



**Democratic Services**

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Our Ref: Distrikt DL final hg  
Your Ref:

30 July 2009

**APPLICATION FOR THE GRANT OF A PREMISES LICENCE: "DISTRIKT" LOWER GROUND FLOOR, 7 DUNCAN STREET, LEEDS, LS1 6DQ**

On the 23<sup>rd</sup> March 2009 the Licensing Sub-Committee heard an application brought by Mr Jonathon Simons, Flat 4, 8 Grove Road, Headingley, Leeds, LS6 2AQ and Mr Peter Hall, 22c Shire Oak Road, Headingley, Leeds, LS6 2DE for the grant of a premises licence in respect of the premises known as "Distrikt" Lower Ground Floor, 7 Duncan Street, Leeds, LS1 6DQ.

The applicant sought the following:

**Proposed Licensable Activities**

Provision of Live Music; Recorded Music; Performance of Dance; anything of a similar Description to live/recorded music or performance of dance; Provision of Facilities for making Music; Provision of Facilities for Dancing; provision of Facilities for Entertainments of a Similar Description to making music and/or dancing; and Supply of alcohol for consumption both on and off the premises

Monday to Saturday	08:00 hours until 02:00 hours
Sunday	08:00 hours until 01:00 hours

**Late Night Refreshment**

Monday to Saturday	23:00 hours until 02:00 hours
Sunday	23:00 hours until 01:00 hours

**Non standard Timings and Seasonal Variations**

- A further two hours from 02:00 hours to 04:00 hours every Friday, Saturday
- A further three hours from 01:00 hours to 04:00 hours for each May Bank Holiday, Spring/Whitsun Bank Holiday, every August Bank holiday and also for every Thursday, Friday, Saturday, Sunday and Monday of the Easter Bank Holiday weekend.

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- A further three hours every Christmas Eve and Boxing Day.
- An additional hour to the standard and non standard times on the day British Summertime begins.
- To extend the permitted hours from New Year's Eve to the end on New Year's Day.

### **Proposed Times that the Premises will be Open to the Public**

Monday to Saturday	08:00 hours to 02:30 hours
Sunday	08:00 hours to 01:30 hours

The Sub-Committee noted the applicant had reached agreement with the responsible authorities over measures proposed by them to address the licensing objectives as follows:

#### **West Yorkshire Police (WYP):**

- 1) A fixed number of covers, not including the proposed fixed seating in the alcoves, will be maintained where the sale of alcohol will be ancillary to a table meal.

WYP were unable to determine how many covers should be maintained as the applicants were not aware of the size of the proposed tables and chairs and how many would fit into the finished floor space. WYP therefore asked that, should an agreement be reached and the premises licence be granted, the licence should be withheld until a final inspection where agreement could be reached on the number of covers to be maintained.

- 2) The DPS shall maintain an Incident Report Register within which staff must record any incident which has occurred on the premises. The incident report Register must be on the premises for a period of one year, taken from the date of the last entry, and include the following:
  - Consecutively numbered pages
  - The date and time of any incident
  - The nature of the incident
  - The full name/s of staff involved including the badge numbers of any door staff and to whom the incident was reported, including the names and numbers of any police officers who attended the scene of the incident and details of any witness/esIncident Report Registers shall be produced for immediate inspection on request by any police officer or licensing enforcement officer from Leeds City Council
- 3) Adopt the Check 21 Proof of Age scheme in accordance with guidance issued by West Yorkshire Police.
- 4) Participate in a local pubwatch scheme or licensing association (where one exists) that is recognised by West Yorkshire Police
- 5) Where SIA doorstaff are employed a door staff register is to be maintained. This must be retained on the premises for a period of one year, taken from the date of the last entry, and include the following:
  - Consecutively numbered pages
  - The SIA badge number and full name of each registered person on duty
  - The date and time that he/she commenced that period of duty with a signed acknowledgement by that person
  - The time at which he/she finished duty with a signed acknowledgement by that person.These registers shall be produced for immediate inspection on request by any official of the SIA, Police or Licensing Authority.

