

Supplementary Papers for Licensing Sub-Committee

Date: Tuesday, 26 November 2024



5. Havana, 61 Charminster Road, Bournemouth

3 - 22

Please find enclosed supplementary information submitted on behalf of the premises.

Published: 22 November 2024

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APPLICATION TO REVIEW THE PREMISES LICENCE FOR HAVANA, CHARMINSTER ROAD, BOURNEMOUTH RESPONSE ON BEHALF OF THE PREMISES LICENCE HOLDER

Introduction

This document will refer to various matters that are the subject of criminal investigations/prosecutions and parts of it may need to be redacted from any publicly available document. To assist, I have highlighted what I regard to be the relevant parts that might need to be redacted (which includes Appendix 1 in its entirety).

Havana itself

The business has operated as a late-night bar for some 20 years under the ownership of Mr Tarek Halabi who is also both Premises Licence Holder and the DPS. It is normally only open on Friday and Saturday nights but also on “special occasions” such as New Year’s Eve.

Notwithstanding his licence conditions, he deploys 3 SIA in the early hours until closing, has a member of staff whose specific function is to take care of any person who may be intoxicated, particularly female customers who might need assistance in finding a taxi home. The premises has a “hot line” to private hire vehicle operators to assist in the dispersal of people from the premises.

The premises is equipped with a noise limiting device and has no history of noise complaints relating to music from within (and the relevant EHO has made no representation with regard to this application).

Whilst the premises may be the only on-licensed premises locally permitted to open until 5 a.m., other premises do stay open at least until then (particularly during Ramadan) and the Golden Supermarket store is open 24 hours a day and licensed to supply alcohol for consumption off the premises.

Buses operate throughout the night bringing students and other revellers home from late night venues in Bournemouth (and beyond).

Photographs of the immediate locality are attached separately to assist members who may not be very familiar with the locality.

The issues in this case

The application for Review talks of “concerns” and “reports” but does not of itself include the sort of evidence that Members will require to make their decision – indeed, it is arguable that officers should not have accepted this as a valid application at all but that is now irrelevant – it was accepted and one must now consider the “Supplementary Evidence” that has been provided by the Police.

Ultimately, the issue in this case will be whether and to what extent Havana has fallen short in terms of failing to promote the “Crime Prevention” Licensing objective but before turning to that, it is appropriate to address other issues raised in the document.

The “heat maps”

No analytical data has been provided to support these maps and of themselves, they do not provide evidence of a link to Havana because (for example):

The Police recently reviewed the Premises Licence for the nearby Dancing Jug premises on the grounds of (inter alia) crime and disorder. To what extent incidents that can be demonstrably shown to be associated with those premises is unknown. Further, there is no analysis of what (if any) difference reducing the hours of those premises has made to the statistics.

The maps do not compare like with like – some cover a period of 6 months and others a year. Logic dictates that the latter will show more incidents than the former!

The maps cover a large area and to “pin” Havana is potentially misleading – one might as well have pinned the Golden Supermarket (open to supply alcohol 24 hours a day) and one would have seen the same outcome.

There is no information concerning the number of incidents alleged to have occurred within Havana itself – in that regard, see further below but in essence, there have been very few of note..

The statistics apparently include “Anti-Social Behaviour”. To what extent that can be attributed to the behaviour of local residents (including the not insignificant student population) returning to their homes from elsewhere is very unclear. The pie chart on page 9 apparently excludes anti-social behaviour and it is unclear from what statistical base this data has been compiled nor the period to which it relates.

In short, I submit that the “evidence” of the “heat maps” should be regarded with the greatest care, particularly the assertion that “The demand that can be associated with Havana can be categorised as follows:..... As is oft said, “there are lies, lies, damned lies and statistics!”

“Key reports and intelligence”

Having been specialising in licensing matters as a solicitor for over 40 years and dealing with licensing reviews for almost 20 (the first was early in 2006 some months after the 2003 Act came into effect and is believed to have been the first in the country), I have never before seen an application for review supported by supplementary “evidence” of the like contained in the additional police document.

