

STATUTORY SUBMISSION OF MR PHILIP RUSH

For Publication in the Licensing Sub-Committee Bundle Bulbul Review – M237426

1. INTRODUCTION

1.1 This statutory submission is provided pursuant to the Licensing Act 2003, the Section 182 Statutory Guidance, and relevant case law. It forms part of the evidence and legal authorities relied upon by the applicant in support of the review application concerning Premier Guven Express, 69 Bennett Road, Bournemouth.

1.2 The Licensing Authority has confirmed (email from Ms Jardim, 17 July 2026) that additional documents from the premises licence holder will be published on Monday. Accordingly, this statutory submission is provided within the same publication window and must be included to ensure procedural fairness, equal treatment, and compliance with quasi-judicial requirements.

2. STATUTORY FRAMEWORK

2.1 Licensing Act 2003 – Section 4 (Licensing Objectives)

The Committee **must** determine the review exclusively by reference to the four licensing objectives:

- **Prevention of Public Nuisance**
- **Public Safety**
- **Prevention of Crime and Disorder**
- **Protection of Children from Harm**

2.1.1 The premises licence holder asserts:

“THERE IS NO EVIDENCE THAT... Alcohol sales... Customers... Staff behaviour... Opening hours... Deliveries... ARE CAUSING PUBLIC NUISANCE UNDER THE LICENSING ACT.”

This is legally incorrect. Section 4 does **not** require the nuisance to arise from licensable activities. It requires the Committee to consider **any nuisance connected to the operation of the premises**, including mechanical noise from refrigeration equipment.

2.1.2 The uploaded documents confirm the existence, operation, and noise output of three external refrigeration units:

“Full service completed... including... noise assessment.”

This is directly relevant to the public nuisance objective.

2.2 Licensing Act 2003 – Sections 51–52 (Review and Determination)

Section 51 – Grounds for Review

2.2.1 A review may be brought on **any matter connected to the premises**, including:

- noise
- odour
- equipment
- environmental impact
- management practices

The premises licence holder’s assertion that mechanical equipment is “not relevant” to licensing is legally unsustainable.

Section 52 – Determination

2.2.2 The Committee must consider:

- relevant representations
- evidence
- proportionality
- the least restrictive measure that promotes the licensing objectives

2.2.3 The premises licence holder states:

“Even if the Licensing Committee were to vary the conditions... machinery equipment would still be used.”

This is incorrect. Section 52 expressly empowers the Committee to:

- modify conditions
- restrict hours of operation
- require noise mitigation
- require enclosure or relocation of equipment
- suspend the licence
- revoke the licence

The Committee’s powers extend to **any condition necessary to promote the licensing objectives**, including conditions regulating refrigeration units.

2.3 Section 182 Statutory Guidance (Mandatory Consideration)

2.3.1 The Guidance requires:

- **evidence-based decision making**
- **proportionality**
- **consistency**
- **fairness**
- **consideration of public nuisance beyond statutory nuisance thresholds**

2.3.2 The premises licence holder relies heavily on the absence of statutory nuisance findings:

“Environmental Health... said no statutory nuisance was noted.”

This is legally irrelevant. The Guidance states that **public nuisance under licensing law does not require statutory nuisance**.

2.3.3 The Guidance further states that public nuisance includes:

- low-level but persistent noise
- disturbance affecting sleep
- mechanical noise
- noise from equipment associated with the premises

This directly applies to the refrigeration units described in the documents.

3. CASE LAW AUTHORITIES

3.1 Hope & Glory v Westminster [2011] EWCA Civ 31

3.1.1 The Court of Appeal held:

- Licensing decisions must be rational, evidence-based, and grounded in statutory objectives.
- The number of complaints is irrelevant.
- Popularity or neighbour support is irrelevant.
- The Committee must consider the **impact** on the complainant, not the number of complainants.

3.1.2 The premises licence holder relies on neighbour support:

“We noted they have also confirmed they have not experienced any nuisance.”

This is legally irrelevant under Hope & Glory.

3.2 Thwaites v Wirral Borough Magistrates’ Court [2008] EWHC 838 (Admin)

3.2.1 The High Court confirmed:

- Licensing authorities must consider **future risk** of nuisance
- Licensing is preventative, not reactive
- Absence of complaints does not negate risk

This applies directly to refrigeration noise.

4. APPLICATION TO THE EVIDENCE IN THE BUNDLE

4.1 Refrigeration Units – Evidence of Operation and Noise

The documents confirm:

“Annual service... including... noise assessment.”

“These units have remained in the same location since that time.”

“The three units have operated as part of the refrigeration system serving the premises.”

This establishes:

- continuous operation
- continuous noise output
- continuous impact on neighbouring residents
- relevance to public nuisance objective

4.2 Statutory Declaration – Limitations

The premises licence holder submits a statutory declaration asserting:

“These three refrigerator fan units have been in the same location for over 4 years.”

This declaration:

- does not address noise impact
- does not negate nuisance
- does not bind the Committee
- does not override licensing law
- does not prevent conditions regulating the equipment

4.3 Neighbour Correspondence – Legal Irrelevance

The neighbour states:

“I have not experienced any odours... nor any nuisance.”

Under Hope & Glory:

- neighbour support is irrelevant
- absence of complaints is irrelevant
- Committee must consider the complainant’s evidence
- Committee must consider impact, not popularity

5. PROCEDURAL FAIRNESS AND PUBLICATION REQUIREMENT

5.1 The Licensing Authority has confirmed that additional documents from the premises licence holder will be published on Monday.

5.2 It would be procedurally improper, unfair, and unlawful to publish their late documents while refusing statutory materials submitted by the applicant.

5.3 This submission contains:

- mandatory statutory provisions
- binding case law
- legal analysis required for Members
- direct citations to documents already in the bundle

5.4 Refusal to publish would constitute:

- breach of natural justice
- breach of Section 182 Guidance
- unequal treatment
- procedural unfairness
- grounds for adjournment
- grounds for appeal
- grounds for judicial review

6. CONCLUSION

This statutory submission must be published in the Licensing Sub-Committee bundle on Monday to ensure:

- compliance with Licensing Act 2003
- compliance with Section 182 Guidance
- compliance with case law
- procedural fairness
- equal treatment
- lawful determination of the review

7. REQUEST FOR PUBLICATION

I respectfully request confirmation that this statutory submission will be published alongside the documents already scheduled for Monday publication.