

# **REPORT FOR: LICENSING PANEL**

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**Date:** 13 December 2016

**Subject:** Application for review of the premises licence for The Shaftesbury, 3 Shaftesbury Parade, Shaftesbury Avenue, South Harrow, Middlesex HA2 0AJ

**Responsible Officer:** Tom McCourt - Corporate Director – Community Directorate

**Exempt:** No

**Enclosures:** Application for review (appendix 1)  
Image and location map (appendix 2)  
Current premises licence and plan (appendix 3)  
Representation by licensing authority (appendix 4)  
Representation by another person (appendix 5)  
Exhibits AW 1-5

## **Section 1 – Summary**

An application has been received from the Metropolitan Police Service to review the premises licence of The Shaftesbury, 3 Shaftesbury Parade, Shaftesbury Avenue, South Harrow HA2 0AJ on the grounds of the prevention of crime and disorder, public safety, and prevention of public nuisance.

## Representations received

From	Representations details
The Planning Authority	No representations received
Health & Safety	No representations received
Environmental Health Authority (Pollution and environmental enforcement)	No representations
Trading Standards	No representations
Area Child Protection Service	No representations received
London Fire Brigade	No representations received
Metropolitan Police	Application made
Licensing authority	Representation made

## Representations from other persons

A representation has been received from another person living in the vicinity of the premises.

## Section 2 – Report

- 2.1 An application has been received on behalf of the Metropolitan Police Service to review the premises licence of The Shaftesbury, 3 Shaftesbury Parade, Shaftesbury Parade, South Harrow, Middlesex HA2 0AJ on the grounds of preventing crime and disorder, public nuisance and protecting public safety (appendix 1).
- 2.2 Description of premises  
These premises are a converted shop located in a local shopping parade, situated on ground level. An image of the premises and a location map are provided at appendix 2.
- 2.3 Licensing history  
The premises have been licensed to sell alcohol since July 1990 under a justices' liquor licence and have been continuously licensed under the Licensing Act 2003 since November 2005. For the purposes of this review application the premises licence was transferred to Surf the Seas Limited in June 2013.
- 2.4 On 14/10/16 the licence was transferred to the current premises licence holder, Anton Van Niererk (appendix 3) on whom the review application was served.
- 2.5 Designated premises supervisor (DPS)  
Craig Andrew Daniel from 14/12/15.
- 2.6 Details of the application  
Received: 03/11/16  
Application advertised: 04/11/16 – 01/12/16

In addition to the police serving a copy of the review application on the premises licence holder, the licensing authority delivered a letter by hand to the premises licence holder advising him of the application on 11/11/16. The licensing authority wrote to the premises licence holder on 21/11/16 advising him of the hearing.

2.7 Representations

A representation has been submitted by the licensing authority (appendix 4).

2.8 A representation has been submitted by another person. In accordance with paras 9.25 – 9.29 of the statutory guidance, their personal details have been withheld. The general address of the person will be disclosed to the premises licence holder and be made available to the Panel.

2.9 Chronology

The chronology below is a summary of the key events and incidents set out in the representations:

06/10/09	Personal licence issued to Craig Andrew Daniel
03/06/13	Premises licence transferred to Surf The Seas Limited (director Matthew Labbett)
07/12/15	Craig Daniel appointed as director of Surf The Seas Limited and Matthew Labbett resigned as director
14/12/15	Craig Daniel nominated as DPS
09/01/16	Craig Daniel victim of grievous bodily harm whilst working at the premises Police reported Craig Daniels appeared to be drunk
30/01/16	Email complaint to licensing authority about smoking in premises Verbal warning given to Craig Daniel
01/06/16	Annual premises licence fee due and invoice issued to premises licence holder
19/07/16	Premises licence inspection conducted by licensing authority Breaches of premises licence found Craig Daniel claimed to be Andrew Paver
25/07/16	Warning letter sent from licensing authority to Craig Daniel
16/09/16	Licensing authority and police visit with Acumen Investigation Services Limited about non-commercial viewing agreement for Sky Sports being shown at premises Craig Daniel not present
26/09/16 (approx.)	Second visit by licensing authority and police with Acuman Investigation Services Craig Daniel not present