For example:

"Between July 2023 and October 2023 Dorset Police received intelligence from multiple sources which suggested that drug distribution and gangs were related to Havana. This could not be substantiated, and no further details can be provided at this time."
and

"Further intelligence was received in April 2024 indicating that the management of Havana were involved in the supply of drugs within the premises, using customers and staff to distribute the items. This could not be substantiated, and no further action was taken in relation to this intelligence. Further similar intelligence was received in May 2024, and again, could not be substantiated and no further action was taken." (My emphasis)

One questions the use of the word "intelligence" (not least for the further reasons set out below) and why these assertions have been included at all, other than to perhaps on the basis that "if one throws enough mud, some of it will stick". Members are reminded that whilst they should take their lead on matters of crime and disorder from the Police, care should be taken to ensure that "evidence" is capable of withstanding cross-examination on oath should the matter be appealed to a Magistrates' Court.

Mr Halabi will also give evidence to the effect that he abhors the use of drugs and any person suspected to be in possession of the same is refused entry or removed and then barred from the premises. Some months ago, he also dispensed with the services of someone whom he had employed whom he suspected (but could not prove) was using drugs.

The further reference to "intelligence" is as follows:

"On the 25th February 2024 intelligence was received that a victim of an alleged stabbing was received by Dorset Police from a neighbouring licensed premises. The victim had sustained a serious injury and first aid had been administered by Havana before they escorted the victim out of the premises via a rear exit to avoid CCTV coverage."

This and what follows in the supplementary evidence (on page 9) clearly implies that a stabbing had taken place inside Havana. The email response from Mr Halabi to the police was as follows:

"Hope all well your end,

I want to apologise for not replying to your emails before, how ever, I did on both occasions called you back on the 18th and the 19th of March and left you a long messages explaining to you what did happen on the previous nights.

I'm sorry I was not aware that my reply should had been an email and not a phone call.

I'm still old fashioned I call rather then email 🙏

In the future that won't happen again.

Regarding the night of 25/02/24

The incident was not out side Havana

It was out side Ahmad food store

And that is 100% correct

As one of my off duty security was in Havana to check on us and to pick up his girlfriend as she was there, he went out to buy cigarettes from the garden supermarket when he noticed ■■■ a local lad that our security knew him was involved in a agreement with other guys not know to our security

████ (our security) separated █████ from the others guys
When later he noticed █████ was bleeding from his back
According to █████ it wasn't so serious how ever he did want to call an ambulance for safety
████ refused that, all █████ wanted is to go home
████ then got a car to get █████ to hospital
As █████ was insisting for █████ to be looked at
Again even that was not █████ request
And █████ did not want to go to hospital.
But █████ took him to hospital any way
He also asked █████ if he wanted to stay with him
████ declined the offer
████ then informed us of what happened.

(The email continues with reference to other matters).

After something of a delay, the following response was received from Louise Busfield, Licensing Officer at 11:24 on 15 May 2024:

Good morning Philip

*Apologies again, in fact I was waiting for information on 2 further incidents reported to police last week, however since these appear to have been appropriately managed by the premises there are no further queries from my side.
I am satisfied with Tarek's previous response, and will of course copy you in to any correspondence going forward.*

Kind regards

Frankly, I find it quite incredible that the "evidence" adduced by the Police includes reference to this event when the Police themselves have acknowledged in writing that they are satisfied with my client's response to the effect that the incident's only connection to Havana was the intervention of one of its off-duty door supervisors – so much for the reliability of this particular piece of "intelligence".

May I then turn to the alleged sexual assault sometime in June 2024? It is difficult to respond to this, not least because we have not even been provided with the date of the alleged incident. What we can say is that we have no record of any request by the Police to view CCTV from Havana to ascertain whether the victim and alleged perpetrator were in the premises nor that they left together. Members are reminded that the premises employs a (female) member of staff whose specific function is to take care of any person who may be intoxicated, particularly female customers who might need assistance in finding a taxi home. Is it part of the police case that Havana is responsible for a "serious sexual assault" that took place after the victim left the premises?

Regarding the following:

"On the 9th July 2024 Dorset Police were advised of a male that was 17 years old and was frequently in attendance at Havana. Following communication with the management of

Havana, an image of a fake CitizenCard of poor quality was shared with Dorset Police, indicating that the male was over 18 years of age. Intelligence received by Dorset Police up to November 2024 suggests that this male continues to be admitted entry to the premises."

Security had challenged this individual and photographed the ID he produced – a copy is at Appendix 1 which is not for publication please as it includes the individual's name, photograph and a date of birth (in 2003). Members will again form their own view as to whether this is a fake "of poor quality". In any event, once the assertion was made by the police that the male was under 18, he has not returned to the premises and the "intelligence" suggesting the contrary is simply wrong.

