In the Newcastle upon Tyne Magistrates' Court – 21st May 2018 – 20th June 2018

In the matter of an appeal under s181 of the Licensing Act 2003

ENDLESS STRETCH LTD

Appellant
(Mr Gouriet QC, Mr Rankin)

And

NEWCASTLE CITY COUNCIL

1st Respondent
(Mr Charalambides)

And

DANIELI HOLDINGS LTD

2nd Respondent
(Mr Holland)

JUDGMENT OF DISTRICT JUDGE (MAGISTRATES COURT) MEEK

13TH AUGUST 2018

ABBREVIATIONS AND REFERENCES USED

Boxpark Shoreditch	BPS
Boxpark Croydon	BPC
Cumulative Impact Area	CIA
Cumulative Impact Policy	CIP
Danieli Holdings Limited	DHL
Designated Premises Supervisor	DPS
Endless Stretch Ltd	ESL
Licensing Sub Committee	LSC
Operating Schedule Revision G	OS RevG
Newcastle City Council	NCC
Night Time Economy	NTE
Statement of Licensing Policy	SLP
Special Stress Area	SSA
The Licensing Act 2003	The Act
The Licensing Act 2003 (Premises Licences and club premises certificates) Regulations 2005	The 2005 Regulations

References to pages in this judgment take the following form:

Within File 1	[File number/tab number/page number/(para - if needed)] – page number used the one to bottom left or right of each page hand written
Within File 2	[File number/tab number/page number/(para - if needed)] – page number used – the one to the top right of each page in large type
Within Law Bundle	[A/tab/page number/(para - if needed)]
Skeleton Arguments	[SA/party/SA number/(para – if needed)]

Plans. Whilst the plans used were contentious, for ease of reference and identification purposes only I refer to them as set out below.

[1/3/38 – 41] those submitted with the original application	"the application plans"
[1/9/134 -135] those presented at the LSC meeting	"the meeting plans"
[2/19/630 – 631] those exhibited by Mr Wright in his – Statement at 2/19/51/paragraph 208]	"the up to date plans"
[2/28/727 – 730] Plans 1 – 4 prepared during the course of the hearing and produced for the 4th June 2018 –	"the capacity plans"

The LSC decision meeting notes. The notes of the meeting do not have paragraph numbers. For ease of reference I have given paragraph numbers to each paragraph within the narrative of that note within the section entitled "SUMMARY OF EVIDENCE" through to and including the section entitled "SUMMING UP" starting with the first substantive paragraph on [1/10/37 "Charles Holland on behalf of…"] as paragraph 1. Where this judgment refers to paragraph numbers within those notes it is that numbering.

A. INTRODUCTION

This case concerns an appeal against the grant of a premises licence for an operation known as "Stack". It is proposed that Stack will be located within a vacant plot of land referred to as the Odeon Site ("the site") in Newcastle bordered to the west by Pilgrim Street and the north by New Bridge Street. To the south is Commercial Union House and to the east, Dex Car Park.

B. PRE HEARING DOCUMENTATION

1. In advance of the hearing I had been provided with the following documentation:

File 1 comprising (A) core bundle (B) the Appellant's evidence (C) the 1st Respondent's evidence

File 2 comprising (D) the 2nd Respondent's evidence

Law Bundle comprising two separate sections firstly the Appellant's Law Bundle and secondly the Respondents' Joint Bundle of Authorities

Skeleton Arguments regarding the issues for the hearing some with documents annexed to them. The 2nd Respondent provided two – the second was limited to an issue raised by the Appellant in their Skeleton Argument that had not been raised earlier during the course of the proceedings nor at the meeting.

2. Further documents were produced and relied upon throughout the hearing adding to each of Files 1 and 2 and the Bundle of Authorities. Copies of the most up to date index for each file are attached to this judgment.

3. Each of the Appellant and the Respondents provided pre closing speech documentation:

Appellant: Closing submissions on behalf of the Appellant: principal issues and suggested reading with the introduction "this is not a skeleton argument, and should not be read as indicating the order in which closing submissions will be made orally"

1st Respondent: Broad Outline of submissions

2nd Respondent: Chronology
Suggested Reading (listing essential documents, additional core documents, statutory, policy and case law provisions)
Closing – Speaking Note – for reasons explained by Mr Holland at the time this provided on the day of the closing speeches

4. Prior to the hearing I read the documentation then contained in Files 1, 2, the Law Bundle and the 4 Skeleton Arguments. I read each additional document placed before me during the course of the hearing. During the course of the hearing and my considerations in preparing this judgment I refreshed my memory of the contents of the documents as necessary.

5. During the course of this judgment I may not refer to each document contained in the bundles. This should not be interpreted as any indication that I have not read or considered a particular document. All have been considered. I refer to that which I consider it necessary and relevant to do so to for the purposes of the judgment.

C. BACKGROUND

1. The application for the premises licence was made to the Licensing Authority by Danieli Holdings Ltd (DHL) ("the 2nd Respondent") on 20th October 2017. On 7th November 2017 the 2nd Respondent submitted a planning application in respect of Stack.

2. Representations were made about the application for the premises licence by Northumbria Police, Environmental Health and the Licensing Authority (each of which are Responsible Authorities) and Endless Stretch Ltd (ESL) ("the Appellant"). The Appellant has an interest in the long lease of some licensed premises known as Harry's Bar which operate on Grey Street in Newcastle.

3. The application was heard at a meeting of a Licensing Sub Committee (LSC) of Newcastle City Council (NCC) on 30th January 2018 ("the meeting"). The meeting had been adjourned once previously at the suggestion of Mr Bryce and with the agreement of the 2nd Respondent to allow the planning decision to be made (the planning committee hearing for Stack took place on 26th January 2018).

4. Between the date of the application and the meeting, changes had been made to the operating schedule (the version available on the day was Rev F but after further discussions that was further changed and became OS Rev G [1/8/82] which was presented at the meeting) and there was a set of plans showing some differences to the layout of containers and other features (the meeting plans).

5. The decision of the LSC ("the decision") was to grant the premises licence for all licensable activities referred to in the application: opening hours from 08:00 hrs to 01:30 hrs permitting the sale of alcohol by retail (for consumption both on and off premises), performance of dance and similar, exhibition of film, performance of live music and similar, playing of recorded music and similar, late night refreshment. Each activity was permitted for each day between 10:00 hrs and midnight other than exhibition of film where it was 08:00 hrs to midnight and late night refreshment only required for 23:00 hrs to midnight; with a reduced terminal hour for licensable activities of midnight (the application had been for 01:00 hours) and subject to:

   (i) the mandatory conditions
   (ii) conditions that reflected the amended operating schedule (Rev G) proposed by the Applicant – a copy of which is attached to this judgment.
   (iii) two additional conditions imposed by the LSC:
      (a) All sales or consumption of alcohol in open vessels, without the purchase of substantial food, is restricted to the ground floor area described as "The Plaza" and the open seated area situated to the north of the Plaza ("additional condition 1")

(b) There is to be no movement of open vessels of alcohol between the two floors of the premises ("additional condition 2")

6. The premises licence was granted for a time limited basis and expires on 7th January 2021.

7. It appears from the notice of the licensing decision ("the notice") that before imposing the additional conditions, the LSC did not raise the possibility of their imposition in the meeting and did not invite representations about them.

8. On 23rd February 2018 the notice was given [1/10/136]. As well as recording the decision and conditions, it includes a note of the hearing including the representations made and questions asked, and what the LSC took into account before reaching its decision and the reasons and decision of the LSC.

9. On 15th March 2018 the Appellant appealed by way of complaint pursuant to s181 and paragraphs 2(3)(a) and 9(b) of schedule 5 of the Act against the decision of the LSC. There was a hearing on 9th April 2018 at which directions were made and the hearing of 21st May 2018 was listed (then with a time estimate of 3 days).

10. There had been an earlier application by the 2nd Respondent for a premises licence for an operation called "Pilgrim Street Tipi". That was to operate within the curtilage of the former Odeon Site. This application was heard at a meeting of a LSC of NCC on 10th October 2017. The decision was to grant the premises licence between the dates 1st October to 7th January for 4 years starting 1st October 2017 and ending 7th January 2021. The licence for Pilgrim Street Tipi is at [2/13/249 – 263] and it is considered within the assessment section of this judgment at H.8 paragraph 1. The Appellant made representations against the application for Pilgrim Street Tipi and was represented at the LSC decision meeting by Mr Gouriet QC. On 3rd November 2017 the Appellant commenced an appeal by way of complaint against the decision of the LSC to grant the premises licence for Pilgrim Street Tipi. Given the circumstances NCC and DHL were the 1st and 2nd Respondents in those proceedings too. By e mail on 3rd April 2018 the Appellant withdrew the appeal against Pilgrim Street Tipi. At the directions hearing on 9th April 2018 for this appeal there was agreement to payment of costs from the Appellant to the Respondents. By the time of this appeal (and at the time of the LSC meeting for Stack) the Pilgrim Street Tipi had operated for the October 2017 – January 2018 period.

11. The 2nd Respondent had also operated another "Tipi" with licensable activities at Central Station in Newcastle between 4th November 2016 and 8th January 2017 which is referred to during this judgment as "Central Station Tipi".

D. THE APPEAL HEARING

1. I heard 7 days of evidence and submissions over 21st May 2018 to 20th June 2018.

2. On 21st May 2018 I gave my ruling on a preliminary issue that had been raised set out in the Appellant's Skeleton Argument [SA/A/3 – 4 paragraphs 10 – 12 and

SA/A/8/paragraph 30] and responded to by the 2nd respondent in their second Skeleton Argument at [SA/R2/2/5 – 9/paragraphs 12 – 34] relating to whether the plans submitted with applications were compliant with the Licensing Act 2003 (Premises Licences) Regulations 2005 ("the 2005 Regulations").

3. After hearing evidence on 21st - 23rd May – and the answers of Mr Wright to the Appellant's questions - the 1st Respondent proposed amendments to additional Condition 1 of the LSC's Decision and to Condition 12 (iii) of OS Rev G. This was sent to all parties by e mail during the evening of 23rd May 2018 and copied to the Court. I set out the contents of the email below. Whilst both Respondents submit the appeal should be dismissed they now propose I should allow the licence subject to these proposed amended conditions. Where relevant I shall refer to them as the "proposed amended conditions".

"Please find below the proposed amendment to Condition 1 of the Licensing Sub-Committee's Decision and to Condition 12 (iii) of Operating Schedule Revision G, to clarify their intended effect in light of the latest layout plan –

- The licence will show the opening hours 08.00 am - 00.30 am 7 days a week
- Amend condition 1 to:

All sale or consumption of alcohol in open vessels, without the purchase of substantial food, is restricted to:

(a) the ground floor area described as "The Plaza";

(b) the open seated area situated to the north of the Plaza;

(c) and the 3 servery container units marked on the approved plan [bundle 2/630]

- Amend condition 12(iii) to:

no more than 15% of the Trading Area or an area equivalent to the aggregate internal area of 4 container units (whichever area is the lower) will be devoted to wet led use"

4. On 24th May 2018 with the parties I made a visit to the site. The site is currently under construction and therefore not operational. It did however provide an opportunity to view the proposed layout at least for the ground floor other than on paper plans as well as to observe – albeit in day time – the neighbouring area.

5. A draft version of this final judgment was sent out to parties on 30th July 2018 for them to propose any amendments required due to typographical or factual errors. The final judgment was handed down at South East Northumberland Magistrates Court on 13th August 2018.

E. BASIS OF THE APPEAL AND AGREED AND DISPUTED ISSUES

1. By closing the Appellant's complaints were:

i. The context in which the decision was taken. The information available to the LSC was insufficient and too indicative and insufficiently certain to allow an informed decision to be made. The application plans and the meeting plans had changed and the

application plans were not compliant with the 2005 Regulations. Further that the up to date plans had changed again in a way that was not permissible. This context helped understand why a wrong decision was made.

ii. There is internal inconsistency and/or ambiguity within the decision particularly between condition 12(iii) of Operating Schedule Rev G and the additional condition 1 imposed by the LSC. This is not and cannot be remedied by the proposed amended conditions.

iii. The changes between the application, the meeting and the up to date plans were such that they fell outwith amendments that could be allowed. Likewise the proposed amended conditions themselves and in so far as they endorsed the up to date plans.

iv. The fact that the licence had not been issued does not in itself mean that the decision is wrong or unlawful but it demonstrates the lack of certainty about the decision; it was that lack of certainty that meant the licence (and associated plans) could not be issued forthwith.

v. If such matters can be resolved, in any event:
   a. the LSC did not properly address the issue of cumulative impact;
   b. the decision of the LSC was irrational and wrong; the grant has allowed the creation of a large area for the sale and consumption of alcohol without substantial food when it was not demonstrated that such an operation would not add to the negative cumulative impact;
   c. the conditions imposed by the LSC cannot themselves lead to a rational conclusion that there would be no negative cumulative impact;
   d. whilst disputing that the Appellant had any evidential burden to demonstrate cumulative impact, that there can be no sensible conclusion other than the operation as licensed would add to the negative cumulative impact.

vi. It was made clear in Mr Gouriet QC's closing submissions – both oral and written - that subject to the above identified complaints about the grant in principle "the focus of the Appellant's concerns is the creation of (a) large ground-floor area for the sale and consumption of alcohol without food" and conceded that "in light of the evidence in this case, the Appellant has no outstanding concerns about the two seasonal periods ….. Nor does the Appellant object to the mixed retail/restaurant proposals for the 'Box Park' area….or to bars there where the sale of alcohol is ancillary to the provision of substantial food". I have quoted from the document prepared and submitted on behalf of the Appellant entitled "Closing submissions on behalf of the Appellant: principal issues and suggested reading". I acknowledge in the introduction to that document is written "This is not a skeleton argument and should not be read as indicating the order in which closing submissions will be made orally". It was however the approach taken by Mr Gouriet QC in oral closing submissions.

2. Given the breadth of the written and oral evidence and the range of issues that had been canvassed, before concluding the hearing I agreed with parties those matters that remained outstanding and required determination. Following this I received an e mail from Mr Gouriet QC about a further issue. This was copied to the Respondents as was my reply.

3. I have set out the agreed issues for determination below. At this stage I note that some of issues in the Appellant's submissions are raised as both discrete issues and Mr Gouriet QC submits they provide the context for why a wrong decision was made.

   i. The approach the court was required to take in determining the appeal.

   ii. Whether the information available to the LSC at the time was sufficient for it to determine the application.

   iii. The plans:
      a. Whether the application plans complied with the 2005 Regulations;
      b. Whether the changes between the application, meeting and up to date plans were permissible;
      c. Whether up to date plans complied with the licence granted;
      d. Whether the amended proposed conditions in so far as they related to the plans were permissible.

   iv. The conditions:
      a. Whether there was ambiguity, uncertainty or inconsistency between condition 12(iii) of OS Rev G and additional condition 1 imposed by the LSC and the proposed amended conditions;
      b. Whether the proposed amended conditions were permissible.

   v. Whether the grant of the licence amounted in part to an improper delegation of duties and decision making from the LSC to officers (described by Mr Gouiet QC as being a "glancing" submission).

   vi. Cumulative impact. This includes consideration of: Newcastle, Newcastle's NTE and existing cumulative impact within the CIA; assessment of the NCC SLP; style of operation; capacity and churn; comparisons with Pilgrim Street Tipi; comparisons with other operations; clientele; location; experience of the operator; the likely cumulative impact of Stack.

   vii. Whether the representations of the Appellant were relevant and particularly whether they were vexatious and/or frivolous.

   viii. Whether the representations of the Appellant offended the Provision of Services Regulations 2009/2999.

   ix. Whether the decision of the LSC is wrong including granting the licence in principle and the conditions imposed.

   x. I was asked by the 1st Respondent to make such comment as I felt able to more generally than in relation to this appeal as to the role, assistance and purpose of actual or purported expert/skilled evidence in appeals of this nature.

