serious disorder<sup>1</sup>.

*Premises*<sup>2</sup>:

Iroko Lounge  
11 Onslow Road  
Southampton  
SO14 0JD

Premises licence number (if known): 2005/00846/01SPRC

Name of premises supervisor (if known): Haydar RAHMAN

I am a Superintendent <sup>3</sup> in the Hampshire police force.

I am giving this certificate because I am of the opinion that other procedures under the Licensing Act are inappropriate in this case, because<sup>4</sup>:

The expedited review of the premises licence is being sought for the grounds of serious crime, namely an offence of "public nuisance". This carries a penalty of up to life imprisonment and so becomes a serious crime offence under RIPA, fitting the legal obligations for a Sec 53(a) – Expedited Review.

Public nuisance is a common law offence. It has been defined as follows:  
A person is guilty of a public nuisance (also known as common nuisance), who  
(a) does an act not warranted by law,  
or (b) Omits to discharge a legal duty, if the effect of the act or omission is to endanger the life, health, property or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's Subjects.

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<sup>1</sup> Delete as applicable.

<sup>2</sup> Include business name and address and any other relevant identifying details.

<sup>3</sup> Insert rank of officer giving the certificate, which must be superintendent or above.

<sup>4</sup> Give a brief description of why other procedures such as a standard review process are thought to be inappropriate, e.g. the degree of seriousness of the crime and/or disorder, the past history of compliance in relation to the premises concerned.

When it is tried in the Crown Court there is an unlimited power of imprisonment.

The alleged offence of public nuisance was committed on 23rd August 2020 whereby over 100 persons attended the venue in the guise as a private party. Music was being played very loudly (above conversational level). The overwhelming majority of persons inside were dancing and or consuming alcohol supplied from the venue.

There was no evidence of social distancing. There was a complete lack of any risk assessment and there was an overt use of nitrous oxide (NOS) clearly unchallenged and in view of the operator.

At the scene, A nearby resident complained of the noise and anti-social behaviour of the patrons attending the venue that evening

Alternative use of regulations under the Licensing Act 2003 have been considered. A standard review would not be suitable as this is a serious crime that is being investigated. Along with the potential of further victims and breaches of both the "The Coronavirus 2020 Act" and the Licensing Act 2003 during the statutory time period to hold such a hearing ( 28 days consultation period, hearing within 21 days following this).

When considering police powers under the Anti-Social Behaviour, Crime and Policing Act 2014, police are aware that the premises will be able to continue to supply alcohol and late night refreshment until a hearing under the provisions set out with a standard review.

A S53 summary review application is therefore the most appropriate course of action to mitigate further offending behaviour.

The premises licence benefits from 3 conditions upon it. 1 is outdated and no longer relevant under the LA2003, 2 is in relation to nonstandard timings. And 3 relates to the venue only being able to supply alcohol if it supplies table meals. This condition has been breached and an offence under section 136 of the LA200-3 committed.

However, it is the actions and behaviour of the premises licence holder TUT, that the police have serious concerns with. As such, his behaviour cannot be addressed by modifying the licence or conditions.

Police are requesting that, due to the serious nature of the investigation, the Licensing Authority suspend the premises licence as interim steps, with a view to revoking the premises licence.

It is the belief of the Chief Officer of Police that these steps will be the most effective way to remove the risk of further offences being committed.

.....  
(Signed)

SUP 98 UH117247.

(Date)

28/8/20



**SOUTHAMPTON**  
CITY COUNCIL

**Schedule 12**  
**Part A**  
**Premises Licence**

Regulation 33,34

**Premises licence number** 2005/00846/01SPRC

**Part 1 – Premises details**

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

**Iroko Lounge**  
11 Onslow Road  
Southampton  
SO14 0JD

**Telephone number** 023 8023 0222

**Where the licence is time limited the dates**

Not applicable

**Licensable activities authorised by the licence**

Provision of late night refreshment  
Supply by retail of alcohol

**The times the licence authorises the carrying out of licensable activities**

Provision of late night refreshment

Monday	23:00 - 02:30
Tuesday	23:00 - 02:30
Wednesday	23:00 - 02:30
Thursday	23:00 - 02:30
Friday	23:00 - 02:30
Saturday	23:00 - 02:30
Sunday	23:00 - 02:30

Supply by retail of alcohol

Monday	10:00 - 02:00
Tuesday	10:00 - 02:00
Wednesday	10:00 - 02:00
Thursday	10:00 - 02:00
Friday	10:00 - 02:00
Saturday	10:00 - 02:00
Sunday	12:00 - 02:00

**The opening hours of the premises**

Monday	10:00 - 02:30
Tuesday	10:00 - 02:30
Wednesday	10:00 - 02:30
Thursday	10:00 - 02:30
Friday	10:00 - 02:30
Saturday	10:00 - 02:30
Sunday	12:00 - 02:30

**Where the licence authorises supplies of alcohol whether these are on and / or off supplies**

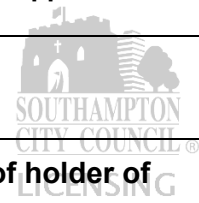
Alcohol is supplied for consumption on the premises

**Part 2**

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

Mahram Miah  
65 Avenue Road  
Southampton  
SO14 6TW  
Business Phone Number

Haydar Rahman  
67 Avenue Road  
Southampton  
SO14 6TW



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

Not applicable

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

Haydar Rahman



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

Licence Number: 2005/00686/02SPEC  
Licensing Authority: Southampton City Council

This premises licence is issued by Southampton City Council as licensing authority under part 3 of the Licensing Act 2003 and regulations made thereunder

Dated this ;

**Licensing Manager**  
Southampton & Eastleigh Licensing Partnership  
PO Box 1767  
Southampton  
SO18 9LA

## Annex 1 – Mandatory Conditions

- 1 No supply of alcohol shall be made under the premises licence:
  - (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
  - (b) at a time when the designated premises supervisor for the premises does not hold a personal licence or his personal licence is suspended.
- 2 Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- 3 The responsible person must 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;
  - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
  - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.
- 4
  - (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
  - (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
    - (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 in a manner which carries a significant risk of undermining a licensing objective;
    - (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 in a manner which carries a significant risk of undermining a licensing objective;
    - (d) 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;
    - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
- 5 The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
- 6
  - (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
  - (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
  - (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
    - (a) a holographic mark, or
    - (b) an ultraviolet feature.