Regarding the conversation following the Pubwatch meeting on 19th August 2024, Mr Halabi will give his own evidence to the effect that following the earlier minor variation that included the condition that there be no admission after 3.30, he had spoken to the Police who had informally agreed that he could allow staff (that are personally known to him) from other local venues (specifically Saxo and My Bar that close at or shortly after 3 a.m.) late entry. Following the conversation on the 19th, Mr Halabi has made it clear to all such persons that they cannot come into the premises after 3.30 a.m. and this condition has been strictly adhered to.

There is then a further piece of "intelligence" that could not be verified and that relates to the allegation that nominals that had been excluded through the Pubwatch scheme had been allowed admission to Havana. Mr Halabi will give evidence that to the best of his knowledge, no such person has been admitted to the premises.

Before dealing with the two incidents that have led to this review, may I also deal with the alleged breaches of licence conditions (pages 14 and 15 of the Police Supplementary evidence)?

1. Condition 2.3 – Admission after 3:30. As mentioned above, this is admitted to the extent only that staff from other venues had been admitted. This practice has now ceased.
2. Condition 2.4 – Incident reporting etc. This is yet another example of uncorroborated "intelligence" but the allegation is strenuously denied. The Police have on a number of occasions requested sight of and copies of entries and have not found fault. If one takes for example the alleged stabbing in February 2024 (see above) this of course was not recorded because it didn't happen in Havana! I have myself examined the Incident Book and have to say that in my opinion, it has been much more faithfully completed than many others that I have seen.
3. Condition 2.11 – Drinking outside. The CCTV does indeed show staff decanting drinks into small plastic vessels as they are clearing the premises and encouraging customers to leave in an orderly fashion – as the CCTV shows, dispersal from the premises of those inside at 4.45 takes place gradually over a period of about 15 minutes. Decanting what is left of the drinks enables staff to remove glasses from customers and reduces the risk of those being taken outside. The footage from the camera covering the entrance does not appear to show anyone drinking outside.

4. Condition 2.13 – Dispersal Policy. This will be addressed in more detail in those parts of this submission which are not for publication but door staff are instructed to ask customers to leave quietly and to encourage them to disperse from the immediate area as quickly as possible. Further, Mr Halabi himself (as evidenced by the CCTV footage) assists in this and at all relevant times, a member of door staff is positioned just inside the entrance as required – this tiny area is not shown in the CCTV footage produced by the Police but specifically regarding the “September incident”, it can be seen that customers are indeed dispersed away from the “immediate area” – the issue here is how far the “immediate area” extends (of which more later).
5. Condition 3.2 – Noise from the premises shall not be audible at nearby residential premises..... This condition could perhaps have been better worded but has always been taken to mean noise from music within the premises. The mobile phone footage (videos 5, 6 and 7) does not in our view demonstrate that there is any nuisance from music noise emanating from the premises – indeed, in one of the videos, the loudest point is when one of the regular night service buses passes. Further, Video 4 shows people at the bus stop at 3.22 a.m. but there is no evidence to connect these persons with Havana.

I also note (in the “Conclusion” on page 17) the following:

“Whilst Dorset Police value the significance of each of the licensing objectives, concerns are heightened when there is a heightened risk of Violence Against Women & Girls (VAWG). Reducing VAWG is a key priority for Dorset Police and we are concerned that there are levels of VAWG offences associated with Havana which are higher than other similar-sized venues.”

No evidence has been adduced to support this assertion and the PI Chart on page 9 of the submission is not supported by any evidence (see above).

Finally for the moment, I will address the following (but more on that later as well):

“Communication followed between Local Councillors, the Neighbourhood Policing Team, residents and Local Authority partners which resulted in additional concerns being identified, such as late night ASB being associated with Havana and the use of NO2 gas canisters by people visiting Charminster Road in the early hours of the morning.”

It is, with respect, entirely wrong to reference “the use of NO2 gas canisters by people visiting Charminster Road in the early hours of the morning” (my emphasis) with Havana. Yet again, there is absolutely no evidence of any connection between Havana and the abuse of Nitrous Oxide by persons who may live in the locality or be passing through. Mr Halabi will again emphasise his absolute abhorrence of the use of any unlawful substance and his “zero tolerance” approach to drug use in his premises.

I now turn to what I choose to describe as the “trigger incidents” that led to the review.