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- 6) Operate an effective CCTV system to be maintained in accordance with guidelines issued by West Yorkshire Police:
  - a. CCTV footage to be retained for a period of at least 31 days
  - b. Downloaded footage to be made available immediately on request of a police officer or council licensing enforcement officer.
  - c. The quality of image to be of a standard acceptable in a court of law.

### **LCC Health and Safety Services**

1. Electrical installations will be inspected on a periodic basis (at least every 3 years or at a frequency specified in writing) by a suitably qualified and competent person. If used, any temporary electrical wiring and distributions will also be inspected. Inspection records and certificates will be kept. These will be made available at the request of an authorised officer.
2. A suitably trained and competent person must ensure regular safety checks of the premises including decorative and functional fixtures, floor surfaces and equipment (including electrical appliances) to which the public may come into contact are undertaken. Records of these safety checks must be kept and made available for inspection by an authorised officer.
3. Adequate and appropriate First Aid equipment and materials will be available on the premises.

### **LCC Environmental Protection Team**

1. Ensure that no nuisance is caused by noise or vibration emanating from the premises.
2. Noise from the premises shall be inaudible at the nearest noise sensitive premises (i) after 23:00 hours and (ii) at any time when entertainment, as defined by paragraph 2 of schedule 1 of the Licensing Act 2003, takes place on more than 30 occasions per year.
3. Ensure that the rating level of noise from plant machinery is no higher than 5dB below the lowest background level at the most affected noise sensitive premises during the operation of the plant. Plant and machinery shall be regularly serviced and maintained to continue to meet the rating level.
4. Clear and legible notices shall be displayed at exits and other circulatory areas requesting patrons to leave the premises having regard to the needs of local residents, in particular emphasising the need to refrain from shouting, slamming car doors, sounding horns and loud use of vehicle stereos and anti-social behaviour. The activity of persons leaving the premises shall be monitored and they shall be reminded to leave quietly where necessary.
5. Ensure that the premises are operated so as to prevent the emission of odours which are a nuisance at nearby premises or to persons in the immediate area.
6. Ensure that business waste is stored inside close containers awaiting collection; that litter arising from people using the premises is cleared away regularly; that promotional materials such as flyers do not create litter, and that other street advertising is carried out lawfully.

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The above proposed measures could be placed on the Premises Licence should it be granted. This letter represents the formal decision of the Sub-Committee in respect of the application.

### **Preliminary Procedural Issues**

The Sub-Committee considered preliminary matters of a purely procedural nature. There were no declarations of interest made. The Sub-Committee agreed the procedure for the hearing would be varied to allow each party 20 minutes each to make their representations and the time could be extended if required. The Sub-Committee then decided to exclude the public from that part of the meeting where Members would deliberate on the application as presented. This would allow them to have a full and frank discussion on all matters put before them and this fact outweighed the public interest in not doing so.

Prior to the hearing that Sub-Committee had considered the Licensing Officers report which included a copy of the application as submitted. The report also included written representations received from Mr. Jerome Thompson, Sally Haigh, Daniel Jones and Lyndsey Vyse. The Sub-Committee also noted that Mr. Thompson had submitted further information prior to the hearing and the applicant had also submitted a revised noise report

The Sub-Committee then went on to consider the application

### **The Hearing**

The following interested parties attended the hearing:

- Mr Peter Hall, applicant
- Mr Jonathon Simons, applicant
- Mr McCombie, solicitor for the applicant
- Mr Jeremy Thompson, objector

In determining the application the Sub-Committee took into account the written submissions from the responsible authorities contained within the report and the Notices of Hearing. These had been circulated to the parties prior to the hearing. After considering the evidence and submissions the Sub-Committee would need to satisfy itself that granting the variation would promote the licensing objectives.

In reaching its decision, the Sub-Committee had regard to the provisions of the Licensing Act 2003, guidance under Section 182 of that Act and the council's own Licensing Policy.

In particular the Sub-Committee took into account Sections 17 & 18 of the Act because these were the most relevant to the application and Chapter 2 of the Guidance relating to the prevention of crime and disorder, public nuisance and public safety.