4. Agreed issues and issues that required no determination:

   i. There was no complaint relating to the licensing objectives of public safety or protection of children from harm. These licensing objectives need not concern the

court in the context of this appeal. The only licensing objectives raised for consideration by the Appellant were the prevention of public nuisance (and then specifically not in relation to noise to residents in Bewick Tower) and as a "secondary" consideration the prevention of crime and disorder.

ii. Cumulative impact refers to the cumulative impact on the licensing objectives of licensed premises within the CIA away from the site of the particular premises. Such impact may not be traceable to individual licensed premises.

iii. The 2nd Respondent was a person entitled to apply for a premises licence within s16 of the Act and within the context of this application. This refers to the passage within the 2nd Respondent's second skeleton argument [SA/R2/2nd/9/paragraphs 35 – 39] in response to issues raise in the Appellant's skeleton argument about whether the 2nd Respondent should in fact have applied for a Provisional Statement under s29 of the Act.

iv. The 2nd Respondent was not obliged (in the circumstances of this application/development at the time the application was made) to apply for a provisional statement under s29 of the Act rather than a premises licence under s17 - a submission initially made within the Appellant's skeleton argument [[SA/A/2 – 3/paragraphs 7 – 9 and SA/A/8/paragraph 29].

v. The appropriate SLP for this court to consider is Newcastle City Council (NCC) 2003 Statement of Licencing Policy (SLP) 2018 – 2023 [1/12/204 – 374] approved by the City Council on 7th March 2018. The appropriate s182 Guidance is that issued by the Secretary of State in April 2018 [A/18/228 – 382].

vi. Paterson's Licensing Acts 2018 is the leading up to date text on licensing law. Its commentary is not authoritative or binding but where appropriate could offer some guidance.

vii. I was not required to repeat in this judgment my preliminary ruling given on the first day of the appeal about the compliance of the plans with the 2005 Regulations.

F. THE LAW, POLICY AND GUIDANCE DOCUMENTS

1. The Licensing Act 2003 ("the Act") provides the statutory framework.

2. The Act details the general duties of licensing authorities and by s4(1) a licensing authority must carry out its functions under the Act (licensing functions) with a view to promoting the licensing objectives.

   By s4(2) the licensing objectives are (a) the prevention of crime and disorder (b) public safety (c) the prevention of public nuisance and (d) the protection of children from harm.

By s4(3) in carrying out its licensing functions a licensing authority must also have regard to (a) its licensing statement published under section 5, and (b) any guidance issued by the Secretary of State under s182 of the Act.

By s18 of the Act the LSC may attach such conditions to a premises licence as it considers appropriate for the promotion of the licensing objectives including modification of those offered in an operating schedule.

S181 and Schedule 5 of the Act provides for appeals against decisions of licensing authorities. By S181(2) on an appeal in accordance with schedule 5 against a decision of a licensing authority, a magistrates' court may (a) dismiss the appeal (b) substitute the decision appealed against for any other decision which could have been made by the licensing authority (c) remit the case to the licensing authority to dispose of it in accordance with the directions of the court.

3. The Secretary of State has made procedural regulations in respect of the applications for premises licenses in the form of the 2005 Regulations. They are set out at [A/4/17 – 50]. I have referred to the individual regulations where relevant.

4. At paragraphs 1.9 and 13.8 the s182 guidance reiterates the statutory provision requiring the licensing authority and the Court in hearing an appeal to have regard to the relevant SLP and the s182 guidance. I (like the LSC) am entitled to depart from either if I consider I would be justified in doing so because of the individual circumstances of the case. I am entitled to find that the licencing authority should have departed from its policy or the s182 guidance because the particular circumstances would have justified such a decision. If I do depart from the NCC SLP or the s182 guidance I should give my reasons for doing so.

5. I am satisfied that the role of this Court in this appeal is as set out in R (Hope and Glory Public House Ltd) v City of Westminster Magistrates Court [2011] EWCA Civ 31 and R (OTA Hope and Glory Public House Ltd) v City of Westminster Magistrates Court [2009] EWCA 1996 (Admin). Further consideration and support for the approach in Hope and Glory is clearly stated in other cases – Marathon Restaurant v London Borough of Camden [2011] EWHC 1339 (Admin) and R (OTA Portsmouth City Council) v 3D Entertainment Group (CRC) Ltd [2011] EWHC 507 (Admin).

6. Mr Gouriet QC urges me to take R (OTA Westminster City Council) v Middlesex Crown Court and Chorion PLC and Fred Proud [2002] EWHC 1104 (Admin) (particularly paragraph 21) as strong support for his submission that there is nothing in the decided cases (about the role of the Magistrates Courts in such appeals or the burden on the complainant) to the effect that the Appellant now has a burden of proving that (in this case) the grant of the licence to the operator will add to the existing cumulative impact. Chorion was decided before Hope and Glory and the enactment of the Act. The 2nd Respondent submits that the particular paragraph (21) of Chorion relied on by the Appellant is approval by the court of an agreed point between the parties that the appellate court should accept and apply the policy of the tribunal below. I agree. It was not a contentious point in Chorion nor is it in this appeal. There is nothing in the Chorion judgment that persuades me the decisions of Hope and Glory should be interpreted other than as I detail below, and as was restated in R (OTA Townlink Ltd)

v Thames Magistrates Court [2011] EWHC 898 (Admin) [A/20/389] (see particularly paragraphs 26, 36 and 86).

7. Accordingly whilst (as all parties agreed) the SLP is a relevant consideration in this appeal and this court should accept and apply the SLP, that does not alter the burden of proof as established in Hope and Glory nor is it the same as imposing a burden of proof on one party or another on any particular issue within this appeal. The decision I am required to make is whether, taking all the evidence and relevant considerations into account, including accepting and applying the policy, the decision of the LSC is wrong. The burden of proof to show that the decision is wrong lies with the Appellant.

8. In accordance with the decision of Hope and Glory and those cases that have followed it, the approach I have taken to this appeal is:

   i. The appeal at the Magistrates Court is a hearing de novo.
   ii. I may hear fresh evidence and take into account events and matters occurring between the decision and the appeal.
   iii. I can consider matters of law and fact.
   iv. That evidence may include hearsay.
   v. I must form my own decision about the merits of the case considering all the evidence before me.
   vi. The decision I must make is whether, because I disagree with it in light of the evidence before me, the decision of the LSC is wrong (even if it was not wrong at the time). It is not sufficient for me to simply disagree with part or all of the decision, I must be satisfied that it is wrong.
   vii. The burden of proof to show that the decision is wrong lies with the Appellant. The standard is on a balance of probabilities.
   viii. I should not lightly set aside the decision of the LSC.
   ix. I should pay careful attention to the reasons given by the LSC for arriving at their decision under appeal. The weight I should ultimately attach to those reasons is a matter of judgment in all the circumstances of the case.

G. EVIDENCE OF WITNESSES

1. I heard oral evidence from 6 witnesses all of whom had also provided written witness statements within the bundles and which they adopted in examination in chief. I was referred to and read the statements of 3 others who did not attend. Within this section I have not detailed the contents of written statements nor rehearsed in detail the oral evidence but have sought to summarise some of the relevant evidence given and provide my assessment of each witness. Where relevant thereafter I have, referred to the witnesses' evidence in my assessment of the issues.

2. Before moving on to do so, a matter arose in the hearing relating to the production of plans showing licenced premises in Newcastle. As they were produced by the Appellant and 1st Respondent during the witness evidence I refer to it here.

3. During his cross examination of Chief Inspector Pickett, Mr Rankin produced a plan which purported to show the licensed premises in proximity to the site - particularly to the west - and to provide details of those licenses (times, activities) and direction of

travel of users of the Newcastle NTE. It quickly transpired this had not been served on or agreed by either of the Respondents and they did not agree it was accurate. It was not included in the bundles of evidence that had been served. It was not referred to by either of the Appellant's witnesses. There was no information about the legend. No information was provided about when or how the map had been produced other than, when asked, Mr Rankin said it had come from his client.

4. The Respondents said it did not include a number of licensed premises and was inaccurate or misleading as to some it did. Mr Rankin immediately conceded the plan was not accurate saying it was merely indicative and produced to show the general location of the majority of licensed premises and the directions of travel. He did not specify the extent of the inaccuracies. The plan was in my view being used by the Appellant in an attempt to demonstrate that the majority of users of Stack would come from or through and go (return or move on to) the City Centre CIA to the west and licensed premises within that area.

5. In a period of adjournment that followed the 1st Respondent produced a plan showing licensed premises. This was exhibited by Mr Bryce in his statement of 30th May 2018 and produced in the course his oral evidence. Before it was produced it was said by the Appellant that it was likely to be agreed as accurate and in due course it was.

6. Chief Inspector Pickett had been asked about the plan produced by the Appellant at the time of its production. He had not seen it previously but his immediate response was that it was inaccurate. Mr Bryce when asked about it also thought it inaccurate.

7. Given the concessions of the Appellant about the inaccuracy of their plan and the accuracy of the one by Mr Bryce, in so far as I have required it necessary to take into account the location of licensed premises in the relevant areas, I have preferred the plan produced by Mr Bryce to represent the accurate position.

8. The manner in which the plan was produced by the Appellant was wrong and should not have happened. If nothing else there were case management directions about service of evidence. I may have ruled that the plan should not be admitted and/or that I would give it no weight. Whilst the Appellant immediately acknowledged it was not accurate that is not sufficient. Once it had been produced the damage to a certain extent was done. So far as the Respondents were concerned there was a plan before the court that purported to show a material consideration in support of the Appellant's case and the Respondents said – and the Appellant acknowledged – it was inaccurate. The Appellant could not remedy this (even had that been a satisfactory approach) by detailing the inaccuracies.

G.1 WILLIAM (JOE) GRAHAM ROBERTSON

1. The statement of Mr Robertson dated 19th April 2018 is within the Appellant's bundle served and relied on at [1/13/375 – 380]. He holds an interest in the long lease of the site on which, and the building within which, the licensed premises Harry's Bar are located on Grey Street from which his company obtains rent [1/13/375 – 380 paragraphs 12 and 23]. The location falls within Newcastle City Centre SSA and the same CIA as the Stack site. In the main Mr Robertson's statement refers to his business

interests including in relation to Harry's Bar, discussions he had with the City Council at the time of the applications for licences (new and variations) and the development of Harry's Bar, the potential impact on his and business and inward investment by the granting of licences in Newcastle city centre. There are brief references to his view of public nuisance and crime and disorder in Newcastle city centre.

2. Mr Robertson's statement was not agreed or accepted by either respondent and they requested he attend to give evidence and answer questions from them. He did not do so. No explanation was offered why not. Both Respondents relied on evidence from witnesses in the form of written statements and oral evidence. Where those witnesses were not called to give oral evidence their written statements had been agreed and accepted by the Appellant. Each witness provided evidence that conflicted with, or in some cases, directly contradicted parts of Mr Robertson' statement.

3. Much of the written statement of Mr Robertson in my view, lacks relevant (qualitative or quantitative) detail or evidence on which I could assess it. His comments about Newcastle NTE and the potential impact of Stack on the licensing objectives and additional cumulative impact within the CIP similarly so. In the absence of his being available to answer questions much of the content of his statement is incapable of being clarified or assessed to any meaningful extent. In so far as Mr Robertson raises relevant issues in his statement, unsupported by other evidence and in so far as they are contradicted or clarified or expanded upon by the unchallenged written and/or oral evidence of other witnesses relied on by the Respondents, I have preferred the accounts of those witnesses.

4. Specifically however, I reject the assertion in the statement of Mr Robertson [1/13/375 – 380/paragraphs 16, 17] and referred to again in terms at [1/13/375 – 380/paragraphs 21, 29, 31] that in, 2012 or at any other time, Mr Robertson was told or offered assurances by the City Council that "there would be no further City Centre licenses granted". Mr Savage's statement at [1/18/572] that I consider later and which was accepted and agreed by the Appellant deals with this issue. Given the content of Mr Savage's statement that was agreed and the clear reference to assurances having been made in Mr Robertson's statement I am not clear why that assertion was not withdrawn.

5. Nor do I make any finding about the perceived, potential or actual economic loss to Mr Robertson's business interests in Harry's Bar or any other premises, nor to those of others who may have interests in licensed premises in Newcastle or the loss of investment to Newcastle should the licence for Stack be upheld. At its height Mr Robertson's statement perceives the possibility of such losses but in the absence of the evidential basis for that suggestion I am unable to do make any such findings even were I inclined to.

6. I address the issue of whether the Appellant's (or specifically Mr Robertson's) representations were relevant and particularly whether they were vexatious and/or frivolous elsewhere.

G.2 MR ALISTAIR TUNRHAM

1. Mr Turnham gave evidence for approximately two days. The report he adopted in

evidence in chief is 114 pages long. I do not propose at this stage to provide a review of his evidence. As with all the evidence heard and read I have taken it into account and I will refer to that which I consider to be relevant to my assessment as it arises.

2. In short his oral evidence of substance remained as his report and as set out in his conclusions for the same reasons. He remained of the opinion as set out in paragraph 193 of his report [1/14/422 – 423] that however well operated Stack would, in its current location, unavoidably add to the existing cumulative impact in Newcastle City Centre

3. Mr Turnham was presented to the court as an independent expert witness by the Appellant. There was no suggestion before the service of bundles that any expert evidence was to be relied on by either party.

4. Whilst neither Respondent submitted that Mr Turnham's evidence should not be admitted and conceded he had some relevant experience to offer, both made forceful submissions about the weight that should be attached to his evidence given concerns they raised. They were in my view at least in part relevant concerns and did go to weight. Given that and the potentially important role of expert/skilled evidence I have considered those concerns in this section.

5. I should say at this point I was invited by both Respondents, but particularly the 1st Respondent, to comment more generally on the role of expert evidence and the value of their evidence in such cases. I indicated at the time I was likely to resist the invitation and remain of that view. The Magistrates' Court is neither a court of binding authority nor a court of record. My assessment of Mr Turnham's evidence throughout this judgment is in relation to this case, based on the evidence I heard and in the context of the decision I had to make.

6. The purpose of the Court hearing expert or 'skilled' evidence is to assist the Court to determine matters about which it cannot be expected to possess an appropriate degree of knowledge or understanding to otherwise do so. The evidence should be relevant to the issues the court has to determine and required to assist the court in making that determination. Such evidence will be used as part of the evidential picture and evaluation of the case as a whole. Given the nature of skilled or expert evidence, it will often form a significant part of that evidential picture and evaluation process.

7. In any court proceedings, parties can expect the evidence on which they rely to be tested and, where appropriate, robustly so. The evidence of expert or skilled witnesses, as much as any other (arguably perhaps more so) must be able to withstand that rigorous scrutiny if it is to be afforded weight and if it is to be of assistance to the Court in the way it should be. Where the evidence is found to be lacking it is likely to effect the weight that is given to it and the assistance it can provide the court particularly where the court has other conflicting evidence on which it can rely and place greater weight.

8. Evidence heard in appeals of this nature are not subject to criminal or civil rules of evidence nor the criminal or civil procedure rules each of which make specific provisions about expert evidence. Hearsay evidence can be admitted. I consider that the case law and procedural rules from those jurisdictions can provide useful guidance to a court or tribunal trying other cases when assessing the admissibility of, or weight to be attached to, expert or skilled evidence. I was referred to Kavanagh v Chief Constable

of Devon and Cornwall [1974] 2 WLR 762; Kennedy v Cordia (Services) LPP [2016] 1 WLR 597, in relation to expert or skilled evidence (and in turn its references to the South Australian case of R v Bonython (1984) 38 SASR 45 and the "Cresswell Principles" set out by Mr Justice Cresswell in a case known as The Ikarian Reefer [1993] 2 Lloyds Rep. 68); and Leeds City Council v Hussain [2002] EWHC 1145 (Admin), in relation to hearsay evidence - each to provide some guidance in assessing or weighing evidence admitted in appeals of this nature.