7 1 A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

2 For the purposes of the condition set out in paragraph 1 —

(a) 'duty' is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;

(b) 'permitted price' is the price found by applying the formula —

$$P = D + (D \times V)$$

where—

(i) P is the permitted price,

(ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) 'relevant person' means, in relation to premises in respect of which there is in force a premises licence —

(i) the holder of the premises licence,

(ii) the designated premises supervisor (if any) in respect of such a licence, or

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) 'relevant person' means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) 'value added tax' means value added tax charged in accordance with the Value Added Tax Act 1994.

3 Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

(1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day ('the first day') would be different from the permitted price on the next day ('the second day') as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

## **Annex 2 – Conditions consistent with the operating Schedule**

### **1 EMBEDDED CONDITIONS FROM CHILDREN AND YOUNG PERSONS ACT 1933**

It is a condition of your licence that you comply with the extant provisions of the Children and Young Persons Act 1933, as amended.

2 On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day

3 The premises shall be structurally adapted and bona fide used for the purpose of habitually providing the customary main meal at midday or in the evening, or both, for the accommodation of persons frequenting the premises; and

Alcohol shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary to his meal

## **Annex 3 – Conditions attached after a hearing by the licensing authority**

1 None

# Annex 4 – Plans



## LEGEND

- Gas Cooker & Oven
- Tandoori Oven
- Working Table
- Deep Freezer
- Fridge
- Hot Plate
- Shelves
- Internally Illuminated Fire Escape Sign
- Fire Exit Keep Clear
- Carbon Dioxide Fire Extinguisher
- 9 Litre Water Fire Extinguisher
- Foam Spray Fire Extinguisher
- Fire Blanket
- Fire Break Warning
- Fire Alarm Bell
- Ceiling Smoke Alarm



Scale: 1:100	Client: Iroko Indian Cuisine 11 Dangle Road Southampton		
Date: 13/07/09			
Drawn By: M	Working Title: Floor Plan Layout	Drawing No: 25-01	Revision:

Plan not reproduced to scale.



# LICENSING ACT 2003

## Section 53A – Summary Review

### NOTICE OF REVIEW OF PREMISES LICENCE



Reference: 2020/02681/01SSRP

**Iroko Lounge Southampton SO14 2BR**

Southampton City Council, as licensing authority, hereby gives notice that

### **Hampshire Constabulary**

has applied for the summary review of the Premises Licence for the above premises under the Licensing Act 2003, on the following grounds:

**In the opinion of a senior police officer, the premises are associated with serious crime**

by reason of serious crime for the offence of public nuisance and breach of covid regulations.

The relevant licensing authority is Southampton City Council, and the statutory register, including the application for review, may be inspected on the City Council's web site at [www.southampton.gov.uk/LA03register](http://www.southampton.gov.uk/LA03register) or at their offices at Civic Centre, Southampton SO14 7LY between 09:00 and 12:00 or between 14:00 and 16:00, Mondays to Fridays.

A responsible authority or any person, body or business likely to be affected may make representations about the application in writing to the Licensing Team, Southampton & Eastleigh Licensing Partnership, Southampton City Council, PO Box 1767, Southampton SO18 9LA, so as to be received by them between the 28<sup>th</sup> August 2020 and 14<sup>th</sup> September 2020.

Any representation must relate to at least one of the licensing objectives. Frivolous or vexatious representations are likely to be rejected.

Please note that it is an offence knowingly or recklessly to make a false statement in connection with an application and, on summary conviction for the offence, a person is liable to a fine not exceeding level five on the standard scale (currently £5000).

Dated 28<sup>th</sup> August 2020

**Mr. P Bates, Licensing Manager.**

**LICENSING (LICENSING AND GAMBLING) SUB – COMMITTEE**  
**DECISION OF THE MEETING HELD ON 1 SEPTEMBER 2020**  
**INTERIM STEPS PENDING SUMMARY REVIEW OF A PREMISES LICENCE**  
**IROKO LOUNGE, 11 ONSLOW ROAD,**  
**SOUTHAMPTON SO14 0JD**

The Sub-Committee determined that the hearing should proceed with the press and public excluded in accordance with the Hearings Regulations under the Act.

The Sub-Committee has considered very carefully both the certificate of Superintendent Whiting, the application for summary review and the oral representations of the police. The Premises Licence Holder did not attend having been invited to do so.

The Sub-Committee has considered what interim steps, if any should be taken pending the full hearing of the summary review of the premises licence for Iroko Lounge, 11 Onslow Road, Southampton SO14 0JD.

It has given due regard to the provisions of the Licensing Act 2003, including the statutory licensing objectives, the statutory guidance (as amended) and the City Council's adopted statement of licensing policy. Human rights legislation has been borne in mind.

The Sub-Committee has determined:

To suspend the premises licence with immediate effect in accordance with Section 53B of the Licensing Act 2003 pending consideration of the Summary Review of the Premises Licence which will take place on 23 September 2020.

**Reasons:**

The Sub-Committee has considered all the options set out in section 53B of the Licensing Act 2003 (namely):

- modification of the current conditions of the premises licence
- exclusion of the sale of alcohol from the current permissions of the premises licence
- removal of the designated premises supervisor from the licence
- suspension of the licence.