The Sub-Committee then went on to consider the following sections of the Licensing Policy as the Sub-Committee took the view that these paragraphs had a bearing on the applications:

- Section 6 General Principles
- Section 7 Cumulative Impact Policies
- Section 12 Promotion of the Licensing Objectives

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In relation to Cumulative Impact Policy, the Sub-Committee noted the premise was located within Area 1 of the Cumulative Impact Policy. Particular attention was given to this policy which stated: *'It is the Council's policy on receipt of relevant representations to refuse applications in Area 1 for night clubs and for pubs which are characterised as large capacity vertical drinking premises (sometimes called high volume vertical drinking establishments) which are premises with large capacity used primarily or exclusively for the sale or consumption of alcohol, and which have little or no seating for patrons.'*

### **Objectors**

The Sub-Committee first considered representations made by Mr Jeremy Thompson, a local business owner. Mr Thompson informed Members that he had covered the reasons for his objections to the application in his original letter and the additional information which he had submitted. Members noted that Mr Thompson had attended the hearing to answer any of their questions. Mr Thompson urged the Sub-Committee not to waste time by granting the application, only to grant an application to Review the Premises Licence as he believed the conditions would not be met.

In relation to the smoking area, Mr Thompson made representations regarding the location of the smoking shelter on the façade of the premises. However the Sub-Committee were aware that the smoking shelter was proposed to be located on a gate. Mr Thompson stated he had not been aware of this at the time he had made his objection.

### **Applicant**

As there were no outstanding representations from responsible authorities or no other objectors present the Sub-Committee then considered the representations made on behalf of the applicant by Mr McCombie who stated the proposed premises aimed to contribute to the improvement of the reputation of Leeds as a cultural centre. It was not intended that the premises would detract from those living and working in Leeds. The proposed use of the basement at 7 Duncan Street would enhance the live music and dancing provision for those living and working in Leeds. He confirmed the premises would not be a vertical drinking establishment where customers were packed in and encouraged to buy cheap alcohol. Those venues were not the type of premises which should be granted a premises licence; especially not in Area 1 of the Cumulative Impact Policy (CIP) area. The applicants would not have invested £150,000 in the premises if they had felt they could not have achieved the requirements of the CIP Area 1.

Mr McCombie stated the applicants had carefully considered the Licensing Objectives when making this application. In relation to the protection of children from harm he reported that no children would be allowed on the premises. The only impact the premise would have, was on those children walking past. Patrons entering the premises would also be required to produce identification as proof of age.

In relation to the prevention of crime and disorder Mr McCombie stated he felt the proposed premises would further prevention and not add to crime and disorder. He referred to the photograph provided by Mr Thompson in his additional letter of the entrance to the premises and explained the bins shown would be moved to a location behind the gate. This had the support of the landlord of the premises, Allied Associates acting on behalf of George Storey.

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Mr Thompson had noted that crime took place in this bin area however Mr McCombie felt this would be solved with the grant of the premises licence as the applicants intended to provide a security guard and CCTV to monitor the alleyway. The doorstaff would be fully trained and the CCTV would also cover the inside of the premises. With regard to public safety the applicant would ensure that no one was put at risk whilst at the premises from problems such as crowding inside the premises and at the entrance. The applicant had employed a reputable company - Protect Security - to provide doorstaff and the applicant had also agreed to comply with relevant schemes and to liaise with Leeds City Council, responsible authorities and other interested parties.

Mr McCombie asked the Sub-Committee to take into consideration a number of factors in considering the application. The style of operation of the premises was to be low key with live music which would mostly be acoustic music and not heavy dance music. The marketing plan of the premises was included on pages 55 to 56 of the Licensing Officers report. The premise was targeted at local professionals and not students. This locality was very popular with local professionals and there was a strong need for a quality institution in the area. The applicant hoped to build up brand loyalty for the premises and regular customers.

The local Fire Officer had provided a fire certificate which stated that the maximum capacity of the premises was 200 however the applicant had reduced this to 150 to be able to manage the premises and to ensure that the premises operated as it was intended.

