

LICENSING SERVICE

<i>For Office use only</i>	
<i>LalPac Application No.</i>	
<i>Licence Number</i>	PL1878

APPLICATION FOR THE REVIEW OF A PREMISES LICENCE OR CLUB PREMISES CERTIFICATE

LICENSING ACT 2003

<i>Review requested by:</i>	Licensing Authority
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Blackpool will be a Vibrant, Inclusive, Healthy, Safe and Prosperous  
Town



**Blackpool Council**

BUILDING A BETTER COMMUNITY FOR ALL

**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 this 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. You may wish to keep a copy of the completed form for your records.

I	Mark Marshall
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[insert name of person requesting review]

**apply for the review of a premises licence under section 51 or apply for the review of a club premises certificate under section 87, of the Licensing Act 2003 for the premises described in part 1 below.**

**Part 1 – Premises Details**

<b>Postal address of premises or club premises if any, or if none the ordinance survey map reference or description.</b>									
<b>Premises Name and Address</b>	Underbar								
	Bank Hey Street								
	Blackpool	<b>Post Code</b>	F	Y	1		4	R	U
<b>State the Name of the premises licence holder or the name of the club holding the club premises certificate (if known)</b>									
Underbar Blackpool Ltd									
<b>Premises Licence or Club Premises Certificate Reference Number (if known)</b>									

**Part 2 – Applicant details**

I am:

Please tick

<b>1) an interested party (please also complete sections 2A or 2B below)</b>	
<b>a) a person living in the vicinity of the premises</b>	
<b>b) a body representing persons living in the vicinity of the premises</b>	
<b>c) a person involved in business in the vicinity of the premises</b>	

d) a body representing persons involved in business in the vicinity of the premises	
2) a responsible authority (please also complete 2C below)	✓
3) a member of a club to which this application relates (also complete section 2A below)	

**(2A) Individual Applicants (fill in as applicable)**

Title:	Mr	Mrs	Miss	Ms	Other	I am 18 years old or over	Please tick	
							Yes	No
Forenames						Surname		
Home address								
							Post Code	
Telephone Number						Mobile Number		
E-Mail Address								

**(2B) Other Applicant or Representing Body**

Name								
Address								
							Post Code	
Telephone Number								
E-Mail Address								

**(2C) Responsible Authority applicant**

<b>Name</b>	Mark Marshall								
<b>Address</b>	Progress House								
	Clifton Road								
	Blackpool	<b>Post Code</b>	F	Y	4		4	U	S
<b>Telephone Number</b>	01253 478349								
<b>E-Mail Address</b>	mark.marshall@blackpool.gov.uk								

**Part 3 – Reason for Review**

This application to review relates to the following licensing objective(s):

Please tick

1) the prevention of crime and disorder	√
2) public safety	√
3) the prevention of public nuisance	√
4) the protection of children from harm	

**Please state the ground(s) for review (please read guidance note 1 before completing)**

The Underbar is located in the centre of the town centre and for some time its trading style has been a cause of concern for the Authorities as well as neighbouring businesses. The synergy between the shopping area and a lively alcohol premises is something that will always need careful management and in summary the Underbars management is quite the opposite of careful.

A programme of intervention and visits to the premises has been undertaken along with a formal meeting with the Licence Holder, after a period of notice; improvement has been minimal and in some areas has got worse.

The Underbar has a chequered history in that it has been subject to a Review of the Licence previously in 2010, initiated by Weights and Measures for issues in relation to the Protection of Children from Harm but more notably supported by Health and Safety for internal conditions that were poor in the extreme.

Issues of poor internal conditions were noted on a visit on the;

**16<sup>th</sup> August 2014** The Premises was visited by Mark Marshall and Gareth Shaw a number of issues were raised mainly with the lack of cleanliness, lack of organisation, electrical problems and the excessive storage of combustible materials.

The concerns were followed up in writing and Health and Safety have been consulted and will be providing photographic evidence and a more detailed explanation of the issues in their representation.

A copy of this letter is attached as **Document 1**

**16<sup>th</sup> November 2014** The premises had to be visited following the call from a Police colleague Sgt Richard Hurt who will be providing a statement describing the extreme noise nuisance spilling from the premises and the subsequent refusal from the management to do anything about it.

Mark Marshall arrived at 12.40 hrs; the noise was bellowing from the vestibule area and was causing a significant nuisance.