The suspension of the Premises Licence (pending the full review hearing) is considered the most appropriate course of action at this point in time and is considered proportionate given all the circumstances.

The incident referred to by the police evidenced breaches of existing conditions on the licence and it was not felt that additional conditions would necessarily be complied with. The problems at the premises went beyond an issue with alcohol and therefore removal of the sale of alcohol alone would not address these issues. Equally the removal of the DPS would not solve the issues raised.

The Sub-Committee was disappointed that there was not an opportunity to hear from the premises licence holder and was therefore unable to hear an explanation for the events described.

The Sub-Committee is not making a determination in relation to whether or not criminal offences have been committed, it is mindful that it is not seeking to punish but rather to impose steps to promote the Licensing Objectives pending the final review hearing.

The imposition of a suspension at this stage, with immediate effect, is felt to be the only way to ensure there is no repeat of this incident. This in turn will protect those in close proximity from crime and disorder and public nuisance. It will also protect those and the wider community from the potential public health implications of such a gathering during the current pandemic.

There is a right under section 53B (6) of the Licensing Act 2003 for the premises licence holder to make representations against the interim steps to the Sub-Committee. There is no right of appeal for any party at this stage to the Magistrates' Court. All parties will receive written notification of the decision with reasons and that notification will set out the right to make representations in full.

**Licensing Team  
Southampton and Eastleigh Licensing Partnership**



Southampton City Council  
Civic Centre,  
Southampton

Please address all correspondence to:  
**Licensing – Southampton City Council,  
PO Box 1767, Southampton SO18 9LA**

Direct dial:  
Our ref: 2020/02681/01SSRP

E-mail: licensing@southampton.gov.uk  
Please ask for: Mr. Bates

Licensing Team,  
Southampton & Eastleigh Licensing Partnership,  
Civic Centre,  
Southampton.  
SO14 7LY

8<sup>th</sup> September 2020

Dear Sir or Madam,

***Review of Iroko Lounge, 11 Onslow Road, Southampton***

I am writing on behalf of the Licensing Authority, as a Responsible Authority, to support the representations from the police in seeking a review of the licence of Iroko Lounge.

I consider the application impacts on the licensing objectives of:-

- The prevention of crime and disorder
- The prevention of public nuisance

11 Onslow Road has been licensed since at least 2005 as a restaurant. The licensing authority was notified on 26<sup>th</sup> September 2019 the premises changed its name to Iroko Lounge. It is licensed for the sale of alcohol and late night refreshment.

The premises licence has a condition restricting the sale of alcohol to times when it is accompanied by a meal.

*The premises shall be structurally adapted and bona fide used for the purpose of habitually providing the customary main meal at midday or in the evening, or both, for the accommodation of persons frequenting the premises; and  
Alcohol shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary to his meal*

A plan attached to the licence shows the layout of tables and chairs. The licensing authority has not been notified of any change of layout or a request or enquiry to vary the licence. The fact the authority was notified of the change of name on 2019 suggests the licence holder understands his obligations to notify the licensing authority of a change of layout and to seek a variation of the licence if he wished to change the business from a restaurant.

The events described by the police show a complete disregard for the legislation and the public. Activities likely to increase the risk of transmission of the Coronavirus during a pandemic risks creating a public nuisance.

There was clear evidence of overt use of nitrous oxide which is used to get a 'high'.

The police also evidence from a resident of noise and anti social behaviour of the patrons attending the premises.

There was no evidence of any effective management of the premises or the events of that night. The premises had been cleared of furniture to facilitate this event in a clear breach of the conditions of the licence as well as the Coronavirus Act.

I support the police request to revoke this licence.

Yours faithfully,

Phil Bates  
Licensing Manager

Mr I McGuiness  
Senior Licensing Officer  
Southampton and Eastleigh Licensing Partnership  
Southampton City Council  
Civic Centre  
Southampton  
SO14 7LY

Please ask for: Gavin Derrick  
Our ref: GD/ IROKO  
Your ref:  
Date: 14 September 2020

Dear Mr McGuiness,

**Licensing Act 2003 - Application for Summary Review of Premises Licence  
Iroko Lounge, 11 Onslow Road.**

I am writing to make a representation on behalf of Southampton City Council's environmental health service to be considered at the review of the premises licence for Iroko Lounge, 11 Onslow Road Southampton.

The environmental health service is a responsible authority for the purpose of the Licensing Act 2003 and is also the enforcing authority for the Health and Safety at Work etc Act 1974 in respect of these premises.

The coronavirus emergency has placed substantial additional duties on the environmental health service, who are partly responsible (together with other regulators and public health agencies) for controlling the transmission of coronavirus.

The Government passed legislation to restrict the operation of certain types of business under the Coronavirus Act 2020 and associated health protection regulations. The Government permitted some types of business to resume operation from 4 July 2020 subject to appropriate steps being taken by the operators of these businesses to reduce the risk of coronavirus transmission. The Government provided comprehensive advice to business operators on the steps to be taken to reopen safely on the [www.gov.uk/coronavirus](http://www.gov.uk/coronavirus) website.

The operator of the Iroko Lounge has a legal obligation to carry out a risk assessment and to put in place measures to control the risk of coronavirus transmission and to protect the health of both customers and staff. This legal obligation is imposed by the Health and Safety at Work etc Act 1974 and the Management of Health and Safety at Work Regulations 1999.

I understand that the review was initiated after the police attended the premises and found a large number of customers inside the premises and inadequate controls in place to ensure social distancing measures were observed by customers and other mitigation measures are in place.

continued/...



The environmental health service worked with the police following their attendance at the premises and issued a direction to the operator of the business in accordance with the Health Protection (Coronavirus, Restrictions)(England)(No 3) Regulations 2020. A copy of this direction is enclosed.