The seated area within the premises was proposed to be a combination of fixed and loose seating. The menu of the premises (pages 57-59 of the Licensing Officers report) contained a wide variety of style of food from Italian to traditional Yorkshire food. Members' attention was brought to the fact that some of the dishes were expensive and that two reputable chefs had been employed. The applicant did not intend to provide a burger in a bun to get around the requirements of the CIP. Again Mr McCombie reiterated that the premises would not be a vertical drinking establishment. The applicant understood the caution and concerns expressed by Mr Thompson especially in regard to the 11 flats above the Yorkshire Bank building. Mr Hall and Mr Simons had both given assurances to those residents that the premises would not have a negative impact on them. The planning permission which had been granted for the premises required that the odour control extractor and the air conditioning units were very quiet and would ensure that the noise that they produced would be below the ambient noise level of the street.

The applicants had instructed a sound specialist to advise them on the premises and the work required. As part of the noise report the specialist had placed microphones on the street at 01:50 hours and 03:30 hours. The lowest level of noise from the street was 53 dB and the loudest level was 63dB. The report gave examples of what the average decibel level of a conversation was to assist Members. The smoking shelter would be made from materials such as polycarbonate and shaped to decrease the noise of smokers by 10 dB and to prevent any disturbance to local residents. The shelter would also be attached to the gate and not to the façade of the premises as Mr. Thompson had suggested. Security staff employed at the premises would ensure that smokers were restricted to the smoking shelter and in the unlikely event that more than 20 people wished to smoke at one time; they would be asked to smoke away from the premises. CCTV would also cover this area and along with the security staff the alleyway would become safer than the existing arrangements.

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In relation to sound from within the premises there were small high level windows in the basement which had been measured as having a dampening effect on noise. There was a shop above the premises that also contributed to the dampening which would be in total 75 dB. As this was the case Mr McCombie stated that noise from the premises would not affect the flats which Mr Thompson had proposed to build. Mr Thompson had also raised queries about the pillars at the premises and that these may contribute to the transfer of noise to the proposed flats. The noise report had also checked these pillars however no concerns had been raised in the report. Mr McCombie was certain the applicants would address any problems associated with the pillars. Fire safety doors were to be installed which had a higher dampening level of 50 dB compared to the usual 25 dB. Speakers inside the premises were to be located in a way to prevent noise breakout and a noise limiter was also to be installed which would cut off anything played through the sound system if it was measured to be over 90 dB. However, even if there was a loud level of noise produced, it would be affected by the various dampening controls at the premises.

Mr McCombie went on to address the objections which had been raised by Mr Thompson in his representations. With regard to the 11 flats, he stated they would not be adversely affected as there would be no noise breakout from the premises. The ventilation requirements for the premises would also not impact on the proposed flats as this would be installed in such a way as to ensure that any noise produced by the equipment would not be above the ambient noise level of the street. The public would no longer be able to urinate in the lane as there would be door staff present in that location when the premise was open to monitor the area. Mr Thompson had commented that the number of drinking establishments in the area was sufficient however Mr McCombie was aware that some of the local drinking establishments were closing down. The proposed premise would be a good quality establishment which the area currently lacked. A comment had been made that there were other empty premises in the area which could be used instead of this location. The Sub-Committee was advised that this may have been the case however this proposed location was the preferred site of the applicant.

The following points raised by Mr Thompson were addressed by Mr McCombie:

- The premise would have fixed seating for more people than could be accommodated for standing and also menus would be placed on all tables.
- Whilst the premise would have Live Music until late, the reduced capacity of the premise and the fact that no noise breakout from the premises would be conditioned, addressed concerns about live music
- Concern had also been raised regarding the need for security. Mr McCombie responded that the security staff were a benefit to the premises and would not act to deter customers.
- The objection stated the applicants were inexperienced. Mr McCombie responded that both the applicants had a wide range of experience of working in the licensed trade in both Leeds and London.
- The windows on to the main street would be sealed to ensure noise would not escape from the premises which was above the ambient level of the street.
- Mr Thompson had suggested that the doors would not be closed as had been proposed in the application. Mr McCombie replied that the applicant had not made any promises which they could not keep and that Mr Thompson had no evidence to suggest the applicants would not adhere to the premises licence conditions
- The proposed drugs and weapons search was proper and correct
- The venue proposals had met with the approval of the Disabled Access Group