9. Before going further it is necessary to clarify the relationship between Mr Turnham and MAKE Associates. File 1 included a report of Make Associates [1/14/381-495]. The report is entitled "Licence: Stack An Independent Licencing and Cumulative Impact Assessment" and overleaf "By MAKE Associates April 2018". The index to File 1 refers to this document at tab 14 as "Statement of Alistair Turnham of MAKE Associates dated 19th April 2018". Within the report at Appendix 1 [1/14/424 paragraph 194] MAKE are described as "leaders in night time economy strategy development and licencing research" and [at para 195] under the sub title "About the researcher" it is stated "MAKE Principal Alistair Turnham undertook this study" and [at paragraph 196] sets out his previous experience and qualifications. This report was written in the first person plural and Mr Turnham's references were in the plural when giving evidence; in describing the work done, the findings and the conclusions references were to "we" not "I", in referring to Mr Turnham in the report there were references to him/his/he/Alistair (Turnham) rather than I. During cross examination it was established that MAKE Associates is a consultancy organisation operated by Alistair Turnham as a sole trader. He said that sometimes he/MAKE may work with other associates, researchers or organisations but not on this report. Mr Turnham had undertaken all the work alone. So MAKE Associates and Mr Turnham are one and the same as are the statement of "Alistair Turnham of MAKE Associates" in the index and the "Independent Licensing and Cumulative Impact Assessment….By MAKE Associates" report. The report itself has no clearer date than April 2018 and is not signed nor is there any form of statement of truth attached to it. It seems as if 19th April 2018 (given in the index) cannot be correct: during his evidence Mr Turnham agreed that he was still working on the report on 23rd April 2018. Copies of previous versions of the report were requested by the 2nd Respondent but not provided.

Independence and impartiality

10. The report refers on numerous occasions explicitly or implicitly to its independence and Mr Turnham reiterated this in his evidence. In evidence in chief Mr Turnham said his "brief" was whether there would be any negative cumulative impact to the area from Stack. The Respondents each returned to this during their cross examination. When he was asked by Mr Holland why his report said that his observational notes were for both positive and negative impact given those instructions his response was "that was what my brief was". When asked why he therefore said both positive and negative he replied that "possibly I need to go back and look at the brief" and then asked why he need to do that "when I do a Cumulative impact assessment it is possible for it to be positive, negative or neutral. The reality is that the majority is negative". When asked why he said negative only in evidence he repeated "I was briefed to look for negative only" and that "it is perfectly reasonable for someone to instruct you only to look at the negative". When challenged that it was not reasonable to accept such instructions and then to say in the report that he was looking for both positive and negative he replied that "it may

be that I have cut and paste that bit in but my approach is always to look for the positive and the negative." He was asked if there were positive matters would he put them in the report and the answer was "if that was the brief yes". He was reminded he had said it wasn't "in the brief" and answered "I make no bones about it that there will be benefits about Stack …….I cannot comment on every aspect of Stack….I have been objective with the brief I have been given"

11. During his evidence about the report itself more issues arose about his independence and impartiality.

12. His observational notes that were requested by the 2nd Respondent are at [1/19A/615 – 618]. His notes from visiting BPS at [1/19A/617 – 618] in noting the dispersal at 23:00 show "…But there is no fighting as would likely be seen in Newcastle City Centre..". He had not by this time visited Newcastle to conduct his observations in preparation of this report. In his observational notes for Newcastle at page 616 at 00:33 hours at the Bigg Market and after describing it "..Confirms the area's reputation."

13. He considered it important to look at "churn". He took the figures provided relating to Pilgrim Street Tipi. He sought to make comparisons with other establishments. The only comparator he drew from an establishment in Newcastle was with Harry's Bar (the premises in which the Appellant has a financial interest) for a period of 6 weeks over the Christmas period 2017/18 on Friday and Saturday nights. It is not clear if the information came directly from Mr Robertson. The other two comparators came from establishments in London that he said were one bar/restaurant premises not of a similar nature to Stack nor the other venues he had said there was value in drawing comparisons with. They "verified that the figures we gave were in the correct range for an evening and night-time economy venue" [1/19A/583]. He was unable to provide the details of those premises for commercial reasons. I return to the churn figures in my assessment.

14. He was asked both in evidence in chief and cross examination about his Instagram post exhibited at [2/19/613] referring to his visit to a restaurant on the night of his observations in Newcastle. The post had a photograph of the restaurant and attached to it a comment "Oh noor. Night on the Toon. Thanks lovely Geordies. Madness but goodness" (followed by several hashtags). In evidence in chief he said he wanted to be diplomatic in the post (it was in this context that he said that his brief had been about negative cumulative impact). In cross examination he agreed he had eaten in that restaurant on that night and that the restaurant was in the Bigg Market within the SSA. He at first could not recall if it was during his observations or slightly afterwards but then said it was afterwards. He had felt safe notwithstanding his own evidence about that area and the assertion by Mr Robertson that it was a "no go area" as he is used to such areas. He saw no discrepancy between his positive comment on Instagram with the findings of his report and the assertion of Mr Robertson that the Bigg Market was a no go area; given his experience he felt safe, the scenes in and about the Bigg Market are known to all, a large proportion of the population would however find it incredibly intimidating.

15. There were errors in his report that he did not acknowledge until his evidence that are difficult to reconcile each of which on the face of it were negative to Stack. By way of examples.

i. At paragraph 15 of his report [1/14/389] in describing the application process for Stack "..after objections from …..and other local businesses" – as the papers that Mr Turnham said he had considered made clear the Appellant was the only local business that objected to Stack whereas a number of other local businesses wrote letters of support to be considered by the LSC.
ii. At paragraph 36 [1/14/393] he comments on what he says is a problem with the late licence for food "(if) the EHO upon visiting the site were minded to issue a temporary closure notice, it would affect all the independent food (and alcohol) retailers within the site, since in terms of their late licence they are, in reality one retailer. Normal practice in this scenario is that individual registration and late-night licencing would have been built into the licence". The notes of the decision make it clear that this was not raised as an actual or potential issue by Ms Wallis the representative of Environmental Health responsible authority and by the time of she had withdrawn any objection to the application. Her written evidence which he had seen before the hearing said there was no such issue (as she subsequently confirmed in oral evidence). In examination in chief he conceded this was wrong but gave no explanation for its inclusion in his report.
iii. At paragraph 37 of his report [1/14/ 393] he says "it is also worth noting there is *no* terminal hour currently ascribed to Stack…" and goes on to set out the problems of that. The papers Mr Turnham had showed there was a terminal hour in the licence granted. No explanation was provided for this error when he was cross examined about it.

16. One of the photographs that he had taken whilst making his observational visit to Newcastle (fig 25 at [1/19A/611]) was considered in some detail throughout his evidence. In his caption to the photograph he said "There is an unusually high police and paramedic presence in Newcastle city centre. This ranking of vehicles to treat the wounded and extreme drunkenness is the most visible response we have seen in any UK city. This is very much a coping solution." He referred to it in similar terms in his evidence. When asked about it in his evidence, Chief Inspector Pickett referred to it as a "safe haven" for vulnerable people to be taken to or use that was paid for by the late night levy and he described it as a proper and responsible approach to vulnerability that the police undertook in partnership with others. It is also referred to within the NCC SLP [1/12/250/paragraph 6.15.2] read by Mr Turnham in preparation of his report, specifying its location (i.e. where the photograph was taken), as an example of one of "various night time safeguarding initiatives" a "safe haven" project with its role described in much the same terms as Chief Inspector Pickett. At no point did Mr Turnham refer to it as a safe haven or recognise it, or any value of it, as such. I note that in the appendix to his report setting out his credentials at paragraph 199 is described "Alistair's latest project, published in 2017, is the **first evaluation of 'safe spaces'**…these schemes provide care for those who are intoxicated or vulnerable….MAKE's study of these examines their contribution to reducing alcohol related injuries and crime in town centres after dark. The work was overseen by the Local Alcohol Partnerships Group and is being rolled out nationally in 2018 as part of the Home Office's current Local Alcohol Action Areas 2 programme".

17. The terms of his instructions were never established more objectively than as set out by Mr Turnham above in his evidence; no letter of instruction was produced although the 2nd Respondent did request it. I remain unclear whether there was in fact any letter of instruction or whether it was an oral instruction. What is clear is that Mr Turnham was

liaising directly with Mr Robertson apparently during the preparation of his report. At [2/19/608] there is an e mail from Mr Rankin to the other parties which includes an e mail from Mr Robertson to Mr Turnham of the same date providing information and saying the plans had been sent separately. He also said in cross examination that he was in direct oral communication with Mr Robertson. See also below about the images provided by Mr Robertson.

18. At [1/14/429 – 440] is Appendix 3 to the report "Media coverage of Newcastle at night" then an introductory paragraph 202. Below is a representative sample of media coverage of Newcastle's night-time economy" following which there are a series of photographs some with newspaper articles attached to them, some dated and some with captions or descriptions above them. These photographs referred back to one of the stages of his approach [1/14/385] including "7 (iv) we collected photographic evidence to explicate the written findings of our report" (the photographs taken by Mr Turnham himself were not contained in the report, he provided them later having been asked by the 2nd Respondent). In cross examination it was established that these images had been provided to Mr Turnham by his client Mr Robertson. Mr Turnham and ESL had both been involved in appeal proceedings relating to other premises "The Alchemist" in 2016, Mr Turnham had been called as a witness for The Alchemist and ESL was the Appellant. Mr Turnham knew from this that Mr Robertson has some media images used at that appeal and asked him to provide them. He did not consider that approach would damage his independence; it could do but didn't here as he was simply asking for something that he knew existed and would complement his own links at paragraph 68 of his report. It was subsequently established – almost by accident and in response to a different question - that he had in fact not only asked Mr Robertson for the media images he already knew he had but also to conduct an online search for other images. It also became apparent having been provided with the photographs, he had thereafter made no further enquiry about the images. In cross examination it was established that: the photographs were provided either by Mr Robertson or his assistant; the photographs were not all the same as those used in the Alchemist appeal; it was not clear that they were all in fact media images rather than photographs taken by others - for those he did not know the origins of the images nor the accompanying captions he thought some may have come from a professional photographer; for some it was not established – nor had Mr Turnham taken any steps to do so – that they were Newcastle – for one he said he thought it was as the bin looked like the bins in Newcastle City Centre; where the images that appeared to be media images some of the written (contextual) media coverage had been removed; where there were dates associated with the images they went back to 2016. Ultimately, after some extensive cross examination about the images, when asked by the court whether, in conducting his media review he had found any positive images, he said that his particular instruction was negative, that he would have seen images along the way that weren't showing negative impact but couldn't be sure.

Experience, expertise, qualifications and body of knowledge

19. It was not suggested by either respondent that Mr Turnham did not have any experience or qualifications of potential relevance. However again questions were raised about it, Mr Turnham's approach was left wanting and I was left in a position where a clear assessment could not be undertaken.

20. He readily acknowledged when asked by the Respondents that there was no code of conduct for his work other than the Market Research Society Code of Conduct that was not relevant to this report, that he was not a member of any professional body, his work was not regulated by any outside agency other than "the rules of business and government etc but no specialist organisation". He was asked about the reference to MAKE as "the world's leading night time economy consultancy" on his e mail at [2/19/608] and his reference on a social media account to him being recognised as a world leader. To the 2nd Respondent he said MAKE was the only such consultancy so it was accurate. To the 1st Respondent when asked about the description of himself, that it was based on his being introduced as such at conferences, talks and interviews and that he was "generally regarded as the leading expert in this area" that there "are not many of us" and not wanting to blow his trumpet but people "have said to me you are the leading expert you should say so". There was no external regulator, body or agency who had recognised MAKE or Mr Turnham as such but he was always happy to refer to himself as a leading expert and should there be any misunderstanding about that then the 1st Respondent was invited to undertake a survey of "people" in his area.

21. In his report at paragraph 196 (1/14/424] under the title About the Researcher "Alistair's specialist subject is the evening and night time economy, a phrase he created in 1994 when he undertook the first of three degrees in the subject". In cross examination he was challenged about the degrees it having been put to him that he had 3 degrees during examination in chief. He responded that he had corrected himself during examination in chief and that he said he had "undertook 3 degrees". It turned out what he meant by this was he had an undergraduate degree, a masters in science and some time ago had started but not completed a PHD. It is difficult to understand his reluctance to simply set out the position in a straightforward manner. He had felt the need to correct himself when Mr Rankin asked the question of his qualifications but only to the extent to use the word "undertook". There was then cross examination about creating the phrase "night time economy". He said then when referred to an article dated 1990 [2/19/662] that he was "not taking the credit for night time economy. John Montgomory was already talking about it then but not in the same way we use it now".

22. At paragraph 8 of the report under the title "Objectivity" [1/14/386] "It is important to note the although MAKE is briefed to undertake expert witness studies such as these by courts, licencing committees, barristers and legal firms…". The 2nd Respondent made a written request before the hearing for details of such work the response to which is set out at [1/19A/613 – 614] and then cross examined Mr Turnham further about it. He said that the use of the word "generally" at page 613 explained that paragraph to refer to the "general area" of "being briefed in legal proceedings". On further exploration it became apparent he had never been instructed by a court but on two previous occasions by parties in court proceedings; the Alchemist Appeal instructed on behalf of the Alchemist and the Horesferry Magistrates case where he was instructed by solicitors "presumably" on behalf of McDonalds. He was unable to recall if he had ever attended court and given evidence in any other cases. So far as the Licencing Committee cases referred to at page 614 it was the two involving Hammersmith and Fulham Licensing Committee where he believed he was instructed on behalf of the licencing authority. Of those, for the Fiesta Havana case he first said the request came from the Licensing Committee, then the chairman of the licencing committee, then from an officer and he believed it was for the committee. When asked when this was he was unable to give any indication but thought 2008, when suggested by the 2nd Respondent,

sounded familiar. For the Walkabout case the instructions came from a licensing officer for the committee.

23. So far as his experience of Newcastle is concerned, his report notes at page 385 paragraph 7 (i) that he "undertook an initial night's observation of the Stack site, the Newcastle City Centre Stress Area and the City Centre Cumulative Impact Area from 20:00 on Saturday 7th April 2018 through until 01:00 hrs on the morning of Sunday 8th April 2018". Notwithstanding the use of the word "initial", his evidence was clear that this was his only visit to Newcastle in the course of this piece of work. In his evidence he said that he had 20 years of experience of Newcastle and that he had drawn on that as well as the 5 hours observation in his report. In re-examination he was asked to clarify this. There were 3 other professional visits – one to the Alchemist in the context of that appeal in 2016, one in relation to some work for a Home Office Programme in late 2017 (I am not clear whether or not that was the same work he was undertaking for the Safe Space project referred to above) and once in his capacity as a special advisor in 2008 or 2009. Other than that he had visited as a DJ (in the 1990s) or in a social capacity to visit friends over the period of 20 years. In total he estimated he had visited 20 times over the last 20 years. During those visits he had built up his knowledge of the city which in turn was backed up by his 30 years of experience in this area of work. Accordingly he said the 5 hour observational period should not be seen in isolation and it needed to be appreciated that he was able to make assessments and identify relevant issues in what may appear to be a short period of time.

Remit of report and methodology

24. Setting aside any issue about the terms of reference of his instructions in respect of objectivity, independence or impartiality to my mind there also appears to be some uncertainty about the remit of the instructions or what the report sought to provide. The report offers a range of possibilities. I will not set them out in full here but they can be found in the report's various descriptions at the following entries: The title; background section at 1/14/384/paragraphs 1, 4 and 5; the aims of the of this licensing and cumulative impact assessment are set out at 1/14/384/paragraphs 2(6 i – v); Findings overview section at 1/14/387 paragraph 5.1/11(c); Findings context section at 1/14/388/paragraphs 10 – 12.

25. Likewise whilst Mr Turnham agreed that the section of the report entitled Approach [1/14/385/paragraph 7] set out his methodology in preparing this report in 8 stages, it became apparent that in addition in preparing his report he had also taken account of and/or relied on: his previous 20 years of experience in Newcastle none of which is documented nor referred to in the report although a small amount of information about it was obtained in re-examination (when asked about this he queried that it wasn't referred to in his report but confirmed he had relied on it); relied on statistical information from at least www.police.co.uk but did not refer to that in his report nor provide the information relied on; obtained and relied on information from Mr Robertson and had ongoing communication with him during the preparation of the report. There was also in my view at least some confusion about the relationship between his observational notes and his report.