This incident was followed up in writing, another matter raised was the dishevelled and generally annoying behaviour from the promotional staff, a female whose details were obtained as Francesca Graham was spoken too at the time. This female has gone onto be a cause of significant concern, details of her behaviour will follow.

A copy of the letter highlighting concerns is attached as **Document 2**

#### 14th November 2014

A meeting was conducted at the police station with Chief Inspector Mills, Sgt Richard Hurt, Mark Marshall and [REDACTED] the [REDACTED] in Bank Hey Street.

The purpose of the meeting was to listen to the impact the Underbar was having [REDACTED] described in general terms.

1. Intimation from the customers of Underbar, who are loud, boisterous and disorderly.
2. The general ambivalence of the security staff who seem to ignore bad behaviour.
3. The nuisance from the loud music blaring out from the Underbar
4. The nuisance from the promotional staff.

On 21st November 2014 a meeting took place with [REDACTED] Underbar to see what could be done jointly to address the concerns.

During the winter months as the tourist season tailed off Underbars impact reduced and no further feedback was received, one or two concerning Police comments were disclosed to the licence holder which resulted in us convening a meeting with the Licence Holder on the 29<sup>th</sup> March 2014.

#### Action Plan Meeting 29<sup>th</sup> March 2014

The meeting was convened with Sgt Caroline Hannon, Mark Marshall and Steven Lawrence, the Director of the Ltd Company who holds the Premises Licence.

The issues of concern were discussed and a very short and simple improvement plan was put together. Whilst not directly a licensing problem the external appearance of the building and the promotion staff were discussed, the external doors have lots of broken panels and this issue has been raised by the Planning Department on the 27<sup>th</sup> June 2013 a photograph of the doors was attached to this letter. A copy of this letter and photo are attached as **Document 3**.

Since then the regulatory request for improvement has been ignored and the condition of the doors has deteriorated further. The photograph below was taken on the 28<sup>th</sup> March 2014 at 15.54 hrs demonstrates the condition;



An undertaking was given by Mr Lawrence that the smashed glass would be repaired, this was confirmed in the letter which is attached as **Document 4** and 4 weeks later, precisely nothing has changed, the photo below was taken on the 22<sup>nd</sup> April at 13.13hrs



In addition to the very simple request to improve the external appearance the activity of the promotions staff has been observed and reported to be a nuisance.

Mr Lawrence asked for specific advice on what he could and couldn't do in relation to promotions or importuning, He was given verbal advice at the meeting which was followed up in writing along with the other agreed actions.

The law in relation to importuning is found at Section 29 of the County of Lancashire Act 1984, which is adoptive, In October 2001 Blackpool Council adopted this part of the Act and the council has actively enforced the legislation issuing warnings and taking prosecutions where necessary.

#### **Section 29 County of Lancashire Act 1984**

29-)1) A District Council may designate, in accordance with subsection (5) below, any of the following places, or any part of such places, in the district as places to which this section applies for any of the purposes of subsection (2) below:

- (a) a public off street car park, recreation ground, garden or other park, pleasure ground or open space under the management and control of a local authority;
- (b) a street or esplanade, parade, promenade, marine drive or way to which the public commonly have access, whether or not as of right;
- (c) the seashore;

Provided that the district council shall not designate –

(i) for the purpose of subsection (2)(b) below, any highway specified in a control order under section 7 of the Act of 1976; or

(ii) for the purpose of subsection (2) (c) (ii) below, any street.

(2) Any person who, in a place designated under this section –

(a) importunes any person by **touting** for a hotel, lodging house, restaurant or other place of refreshment, for a shop, for a pier, garden, theatre or other place of amusement or recreation, for a hackney carriage or other conveyance (other than a public service vehicle), or for a ship or boat; or

(b) without the consent of the district council, or in breach of any condition subject to which the council's consent is given, hawks, sells or offers or exposes for sale anything; or

(c) without the consent of the district council, or in breach of any condition subject to which the council's consent is given –

i) photographs any person by way of trade or business; or

(ii) offers or exposes for hire any vehicle, chair or seat or any animal to ride;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £200.