The incident on 8th September 2024

I am not aware that this incident is the subject of any Police investigation and therefore do not know of any reason why the footage of this incident (Councillor Video 1) might be kept out of the public domain but that must be a matter for the sub-committee.

Mr Halabi will speak to this but in essence, a female customer had left the premises and was waiting at the bus stop when another female who had been drinking in the Dancing Jug approached her and a loud argument ensued. The first female refused to return to Havana and, frankly, there was nothing that could be done save that she was then barred from the premises and has not returned since.

One of the mobile camera videos (Video 2) suggests that this same female was involved in a later incident – Mr Halabi will give evidence that this is not the case and the female involved in the later incident was not the same person.

The incident “in the early hours of 22nd September 2024”

This incident actually occurred in the early hours of 21st September and as it remains a matter of criminal investigation/prosecution, the bulk of what follows should be redacted from any public document.

However, I believe that the following can be openly disclosed.

The Police rely on four pieces of CCTV footage. The first of those is from an internal camera in Havana. At the time of writing, the Police have not made it clear why they intend to rely on this (other than relying on it to show the decanting of drink into small plastic vessels – see above).

The next two are from an external camera at Havana covering the entrance.

All three of these were voluntarily provided by the premises to assist the Police.

The final footage comes from a camera on the Golden Supermarket further down Charminster Road where the alleged GBH took place. It is my understanding that this footage had been widely circulated on social media – a copy came into the possession of my client who passed the same to me and I in turn provided the Police with a copy, again to assist in their enquiries.

The point here is quite simply that the premises have done all that it can to assist the Police in their investigation and have not only done nothing to hinder the same but have gone beyond that in providing further information and evidence to assist. In this regard, it should be noted that this entire section of Charminster Road is covered by the Town Centre CCTV system yet none of the footage from that system has been produced in evidence.

Some of the other (mobile phone) footage (Video 2 and the very short clip at video 3) produced by other persons who have made representations appears to show part of

the same incident but this is apparently not being relied on by the Police who bring this application for review.

Finally, I have provided the police and the Licensing Authority with CCTV footage from other premises which captures part of the incident but for the moment at least, I consider that this footage should not be placed in the public domain. I do however intend to refer to it during the hearing.

Before embarking on a commentary of what happened, it seems to me that the issues here are the extent to which the holder of a Premises Licence can be held to be accountable for incidents that occur away from the premises themselves and after they have closed) and the duties of SIA registered door staff generally.

In that regard, I will be referring to sections of the Licensing Authority's current Statement of Licensing Policy – I have reproduced the relevant extracts at Appendix 2 and highlighted the more significant aspects of the wording in the hope that assists but in essence, my submissions will be that there is a difference between the Police interpretation of events and that of my client but that the premises did not fall short in terms of how the initial incidents or dispersal from the premises were dealt with, door staff cannot be legally required to deal with incidents occurring away from the premises (and might be acting unlawfully if they did so) and that the premises cannot be held accountable for the behaviour of customers once they have departed from the premises and are some distance away.

I have also taken a number of photographs of the locality which are in Appendix 4 – a separate document.

The following has been redacted due to the ongoing Police investigations

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Other matters

This has also been an unusual application in a number of other respects.

Firstly, there appears to have been something of a local campaign to encourage people to support the application – please see the letter reproduced at Appendix 3 which we understand was hand delivered to all local residents.

There is of course nothing wrong with that but the end result was a total of 10 representations (including two from local councillors) which is perhaps a surprisingly low number given the density of the local population and the number of people who live not just in the roads leading away from Charminster Road but in the flats all along the road itself.

Further (and again, this is not something that I have ever come across before), the Police assert that:

“There was significant interest from the public in the Application for Review and Dorset Police agreed to attend a meeting of residents at a local church hall, intended to allow residents to express any concerns that they have regarding the premises, seek reassurance and to ask any further questions that they might have regarding the Review process.”

Neither I nor my client were invited to take part in that meeting and despite have asked the police how many residents attended, the question remains unanswered.

Conclusion

Local residents are clearly concerned about what happens along Charminster Road late at night but the issue here is largely a matter of law.

Any decision the sub-committee makes will need to withstand the scrutiny of any possible appeal.

The Police who bring this application have adduced very little hard evidence in support of their application and, frankly, have embellished their “evidence” with allegations that can either simply not be corroborated or can demonstrably be proven to be wrong.

There will of course be pressure on the sub-committee to be seen to be “doing something” in the light of the representations from local residents and two of their councillors.