Underlying evidence

26. There were few references in the report to the underlying evidence or data on which assertions were based. In large part where they were provided they were references to newspaper articles. By way of example in relation to his evidence about levels crime and disorder and nuisance. At page [1/14/391/paragraph 29] "this is due to the highest level of alcohol-related violence and nuisance in the city (and some of the highest in the UK)". Further similar entries about crime and disorder are at [1/14/389/paragraph 13], [1/14/422/paragraph 191], [1/14/397/paragraph 57] and [1/14/401/paragraph 84] including references to having reviewed the statistics.

27. There is no reference at any of these points or throughout the report as to where these conclusions are taken from nor, if they were, the statistics on which they are based. Having been asked in writing before the hearing to clarify the basis for the final point referred to above the response was [1/19A/585/30] "The respondent could also visit as we did www.police.co.uk and search the national crime mapping for night-time proxy indicators of violent crime and ASB in the areas. This shows clearly that there are some problems in this part of the CIA, they are considerably more limited than those in the Stress Area."

28. Having, further to a written request from the 2nd Respondent, provided his own photographs taken during his observations in Newcastle, Mr Turnham included amongst them one (Fig. 23) at [1/19A/609] with the caption including "Here the police statistics show huge amounts of public nuisance problems as well as more serious violent crime requiring a police containment operation". When asked about the statistics used he said he had visited www.police.co.uk and thought he had referred to the site in his report but on checking he had not. When asked if he had the statistics on which the statement was based he said that he did not but he had looked at the statistics for the last year and they are as he had reported them.

29. The approach section of the report makes no references to websites or other sources of statistical information from which these conclusions can be drawn other than possibly the "assessment of relevant policies from Newcastle City Council pertinent to licensing and night-time economy including the council's Cumulative Impact Policy (CIP) in which Stack is situated, as well as the Newcastle City Centre Stress Area (which is located adjacent to the Stack Site)". The NCC SLP (both the 2013 – 2018 and 2018 – 2023 versions) acknowledge the impact of alcohol consumption in Newcastle and the city centre and the problems associated with it including crime and disorder. They do not provide statements comparative to those made by Mr Turnham. The current policy at [1/12/314/paragraphs 3.2.3 and 3.2.4] notes that whilst overall recorded crime has been increasing over the past few years, the proportion of crime that is recorded as alcohol related has decreased slightly over the same period and that alcohol was involved in 13% of overall crime in Newcastle which has reduced since 2014/15. Chief Inspector Pickett also confirmed a reduction in crime in the city centre including a reduction in alcohol related violent crimes in the NTE.

30. Without the source data on which Mr Turnham relies it is not possible to say whether or not his summary of the position is an accurate one in total for the city, the city centre

or the small geographical area he refers to as east of the site. In so far as they relate to the NCC SLP they are at best a subjective view of what is said within it.

31. Likewise at [1/14/396/paragraph 59] he reports that "Newcastle also suffers from a very high level of public place urination…yet despite being a crime our understanding is that it is rarely prosecuted in Newcastle". Neither assertion was supported by any underlying evidence within his report. In cross examination he said the first assertion was based on that recorded in his observational notes of his visit to Newcastle (which record at 00.30 hours "some urination and urine trails" and in the "Crime and Disorder Count 3 urinations") as well as a mental note of what he saw.

Understanding his role

32. Mr Turnham's report was served and relied on as "An independent Licencing and Cumulative Impact Assessment" (title) and within the background section as an "expert witness report" [1/14/384/paragraph 4]. Setting aside the concerns I have about Mr Turnham's independence and impartiality, there were times when it appeared he did not fully understand his role as an independent expert in assisting the court or the role of the other parties in the proceedings. During the exchange about his previous instructions it became apparent he lacked understanding about the relationship between the court, the various parties to the proceedings and him as a witness and in particular who his client was. If there was no such misunderstanding then his evidence at times was misleading whether intentionally so or not.

33. There were a number of examples of errors in the report – some referred to elsewhere in this section. The conflicting information was available to him before the hearing. At no point prior to the hearing and his giving evidence did he seek to correct such errors or to provide any clarification that his opinions and conclusions had been reassessed or remained the same in light of those corrections. Some were clearly what he considered to be relevant matters to the assessment of the LSC - for example the lack of a closing time, the impact of the EHO imposing a closure order on an individual trader. They were all presumably considered relevant enough for him to include them in this report the purpose of which as an expert witness is to assist the court.

34. In response to being asked to provide additional information by the 2nd Respondent he produced a document [1/19A/582] which included the passage "There were an unusually large number of additional requests and as such this has required considerable extra work. In the *spirit of cooperation*, we have completed it at the earliest opportunity by displacing other work that was planned for in this time to a later date" (my emphasis).

35. When providing some of the additional information requested in relation to his description of the area to the east of the site at [1/14/401/paragraph 84] including his review of the "crime statistics" he did not provide those statistics but suggested that "The respondent could also visit as we did www.police.co.uk". Likewise when being asked questions about the basis of his assertion to be a leading expert he invited the 1st Respondent to undertake a survey of "people in his area".

36. When asked about the photographs he had taken on his visit to Newcastle he said that he had not included them in the report as there was insufficient time to do so further

explained in terms of the budget allowed for hours of work. He disputed that they had not been included as they were "too tame" and did not support the Appellant's case rather that in any event they were not particularly helpful. He was challenged about the need to attach captions to them when only the photographs had been asked for, it being suggested that was an adversarial approach taken by him. He said he had put the captions in as he thought they were helpful for context (albeit he accepted that some of the captions did not relate to the individual photograph they were appended to). The request to Mr Robertson to provide the images was also in part in order to keep costs down.

37. He was asked why this report did not include the same passage contained in another report prepared by him and seen by the 2nd Respondent about not making amendments other than "typos" to a report at the request of clients. He explained that had been removed as he had specifically been asked to consider/clarify two things (about the terminal hour, dispersal and capacity between the two floors). He described that line of questioning by the 2nd Respondent as "fishing around in a report to look for things to use for collateral".

38. He thought it was "weird" that the 2nd Respondent had referred to the Instagram post referred to above and exhibited at [2/19/613]

Accuracy, objectivity and evasiveness

39. There were several times during his evidence that I considered Mr Turnham's answers to be evasive; by way of example during the times he was being asked about his qualifications, his former instructions, about the photographs provided by Mr Robertson, about the proximity of Stack to the SSA. He appeared unable or unprepared to answer the questions in a straightforward way. I formed the impression Mr Turnham was reluctant to concede any ground where he thought criticism was being levied at him. At times the exchanges were unnecessarily prolonged because of the way he chose to answer questions with the clear picture not coming out or being conceded by him for some time. He at times took what could be described as an adversarial approach. In my view his evasiveness in these exchanges was at times more damaging to his credibility than any actual or perceived concessions he made.

40. There were other examples throughout his evidence of what appeared to be an adversarial approach or, as the 2nd Respondent put it, "conducting advocacy" to paint Stack in the most disadvantageous light. They include:

    i. the photographs that were provided at the 2nd Respondent's request after the report had been served. Having said he had not included them because he did not consider they added much to the report and/or due to budgetary constraints he then provided them but with comments by way of captions at the top of each of them. He went on to acknowledge that each of the captions did not necessarily relate to what the photograph showed. Every photograph of Newcastle that was provided [1/19A/597 – 612] (except for those at Pages 597 – 599 which simply showed the site) had negative comments attached to them and in some cases purported to give additional (negative) evidence;

ii. In his observational notes (prepared before the report) at [1/19A/615] he notes "Stack is on the edge of the stress area! Not as far out as it looks on the map". At [1/14/391/paragraph 29] of his report he said that the "The Stack site is *not* currently in the council's core Stress Area….However, it is worth noting that the Stack site effectively abuts the Stress Area" and seeks to clarify that statement. In his evidence he said that it was "incredibly close proximity." The Stack site does not abut the SSA as was established in evidence. Notwithstanding his own clarifications in his report about what "effectively abuts" meant and his comments in his notes and evidence, Mr Turnham would not accept this. When asked whether he meant that the Stack is effectively next to the SSA his response was "I am saying it effectively abuts it, that is what I say and what I meant";

41. There was in my view evidence that Mr Turnham had not fully appreciated some of the papers he said he had considered or alternatively had chosen not to present his findings in an objective way. Statements that were established in evidence to be inaccurate during the report were almost all negative to the 2nd Respondent and none were conceded by Mr Turnham before giving his evidence. No explanation was offered for the errors which would have been apparent from the papers he had available before preparing his report and, if not picked up by him then, certainly afterwards when pointed out by other witnesses in their statements. There were a number of examples some of which I have already referred to. They include:

    i. the lack of a closing hour; the time restaurants served in Newcastle (and here the only example he gave was a restaurant operated by the 2nd Respondent); whether a compromise was reached between the 2nd Respondent and the responsible authorities on individual matters or in general; that other local businesses objected;

    ii. at [1/14/421/paragraph 190]; that the "council and police – in their consideration of Stack (including after compromises were reached on ….other licensing conditions) – clearly felt that the open space inside Stack (the Plaza) was enough of a concern to restrict it to a limited number of months during the summer and winter season...";

    iii. that the 2nd Respondent could simultaneously exploit both the Pilgrim Street Tipi and Stack licences.

42. At least three such errors were referred to in the conclusions of Mr Turnham's report as to the "likely impact of Stack on the licensing objectives in Newcastle City Centre" [1/14/418 – 423]. There were also other matters that he reported and concluded on that in my view appeared to either miss out or demonstrate a lack of awareness of relevant facts. Again they related to conclusions that were not favourable to Stack.

    i. [1/14/418/paragraph 181] when referring to the reliance of 'Boxparks' on alcohol to cross subsidise retail, food and community events having commented on its dominance elsewhere and the lack of retail at BPC he makes no reference to the minimum and maximum caps for different types of use at Stack.

ii. [1/14/419/paragraph 183] having said at page 392 (paragraph 30) that timescale is "not something we consider overtly relevant to any impact on the licensing objectives in this case. However it is worth nothing that both BPS and Pop Brixton are now established on a more permanent footing" he considers it a relevant conclusion that "these 'pop up' malls should be considered long-term additions to the neighbourhoods….Licensing and planning conditions and considerations should reflect this even if the initial lease is for only two to five years" He makes no mention at this stage of the time limited nature of the planning consent or premises licence for Stack.

43. There were repeated and unnecessary references in his report pointing out that the Stack site is in the CIA or its proximity to the SSA. For example at [1/14/384 – 5] in setting out his aims and approach there are three such references. He reports at [1/14/391/paragraph 29] that "Stack is *not* currently in the council's core Stress Area". It is difficult to understand why it is necessary to include the word "currently" other than to suggest it is likely to be in future. Either way it is clearly something he considers as relevant yet does not note that the new NCC SLP that was adopted in March 2018 amalgamated and extended the former two City Centre Stress Areas but not such that it included the site for Stack. He made more than one reference to the comparable area in Shoreditch being extended to include BPS (albeit at the time of his report that had not actually happened but was proposed). See also above regarding the site effectively abutting the SSA.

44. There is at least some indication of preconceived ideas or early conclusions being drawn again that were disadvantageous to the 2nd Respondent. These were either his own or those he believed others may have:

i. I have already referred to the comments in his observational notes "….but there is no fighting as would likely be seen in Newcastle City Centre.." relating to the dispersal at BPS before visiting Newcastle and about the Bigg Market where his observations "Confirm(s) the area's reputation."

ii. When visiting Newcastle the first observational note he makes on arrival "…will make a big impact to this area – positive (day retail – hinge site) and but mainly negative (evening)". By the time of his evidence the "mainly negative" impact had changed to "I was able to get a pretty clear picture that there may be some positives but from a cumulative impact point of view it would be overwhelmingly negative" which in answer to a further question became a "very serious effect".

iii. At the same time in his notes he concluded that Northumberland Street was "not one that many people are using to get to the city centre to access its NTE". In his evidence he said that remained the case throughout his observations. There are no further references in his notes. There was no reference to the travel movements referred to in council framework and policy documents exhibited to the statement of Mr Wright. He was unaware of and unable to describe the residential area or demographic of residents to the north of Northumberland Street.

iv. In his observational notes at [1/19A/615] at 20.25 hours the restaurants are "not as busy as we might expect for a city centre at weekend" and at 20.55. "Circuit city centre (e.g. Collingwood Street and Bigg Market) not as busy as expected".

v. when being asked about the Instagram posting in evidence "the scenes in and about the Bigg Market are known to all".

vi. During his evidence when being asked about the location and numbers of licensed premises close to the site he thought it was "no secret and the court would use its own experience".

vii. The issue about whether the site abuts the SSA arose from his initial misinterpretation of the maps he viewed before his visit but he was not prepared to alter that notwithstanding his later observations.

viii. When asked about his motivation for the images he had included in his report he said he was "putting it in to show the kinds of things which we all know and some of which I saw on a smaller scale".

45. The exchange and his evidence about the "safe haven" and the photographic image at [1/19A/611] that I have already referred to.

46. At [1/14/389 paragraph 13] having said it was unusual, the report says in this case "we also examine the protection of children from harm as this emerged as a key concern for residents" so raising it as an important issue in the "Context" section of his report. There is thereafter no such examination although there are sections in the report that consider each of the other licensing objectives [1/14/397 – 399 paragraphs 57 – 66].

47. In his report and evidence Mr Turnham asked me to give careful consideration to the letters of objection from the public when BPS had applied for a variation of their licence. He pointed out that they were individual letters and not of the generic type often seen. The nature and number of the letters he said was important. At [1/14/408/paragraph 121] "We cannot vouch for the veracity of each individual complaint" but at [1/14/419/paragraph 184] "…residents have been able to provide reliable accounts of this (problems with the licensing objectives)". I did consider those letters. At least 10 of them contain the same significant passage from (using the letter at 1/14/465 as an example) "1. The premises are located in the Shoreditch Special Policy Area……" through paragraphs 1 – 5 and then a concluding paragraph "..Should the licence be deemed suitable …… ancillary to a meal". I do not agree with Mr Turnham's assessment of the letters in total not being of generic type and therefore more persuasive to the extent I consider them relevant to my decision about Stack. As to relevance, in any event, many of the issues raised in these letters are – as one might expect them to be – particular to BPS, its management, its operation and its location and environs.

48. Having considered all of his evidence I was left with the clear impression that Mr Turnham, whether because he was influenced by his initial instructions or otherwise, did not produce an independent or impartial study or give independent or impartial evidence. I cannot reconcile his explanation about his impartiality within the ambit of his instructions to consider negative aspects not least because on occasions when he

was asked about the partiality of aspects of his evidence he referred back to the limitations of working within those instructions. On one reading of at least sections of his evidence it appears that he was not only impartial but determined in his instructions and made positive efforts to point out the negative. I was also concerned about Mr Turnham's understanding of his role within the proceedings – whether it was a neutral role to assist the court or an adversarial one to maintain his own position or benefit his client.

49. There were times when I considered he adopted an inappropriately adversarial approach and others when I considered him to be evasive particularly when he considered himself or his findings to be being subject to challenge. At times I was equally, if not more, concerned about the manner in which he dealt with questions as with the answers that finally came. I regret to say that Mr Turnham's approach to questions when he was, or perceived he was, being challenged or criticised all too frequently led to evasive and obstructive exchanges. On occasions he appeared affronted or surprised that he was subjected to rigorous cross examination about relevant issues or that the Respondents had undertaken a forensic approach to his evidence.

50. There were errors, inaccuracies and omissions in his report about matters of varying significance. They were almost always adverse to the 2nd Respondent and were not acknowledged until his live evidence and then remained unexplained. Given their nature I consider them difficult to understand. There are a variety of possibilities none of which, particularly in light of my view of his independence, are particularly attractive in the context of an independent expert providing evidence to a court. At best they suggest that he had not read or thoroughly understood the documentation he had been provided with.