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- Comment had been made that this was the wrong area for this venue, but Mr McCombie did not agree, however if this was the case then the venue would go out of business. He confirmed that the space was suitable for a retail unit, however no retail interest had been shown

In response to comments and questions from the Sub Committee Mr McCombie provided the following additional information:

- There was no intention to provide adult entertainment nor gambling at the venue. The venue would not be open to children.
- Customers would be searched and door staff provided with search equipment if necessary. Not all customers would be searched but the doorstaff team would operate a similar regime to that used at the Wardrobe venue
- He expected the premises to attract passers by and eventually more customers through its reputation
- He had advised the applicants to seek sale and supply of alcohol both on and off the premises to facilitate those customers who bought a bottle of wine but did not finish it. The cork could be provided for them to take it away with them. It was not the intention to operate the premise as an off-licence. The 08:00 opening hour had been requested in order to serve breakfasts
- The smoking area would accommodate up to 20 persons, and would be monitored by SIA registered doorstaff to ensure that number was not exceeded and to monitor area
- The premises was intended to be low key, but as it was also to be a late night live music venue, doorstaff would be provided as a preventative measure. Dancing had been requested to facilitate those customers who wished to dance to the live music. It was not the intention to clear away tables once food had stopped being served
- The applicants anticipated comedy nights, jazz nights and entertainment provided by the College of Music. The premises had a 1400 sq ft area of which approximately 10 sq ft would be clear for a dance floor. The remainder was earmarked for a fixed seating/table area, the bar, kitchens, toilets and a clear area for standing at the bar
- Photographs were tabled to all present, which indicated a closed fire escape. Mr McCombie reported this was not the premise to be known as Distrikt, but another closed premises. Furthermore, the proposed canopy would not obstruct the fire exit. The rear fire exit from Distrikt led onto a wide street and this access had been approved by the Fire Officer. Mr McCombie noted the comments about the service area and explained the bins had not been removed as they should have, this area was also used as a smoking area by chefs from other adjacent establishments
- Confirmed the premises would not operate beyond the existing planning permission hours.

Members expressed their reservations about the operation of the premises after 23:00 hours once the restaurant element of the venue had closed and whether the premise would change into another type of night time venue, particularly with regard to the “off-sales” and the impact this would have on the locality.

In response, the applicant offered to withdraw the request for off-sales and went onto confirm that there was no licensed area outside the premises, therefore no external drinking would be permitted, even in the smoking area. Mr McCombie acknowledged the reasoning behind CIP Area 1, and the presumption against granting any new licences for premises which were felt to be vertical drinking establishments. However this was not to be a night club. He appreciated their concern that this may become a nightclub in the future, however he drew



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Members attention to the fixed seating area to the centre of the premises which would prevent that occurrence. He agreed there was a 150 capacity but the premise was not primarily concerned with the sale of alcohol, mainly with the restaurant and music. Alcohol consumption would be incidental to this. Menus would always be on display on the tables, and although the kitchen may appear small on the plans, it was very well equipped and it was staggering how food could be produced in large quantities from small kitchens. No food or alcohol would be allowed off the premises. The applicants wished to turn this into a respectable area with their investment, CCTV and doorstaff would be in situ and would contribute to the area with a balance of residential and business community there to use it.

Members turned again to the capacity and calculations for seating. Mr McCombie explained the noise report referred to a capacity of 200, however the applicant stated the maximum would be 150 – and expected only to achieve this at standing room for live music events or performances. The performance area was not a raised a platform and would be used during the day as further restaurant area. The DJ station would be situated there, and DJ entertainment was intended on those nights when there was no live music performance.

Members commented again on the size of the kitchen being capable of providing food orders for the numbers of tables/seats anticipated to be filled. Mr McCombie replied that the kitchen was compact and divided into workstations, the bar, kitchen and basement were very close together and platters could be accommodated through the serving hatch.