The conditions attaching to the current licence are thorough and (to quote the Police) “robust” but we would not be averse to agreeing a proposal by the police that there be

“a requirement for a Personal Licence Holder to be always present at the premises when licensable activities are taking place and that additional SIA staff are to be employed with an emphasis on ensuring that they reduce the impact of this premises on residents nearby and diffuse confrontation emanating from the premises” although I would be concerned to ensure that the wording of the latter part was clear and did not impose a requirement or duty on Door Staff to go beyond their legal powers.

Reducing the operational hours of the Premises would be effectively the same as determining to revoke the licence as the premises would not be financially sustainable – inspection of the Incident Book confirms that virtually no customers frequent the premises before midnight.

Removing the DPS would not be justified given the absence of evidence that there has been any significant failure on his part and suspension of the licence would simply be a punitive measure (which is indeed permitted but in terms of breaches of licence conditions, the appropriate action is prosecution).

Mr Halabi will tell you quite frankly that he is at a time of his life when he would appreciate a quiet retirement. He would ideally like to sell the business to his manager but with the threat of the review, that is simply not possible because no-one will lend money.

As an alternative, he would like to convert the first floor to residential accommodation and maybe let the ground floor for some retail to other business use.

Both of these options will take time and money.

Mr Halabi is and has been a responsible operator and finds himself in difficult circumstances but be that as it may, members are reminded (again) that their decision on this case needs to be evidenced based and capable of withstanding any appeal.

I there for invite the sub-committee to take no action (because the evidence does not support any other course) other than to attach the conditions referred to above.

Philp Day
Consultant Solicitor, Lacey's Solicitor LLP
9 Poole Road
Bournemouth BH2 5QR
01202 377687
p.day@laceysolicitors.co.uk

Appendix 1 – NOT FOR PUBLICATION

This is a photograph taken by security staff of the allegedly fake Citizen Card.

Photo redacted

Appendix 2 – Relevant extracts from BCP’s current Statement of Licensing Policy with parts highlighted by me.

8.4 Licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the 2003 Act. Conditions attached to various authorisations **will be focused on matters which are within the control of individual licence holders** and others with relevant authorisations, i.e. relevant to the premises and its vicinity.

8.5 **Whether or not incidents can be regarded as being "in the vicinity" of licensed premises is a question of fact** and will depend on the particular circumstances of the case. In cases of dispute, the question will ultimately be decided by the courts. In addressing this matter, the Licensing Authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working, or engaged in normal activity in the area concerned.

8.6 Licensing law is not the primary mechanism for the general control of nuisance and antisocial behaviour by individuals **once they are away from the licensed premises and, therefore, beyond the direct control** of the individual, club or business holding the licence, certificate or authorisation concerned. Nonetheless, it is a key aspect of such control and licensing law will always be part of the overall approach to the management of the day time, evening and night-time economy within the conurbation.

10.1 **Once away from the licensed premises, a minority of customers may behave badly and unlawfully. Other mechanisms exist both within and outside the licensing regime that are available for addressing such issues.** For example