The operator of the premises should have calculated the capacity of the premises, so that the number of customers within the premises can comply with social distancing requirements (i.e. 2 metre social distancing, or 1 metre social distancing with mitigation measure such as face coverings, screens etc). The operator of the premises should have controlled the number of customers entering the premises to ensure that the capacity is not exceeded.

The operator should avoid encouraging customers to stand and interact.

The operator should ensure, where music or entertainment is provided, it is provided in such a way as to discourage customers from having to raise their voices to communicate (as this increases the risk of the coronavirus spreading through aerosol formation). This means that any music should not be excessively loud. Music and dancing after dark continues to be prohibited as this activity would constitute the operation of a 'nightclub' which continues to be specifically prohibited by the health protection regulations.

The operator should carry out a risk assessment to identify the appropriate controls and ensure that they are properly implemented to ensure that the health of customers and staff is protected.

It is clear to me that the observations of the police when attending the premises demonstrate that the operator of the premises has not carried out an adequate risk assessment or implemented adequate controls as required by the health and safety legislation. Many businesses trading in the city, including licensed premises, have put in place extensive mitigation measures and reduced their capacity to protect the health of their customers and staff. This will have a financial impact on those business which follow the Government advice and guidance. It is regrettable that some businesses, such as the Iroko Lounge, do not make these efforts to protect public health but instead choose to operate in a way which exposes their staff and customers to risk for the pursuit of financial rewards.

I would recommend that this is considered when the licence is reviewed.

Yours sincerely,

  
**Gavin Derrick**  
**Service Manager - Environmental Health, Trading Standards and Community Safety**

**Health Protection (Coronavirus, Restrictions)  
(England) (No.3) Regulations 2020  
(SI 2020: No. 750)**



**DIRECTION**

28<sup>th</sup> August 2020

**Part A**

**To: Malcolm Forbes**

*[Person responsible for carrying on the business (includes the owner, proprietor or manager)]*

**At: 11 Onslow Road, Southampton SO14 0JD**

*[Premises location]*

**Of: Nija Bite Limited**

*[Business (if elsewhere)/ Company Registered Address]*

**Trading as: Iroko Lounge Restaurant and Bar**

This Direction is served under Regulation 4(1) of The Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 (the Regulations) and has immediate effect/takes effect on 28<sup>th</sup> August 2020 ending on review by Southampton City Council).

The Regulations impose certain restrictions to protect against the risks to public health arising from coronavirus. Failure to comply with the requirements of the Regulations, without reasonable excuse, is a criminal offence.

I, **Rosie Zambra** designated as a relevant person for the purposes of the Regulations by Southampton City Council have reasonable grounds for believing that you are contravening a requirement in the Regulations as set out in Part B below and that it is necessary and proportionate to issue this Direction to prevent continued contravention of the requirement.

**Part B. Contravention of the restrictions**

*Under Regulation 4 (1) a local authority may give a Direction imposing prohibitions, requirements or restrictions in relation to the entry into, departure from, or location of persons in, specified premises in the local authority's area.*

*As a person carrying on a business consisting of the provision of food and drink in a restaurant (including Restaurants, including restaurants and dining rooms in hotels or members' clubs) you are hereby required to do the following:*

1. Limit the number of persons (including staff) in the restaurant to ensure that appropriate social distancing can be followed
2. Maintain a 2metre distance, where possible, between persons queuing outside the premises
3. Keep a distance of 2metres between persons of different groups at all times
4. Limit the size of groups
5. Ensure you have appropriate controls in place where the 2 metre distance cannot be met

### **Part C. Action required**

This Direction requires that you **immediately** implement the following steps. The measures specified below must be taken to prevent continued contravention of the Regulations:

1. Limit the number of persons (including staff) in the restaurant to ensure that appropriate social distancing can be followed
2. Maintain a 2metre distance, where possible, between persons queuing outside the premises
3. Keep a distance of 2metres, where possible, between persons of different groups at all times
4. Limit the size of groups
5. Ensure you have appropriate controls in place where the 2 metre distance cannot be met

### **Part D. Consequences of non-compliance**

Failure to comply with this Direction, without reasonable excuse, will lead to the service of a Prohibition Notice and failure to comply with the Notice is an offence punishable by a fine on summary conviction in a Magistrates Court.

### **Part E. Challenging this Direction**

There is a right to appeal against this Direction.

If you consider that the Direction should not have been issued or that the actions required of you are unreasonable or unjust, you can lodge an appeal to West Hampshire Magistrates' Court outlining your reasons for challenging the Notice, within 21 days of the date on this Notice.

Alternatively, you may challenge this Notice by way of Judicial Review. Should you wish to pursue this option, you may wish to consult a lawyer to obtain independent legal advice.

**This Notice remains in force even if you have raised a challenge.**

**Should the local authority's review of your challenge determine that the Notice should be revoked, you will be notified in writing that the Notice has been revoked.**

Signed: 

Date: 28<sup>th</sup> August 2020

Name in Capitals: ROSIE ZAMBRA

Southampton City Council, Civic Centre, Southampton, SO14 7LY

Telephone: 

Email: [environmental.health@southampton.gov.uk](mailto:environmental.health@southampton.gov.uk)

**If you are not sure of your rights or the implications of this Notice, you may want to seek independent legal advice**

Direct dial: [REDACTED]  
Email: [REDACTED]  
Please ask for: Philip Gilbert

Fax:  
Minicom:  
Our ref:

Date: 14<sup>th</sup> September 2020

Licensing Department  
Civic Centre  
Southampton  
SO14 7LS

To Whom It May Concern,

**Re: Iroko Lounge License Review**

This representation is made by the Interim Director for Public Health at Southampton City Council in her role as a responsible authority under the Licensing Act 2003, in support of Hampshire Constabulary's application to review the above premises license on the following grounds:

1. The Prevention of Nuisance
2. The Prevention of Crime and Disorder

**The Prevention of Nuisance & Prevention of Crime and Disorder**

As Interim Director of Public Health I am concerned about the reports of the event that took place at the Iroko Lounge on the night of the 23<sup>rd</sup> August 2020. Events and gatherings are currently prohibited under Section 22 of the Coronavirus Act 2020 while a 'public health period' is in effect. A public health period was declared by the Secretary of State at the end of March 2020, and is ongoing.