30/09/16	Licensing authority and police visit premises during evening Craig Daniel not present but in his flat Damage observed to toilet cubicles
18/09/16	Email complaint to licensing authority about disorder at the premises
14/10/16	Premises licence transferred to Anton Van Niekerk
19/10/16	Suspension notice delivered to Craig Daniel by licensing authority arising from failure to pay invoice for annual fee due 01/06/16 Licensing authority officers noted strong smell of cigarette smoke inside the premises
21/10/16	Telephone call to licensing authority from Craig Daniel stating annual fee had been paid No evidence of annual fee payment has been found or produced
28 – 29/09/16	Report of disturbance at premises (see statement of PC Brand)
27/10/16	Police called to disturbance and ejected people from premises Craig Daniel not in the bar and appeared to be drunk by police Bar maid appeared to police to be drunk
31/10/16	Police attended premises following report of domestic disturbance Craig Daniel appeared to police to be drunk
01/11/16	PC Moran attempted to call Craig Daniel on the telephone at 1200 hours and was told he was in Birmingham Police called to report of attempted forced entry to premises at 1300 hours Police reported premises smelt strongly of stale smoke Craig Daniel appeared to police to be drunk
03/11/16	Review application submitted PC Moran found Craig Daniel appearing to be drunk on the premises

## 2.10 Statutory guidance

The following passages and paragraphs of the statutory guidance issued by the Secretary of State are relevant to this application:

*2.5 ...The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder...*

*4.19 ...The Government considers it essential that police officers, fire officers or officers of the licensing authority can identify immediately the DPS so that any problems can be dealt with swiftly...*

## Reviews arising in connection with crime

*11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises; money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.*

*11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.*

*11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder.*

*11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:*

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;*
- for the sale and distribution of illegal firearms;*
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;*
- for prostitution or the sale of unlawful pornography;*
- by organised groups of paedophiles to groom children;*
- as the base for the organisation of criminal activity, particularly by gangs;*
- for the organisation of racist activity or the promotion of racist attacks;*
- for knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter;*
- for unlawful gambling; and*

- *for the sale or storage of smuggled tobacco and alcohol.*

*11.28 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.*

2.10 Licensing policy

There are no implications in relation to the statement of licensing policy arising from this application.

2.11 Legal implications

The Licensing Authority is required to hold a hearing to consider the review application and any relevant representations made. The hearing must be held in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

2.12 The Licensing Panel is required to give appropriate weight to the review application, representations (including supporting information) presented by all the parties, the Guidance issued pursuant to section 182 of the Licensing Act 2003, the Council's statement of licensing policy and the steps (if any) that are appropriate to promote the four licensing objectives.

2.13 Having considered those relevant matters, the Licensing Panel can take such of the following steps (if any) as it considers appropriate for the promotion of the licensing objectives –

1. to modify the conditions of the licence;
2. to exclude any of the licensable activities from the scope of the licence;
3. to remove the designated premises supervisor;
4. to suspend the licence for a period not exceeding 3 months;
5. to revoke the licence

and for this purpose the conditions of the licence are modified if any of them are altered or omitted or any new condition added.

2.14 If the Panel takes a step mentioned in 1 or 2 of paragraph 2.13 above, it can specify that the modification or exclusion is to have effect for a period up to three months if it considers this to be appropriate.

2.15 It should be noted that –

- clear reasons must be given for the decision;
- any additional or modified conditions should be practical and enforceable;
- the applicant for the review, the premises licence holder and any person who made relevant representations would have the right of appeal to a magistrates' court on one of the grounds provided in schedule 5 to the Licensing Act 2003.

- 2.16 In addition to determining the application in accordance with the legislation, Members must have regard to the –
- common law rules of natural justice (i.e. ensuring a fair and unbiased hearing etc);
  - provisions of the Human Rights Act 1998;
  - considerations in section 17 of the Crime and Disorder Act 1998.
- 2.17 The Panel must also act appropriately with regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms implemented under the Human Rights Act 1998, particularly articles 6 (relating to the right to a fair trial); article 8 (protection of private and family life); and article 1 of the First Protocol (protection of property).
- 2.18 The Panel, when exercising its powers, must consider section 17 of the Crime and Disorder Act 1998 which states:
- ‘without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies 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.’

### Financial Implications

- 2.19 There are no financial implications.

### Appeals

- 2.20 If any party is aggrieved with the decision of the licensing panel on one of the grounds set out in schedule 5 to the Licensing Act 2003, they can appeal to a Magistrates’ Court within 21 days from notification of the decision.

### Section 3 - Statutory Officer Clearance

Name: Jessie Mann	<input checked="" type="checkbox"/>	on behalf of the* Chief Financial Officer
Date: 24.11.16		
Name: Paresh Mehta	<input checked="" type="checkbox"/>	on behalf of the* Monitoring Officer
Date: 25.11.16		

## **Section 4 - Contact Details and Background Papers**

**Contact:** Jeffrey Leib, Principal Licensing Officer extension Tel: 020 8424 7667  
(ext 7667)

**Background Papers:** Statutory Guidance