(7) This section shall not prohibit -

(a) the doing of anything on land by the owner or occupier of the land, or by an person with the consent of the owner or occupier of the doing of anything on land forming part of a highway by the owner or occupier of land fronting that part;

(b) the selling or offering or exposing for sale of anything to persons on premises fronting on, or adjacent to, a place designated under this section, whether on those premises or in that part of any highway on which the premises front or to which they are adjacent;

(c) the taking of a photograph for the purpose of making it available for publication in a newspaper or periodical if the photographer is employed as such by or on behalf of the owner or publishers of a newspaper or periodical, or carries on a business which consists of, or includes selling or supplying photographs for, such publication;

And the district council shall not withhold their consent under subsection (2) (b) above to the selling or offering or exposing for sale by any person of newspapers and periodicals except on the grounds that their consent has already been given to a sufficient number of other persons.

(8) Before giving consent under this section to the hawking, selling or offering or exposing for sale of anything in a highway, the district council shall consult the highway authority.

#### **Complaints and Observations re Nuisance Promotional Activity**

**14<sup>th</sup> April 2014** I received an e mail from [REDACTED] who was attaching pictures of the promotions female, Francesca Graham who was straying a considerable distance away from the Underbar, she was also seen to be approaching people who were queuing for the Tower attraction ( not the Tower Lounge ).

From my own observations this female is poorly presented has no awareness of who she is approaching she seems to prefer the scatter gun approach and just invites anyone in for a drink and her approach is not only a nuisance to the public and businesses in the vicinity it is an offence under Section 29 of the County of Lancashire Act 1984, this is the position not only after the Licence Holder received verbal advice but well after the receipt of the written advice dated the 3<sup>rd</sup> April 2014









**8<sup>th</sup> April 2014** Whilst dealing with a hotelier who lives on Coronation Street comments were passed about the state of the town centre on a Saturday afternoon in particular the issues around promotions staff and the state of the drunken customers preventing anyone decent from sitting on the benches outside the Underbar.

Agnes Ashe has provided a witness statement of her observations- **To be submitted before the hearing**

On about the same date an employee of the Council, Claire White also passed comment on a recent social visit she made to the Underbar with her partner in August 2013- **To be submitted before the hearing**

**19<sup>th</sup> April 2014** Officers were on duty in Bank Hey Street supported by the Police looking at putting general improvement responses in place to issues impacting on residents and shoppers.

It was noted that Francesca Graham was straying away from the Underbar and approaching anyone, she then approached the 2 council officers and the 2 police officers who were in partial uniform and asked if they were coming in the Underbar for a drink, this was done close to the Tower entrance a considerable distance from the Underbar.

Sgt Hannon gave her advice and disclosed who we were which was obvious as the police uniforms were clearly visible; this again just demonstrates her complete unawareness of her surroundings in the relentless pursuit to get people into the Underbar.

She was told to confine her activities to the Highway affronting the Underbar and not to stray past the benches; this instruction was previously given in writing to the Licence Holder, Steven Lawrence.

We returned to the area of Bank Hey Street about 20 minutes later to find once again the warning had been completely ignored and Ms Graham was resuming her usual nuisance activities.

A number of Photos were obtained which are shown below.











19/04/2014 14:32:51



19/04/2014 14:33:24



19/04/2014 14:34:04



The next issue of concern was the male member of promotions, whose details were not obtained, but the officers took the view that his appearance, dress and locality fell under the definition of Manned Guarding in that he was providing a physical presence on the door at Under Bar.

**Schedule 2 of the Private Security Industry Act 2001**

**Manned guarding**

**2.**

(1) This paragraph applies (subject to the following provisions of this paragraph) to any of the following activities:

- (a) guarding premises against unauthorised access or occupation, against outbreaks of disorder or against damage.
- (b) guarding property against destruction or damage, against being stolen or against being otherwise dishonestly taken or obtained.
- (c) guarding one or more individuals against assault or against injuries that might be suffered in consequence of the unlawful conduct of others.

(2) in the paragraph references to guarding premises against unauthorised access include references to being wholly or partly responsible for determining the suitability for admission to the premises of persons applying for admission.

(3) in the paragraph references to guarding against something happening include references to so providing a physical presence, or carrying out any form of patrol or surveillances, as –

- (a) to deter or otherwise discourage it from happening, or
- (b) to provide information, if it happens, about what has happened.

(4) This paragraph does not apply to the activities of an individual who exercises control over the persons allowed access to any premises to the extent only of securing, or checking that persons allowed access –

- (a) have paid for admission or;
- (b) have invitations or passes allowing admission.