The Coronavirus Act 2020 is a means of "*preventing, protecting against, delaying or otherwise controlling the incidence or transmission of coronavirus in England.*"

A public nuisance is "*an act not warranted by law, or an omission to discharge a legal duty, if the effect of the act or omission is to endanger the life, health, property or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's subjects.*"

Coronavirus poses a serious threat to the health and security of this country. It has been deemed a global pandemic by the World Health Organisation, a major incident by the UK Government, and at the time of writing it has claimed the lives of over 40,000 people in the UK. Guidance has been issued by Public Health England that says that large gatherings should not take place to prevent the spread and continuation of the incident. This guidance specifically states that nightclubs are required to stay closed. Public Health England guidance also requires contact details to be taken of those who attend the premises so that they can be contacted in the event of a local outbreak of Coronavirus to ensure that should an outbreak occur it can be isolated quickly, and this was not carried out.

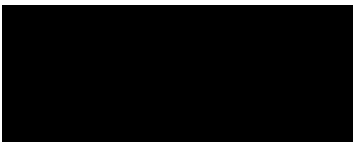
The use of the Iroko Lounge as a nightclub as described by the Police report was in breach of Public Health England guidance. It is also a breach of the premise's opening hours, its licensed activity as a restaurant, its requirement to only sell alcohol as part of a table meal, and the event was carried out without the knowledge or permission of the DPS.

I further find the extensive, unchallenged use of Nitrous Oxide to be concerning. Nitrous Oxide is a psychoactive drug under the 2016 Psychoactive Substances Act, which means it is illegal to give away or sell. Use of Nitrous Oxide can lead to loss of blood pressure, fainting and heart attack. The risk is likely to be greater if the gas is consumed in an enclosed space, like the Iroko Lounge, or if a lot is used at the same time. It is also recommended that alcohol is not consumed when using Nitrous Oxide as both are depressants and using them together increases the risk of ill effects and accidents, and there was clear evidence of alcohol being supplied by the premises. The Psychoactive Substances Act 2016 allows for the prosecution of landlords, club owners or any other person concerned in the management of the premises.

For these reasons it is my belief as the Interim Director of Public Health that the event that was hosted at the Iroko Lounge on the 23<sup>rd</sup> August was not run in a manner that would meet the requirements of the Coronavirus Act 2020, the Licensing Act 2003, or Public Health England's guidance on protecting the public during the Coronavirus pandemic.

As Interim Director of Public Health, I support the Police in their call for a review of the license of the Iroko Lounge on the grounds of Prevention of Nuisance and the Prevention of Crime and Disorder, and support their call to revoke the premises license.

Yours sincerely



Debbie Chase  
Interim Director of Public Health

**Trading Standards Service**  
Southampton City Council  
Civic Centre  
Southampton S014 7LY

Direct dial: [REDACTED]  
Fax: [REDACTED]  
Email: [REDACTED]

Please ask for: Lucas Marshall  
Our ref:  
Your ref:

14<sup>th</sup> September 2020

Licensing  
Southampton City Council  
PO Box 1767  
Southampton  
SO18 9LA



Dear Sir/Madam

**Licensing Act 2003**  
**Psychoactive Substances Act 2016**  
**Iroko Lounge, 11 Onslow Road, Southampton**

I am writing to make representation with regard to the Application for Licence Review for Iroko, 11 Onslow Rd, Southampton, which has been made by Hampshire Constabulary.

I have read the contents of the application, and I have viewed video footage from PC Swallow's visit to the Premises on 23<sup>rd</sup> August 2020. Whilst the apparent lack of regard for the Covid legislation is clearly of concern I am also concerned regarding the reference in the Application to Nitrous Oxide use at the Premises. Footage from PC Swallow's body worn video shows numerous Nitrous Oxide canisters within the Premises.

Nitrous Oxide is a psychoactive substance, as defined in the Psychoactive Substances Act 2016: a "psychoactive substance" means any substance which is capable of producing a psychoactive effect in a person who consumes it - a substance produces a psychoactive effect in a person if, by stimulating or depressing the person's central nervous system, it affects the person's mental functioning or emotional state. Use of Nitrous Oxide can cause the user to become unconscious, and, at worst, suffocate. It is usually inhaled via balloons, so its use should be clearly evident to a person acting in a supervisory capacity at the premises.

Supply of Nitrous Oxide is an offence under the Psychoactive Substances Act 2016, legislation which is enforced by both the Police and Trading Standards. Whilst, to my knowledge, there is no allegation that the Premises Licence Holder has supplied the Nitrous Oxide, the quantity that was found would appear to indicate that supplies, and therefore offences, may have been committed at the premises. If the premises had been adequately controlled and supervised this could have been prevented by the Designated Premises Supervisor: the Premises appears to have failed to meet the Prevention of Crime and Disorder Objective, and Southampton City Council's Trading Standards Service would therefore support the Application.

Yours faithfully

Lucas Marshall  
Trading Standards Office [REDACTED]

**From:** [REDACTED]  
**To:** [Licensing](#)  
**Subject:** 2020/02681/01SSRP  
**Date:** 14 September 2020 17:24:26

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**CAUTION: This email originated from a non UK Government address. Do not click links or open attachments unless you recognise the sender and know the content is safe.**

RE: Summary review Iroko Lounge SO14 2BR

From: Mr Leigh Stuart Chester JE523133B resident at Flat 5, 19 Onslow Road, Southampton, SO14 0JD. [REDACTED]

I wish to make a representation regarding this location.