51. I too accept that Mr Turnham has some experience of relevance to this appeal. I do not suggest that his evidence is inadmissible or should be given no weight at all. I was unable to undertake any comparative assessment of his expertise not least given his own evidence about the shortage of supply of such experts or consultancies and his area of work being unregulated or monitored or attached to any professional body. On the basis of the evidence I heard I consider that his report was presented in a way that in some respects over exaggerated his experience, the reach of MAKE Associates and the resources that had been deployed in preparing the report. This not so much in a dishonest way but in a manner that, whether inadvertently or otherwise, painted a less than accurate picture.

52. The images presented in his report that had come from Mr Robertson, whilst not necessarily the most significant issue themselves, although not insignificant, captured a number of my concerns that also arose elsewhere: they demonstrated partiality and an adherence to his instructions rather than an adoption of the approach he previously said he had taken to present the negative, positive and neutral notwithstanding his instructions; that he had as part of his preparation of the report obtained source material from his client and not just that which he knew his client had already but also asking his client to carry out a review; they were out of date; he made assumptions about them and demonstrated a lack of attention to detail and enquiry that would be expected from an independent expert witness; he was evasive when being questioned about them; the way in which he chose to present them in the report arguably added to the lack of

objectivity; he presented them as illustrative of his point; when questioned about them he did not see, or was unprepared to see, any problem with his approach.

53. When he was re-examined by Mr Gouriet QC about the criticisms that had been made of him his answers afforded me little comfort. He confirmed that whatever else may be said his evidence was truthful, he had not exaggerated or minimised it to benefit his client or damage the 2nd Respondent, he did not change anything in his report at the request of third parties nor did he set out determined to find negative cumulative impact (although again said that was what he was asked to look for). He was asked if he had reflected on the criticisms that had been made in cross examination and whether he could see some force in them. He thought there were some legitimate concerns about presentation. Asked if he would carry forward some lessons for the future his response appeared to acknowledge that the underlying detail on which conclusions were based was not made available. The concerns about his evidence cannot be dismissed as presentational, they are more fundamental than that. It was also a little late to acknowledge the failing in underlying detail. In my view his responses did not demonstrate any real acceptance of those criticisms nor that he understood the impact of them.

54. I make it clear I do not consider that Mr Turnham was dishonest in his evidence. My concerns were not of the truth or lies variety. Nonetheless, there were real issues about credibility. For the reasons I have given I do not accept that Mr Turnham's evidence as independent expert evidence. For the same reasons the weight I feel able to give his evidence of substance is reduced.

G.3 MR MARK WILLIAM WRIGHT

1. Mr Wright is employed by the 2nd Respondent and has been since July 2015. He is now the Operations Manager of the leisure division of the 2nd Respondent (DHL). DHL hold premises licenses and consents for a number of permanent licensed premises in and around Newcastle and have also provided temporary licensed events and venues under the "Hadrian's brand" including those referred to elsewhere in this judgment – Pilgrim Street Tipi and Central Station Tipi. At paragraphs 262 – 273 of his first statement he sets out the proposed management structure at Stack and details of the General Manager responsibilities and at paragraph 273 his role with Stack as the Operations Manager of the leisure division of DHL.

2. He provided two written statements. They are both extensive. The first is at [2/19/1 – 631] incorporating a 63 page statement followed by 568 pages of exhibits. The second is at [2/23/640 – 661] and comprises and 8 page statement followed by 13 pages of exhibits. I do not intend to attempt to summarise them here. Subject to a few minor and immaterial amendments (again that do not require repetition here) he adopted the statements in his evidence in chief.

3. Mr Wright's first statement (paragraphs 1 – 24) sets out in some detail his experience in the licensed sector mostly in Newcastle (when asked by the 1st Respondent he confirmed he had worked in the NTE for 22 years), the set up of the 2nd Respondent, the 2nd Respondents interest in the licensing sector, his responsibilities as operations manager of the leisure division of the 2nd Respondent none of which was challenged.

In my view it demonstrates extensive and relevant experience in the licensing sector (in management of individual licensed premises, multiple premises, broader management and training roles within the companies he has worked for) and an experience base on which he can understand the issues of cumulative impact and the promotion of licensing objectives within Newcastle. It also demonstrates the experience of the 2nd Respondent – his employer and the premises licence holder – in the licenced sector in and around Newcastle.

4. Whilst I acknowledge Mr Turnham's evidence on which the Appellant relies, in parts conflicted with that of Mr Wright's, in fact there was little challenge to Mr Wright's evidence in cross examination by the Appellant and much of it was clarification.

5. He confirmed the dimensions of the containers. He confirmed the authorisations for those containers marked bars and which would be wet led allowed for sale of alcohol without substantial food and only snack food (crisps, nuts etc) would be sold from those containers, that food led containers could only sell alcohol as ancillary to purchases of substantial food.

6. He explained his understanding of the conditions regarding the sale and consumption of alcohol without substantial food and its interaction with the up to date plans. Such sales are limited to the Plaza Area and the open seated area to the north. For licensable activities the open area has year round operation but the Plaza is limited to the two seasonal periods of 3 months each and any other additional periods that may be permitted. The LSC decision in its adoption of the OS Rev G conditions imposed a cap on the percentage of the trading area and number of containers (whichever the lower) to be devoted to wet led use. The maximum number of containers to be devoted to wet led use is 6. The up to date plans were in accordance with those conditions. The upstairs "bar" is proposed to operate with a voucher system – the customer could buy substantial food from a food offering and be provided with a voucher which would allow a purchase of alcohol from that bar, the purchase of alcohol would only be allowed on production (and thereafter surrender) of the voucher and so would be ancillary to substantial food albeit two separate transactions. Having surrendered the voucher the customer could not make further purchases of alcohol ancillary to that food but if they wished to purchase further alcohol could move downstairs to the ground floor. His written statement set out that he would agree any such system with the licensing authority before its implementation. The bars downstairs would sell into the open area to the north of the Plaza area and so were compliant with the restrictions. In total these 4 containers were within the conditions and restrictions imposed. He agreed that the licence as granted permitted more but was clear in his evidence that the plan was for no more bars that on the up to date plans – their commercial plan, their commercial arrangements with proposed tenants (set up around the up to date plans) and not least the practical necessities (utilities, water, foundations already set) meant this would not change.

7. He was asked about trading patterns at Pilgrim Street Tipi and capacity of Stack as well as the operating style for Stack. I have considered his evidence on these matters within the assessment section.

8. He was asked about the terminal hour for licensable activities and the opening/closing hours for the site. When asked he was unable to say whether or not closing hour of

00.30 would be agreed by the premises license holder; it was "above my paygrade". It being noted that the transaction numbers dropped significantly between 11 pm and 1 am he was asked about the terminal hour of 12 midnight. He agreed the later time had commercial and economic benefits in that in the later hours there were still transactions albeit diminished. Also though that the later time helped with gradual dispersal in the later hours which helped to manage cumulative impact outside the site. The operating hours and transaction pattern at Pilgrim Street Tipi meant that there were not large numbers of people leaving the site at closing time. He did not agree that the later hour was designed to attract customers who would start their evening later on with a view to moving on elsewhere – the example given being the Bigg Market; the operational style at Pilgrim Street Tipi and for Stack was designed to attract a different demographic of customers that may be attracted to the offers in the SSA around the Bigg Market. Having questioned Mr Wright about the trading patterns and customers of Tipi it was suggested that there was little that could be drawn from that to compare with the larger wet led open space permitted at Stack. Whilst he agreed that there was not much else on offer in the internal open space than wet led bars, he thought that the inference that the open area would become a large vertical drinking space did not take into account the operating style proposed, planned or intended. Following the site visit it was confirmed by Mr Wright that there would be food offerings on the ground floor as shown on the up to date plans and by those containers already on site.

9. He was asked about a variety of matters that he was unable to answer and he was realistic about his limitations to do so: conditions that potentially could have been offered or imposed e.g. setting a music policy, a higher minimum pricing policy than set out in OS Rev G – he could not say whether the 2nd Respondent would agree to either of those conditions but in any event thought neither were necessary given their operating style; and earlier terminal and/or closing hour – dealt with above; whether the capacity figure of approximately 1500 referred to at the LSC meeting was the highest – it was not a figure he had put forward.

10. He confirmed that Pilgrim Street Tipi and Stack could not operate simultaneously – as had been suggested by Mr Turnham in his report but conceded as incorrect in his evidence.

11. From his experience of working with the responsible authorities he considered them experienced and thorough.

12. In my view Mr Wright in both his written and oral evidence gave credible and plausible evidence that was considered, reasoned and balanced. He demonstrated a maturity of approach appropriate to the role he currently holds which is proposed would extend to cover the Stack operation. Whilst clearly there was an error in his evidence when he said there would be no food offer on the ground floor, this does not when I consider the totality of his evidence undermine it, nor my view of him as a witness. If anything of course the error made was to the disadvantage of the 2nd Respondent on whose behalf he gave evidence.

G.4 MR STEPHEN PATTERSON

1. Mr Patterson's statement is at [2/20/632 – 634]. It also refers back to his letter of support provided at the time of the application to the LSC [1/4/101 – 102]. His written statement was accepted and agreed by both the Appellant and the 1st Respondent and he was not called to give oral evidence.

2. Mr Patterson is the Director of Communications for Newcastle NE1 Limited (NE1) which he describes as a Business Improvement District company whose objective is to improve the business environment for NE1's 1400 members in the central business district of Newcastle. Approximately one third of NE1's members are leisure orientated. It is not insignificant that Mr Patterson provided his statement not as an individual resident or business operator but as the Communications Director of that company which represents the interests of a large number of businesses in Newcastle many of whom are leisure orientated.

3. In advance of providing his statement Mr Patterson considered Mr Turnham's report and Mr Robertson's statement.

4. His statement sets out his support for Stack and attests to the positive experience of Pilgrim Street Tipi and Central Station Tipi. His statement is considered and sets out the basis of his support as did his letter of support at the time of the application. He provides a summary of his view of the leisure and new independent start up markets in Newcastle.

5. He disagreed with Mr Turnham that the audience profile attracted to Stack will be likely drawn to and from other areas in the Newcastle NTE such as the Bigg Market, Newgate Street or Collingwood Street given that they cater for different demographics, or that the patrons of Stack would be likely to be pre loading on cheap alcohol prior to arrival. He considered that the operation would attract patrons to the "experience" rather than on low cost/high volume "vertical drinking" style of venue. He considered that in the last 10 years the Newcastle NTE has undergone a dramatic transformation; it is no longer dominated by "vertical drinking" establishments but rather operators focussing and competing on experience. He also points out that the site for Stack is outside of the SSA in the city centre and therefore not proximate to the "hot spots" within the wider city centre. He considered that "mitigates and minimises the probability of porosity between the contrasting demographics". He goes on to compare by example the little "seepage" between the Bigg Market and Grey Street notwithstanding their geographic proximity as each location provides a distinct and separate offer.

6. He disagreed with Mr Robertson's statement in so far as it referred to "no go areas" within the city on the basis of both his personal and professional experience of the City Centre. His reasons for this are set out in his statement.

G.5 CHIEF INSPECTOR PICKETT

1. He adopted his statement of 9th May 2018 [1/19/574 – 581]. He answered further questions in examination in chief, cross examination and re-examination. He was also referred to his statement of 29th January 2018 prepared in advance of the decision

meeting [1/6/116 – 121] and comments made during the decision meeting of the LSC on 30th January both by himself and Ms Hebb the solicitor for Northumbria Police [1/10/136A – 140].

2. Both of Chief Inspector Pickett's statements set out his experience, roles and responsibilities within Northumbria Police relevant to this application and appeal. They do not require repetition here. They are significant and relevant and an important consideration in my judgment of his evidence. In his oral evidence he gave examples of the breadth of licensing applications he had been involved with. He did not consider there was anything about the Stack application that was unfamiliar to him in fulfilling his role as the responsible authority in licensing applications.

3. Whilst he was not responsible for Gateshead, he was aware that a premises licence had been granted (although not yet issued) for a Box Park at Gateshead Quays and he had obtained a copy of the operating schedule for that as part of his research relating to Stack. It covers sale of alcohol, regulated entertainment and late night refreshment, operating hours 9 am to 00:30 am (with a terminal hour for licensed activities of midnight), the footprint is similar to that at Stack but with significantly less units, there are no retail conditions and no restrictions on the use of individual units. He confirmed in cross examination that the site for this operation, unlike Stack, is not within the City Centre CIP and is located on the opposite bank of the river to Newcastle Quayside.

4. His statements set out the concerns he had at the time of the initial application, the action he took in response and the discussions he had with the 2nd Respondent before the date of the LSC decision meeting and on that day. He confirmed in his evidence that by the time of the decision meeting, many of his initial concerns had been dealt with, representations were still made at the decision meeting but they were much reduced and that the combination of the conditions offered in OS Rev G and those additional conditions imposed by the LSC met his outstanding concerns.

5. Where relevant I have referred to the remainder of Chief Inspector Pickett's evidence in my assessment of the issues.

6. I considered Chief Inspector Pickett to be an impressive witness. His experience is extensive and relevant. In my judgment, he was credible and measured in his evidence and, when challenged, his answers were realistic and balanced. He did not seek to minimise or dismiss the concerns he had had about the proposed operation nor the challenges faced in policing the Newcastle City Centre NTE. He explained why he considered the operation as proposed now, subject to the conditions imposed and the proposed operating style would not add to the negative cumulative impact on the licensing objectives and why his initial concerns had been addressed in the conditions both in OS Rev G that had been developed in consultation and by the additional conditions imposed by the LSC. In my view he gave reasoned and balanced evidence. He demonstrated an appropriately balanced approach to the task he was required to undertake as a representative of the responsible authority in commenting on applications for premises licences when the alternative approaches of a reduced terminal hour or a complete refusal of the application were put to him by the Appellant.

G.6 MS ANGELA WALLIS

1. Ms Wallis's statement dated 4th May 2018 with exhibits is at [1/17/552 – 571]. She adopted her statement in evidence in chief. Her written representations submitted in response to the application dated 17th November 2017 are at [1/3/43].

2. Ms Wallis is a Senior Environmental Officer with NCC a post she has held for 12 years. She is consulted on premises licence applications in her role as responsible authority. During her oral evidence she provided more information about her experience. She has been an Environmental Health Officer since 2003 and throughout that time has been concerned with Environmental Health issues in the city and the city centre.

3. She said that she regularly undertakes work within the city centre at night in and around licensed premises monitoring environmental health issues related to licensed premises and events. She said she is out on such work at least once a month frequently into the early hours; she considered it a valuable area of her work to see how policies relating to licensing play out in practice. It includes work in the CIA and SSA. She gave examples of such work as well as examples of large capacity licensed permissions including those incorporating different uses within the city. She said she was not unfamiliar with the type of application made for Stack nor lacking in experience to deal with it.

4. She gave evidence about the capacity plans which I have considered in the assessment section.

5. She was cross examined about the submitted ambiguity between additional condition 1 and OS Rev G 12(iii). Her view was that the two should be read together and that the up to date plans were not inconsistent with it; OS Rev G 12 (iii) restricted the containers that could be used for wet led use, the additional condition 1 created an area where alcohol could be sold and consumed other than ancillary to substantial food. OS Rev G 12 (iii) was subject to additional condition 1 and so meant any containers that were wet led were bound by additional condition 1.

6. Ms Wallis was cross examined about how the decision, the way in which she interpreted the interaction of additional condition 1 and OS Rev G 12(iii) and the layout on the up to date plans alleviated her previous concerns expressed in her statement about the impact of the premises linked to opportunities for vertical drinking. In this context she was asked what she meant in her statement when she had referred to "the bar" located on the ground floor being the exception to the condition that alcohol must be sold ancillary to substantial food when commenting on the confusion Mr Turnham referred to in his report about the relationship between food and alcohol sales [1/17/558/31 bullet point 2]. She said she meant that alcohol without food could be sold/consumed on the ground floor, she was not sure why she had said "the bar" and thought she had made an error. She agreed she could have been looking at either the application or meeting plans when she did so rather than the up to date plans.