Turning to the issue of unisex toilets, Mr McCombie said the urinal area would be separate from the cubicles and this had been approved by Health and Safety visit this week.

It was noted the premises would not be able to operate the proposed “non standard timings” without the relevant planning permission and that currently the planning hours would only permit opening until 23:00 hours. The Sub Committee was reminded that the planning hours were not relevant matters in terms of the Licensing Act 2003.

Members afforded Mr Thompson the opportunity to sum up and he stated that he had heard nothing new in this evidence from that presented at the initial hearing on 11 April 2009 (when the application was withdrawn). He stated it was debatable whether the premises would operate as a restaurant before 23:00 hours. He reminded Members of his main concerns including:

- The business and residential tenants he had spoken to were not happy with this proposal
- The description of the area as a “hotspot” had not been invented
- Sound did penetrate through doors, even more so if customers did not shut the door after them
- The proposed residential flats would only be 12-15 feet from this venue, although no planning permission had been submitted yet
- The bins were managed on behalf of the Storey Group – and they were failing to manage them, even if they did, the future could mean 9 or 10 bins in this small area.

Mr McCombie denied this, stating the bins would be kept to the left of the area shown. Mr McCombie then summed up stating the applicant had addressed the regulations, and had dealt with comments which were relevant to this premises regarding the pillars, the canopy to the gates, and the photographs. Comments relating to the bins and parking to the side of Mr Thompson’s building would involve the users of that building, not the Distrikt.

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## The Decision

The Sub-Committee discussed the application in a closed session. Members considered the application of Mr Peter Hall and Mr Jonathan Simons for a premises licence in respect of Distrikt, 7 Duncan Street, Leeds and have heard from Mr McCombie on their behalf. They have also noted the agreements reached with the responsible authorities and the representations of members of the public, and have heard from Mr Thompson.

The Sub Committee firstly considered whether the premises were likely to be a vertical drinking establishment under the terms of the licensing authorities Cumulative Impact Policy. Members were of the view that in those premises with a capacity of 200 and without the provision of seating the premises could be so categorised. However it was noted the applicant has said that the capacity is to be 150 and that 52 covers will be provided for the use of diners. Under those circumstances the Sub Committee determined that the premises would not be a vertical drinking establishment and therefore the Cumulative Impact Policy would not apply.

A premises license is granted subject to the conditions agreed with West Yorkshire Police, the LCC Environmental Health Services and LCC Health and Safety department being incorporated into the operating schedule.

The following conditions are also imposed:

1. There shall be no off-sales;
2. The capacity of the premises shall be 150;
3. It is noted that the agreement with the police included a condition that a fixed number of covers, not including the fixed seating in the alcoves, will be maintained where the sale of alcohol will be ancillary to a table meal. The Panel have fixed this number at 52 including the alcove seating in accordance with the plan dated December 2008. The Panel have therefore added a condition that 52 covers be provided until 11 pm for the exclusive use of consumers of a substantive meal and that only persons consuming such a meal at those tables shall be served with alcohol as ancillary to a table meal;
4. The licensable activities be restricted to 00:00 midnight Monday to Sunday and the premises shall close at 00:30 hours;
5. There shall be no additional times for seasonal variations.

With regard to noise outbreak the Panel have taken into account the conditions agreed with the council's environmental health department in respect of noise and vibration.

These conditions are to further the licensing objectives.

In making its decision the Sub-Committee was satisfied that the grant of the licence with the imposed conditions was in line with the Council's own Licensing Policy and the provisions of the Licensing Act 2003.

There is a right of appeal to the Magistrates Court should you be dissatisfied with the decision made by the Sub Committee. You must make this appeal within 21 days of this letter reaching you.

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Appeals should be addressed to the Magistrates Court at:

Clerk to the Justices

Leeds Magistrates Court

Westgate

Leeds

LS1 3JP

and accompanied by a copy of this decision letter and the court fee of £400.00 if you are the premises licence holder and £200.00 for all other parties. Cheques should be made payable to HMCS.

Yours sincerely

**Laura Pilgrim**  
**Governance Services Officer**