Over several weekends, excessive noise including fighting, littering and smashing of bottles as well as complete disregard for covid19 safety guidance has occurred. The latest incident was finally attended by Police and on going downstairs to acquire the reference number I was horrified to find the entirety of Onslow Road from the limits of my own front door to the entrance of Iroko Lounge solidly packed with individuals in apparently varying states of sobriety. This included an ambient noise level from arguments, car radios and shouting which necessitated my wife leaving our bedroom at the front of our building and instead sleeping on the floor in our room which is on the rear of the property. While I do not have the tools to measure decibel levels I can assure you that the levels were extremely high. Please bear in mind I say this having lived here for a substantial part of a decade, tolerating the varying levels of noise from traffic and the adjoining nightclub (once Lennons now Suburbia). While the nightclub often has a brief louder period when people "tip out" this location has provided sustained noise over several weekends and long time periods. From my own building management experience I would also hypothesise the number of people in attendance exceeded all safe limits for fire safety and other regulatory limits on such an establishment and feel compelled to additionally query how a restaurant could serve so many people concurrently in order to provide alcohol to them.

I thank you for your consideration and wish everyone good health in these challenging times.

Leigh Chester



From:



Subject:

Iroko Lounge Licence Review (RA593/1)

Date:

14 September 2020 14:42:45

**CAUTION: This email originated from a non UK Government address. Do not click links or open attachments unless you recognise the sender and know the content is safe.**

Dear All

I have now had an opportunity to take detailed instructions from Mr Rahman and I have also been able to speak at length to Mr Malcolm Forbes.

The outcome in summary is that we do not intend to ask the Licensing Authority to list the matter to consider representations against the Interim Steps but in this email, will make proposals to the Police and any person/body who supports the application for review as to a mediated outcome although we recognise that any agreement that might be reached cannot be binding on the sub-committee which considers the full review hearing on 23<sup>rd</sup> September.

#### Background

The business was originally owned by Mr Rahman's father (Mahram Miah) who remains the joint holder of the licence and has been operated by the family for some 40 years. Mr Rahman himself ran the business from about 1995 as an Indian restaurant and has been the DPS since 2005 when the current premises licence originally granted. The licence is a little unusual in that it is in effect a restaurant licence but authorises the sale of alcohol until 2 a.m. daily and late night refreshment and opening until 2.30. I understand that there are two other restaurants in the same locality that are also licensed for the same hours.

The restaurant closed for a number of months in 2017 as Mr Rahman had tired of running the business and attempted to sell it. Having failed to find a buyer, he re-opened in December 2017 and continued to operate as an Indian Restaurant, making full use of the hours permitted by the licence and complying fully with the (limited) conditions that applied.

In December 2019, he entered into an agreement with Mr Malcolm Forbes to rent the premises to him for a period initially of two years. Mr Forbes took over the running of the premises and operated the same as a restaurant but providing African food. The premises were of course forced to close when the original coronavirus restrictions came into effect. It had been intended that the licence be transferred to Mr Forbes and that he be appointed DPS (he holds a personal licence) but there was apparently some delay on the part of the solicitors who were then acting and with both that and the "lock-down" the licence remained as it had been i.e. held by Mr Rahman and Mr Miah, with Mr Rahman as the DPS.

Up until this point, I understand that there had been no issues with the premises, despite the fact that it operated well into the "night time economy" hours.

#### The "trigger incident"

I have spoken at length to Mr Forbes about what happened. I do not at this stage



propose to detail the account he gave me – suffice it to say that what Mr Swallow has alleged is largely but not entirely accepted. If necessary, Mr Rahman and I can elaborate at an appropriate time but at this stage we would add just a few points:

It seems that Mr Forbes deployed an SIA registered door supervisor on the night in question – something that Mr Rahman had never felt the need to do in 25 years of running the premises. Indeed, it seems that this was also the first time Mr Forbes had done so as well.

Mr Forbes asserts that the original booking was for a private party for 50 and that food was provided for those present.

At some point, the party was gate-crashed by a significant number of people and the door supervisor was lost control of the situation. Indeed, we understand that when the police arrived, he suddenly left.

Finally, Mr Rahman did not in fact visit the premises that night and it seems that Pc Swallow misunderstood what he said when they spoke on the telephone. Following the incident, Mr Forbes contacted Mr Rahman and told him what had happened and that there had been a fight outside the restaurant. Mr Rahman then spoke to a number of his friends who work as taxi drivers and one of them told him that he had driven past the restaurant at about 11 p.m. and had not seen anything unusual such as a crowd outside. That was what he was attempting to explain to PC Swallow. It is also true that at the time, Mr Rahman was indeed self-isolating because a member of his household was exhibiting symptoms of Covid 19.

#### Following the incident

I am given to understand that Neither Mr Forbes nor Mr Rahman have been formally cautioned or interviewed about any alleged offence. I am also told that following the incident, Licensing Officers visited the premises and although I cannot confirm this to be the case, apparently expressed themselves satisfied with the distancing and other measures that had been taken. Other than supporting the review, the Licensing Authority/Council has not taken any other formal action.

The premises have been closed at least since the licence was suspended. *Haydar – can you confirm if it was open between the date of the incident and 1<sup>st</sup> September when the initial hearing took place?*

#### The present situation and future plans

Mr Forbes is in breach of the terms of his agreement with Mr Rahman and the agreement has therefore been terminated. Regardless of the outcome of the review hearing, the premises will remain closed for a period of time whilst Mr Rahman attempts to find a buyer or new tenant.