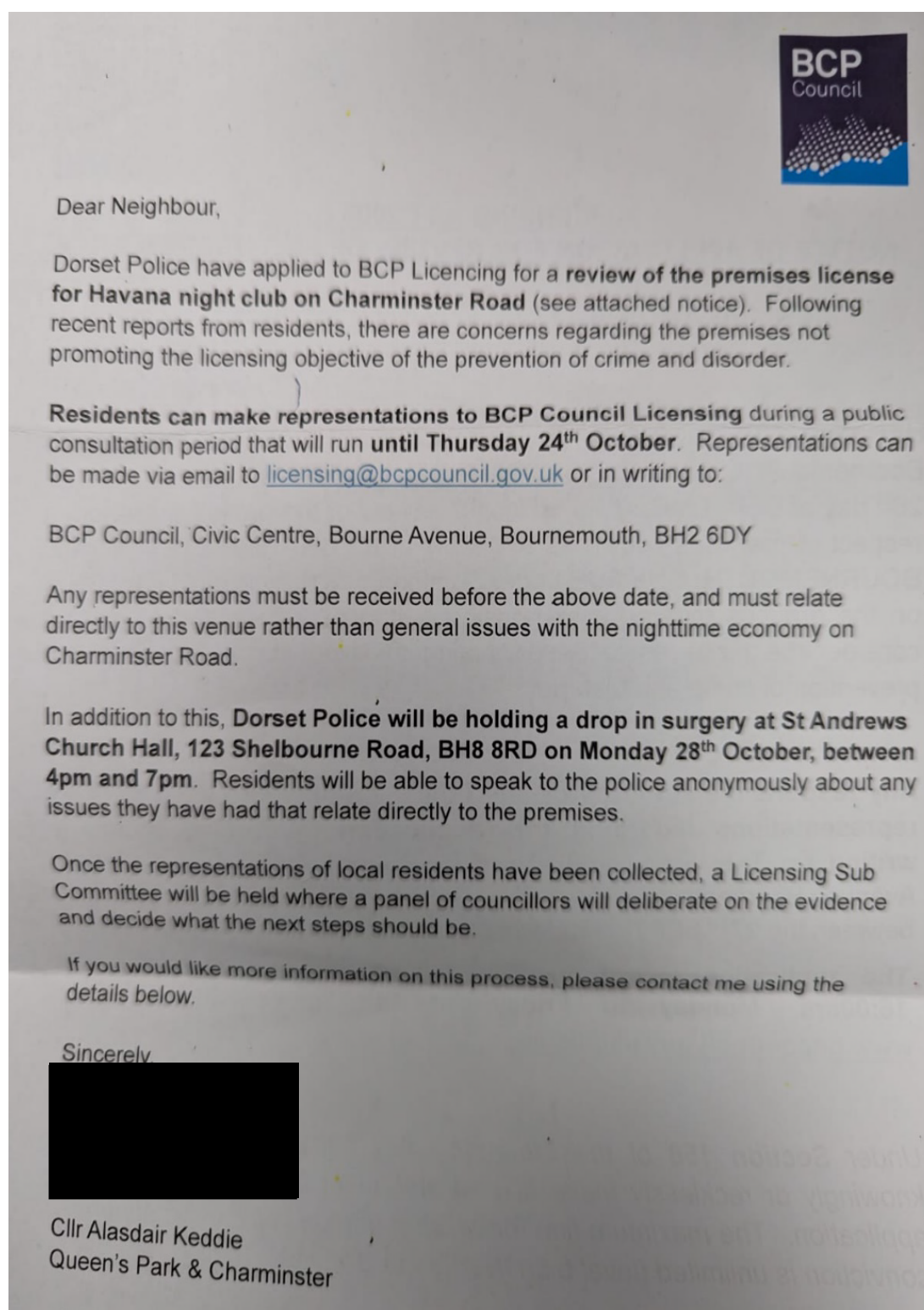
- Planning control
- Positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority, including Best Bar None, Pub Watch or BIDs
- Community Alcohol Partnership Scheme (CAP)
- Community Protection Notices
- The provision of CCTV surveillance in town centres, taxi ranks, street cleaning and litter patrols
- Powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly
- A Public Spaces Protection Order
- The confiscation of alcohol from adults and children in designated areas
- Police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices
- A prosecution for the offence of selling alcohol to a person who is drunk (or allowing such a sale)
- Closure Notices and Closure Orders
- The power of the police, other responsible authorities or other persons to seek a review of a licence or certificate
- Raising a contribution to policing the late night economy through the Late Night Levy and Early Morning Alcohol Restriction Orders

14.8 Applicants should make provision to ensure that premises users safely leave their premises. Measures that may assist include;

- Providing information on the premises of local licensed taxi companies who can provide transportation home
- Ensuring adequate lighting outside the premises, particularly on paths leading to and from the premises and in car parks

14.16 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour are accountable for their own actions. However, it is considered perfectly reasonable for the Licensing Committee to impose a condition, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of other external areas, and to respect the rights of people living nearby to a peaceful night.

Appendix 3 – Letter circulated to Local Residents



Appendix 4 – Photographs – separate document

HAVANA AND CHARMINSTER ROAD



Saxo and Havana – not the alley



View from Havana across the road



Looking down Charminster Rd
ATM is on the left out of shot



Havana on the left – note location of
bus shelter



Just Eat then Shisha bars
open 24 hrs during Ramadan



Champions



My Bar



Golden Supermarket



Golden Supermarket – note the outside seating



Alley leading to rear of My Bar etc



Looking towards the Dancing Jug



Photograph taken by Mr Halabi at 4.47 a.m. on 2nd November 2024



Photograph taken by Mr Halabi at 5.34 a.m.

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