7. She agreed that her interpretation of the combination of additional condition 1 and OS Rev G 12 (iii) allowed for more than "a bar" on the ground floor and recognised the opportunity for vertical drinking within the premises existed and that there may be some

within the premises. But that her assessment of this application overall, taking into account the operating style, the minimum pricing, the combination of conditions, her experience of the clientele likely to be attracted to the premises, the totality and mix of offer at the premises meant that if there were vertical drinking within the site it would not add to the negative cumulative impact on the licensing objectives. She drew a comparison with events in Time Square where there are permanent bars around a large open area. There are she said events held at that location when there is a capacity of 5,000 with a number of wet led bars, some food offer and music. The events are well managed. Notwithstanding the large capacity and space available for vertical drinking, the way they operated and were managed affected the clientele attracted, and had not resulted in additional negative cumulative impact.

8. She was asked about the impact of the two bars to the north of the open area on the ground floor blocking former doorways from retail premises into the interior of the site – which I have considered elsewhere in my assessment of the plans.

9. When re-examined Ms Wallis did not consider that the up to date plans showing 3 bars on the ground floor altered her view of the likely cumulative impact of the premises and the up to date plans still reflected her vision of the premises and were not a concern.

10. Ms Wallis agreed that there were a large number of licensed premises to the west of Stack. They were she thought for the most part a different offer to Stack and, whilst she could not rule out that some customers of Stack would go to the west, those premises were unlikely to be an attraction to the majority of customers of Stack. To the east of the city as shown on the map produced by Mr Bryce there were other licenced premises that she described being of a more "hipster" environment (e.g. in and around the Ouseburn which she described as destination venues with premium offering and high quality beers where customers were seeking a quality experience in a comfortable venue rather than just to drink). She considered that customers of Stack were more likely to be attracted to those premises and potentially some of the niche bars in and around the area of Stack site.

11. During closing Mr Gouriet QC suggested an unreliability or lack of credibility to Ms Wallis's evidence as a result of matters that had come up during it.

12. Firstly that Ms Wallis had said if the 2nd Respondent wished to remove seating from the downstairs they would have to apply to vary the licence. It arose during questions about the permissions the 2nd Respondent would need to obtain to operate licensable activities on the Plaza area within OS Rev G 4(ii) and when she had said that the operator would have to obtain permission to erect a structure for such events in accordance with OS Rev G 4(ii) or seek a variation. She was wrong on that point.

13. Secondly Ms Wallis was criticised for referring to the need to look at the wider perspective "not the words and phrases". It was clear in my view from Ms Wallis's written and oral evidence that she had looked at the words and phrases, that she had also taken an overall view of the application and looked at a combination of all the factors she considered to be relevant and the totality of the conditions and applied her experience of the Newcastle NTE to them in assessing her view of the likely cumulative impact. I do not consider such an approach inappropriate.

14. So far as "the bar" reference is concerned she readily accepted it was an error. When I consider the totality of her evidence I do not consider it demonstrates the confusion suggested by the Appellant about her view of the use of the ground floor area.

15. It was also submitted she expected to see vertical drinking on the site and was blasé about it. She did say she recognised there would be some vertical drinking. Her concern previously, as is clear from her statement, was that she was concerned about the totality of the premises or "the establishment" being available for such use. With regard to the ground floor area whilst she said she recognised there would be some vertical drinking there she also thought that was likely to be discouraged due to the conditions and the operating style. To the extent there would be vertical drinking, the pertinent issue in her view was how that would add to negative cumulative impact. She did not think in this case it would because of the style of operation, conditions and likely clientele. Her evidence was in my view more considered than blasé.

16. Ms Wallis was in my view a witness with a significant amount of experience of relevance to this application. There were two errors in her evidence that I have referred to. Neither undermined the value of that experience to this case nor her evidence in other ways. My view of Ms Wallis's evidence was that it was considered and credible and based on relevant experience.

G.7 MR KEITH SMITH

1. He adopted his statement of 8th May 2018 [1/15/496 – 501]. He was asked further questions in examination in chief, cross examination and re-examination.

2. His statement sets out his role within the Licensing Authority of NCC and in his evidence he confirmed he had been in post in that part of the Directorate since 2010 with a brief period of secondment elsewhere. He confirmed one of his roles was to undertake premises inspections and night time visits and enforcement visits. He did so regularly at weekends and shifts could last until 3 am. Again the extent and relevance of his experience was a relevant consideration in my judgment.

3. There were two particular issues that were raised by the Appellant from his statement.

4. Mr Smith was referred to his statement and particularly the first bullet point under paragraph 24 in which he said that Mr Turnham was incorrect about there being confusion about the additional condition 1 imposed by the LSC. He acknowledged that in his bulleted paragraph he said "there is no such confusion on the part of the Licensing Sub-committee, the responsible authorities and the applicant. The new condition imposed by the committee in the hearing limits the sale of alcohol without food to the Plaza Area. On the rest of the ground floor and the whole of the first floor condition 14 requiring alcohol to be sold only with substantial food still applies". He said that was a mistake and it should have said "…to the Plaza Area and the ground floor seated area…." (regarding the sale of alcohol without food) and that the use of "…the rest of the ground floor…" referred to food offerings on the ground floor. It was suggested at the time of the LSC decision there was only one food offering shown on the layout of the plans at unit 32. He said there were more.

5. He was asked directly if it was the case that when he wrote his statement he thought his words were accurate and in fact he believed that the LSC had only allowed sale of alcohol without substantial food to the Plaza area. He said not and that when he wrote Plaza he meant Plaza and open seated area. He again said that the bullet point paragraph was a mistake on his part, and it did not reflect that which the LSC had imposed by additional condition 1. It was suggested that given that he was specifically commenting on Mr Turnham's misunderstanding of the situation he would have made sure he was accurate. On my reading of the paragraph in Mr Turnham's report (paragraph 23) that this comment related to it is confused and misunderstands what was granted and restricted by the licence which did not help. That aside however there is no doubt that there is an error in the bullet pointed paragraph in Mr Smith's statement, nor by the time that Mr Smith came to give evidence could there have been any doubt in his mind about it. The extent of the condition had been made clear in earlier evidence and submissions when Mr Smith was present. Indeed earlier in his own statement Mr Smith sets out the condition as imposed including both areas.

6. Mr Charalambides returned to this point in in re-examination. Mr Smith said that the LSC reduced the terminal hour and imposed the additional conditions 1 as they were aware that the licensing authority and police still had concerns about the terminal hour for licensable activities and the lack of restrictions relating to the purchase of alcohol across the whole site. This was why they did not restrict the purchase of food but did restrict the purchase of alcohol without substantial food to the plaza and open seated area. He confirmed that the LSC had OS Rev G available to them and were aware they were allowing up to 6 container units to sell alcohol without substantial food and that the LSC had read all the conditions as a package.

7. Mr Smith was also asked by Mr Gouriet QC about paragraph 19 in his statement and what the reference to number of times of the year meant. He said that referred to the two seasonal periods for the Plaza area. He was asked if it was possible that the LSC thought that the whole of the premises was so limited. His answer was clear that was not the case and the LSC were aware they were dealing with an application for 365 days of the year.

8. That Mr Smith made the mistake referred to above (even if there had been confusion on his part) does not in any event lead to any conclusion that there was a mistake or confusion on the part of the LSC who made the decision. Mr Gouriet QC himself in his written closing document submits that whether or not there was a conflict or ambiguity on the face of a licence in not cured by quizzing a licensing officer about his perception of what the LSC understood or didn't understand.

9. More generally Mr Smith was a witness who has a body of experience that is relevant to this case and some of the issues I am required to consider. I considered him to be a witness who gave straight forward evidence and that he was credible. He was asked questions and he answered them. When he was giving his oral evidence about the above matters he was not confused; again he was straight forward in his answers and accepted a mistake had been made on his part. He was asked direct questions about both points. I do not consider from his responses to those questions or his evidence as a whole that I can conclude his answers to those direct questions was anything other than correct – he was not dishonest, evasive or confused in those responses. I accept he made a mistake and nothing more. I had no reason to doubt his honesty or relevant experience

and the mistake he made in his statement does not undermine that. When required on more expansive subjects (e.g. about the Newcastle NTE) he gave nuanced and considered answers.

G.8 MR JONATHAN BRYCE

1. Mr Bryce's statement dated 3rd May 2018 with exhibits is at [1/16/502 – 550]. He adopted this statement in his evidence in chief. Nothing within his statement was challenged. His written representations submitted in response to the application dated 17th November 2017 are at [1/3/44 – 47].

2. Mr Bryce is employed as the Manager of the Licensing Authority of NCC. As well as direction and management of the licensing authority, part of his duties involve overseeing and making Licensing Authority comment as an appointed statutory consultee (a responsible authority) to licensing applications, submitting written representations and presenting submissions as part of the LSC determination.

3. He expanded on his experience in his oral evidence. On a weekly basis – rarely fortnightly – is actively involved through both oversight and direct participation in the activities of the licensing authority monitoring work. He is involved in the development of the SLP. He is an active member of the Institute of Licensing and the North East Strategic Licensing Group. The City is a member of the Core City's project.

4. He visits other cities in his professional capacity and recently had visited Liverpool, Westminster and Brixton. He considered comparative studies to be relevant in Newcastle's policy development for cross referencing aspects but that it had to focus on the specific problems, issues and demographics in Newcastle.

5. He did not think the map produced by the Appellant of licensed premises and directions of travel captured the nature of the premises nor had any credibility. He was concerned about the referencing, trading types (not differentiating appropriately between styles and hours). He said it was not indicative nor reflective of licensing premises in the city and could have misled and resulted in incorrect conclusions being drawn. He produced the alternative map and key referred to previously which sets out licensed premises throughout the city by premises type and showing the latest terminal hour for the sale of alcohol and, where relevant, any later hour for those premises for the sale of late night refreshment.

6. He set out details of the premises licence application for Stack, his involvement in the application process, the concerns he had about the it, his meeting and communications with the 2nd Respondent and other responsible authorities and how changes to the Operating Schedule since the original application met those concerns.

7. In his oral evidence he explained he had assessed the operating schedule and management plan in this case. He considered Stack was a very different offering to that in the centre of the CIA and he thought the clientele attending Stack were likely to be more accustomed to craft ale drinking, that Stack would offer diversity and almost a new way of drinking and socialising within Newcastle NTE. He welcomed the

minimum pricing condition at Operating Schedule Rev G that had been offered by the 2nd Respondent. It is not routinely offered or imposed on the grant of every new licence. It has generally been offered in Grey Street premises where the offer is a premium style and he believed it had a positive effect in that area.

8. By the time of the LSC meeting he says he spoke positively to the LSC about the notice, consultation and operational control afforded to the Licensing Authority. In his statement he details the decision of the LSC and the conditions imposed both as offered in Operating Schedule Rev G and by additional conditions 1 and 2 and confirmed that the Licensing Authority welcomes the conditions.

9. His statement addressed two particular points raised by Mr Turnham in his report – the council's strategy to new applications within the context of the NCC SLP and the attempts being made to diversify the night time economy and he disagreed with the suggestion that typically restaurants stop serving at around 9pm in Newcastle.

10. Mr Bryce was a witness that I considered again to be credible and reliable who gave considered and reasoned evidence. In my view he has experience of direct relevance to this case and the issues I have to consider.

G.9 MR STEPHEN PAUL SAVAGE

1. His statement dated 2nd May 2018 is at [1/18/672]. It was agreed and accepted by the 2nd Respondent and Appellant.

2. He is the Assistant Director of Public Safety, Regulation and Development for NCC. He commented on the statement of Mr Robertson dated 19th April 2018. He said he had not at any time nor could he provide any assurance to Mr Robertson that no further licences would be granted in the City Centre nor did he have any knowledge that anyone else had done so. He says he has had no communication with Mr Robertson since the latter part of 2014.

3. He sets out brief information of other appeals against the grant of premises licences that the Appellant has brought.

4. It was not challenged that – as set out in Mr Wright's statement [1/19/42/170] that the legal representatives for the 2nd Respondent had been told on another occasion by those who represent the Appellant that it was Mr Savage who had given the assurances referred to in Mr Robertson's statement of 19th April 2018. Having considered the evidence of Mr Roberston and Mr Savage, I do not accept that such assurances were given by Mr Savage.

H. ASSESSMENT OF ISSUES

H.1 INFORMATION AVAILABLE TO THE LSC

1. It was suggested by the Appellant both in questions to witnesses and in submissions that the LSC did not have the necessary information to make their decision or that they

were in some way misled in the information they were given. Further the Appellant submits the information available to them at least in part helps explain why the LSC made a decision that is wrong and/or that the LSC didn't comprehend the decision they were being asked to make or did make, and/or the LSC made a decision that they didn't intend or mean to, and/or there is confusion/inconsistency in the decision or in some way a misunderstanding of the decision made by the LSC.

2. At the time of making their decision the LSC had a considerable amount of documentary information available to it:

i. A summary of the application setting out the premises, the licensable activities applied for including the times for each one [1/3/8].
ii. At [1/3/8 – 12] information from the NCCSLP (this at the time being the 2013 – 2018 SLP) detailing Licensing Policy Issues (relevant to representations) which included the SLP sections about:
   a. the Framework of Hours for City Centre premises.
   b. the operating Schedule.
   c. pavement cafes and external areas.
   d. the cumulative impact special policy.
   e. City centre CIA and SSA.
   f. the considerations for determination of applications in areas where special policies apply.
   g. The Cumulative Impact Special Policy Decision making matrix.
   h. A reference to further guidance at Chapter 5 of the SLP with the key message.
iii. At [1/3/12 – 17] – extracts from the s182 guidance (this being the 2017 version) referring to General principles (para 1.15), Licence Conditions General Principles (para 1.16), Each application on its own merits (para 1.17), sections on each of the 4 licensing objectives.
iv. Reference to the Applicant's proposals to promote the 4 licensing objectives [1/3/17].
v. A summary of who had made representations and a list of appendices including the application itself and the written representations [1/3/17].
vi. The application and associated papers including the application plans and the Operating Schedule submitted with the application [1/3/18 - 41].
vii. At Appendices 2 – 6 [1/3/42 - the written representations of Northumbria Police, Environmental Health, the Licensing Authority (which again sets out relevant sections from the then operating 2013 – 2018 NCC SLP), comment from the planning authority, and ESL – each of these dated in November 2017.
viii. A presentation setting out what was proposed and including the meeting plans [1/4/54 – 70] those plans are reproduced in a larger format at [1/9/134 – 5].
ix. A revised operating schedule (Rev D) [1/4/72 – 76].
x. Written letters of support [1/4/78 – 1/4/104] and [1/5/108 – 113].
xi. Statement of Chief Inspector Pickett dated 29th January 2018 [1/6/116 – 121].
xii. A further revised operating schedule (Rev F) [1/7/122 – 127] which in turn was amended further immediately before the meeting started and is produced as Rev G at [1/8/128 – 133] the red text noting the final amendments from Rev F to Rev G. Rev G was the operating schedule relied on at the time of the meeting.
xiii. Plans presented at the hearing [1/9/134 – 135].