(5) This paragraph does not apply to the activities of a person who, incidentally to the carrying out of any activities in relation to a group of individuals which (disregarding this sub-paragraph) are neither –

- (a) the activities of a security operative, nor
- (b) activities comprising the exercise of any such control as is mentioned in sub-paragraph (4) maintains order or discipline amongst those individuals.

(6) This paragraph does not apply to the activities of a person who, incidentally to the carrying out of activities which (disregarding the sub-paragraph) are not wholly or mainly the activities of a security operative, responds to a sudden or unexpected occurrence.

Moments later Mr Lawrence approached us, he was told that the practice of his promotions staff were unacceptable and also that the male promoter was dressed as a member of door staff and as such needed an SIA licence, Mr Lawrence confirmed the male promoter was not licensed.



In addition to the promoters and the unregistered doorman Mr Lawrence was advised that a recent sample of his alcohol had come back as not genuine.

The sample was taken by Lee Wojarski on the **21st March 2014**; the certificate of Analysis is attached as **Document 6**.

This is not the 1<sup>st</sup> time suspicious sample results have been found and in June 2009 Mr Lawrence was formally Cautioned for a similar offence. A copy of the caution is attached as **Document 7**

### **Conclusion**

The Underbar is a decaying premises with poor management that at its best simply fire fights issues, the management have to be constantly reminded of the basic requirements, Health and Safety and the Police will provide a multitude of example to support this.

Issues tend to constantly repeat themselves, again Health and Safety, noise nuisance and substituted alcohol are again examples of this, to qualify the position on the substitution the premise has only ever been subject to 2 sampling exercises both of which have transpired to be substituted.

The action plan demonstrates that even very basic and simple instructions which affect the amenity of the area are ignored; examples include the smashed glass in the front doors and the nuisance promotions.

It is the view of the Licensing Authority that if this premise is not pulled into line the poor practice that is evidenced will only increase the agitation of neighbouring businesses and residents. Many attempts to address the issues have been made by a number of Authorities and still the Underbar causes huge concern.

The day time trading is the root cause of many of the problems and the Committee is asked to target its action here. The Licensing Authority advises that the premises hours should be curtailed and all Licensable Activity should be prohibited until at least 7pm.

The issue of irresponsible trading should be looked at also, whilst the DPS does not have the confidence of the Authorities, the removal of him would serve little or no purpose, the issues stem from poor company practice, and we find our selves back at "square 1 " repeatedly.

Further evidence will be provided before the hearing.



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**Please provide as much information as possible to support the application. Continue on a separate sheet if necessary. (Please read guidance note 2 before completing)**

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**Part 4 – Other relevant information**

		Please tick	
<b>Have you made an application for review relating to this premises before?</b>	<b>Yes</b>	<b>No</b>	
		√	
	<b>Day</b>	<b>Month</b>	<b>Year</b>
<b>If yes please state the date of that application</b>			

**If you have made representations before relating to this premises, please state what they where and when you made them.**

Representation made 8<sup>th</sup> January 2008 to support a Police review of the licence.

Please

tick

**I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate.**

✓

**I understand that if I do not comply with the above requirements my application will be rejected**

✓

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

**Part 5 – Signatures** (please read guidance note 3)

LS/F/005/12/1

**Signature of applicant or applicant's solicitor or other duly authorised agent. (Please read guidance note 4) If signing on the behalf of the applicant please state in what capacity.**

<b>Signed</b>	
<b>Print Name</b>	Mark Marshall
<b>Capacity</b>	Licensing & Health & Safety Manager
<b>Date</b>	26 <sup>th</sup> June 2013

<b>Contact name and address for correspondence associated with this application. (Where not previously given) (See guidance note 5)</b>										
<b>Title:</b>	<b>Mr</b>	<b>Mrs</b>	<b>Miss</b>	<b>Ms</b>	<b>Other</b>					
<b>Forenames</b>				<b>Surname</b>						
<b>Address for Correspondence associated with this application</b>										
					<b>Post Code</b>					
<b>Telephone Number</b>				<b>Mobile Number</b>						
<b>E-Mail Address</b>										

**Notes for Guidance**

1. The grounds for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems that are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf, provided that they have actual authority to do so.
5. This is the address that we shall use to correspond with you about this application.