If he is unable to sell, it would be his intention` (subject to the outcome of the hearing) to re-open the business himself as an Indian restaurant and then endeavour to sell as a going concern. However, he is reluctant to do this because, as I mentioned earlier, he has long since tired of running a restaurant and the very long and late hours that that entails.

#### The proposals

Clearly the issue here is with Mr Forbes. At the very least, he should never have

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accepted a booking for 50 people to attend what we understand was a 21 birthday party, not least because he clearly anticipated that there might be a problem otherwise he would not have deployed a door supervisor. For this purpose it is unnecessary to detail what else he may or may not have done.

Mr Rahman has absolutely no intention of allowing Mr Forbes to return to the premises. I am aware of a (small) number of licences that are subject to a condition that named individuals shall not be permitted to be involved in the running or management of the premises nor be employed thereat. I am also aware that some concern has been raised about the legality of such a condition. However, in the interests of mediation, we would be prepared to agree such a condition, the precise wording to be discussed if the principle is agreed.

We also acknowledge that it is almost inconceivable that if a licence such as this were to be granted today (almost 15 years after the Licensing Act came into effect), it would not be subject to a series of further conditions.

We would therefore be prepared (and indeed propose) conditions to cover the following (in each case again, the wording to be discussed if the principle is agreed):

A CCTV system (there is none currently installed in the premises);  
Maintaining a Refusals Register and an Incident book;  
Implementation of a Challenge 25 scheme and appropriate signage;  
Staff training;  
Risk assessed deployment of door staff should the entire premises be booked for any private party or function or in respect of any booking (post Covid) of more than 20 persons;  
A condition preventing persons who have booked the premises for a private party or function from bringing into the premises any noise amplification equipment.

If there are further suggestions in this regard, we would be pleased to consider them

Further, we would be prepared to agree a period of suspension of the licence to mark the seriousness of what occurred and to allow time to (for example) install the CCTV system and any other appropriate measures.

We would resist revocation of the licence for the reasons stated above and likewise the removal of Mr Rahman as the DOS – in both regards, we would point to the excellent track record of the premises and the fact that Mr Rahman personally had no prior knowledge of what was planned in respect of what became the “trigger incident”.

In the meantime, it would be helpful to hear from the police regarding my original email and thank you to Mr McGuinness for your reply. I do not propose at this stage to advance any legal argument nor do we propose a Judicial Review of the Superintendent’s certificate but for obvious reasons, I have to reserve my clients position generally in those respects. Can I also please ask that if any other representations are received during the consultation period that they be forwarded to me as soon as possible?

I that regard, my client has forwarded me the letter from Trading Standards and I will respond separately to that as soon as I am able to do so – this email was drafted before that was received.

I look forward to hearing from you.

Regards

Philip  
Philip Day Partner

**I will be working from home until the present crisis ends. If you need to speak to me, please ring my mobile - [REDACTED].**

**LACEYS SOLICITORS**



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2019 Dorset Legal Awards

[REDACTED]  
(Support Team)

[REDACTED] Poole Road Bournemouth, BH2 5QR

**Warning: Please be aware of cyber crime. Lacey's will not take responsibility if you transfer money to a wrong bank account. Please speak to your solicitor before transferring any money. If you receive an email from us requesting your bank details, please contact your solicitor immediately to clarify.**

### **Procedure – Applications etc. under the Licensing Act 2003 or Gambling Act 2005**

1. A hearing will be held to decide applications, etc., under the Licensing Act 2003, where there have been relevant representations from one or more of the responsible authorities or other persons. The parties to the hearing will have the chance to be heard. They are also entitled to be helped or represented by another person if due written notice is given in advance.
2. Hearings will take place before a Sub-Committee comprising three members of the Licensing Committee. One of these members will be elected Chair of the Sub-Committee for that hearing.
3. Please note that for day time hearings the Sub-Committee will normally adjourn for lunch at 1:00 p.m. and that comfort breaks will be taken at the discretion of the Chair at appropriate points during the meeting.

#### **Preliminary matters**

4. The Chair will introduce those present.
5. The Chair will check whether any of the Sub-Committee members has a “disclosable pecuniary”, “personal” or “pecuniary” interest.
6. The Chair will check whether all the parties are present at the hearing, and if any are not, whether they have told the Council that they do not wish to attend or be represented. If any party who was expected to attend has not done so, the Sub-Committee will decide whether to hold the hearing in that party’s absence, or to adjourn it to another date. Hearings will be adjourned if the Sub-Committee considers this necessary in the public interest, if that is possible. If the Sub-Committee decides to hold the hearing in a party’s absence, they will still consider any written information received.
7. In the case of an application for variation or a new licence, the Sub-Committee’s legal advisor will ask the applicant or their advisor for confirmation that the required public notices have been displayed where they can conveniently be read from the exterior of the premises and that notice was given in a local newspaper within eleven working days of the day on which the application was received by the licensing authority.
8. Normally, hearings will be open to the public. However, the Sub-Committee may exclude the public from the hearing (or part of it) if they think the public interest in doing so outweighs the public interest in having the hearing in public. If the public are excluded, any of the parties to the hearing, and/or anyone helping or representing them, may also be excluded.
9. The Chair will propose a motion that the public and the press be excluded from the hearing while the Sub-Committee considers the matter. Ordinarily the legal advisor and democratic support officer will remain (see paragraph 30 (b) below).
10. The Openness of Local Government Bodies Regulations 2014 provide an entitlement for the public to film, photograph and audibly record (“record”) public meetings. However, by virtue of Schedule 6, paragraph 58 of the Licensing Act 2003 and section 101 (15) of the Local Government Act 1972, Licensing Act 2003 hearings are not covered by the entitlement to film as of right. The Council’s general approach is to encourage openness and transparency in all its dealings and the general presumption is that filming or recording of hearings shall generally be permitted where due notice has been provided in advance of the hearing. Nonetheless the following shall apply:

- i) Filming / recording / photographing hearings shall only be permitted with the express permission of the Chair. Such permission may include restrictions to protect children, vulnerable persons or others that object to being filmed / photographed / recorded.
  - ii) Requests to film / record / photograph should be made with sufficient notice in advance of the hearing. Late requests may not be granted if there shall be a delay to proceedings as a result.
  - iii) Every party to the hearing and any witnesses shall have the opportunity to object and those representations shall be considered by the Sub-Committee.
  - iv) No filming, photography or sound recording shall be permitted of any person under 18 years of age.
  - v) No person shall be put under any pressure to consent to such and no payment for such consent shall be given.
  - vi) The Chair shall have the final say as to whether any filming, photography or recording is allowed (including the extent to which permission is granted e.g. the parts of the meeting, the individuals concerned or the arrangement of the recording equipment).
  - vii) All directions given by the Chair shall be fully complied with and the Chair shall have the absolute discretion to withdraw permission to film, photograph or record in the event the same causes an obstruction or interferes with the general conduct of the hearing, including the impeding of the giving of proper evidence.
11. A party may have asked for someone else to appear at the hearing to make a point or points that may help the Sub-Committee reach a decision. It is up to the Sub-Committee to decide whether that person should be heard, although permission will not be refused unreasonably. Such a person is referred to as a “witness” in this procedure.
12. Where application has been made, in advance of the hearing, that it should be conducted in private (e.g. by the Police in review or summary review proceedings) reports shall be prepared and presented as confidential so that the Committee can make a meaningful determination in accordance with Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005 to exclude the press and public. It is important to note that reports presenting Licensing Act 2003 matters are not required to be published in advance. However, certain limited information must be published in accordance with the Licensing Act 2003 (Licensing Authority’s Register) (Other Information) Regulations 2005 and section 8 of the Licensing Act 2003.
13. The Chair will then explain the procedure that will follow.

### **General information on the conduct of the hearing**

14. Each party is entitled to:
- (a) Give further information in response to any point that the Council told them before the hearing they would like clarified;
  - (b) With the permission of the Chair, seek clarification on any point by any other party;
  - (c) Address the Sub-Committee.
15. Members of the Sub-Committee may also seek clarification of any party or witness.
16. At the Chair’s discretion, the Sub-Committee’s legal advisor may ask any questions he or she thinks are relevant.

17. Unless the Council has requested in advance that a particular point be clarified, new documentary or other evidence may not be submitted for the first time at the hearing, unless all the other parties agree.
18. Members of the Sub-Committee will have read all the papers included in the agenda for the hearing before the hearing starts. The parties are requested not to spend unnecessary time repeating evidence which is already in the papers and which is not disputed.
19. Evidence that is not relevant to the case, or to the promotion of the four licensing objectives, will be disregarded.

### **Hearing Procedure**

20. If any party has asked permission for a witness or witnesses to appear, the Sub-Committee will decide whether they should be heard (see paragraph 10 above).
21. All parties will be allowed a similar (and maximum) amount of time to put their case, and ask questions of other parties, subject to the Chair's discretion to not hear repetitive matters or questions.

### **The applicant**

22. The applicant for the licence (or their representative) or the applicant in review proceedings, may present their case.
23. If the Sub-Committee permits, the applicant may call those witnesses whose names have been provided in advance to support their application.
24. Where a group of witnesses wish to speak in support of the application for similar reasons, one person should, where possible, act as spokesperson for the whole group. The Sub-Committee may reasonably refuse permission for a witness to be heard if their evidence simply repeats points already made.
25. The Chair will invite those making representations to seek clarification on any point made by the applicant. The Chair will decide in which order those making representations will be invited to put their questions.
26. Members of the Sub-Committee or the Legal Advisor, if so permitted by the Chair, may also seek clarification of the applicant or any of their witnesses.

### **The representations**

27. Where there is more than one person making a representation, the Chair will decide the order in which they may put their case. If there is a representation from one or more of the responsible authorities, their representatives will normally be invited to put their case first.
28. The following procedure will apply to each person making a representation in turn:-
  - (a) The person making a representation (or their representative) may present their case.
  - (b) If the Sub-Committee permits, the person making a representation may call those witnesses whose names have been provided in advance to support their objection.
  - (c) Where a group of witnesses wish to speak in support of the objection for similar reasons, where possible, one person should act as spokesperson for the whole group. The Sub-Committee may reasonably refuse permission for a witness to be heard if their evidence simply repeats points already made.

- (d) The Chair will invite the applicant to seek clarification on any points made by those making representations.
- (e) Members of the Sub-Committee or the Legal Advisor, if so permitted by the Chair, may seek clarification of those making representations or any witnesses.

### **Summing up**

- 29. The Chair will invite each person making a representation to make a final statement or sum up their case.
- 30. The Chair will invite the applicant to make a final statement or sum up their case.

### **Sub-Committee's decision**

- 31.
  - (a) At the end of the hearing the Sub-Committee will move to private session whilst it considers the matter.
  - (b) The Sub-Committee's legal advisor will remain to provide legal advice and the democratic services officer will remain to record the decision. Details of any legal advice will be recorded and referenced in the decision and reasons.
  - (c) The parties will be invited to wait to be informed of the outcome.
  - (d) As soon as the decision is reached, the public and press will be invited to return to the room in which the hearing took place, and the Chair will announce the decision and the reasons for it.
  - (e) If a room is available, the Committee may retire to deliberate and make its decision
  - (f) All parties will be formally notified in writing of the decision and reasons as soon as possible.

In most cases the Sub-Committee will announce the decision at the conclusion of the hearing. In certain cases where this is not possible due to time constraints (and the Hearings Regulations permit – Regulation 26 (1) sets out those hearings where delay is not possible) the decision shall be made within 5 working days beginning with the day of the hearing or the last day of the hearing.