3. During the meeting information was given about the application and the proposed operation and the LSC heard from the 2nd Respondent, the Appellant, the police,

environmental health and the licensing authority. Questions were asked by members of the LSC and on behalf of the responsible authorities and the Appellant. I am satisfied that the LSC received information and heard representations about/from the following:

i. The nature of the proposed operation including the proposed temporary time limit, the range of activities that would take part on the site (paragraphs 1, 2, 3, 4 (when a video was shown), 41).
ii. The precise location of each type of container had yet to be determined and so the markings on the plans were indicative only but that it was proposed there would be minimum and maximum proportions set (paragraph 3).
iii. The site covered the full two floors (paragraph 4). That on the application there would be a "central area" to the north of the Tipi (Plaza) where the public could consume food together which had been purchased from different catering outlets.
iv. There would be a Plaza area where it was proposed would operate two seasonal events and that there was a possibility of other such events taking place in that area at other times but subject to approval. Others could sell outside the specified times if this was agreed. The Plaza was where the focus of the entertainment would be. (paragraphs 4, 5, 6, 20, 25).
v. The Pilgrim Street Tipi operation that had traded from 27.10.17 to 7.1.18 – information about visitor numbers, capacity, demographic, pricing policy, uses, hours, security, incidents were provided (paragraphs 7, 8, 9, 41, 26 and 27).
vi. The details of the final operating schedule Rev G (paragraphs 11 – 15).
vii. The management structure including DPS and Personal Licence Holders. Details of the lease arrangements and police involvement with such leases (paragraphs 15, 19).
viii. Sale of alcohol - would be from containers and people would not be able to sit inside the containers (paragraph 18). The application did not prevent people who had purchased alcohol from consuming it anywhere on the site, alcohol could be consumed throughout the public area of the site (paragraph 24). It was possible that drink could become a significant part of the premises although the operator thought unlikely as they wanted a mix on the site. That there was a large area where people could consume alcohol 365 days of the year (paragraph 25).
ix. Capacity – Mr Winch (for the 2nd Respondent) was unable to specify the capacity for the site and explained how people would be counted (paras 21 and 18). Ms Smith (solicitor for the 2nd Respondent) said the capacity if "totally packed" could contain approximately 1500 people but this would be subject to a risk assessment for the site (paragraph 25). Mr Holland (Counsel for the 2nd Respondent) said that the open area would contain tables and chairs which would reduce capacity. Some would still stand to drink but others would sit to eat (paragraph 26).
x. The police representations (former and remaining concerns and noting that Chief Inspector Pickett's statement had been written prior to receipt of OS rev F) – more reassured about the management structure, he accepted the area needed developing, he wanted a responsible and positive operation, he was concerned about which parts of the premises would be wet led and food led, that there was no delineated area where people should stand, it could lend itself to a vertical drinking establishment on a Friday or Saturday night. Having considered other similar operations elsewhere care needed to be taken it did not become a "Boozepark". A reduction in the terminal hour would be a reasonable idea and allow some monitoring. The Pilgrim Street Tipi had operated for 73 days, until 1 am, with 5 bars and there had been no concerns at all for the police. (paragraphs 30 – 34, 39).

xi. Environmental Health representations – much happier with revised operating schedule, still concerns that could become large wet-led bar later in the evening, happier with greater scrutiny and noise could be managed, one noise issue from Pilgrim Street Tipi had been effectively managed. Noted it was a step up in operation from Pilgrim Street Tipi (paragraph 35).

xii. Representations on behalf of the Appellant - this is a large step up from Pilgrim Street Tipi, the fact that premises are well run does not take away from global cumulative impact, the Council had a policy that recognised that cumulative impact at weekends, in line with the Council's policy the application should be refused unless it could be shown there would be no negative impact on the Licensing Objectives. The premises would be doubling in size, potential for 10,000 people entering the site daily, anyone would be able to consume alcohol anywhere around the site and therefore a large vertical drinking establishment was being applied for. The police are the prime source of advice on crime and disorder and reliance should be placed upon the police unless there were good reasons why not. This is for 3 years and not limited to 3 months per year and so much greater than Pilgrim Street Tipi. The LSC should refuse the application or grant it for a small part of the site only. It was a bar and a food element and a large bar should be refused. That the LSC should assume the applicant would proceed regardless of whether or not the licence was granted and therefore the area would still be improved (paragraphs 36, 37, 40).

xiii. Licensing Authority representations – their concerns had been about a negative cumulative impact on the licensing objectives. The clarity provided about management style, the additional information regarding the conditions, percentages of the types of proposed operations, restrictions on numbers of off sale operators, the unique operation of the premises and the say that the licensing authority and police would have in the future operation stuck a balance (paragraph 38).

4. In support of his submissions about the information available to the LSC the Appellant raised the following points:

i. That the operating schedule had changed from the one submitted with the application. The example given was that the application Operating Schedule did not refer to the percentage caps of different types of operation that were contained in Rev F and G (in fact they existed in Rev D which was available to the LSC in the second set of papers made available to them for the meeting [1/4/73 – condition 11]). That in my view takes the Appellant no further. OS Rev G was more restrictive that the OS submitted with the application. There was no suggestion at the meeting that the Operating Schedule proposed remained as that submitted with the application. The applicant took the LSC through the revisions and the final version of the Operating Schedule - Rev G - which was by then the one proposed by the 2nd Respondent. This is noted in the notes of the decision and also Mr Smith's evidence. Issues about changes to the Operating Schedule are considered in more detail within the following section about plans and the operating schedule.

ii. References to the "green hatched area" were meaningless as there was no green hatched area on the plans at the meeting. I am not satisfied that takes this representation any further. The green hatched area was merely a visual representation of "the trading area" which is adequately defined in condition 12 of OS Rev G. If I am wrong about that, in any event, there were at least two references

to the green hatched area in the notes of the decision without any query as to what that area was and the Appellant subsequently conceded in closing that it must be the case that the green hatched areas were shown at the time of the meeting.

iii. There was not and could not have been any appreciation by the LSC that the application did not restrict the use of the footprint of the Plaza area to the two seasonal events under Rev G condition 4(i) and any other events that may be approved under Rev G condition 4(ii). There was a lack of consideration or appreciation by the LSC that the area could be used as an outdoor venue to consume alcohol at other times. Specifically in closing it was suggested that the LSC was entitled to assume that the use of the Plaza area proposed was so confined. I do not accept that. The Operating Schedule Rev G limits the periods of time when licensable activities may take place in the Plaza to those set out in conditions 4(i) and 4(ii) and subject to the provisions of conditions 5 and 6 and, for 4(ii) times only, that may be approved by the Licensing authority, police and environmental health agency. Conditions 4(i) and (ii) relate to licensable activities within the Plaza only not consumption of alcohol. It was also brought to the attention of the LSC on more than one occasion including by those representing the Appellant at the meeting that it was possible on the face of the application that there could be a large area created where alcohol could be consumed. The Appellant's written representations submitted during the consultation and available to the LSC also clearly pointed out such a possibility. It was also made clear that alcohol would not be consumed in the containers selling it. The application was for the whole of the premises and it was the LSC that imposed additional condition 1 creating a smaller area within the premises where alcohol could be sold and consumed without it being ancillary to substantial food and specifically included within that that Plaza area. It is difficult to understand how in, imposing such a condition, and in the context of the representations made in advance of and at the meeting, they could not have appreciated it.

iv. The LSC were misled as to the nature of the mix of the operation. That too I reject. In closing the Appellant referred to the integrated operation that merged with each other and that was being sold to the LSC. In suggesting conditions I may consider the Appellant referred to a reduction in the terminal hour to say 10pm for the sale of alcohol without substantial food so that the bars ceased trading before the principle operation and that if the bars are an integrated ancillary they should close sometime before the main event. Quotes from the notice of decision attributed to Mr Holland at the meeting were referred to in support of this submission - that the operation would be "a type of shopping centre providing food, leisure, drink and retail" and "there would be a mixture of retail and a limited amount of alcohol retail. Some premises would be food led and others would be wet led" and "there would be a central area to the north of the Tipi where the public could consume food together which had been purchased from different catering outlets". (i) The quotes of Mr Holland were short remarks made in the context of a wider meeting where much more was said. See also my comments above (paragraph 4 (iii)) where the potential operation as a large open bar area was drawn to the attention of the LSC and acknowledged on behalf of the 2nd Respondent at the meeting - albeit they said that would be outwith their operating style. (ii) Those comments are not in my view misleading whether in isolation or taken in the context of the whole of the information provided to the LSC – they describe the range of activities proposed on

the site and the LSC were taken through the proposed caps on the different activities. They are consistent with additional condition 1 (reinforced by additional condition 2) of OS Rev G both of which were the same in the previous versions of the Operating Schedule that the LSC had seen. (iii) At the time of the application the 2nd Respondent sought no restriction on the locations where customers could purchase or consume alcohol without substantial food. It cannot be suggested that they misled the LSC about a condition that they did not propose and which was imposed by the LSC after hearing the application. (iv) The site visit made it clear – as do each of the plans including the up to date ones – that it is the intention of the operator to have some food offer on the ground floor (see also section on plans). (v) There is nothing in the granted licence that prevents customers from taking food purchased between the different areas or floors of the site (and it is intended that some of the food offers will take the form of more casual take away food rather than sit down restaurants) nor the operation of additional temporary food outlets anywhere on the site including on the ground floor subject of course to compliance with the conditions of the licence (vi) There is a significant retail offer at the premises.

v. References to Pilgrim Street Tipi (referred to as Tipi in the decision) operation were not used fairly or were not representative – whether deliberately or otherwise they too misled the LSC into misinterpreting the nature of the proposed operation. Reference is made to Tipi several times in the decision. Mr Holland at the outset refers to the applicant holding the licence for Tipi and that this was "Phase 2" of the intended use of the site. He went on to refer to the presentation and that it would be run as a Box Park and to give the details about its proposed operation. He is reported as saying "it is on the same principles as Tipi". He went on (paragraph 5) to specifically refer to the area described as the Plaza being the area that would be used for the Tipi in this operation and (at paragraph 3) noted the area on the plan where the footprint of the Pilgrim Street Tipi could be seen. He and others during the meeting talked about the other areas of these premises - it was clear it was a bigger operation (by way of non-exhaustive example - the "central area to the north of the Tipi" and "the site is over 2 floors" (paragraph 4), "the name being given to the retail units in the presentation is Market Street" (paragraph 5), "he explained that there would be approximately 40 containers on site"). I do not accept that such comments did not make it clear but, if not, there was information given to the LSC about the capacity of the Pilgrim Street Tipi and this proposed operation, the number of days of operation, the times of the operation. Also each of Mr Rankin (then for the Appellant), Ms Wallis as the Environmental Health Responsible Authority and Ms Hebb (solicitor for Northumbria Police) are recorded as referring to the step up or increase in operation from the Tipi. Mr Rankin specifically raised the issue of why the application for Stack had not been mentioned at the time of the application for Pilgrim Street Tipi (paragraph 22 of the notice). This is something that had been also been raised robustly by the Appellant in their written representations [1/3/50]. Ms Smith response is noted which includes that she and officers "had talked about the larger scheme in the future" (paragraph 23 of the notice). To the extent that more specific comparisons were drawn to the previous operation of the Pilgrim Street Tipi and the proposed activities on this site, they related to the proposed or activities within the Plaza area either within the two seasonal periods or such additional events as may be approved under conditions 4(i)

and (ii). Those suggested are entirely in keeping with the evidence I heard at this appeal.

vi. That the possibility exists that the application was too novel, for too different a type of premises for the LSC (and possibly the Responsible Authorities) to appreciate its nature and to make an informed decision on the information they had. Mr Turnham made more than one reference to this suggestion in his evidence or at least that they were not experienced enough to do so without his assistance. Whilst I anticipate the application was perhaps more unusual than the average application, I reject this submission. I heard evidence about the type and wide range of applications and reviews considered by both the LSC and the responsible authorities. There is nothing that leads me to doubt that evidence nor was it challenged. Again, even setting aside comparisons with previous experience, the information available to assist the LSC was voluminous. As above conditions 1 and 2 of OS Rev G refer to and set out the operating style and what the 2nd Respondent must do if he proposed to change it. The notice records it was said at the meeting to be a different style of operation - the representative for the Licensing Authority referred to it as being unique and Chief Inspector Pickett referred to other Box Park operations, the Responsible Authorities also commented on the management style and their involvement in the future operation specifically in relation to the type of operation. There is no evidence on which to base a conclusion that the LSC were unable to appreciate the different style of premises that were applied for.

vii. That the evidence of Mr Smith demonstrates that the LSC did not make the decision it is now said they did or at the least there was some confusion about it. For the reasons I have set out during my review of Mr Smith's evidence I do not accept the mistake in Mr Smith's statement demonstrates that he was confused rather that it was a mistake. In any event a mistake by Mr Smith would not by necessity infer confusion or an error on the part of the LSC.

viii. That the information on the plans indicative only, and insufficiently precise to allow the LSC to make a decision. It was openly acknowledged by the 2nd Respondent at the meeting that the plans did not show the final layout of the containers. "The containers would be a permanent feature for four years and the precise location of each type of container would be determined in due course, consequently the markings on the plan are indicative but not precise. The maximum proportions however will be as stated" (Mr Holland paragraph 3). The application and meeting plans had red lines around the whole area of both floors with a key showing that as the licensed area. I have no doubt that the information was clear and the LSC were not inadvertently or otherwise misled into believing otherwise. The layout was to be finalised on the "approved" plans referred to in OS Rev G. As it was in any event the additional condition 1 imposed by the LSC made it a necessity that the layout was changed. I am of course aware that a number of other issues were raised about the plans and I have dealt with them below.

I am not satisfied that the fact that the layout of the containers shown was indicative prevented the LSC in properly assessing the application or the impact on the licensing objectives and cumulative impact. I heard evidence about the experience of the LSC e.g. their involvement in developing the NCC SLP, the range of type and scale of applications they hear including large capacity and multi-use

applications, the factors considered for applications when the CIP applies. I have no reason to consider the LSC do not know what information they need to make a decision. If they considered that they were unable to assess the application including issues of cumulative impact on the basis of an indicative layout of the containers having been provided or that it was essential to their decision that they knew where each type of container was to be located within the site, they could, and in my view would, have asked for further information or required the 2nd Respondent to provide specific or final locations. Alternatively they could have imposed conditions that set out where each type of container was to be located or alternatively refused the application altogether. They did not do so. They granted the licence for the whole of the premises but restricted the location in which the sale and consumption of alcohol could take place without being ancillary to substantial food (and endorsed the offered condition restricting the amount of the trading within the premises area that could devoted to wet led use). The additional condition 1 is clearly linked to the LSC's assessment of the opportunities for vertical drinking within the premises and that to potential cumulative impact. They made their decision taking the CIP into account and having had the benefit of further representations from the responsible authorities and particularly Chief Inspector Pickett about the space to be used for consumption of alcohol. There is also no basis for me to conclude there was any error on the part of the LSC and that they went ahead and made a decision believing that the layout was final. For the avoidance of doubt I acknowledge issues were raised about the relationship between additional condition 1 and OS Rev G condition 12(iii). They too are dealt with below.

ix. The very decision the LSC made demonstrates that there was at least some level of misunderstanding about the information they had available to them, if not insufficient information. I do not agree. The decision is not in my view incomprehensible given the information the LSC had. The LSC had before it an application for the totality of the premises to be licensed for all licensable activities sought. They had available to them the information I have outlined. The LSC could have requested further information to be provided or consultations to take place if it considered it to be lacking, it could have refused the application, it could have imposed different and/or additional conditions as they thought appropriate. It did not do so. Rather, having considered the information before them and heard the representations the LSC in making its decision:

a. Endorsed the conditions which by Operating Schedule Rev G were proposed by the 2nd Respondent, and which were supported by the Responsible Authorities. They were aware the responsible authorities had been involved in discussions with the applicant and had information about their former and any remaining concerns.
b. Reduced and defined by description the area within the licenced premises in which alcohol could be sold and consumed when not ancillary to substantial food. In doing so it reduced the area within the licensed premises where it was possible for vertical drinking to take place.
c. Restricted the movement of alcohol between different areas within the licensed premises
d. Reduced the terminal hour of licenced activities

5. In my judgment this demonstrates that the LSC was alive to and turned its mind to the previous and remaining concerns raised by the responsible authorities and the issue raised by the Appellant at the decision meeting about the area available for the consumption of alcohol. It also demonstrates an appreciation of the scale and nature of the whole of the application. It is clear that the LSC determined that within the licensed premises there should be an area where alcohol that was not ancillary to substantial food could be purchased and consumed (and areas where it could not). That area was less than the area that was the subject of the application. Given the information available to them and the combination of conditions imposed I do not accept this was done inadvertently or in error by the LSC or when they were in a position when they had insufficient information on which to make such a decision or without sufficient information to assess likely cumulative impact. My overall decision is about whether the decision is wrong is a different consideration but the actual decision of the LSC does not in my judgment lend support to the suggestion that the LSC did not have sufficient information available to it or comprehend that information.

6. In light of my assessment above the question remains whether the LSC were for some reason unable to understand or comprehend that information or of weighing and analysing it and/or were unable to understand the nature of the application or the decision being asked of them; in short was there some reason they were incapable of making the decision. For the reasons I have already set out at paragraph 4(vi) above I do not conclude that was the case.

7. It was also suggested by the Appellant that since the Respondents relied on letters of support submitted to the LSC [1/4 an 1/5] I should pay particular attention to them as in the Appellant's view they did not demonstrate support for Stack but for Pilgrim Street Tipi. Mr Wright summarises the origins of the letters of support at [2/19/33/129]. I agree that is accurate and shows they were received from local businesses and other entities, NE1, a resident and those who had participated in community activities at Pilgrim Street Tipi. I also agree that a number of those letter refer back to their positive experience of Pilgrim Street Tipi. But they also draw a distinction between Pilgrim Street Tipi and Stack and some quite specifically refer to the different offers that will be available at Stack. In my view the totality of the letters suggest that those who responded in providing such letters were aware Stack was a development not a repetition of Pilgrim Street Tipi and that their experience of Pilgrim Street Tipi in that context afforded them confidence about the future proposed operation.

H.2 PLANS, THE OPERATING SCHEDULE, AMBIGUITY BETWEEN THE CONDITIONS, PROPOSED AMENDED CONDITIONS

1. The plans were contentious. Setting aside the capacity plans there were three sets referred to; the application plans, the meeting plans and the up to date plans. Within each set there was a plan for the ground and first floors. Within the application plans there were two different sets of ground floor and first floor plans each showing the layout for the proposed summer and winter plaza seasonal events.

2. In my view, the issues raised about the plans are closely related to others raised by the Appellant about the relationship between condition 12(iii) from OS Rev G and additional condition 1 imposed by the LSC and the proposed amended conditions. I

also consider that given the interrelationship between the two, it is appropriate to consider the issue of the plans alongside the operating schedule and changes to it. Accordingly this section considers all of the above.

Were the application plans and the meeting plans compliant with the 2005 Regulations

3. This was raised as a preliminary issue by the Appellant for the first time in its Skeleton Argument. It was not raised at the LSC meeting.

4. The Appellant referred to the following statutory provisions:

s17(3)(b) - an application for premises licence must also be accompanied by a plan of the premises to which the application relates, in the prescribed form.

2005 Regulations at Part 1 regulation 4 provides - a person applying for a premises licence …..shall comply with Parts 2 and 4.

Part 4 regulation 23 - an application of a premises licence…..shall be accompanied by a plan of the premises to which the application relates and which shall comply with the following paragraphs of this regulation.

Regulation 23(3)(d) the plan shall show in a case where the premises is to be used for more than one licensable activity the area within the premises used for each activity.

Section 23(1)(b) of the Act provides that where an application is granted under s18 (as it was here) the relevant licencing authority must forthwith …..issue the applicant with a licence and a summary of it.

Section 24(1) of the Act provides that the premises licence and the summary of it must be in the prescribed form and by ss24(2) must include a plan of the premises to which the licence relates.

Regulation 33 of the 2005 Regulations makes such provision for the form of licence and summary and by Regulation 33(c) a premises licence shall be in the form and shall contain information set out in Part A of Schedule 12. Part A of Schedule 12 includes various matters but at Annex 4 a blank page entitled "Plans".

5. The Appellant submitted that neither the application nor the meeting plans were compliant as the plans referred to the whole of the premises whilst the operating schedule (OS Rev G condition 12) made it clear that all of the licensable activities would not take place throughout the whole of the premises; the plans did not show the different areas within the premises where the different licensable activities would take place. It was also submitted that the Annex 4 "plans" referred to in regulation 33 should be the same as those submitted with the application or at the very least reflect that which was decided by the LSC and in any event should be compliant with regulation 23.

6. The Respondents' position was: both the application plans and the meeting plans were compliant with the regulations and paragraph 8.34 of the s182 guidance; the application was, and remained at the meeting, for the totality of the premises to be licensed – this was shown by the red line marked around the whole of the premises shown in the key as "Licensed Area"; it was made clear in the application and the information available to the LSC, that the layout of the specific containers was indicative only; the details of OS Rev G assisted in reading the plans; that the 2nd Respondent sought flexibility as to which containers would be placed where and what they would be used for and the nature of the operation made it clear that flexibility was sought and required; that such an approach was not unusual; that the licence had not been issued was not demonstrative that the plans were not compliant - the decision to impose additional condition 1 by

LSC necessitated amendments to the lay out on the plans which had practical implications for the 2nd Respondent. The settling of the approved plans was part of a process and until such time as all required amendments to reflect the LSC decision had been made the licence will not be issued and the 2nd Respondent could not operate licensable activities on its premises; there were other matters not complained of that needed attending to before the 2nd Respondent could operate under the licence.

7. I provided my ruling on the preliminary submissions at the hearing on 21st May 2018. In short I determined that the plans were compliant with the regulations and the case should not be remitted to the LSC on this basis. I acknowledged there would likely be further submissions about the plans and the consequences they may have had on the LSC decision and whether the decision is wrong. Also that my decision and reasons had been given on the basis of submissions alone; it was possible some of the evidence I was to hear may be relevant to this issue. If so I may need to consider the point further. As anticipated there were further submissions and I have kept the issue under review.

8. By closing Mr Gouriet QC submitted that on the face of the application plans there was compliance with the Act and the Regulations. In support of his caution ("on the face of it") he referred to: the application plans were the plans the public were consulted on; the application plans referred to "proposed layout" which could not be deprived of any meaning; the caps as to different uses were not contained within the operating schedule submitted with the application (the one on which the public were consulted). There was nothing wrong with the introduction of caps on different types of uses of the containers but it was and should not be a substitute for plans showing where different areas were to be placed; that the 2nd Respondent was requesting a grant on indicative plans to be amended further which is what did, but should not, have happened – not least as a grant must be sufficiently certain to be able to be translated forthwith into an Annex 4 (Schedule 12 Part A of the Regulations) plan that complies with Regulation 23; that because of the indicative nature of the plans the LSC had been deprived of the opportunity to properly assess cumulative impact.

9. Various submissions that had been made on behalf of the Appellant were conceded by Mr Gouriet QC: the fact that the licence and summary of it (which should include the Annex 4 "Plans") had not been issued forthwith did not of itself make the decision unlawful or wrong (although he maintained it demonstrated the point that because the plans were indicative and not compliant with the regulations it had not been possible to issue the licence or summary "forthwith"); that there had been green hatching available on the plans at the meeting; that the application should instead have been for a provisional assessment under s29 of the Act; that there could in appropriate cases be changes between the plans submitted with an application and those considered at the time of the decision; that the Annex 4 plans need not be the same as the plans submitted with an application

10. The Respondents' submissions remained broadly the same as when this was raised as a preliminary issue.

11. Having kept the matter under review I remain of the view that both the application and meeting plans were compliant with the Regulations. I am satisfied that:

i. The 2nd Respondent made an application for the totality of the premises to be licensed for the activities applied for. All plans and the application show that. Given the nature of the application and the detail of OS Rev G that was the proper application.

ii. That remained the application throughout the process and was considered and granted by the LSC albeit with conditions that placed restrictions (some offered, some imposed) on some of the licensable activity applied for including where they may take place.

iii. The LSC decision required amendments to be made to the layout shown on the plan – whether the application or meeting plans. Until such time as that is effected the plans will not be approved and the licence will not be issued and the 2nd Respondent cannot operate licensable activities on the site.

iv. Given the decision of the LSC any approved plans will show – as with the application and meeting plans – the whole of the premises as the licensed area. The conditions of the licence (both those offered and imposed) will sit alongside the plan and show the restrictions placed on the licensable activities in detail.

v. Regulation 33 does not require the plans issued with the licence to be compliant with Regulation 23. I understand it is accepted practice that they generally are and that seems a sensible approach but it is not required.

vi. There is no requirement that the plans issued with the licence are the same as those accompanying the application. There will no doubt be many occasions that they will be the same as the application plans e.g. where there were no representations and so no meeting but, again, it is not required. If nothing else, as in this case, the LSC may impose conditions that mean that plans submitted with an application the LSC decision are not compliant with that decision.

vii. The plans that are approved and issued with the licence should reflect the decision of the LSC;

viii. The fact that the licence had not been issued is not indicative that the plans were not compliant rather indicative of the practical necessities required by additional condition 1;

ix. The word proposed on the application plans is not deprived of any meaning by the above. They were at that time the "proposed" plans of the 2nd Respondent or in Hickinbottom J's words in Taylor v Manchester City Council & Anor [2012] EWHC 2467 (Admin) their "wishes and intentions". They were not the approved plans (referred to in OS Rev G) nor final plans. Again, the application was for the totality of the premises to be licenced with no restriction on the location of the venues where alcohol could be sold in any form. Nor at the time of the application was any restriction proposed or sought by the 2nd Respondent on the amount of space that could be used for any activity. That was what the public were consulted on - a two storey premises throughout the total area of which all licensable activities applied for could be carried out without limitation as to method by which alcohol (other than off sales) could be sold or consumed.

x. As I have already said I am not satisfied that the plans as presented prevented the LSC from carrying out their assessment of the application.

Were the amendments to the plans within that which Hickinbottom J said was permissible in Taylor v Manchester City Council & Anor [2012] EWHC 2467 (Admin)

12. I was referred to Taylor v Manchester City Council & Anor [2012] EWHC 2467 (Admin) [A/17/203] in which the question arose of when and to what extent can an

application to vary a licence under the Act be amended. In Taylor, the Appellant contended that the respondent local authority had acted unlawfully because the respondent operator had significantly revised their application after the statutory period of advertisement and consultation had expired. Whilst that case concerned an application to vary a premises licence, all parties agreed that the relevant principles could be applied when dealing with the grant of a new licence. I agree.

13. It was held that: (i) The statutory licensing scheme provided no mechanism for the amendment of an application to vary the terms of the licence, nor was one required. Hickinbottom J explains at [A/17/219/paragraphs 72, 73,] that there is no need for any statutory mechanism as the decision is placed in the hands of the licensing authority who are required to make an evaluative judgment balancing the wider public interests they have responsibility for; (ii) Once an application had been submitted, the licensing authority was entitled, in determining the application, to take into account any change in the applicant's wishes or intentions provided always that the decision made fell within the scope of the extant license and the original application to vary [A/17/220 - 221/paragraphs 79, 80, 81].

14. Throughout his discussion Hickinbottom J placed emphasis on the evaluative role of the LSC, the administrative nature of their decision and the need for fairness within that context and the requirement of the LSC to promote the licensing objectives and to make such decisions in accordance with that requirement. After a discussion of those matters at paragraph 84:

"An applicant may notify "amendments" to the parts of the application he wishes to pursue, and the conditions he is prepared to accept to enable the variation to be granted. However, the……sub-committee must eventually itself come to a judgment as to whether the promotion of the licensing objectives requires the rejection of the whole or part of the original application as made, and, in so far as it does not, whether it requires any modification to the licence conditions. In making that judgment it cannot however extend the scope of the licence"

15. At paragraph 87 he outlines the Appellant's submission that no change to the licence could be made that might reasonably be considered capable of having an adverse impact on the promotion of the licensing objectives unless that change was made clear in the initial application as advertised. In response at paragraph 92 there is a detailed discussion about the scope available to the licensing authority in considering applications and conditions and the necessity to promote the licensing objectives which "requires the balancing of various strands of public interest" and the canvasses that "it is possible, if not inevitable, that one of the objectives may be demoted in order to benefit another". It goes on:

"where that is so the scheme simply does not require further consultation of local residents or other interested parties in the form of a re-advertisement with a fresh opportunity to make new relevant representations. It does not do so because: (i) the authority is already charged with the task of balancing the strands of public interest involved, on the basis of such evidence as it has collected. In many cases it will consider that it is in a position to make that decision without formally consulting interested parties and local residents again. If it is not – eg if it considers that the process will be unfair to local residents without further such consultation – then it is open to the authority to require the applicant to start again with a fresh application. However, absent a proposed change extending the scope of the licence, that would be an exceptional case. (ii) if the authority were required to start the process over again, simply because the exercise of its statutory powers might adversely effect one strand of the public interest involved, that would seriously compromise the dialogue between the authority, applicant and responsible authorities/interested parties who have made representations, which is encouraged as an inherent part of the scheme"

(93) "Responsible Authorities and interested parties can take considerable comfort from the fact that the authority cannot extend the scope of the licence beyond that of the extant licence and variation proposed….where such authorities and parties have made relevant representations they are able to play a full part in both the pre-hearing dialogue……and the hearing itself. If they are dissatisfied with the result of the hearing in practice they are able to appeal or challenge the result….or seek a review of the licence……in licencing terms their rights and interests are not paramount; they are just one factor which the authority must take into account when determining an application to vary. For the reasons I have given, in exercising a licensing function, the focus is on the public interest"

16. The Appellant agrees that Taylor permits changes between the application and decision, but submits that the changes between the plans were outwith that which is permissible. In closing Mr Gouriet QC said he did not take such a point on the Appellant's behalf regarding the application and meeting plans. He was not prejudiced and was represented at the LSC meeting by Mr Rankin. Likewise the responsible authorities. He says however that the public more generally were consulted on the application plans (and operating schedule) rather than the meeting plans (and OS Rev G) or the up to date plans**.**

17. The Respondents submitted that in so far as there were amendments between the plans they fell within that which was permissible. The application with accompanying plan was and remained for the totality of the premises to be licensed. The decision was to grant a licence to the totality of the premises with restrictions on where some licensable activities may take place and caps on the total area devoted to some licensable activities. Any changes were to layout or configuration of the individual containers within that overall plan, application and grant. The changes were within the scope of the original application in fact reducing the scope of the licensable activities. The up to date plans were also permissible and in accordance with the LSC decision.

18. The application was submitted on 16th October 2017. It is set out at [1/3/18 – 41]. The plans accompanying the application are at [1/3/38 – 41] the operating schedule at [1/3/35 – 37]. The application was advertised and the public consulted on those papers. The LSC had those plans and operating schedule. Following the submission of the application and before the meeting some changes were made to the layout on the plans and to the operating schedule. I accept from the evidence I have received about the changes to the operating schedule that they arose following (i) the grant of planning permission which placed restrictions on types of use of the containers; (ii) discussions between the 2nd Respondent and the responsible authorities. As well as that which was submitted with the application and an intermediate version of the operating schedule (Rev D [1/4/72 – 76]), the LSC had the meeting plans and operating schedule Rev G and were addressed on both.

19. Regarding the plans, on the basis of the Appellant's submissions in my view the potentially relevant similarities and changes are:

    i. The application, meeting and up to date plans all show the same overall site and indicate by the red line and key around the perimeter of both floors of the whole site that is to be the licensed area.

    ii. The application and up to date plans show the plaza area to be in the same location and same size. The meeting plans do not show the plaza area specifically.

iii. The application plans had marked on them "Proposed ground *(or first)* floor layout Scale 1:100"; the meeting plans had no such endorsement; the up to date plans had no such endorsement but are exhibited by Mr Wright in his statement at [2/1/49/paras 207 – 208] as "the most recent layout plans which Danieli Holdings is working to" and in relation to them goes on to describe the "current proposals".

iv. Ground floor food offerings: The application plans showed two half containers as "food offering" – one each to the north and west of the site (29 and 32 – this opening into the ground floor area). The majority of other containers on the ground floor were not labelled; the meeting plans showed two full containers as "food offering" both to the west of the site (23 and 24) and one full container as "Retail/food offering" to the west (14) – none opening into the interior of the site. The majority of other containers on the ground floor labelled "Retail"; the up to date plans show one full container and one half container as "food offering" to the west of the site (24 and 32) the full with a server hatch and the half with doors opening to the interior of the site, and one full container as "Retail/food offering" to the north (14) not opening to the interior of the site – half a container more than the application plans and half a container less than the meeting plans. As with the application plans, the majority of other containers on the ground floor are labelled "Retail".

v. First floor restaurants and food offerings: The application plans showed six "spaces" marked "Restaurant" – I use "spaces" not to indicate any lack of certainty but as, whilst they appear to represent approximately the equivalent of the size of one container each, they are not laid out in the same way as the downstairs containers and each appear to be represent two halves of a container joined together widthways; the meeting plans also showed six spaces marked "Restaurant" for the most part the same dimensions and in the same spaces; the up to date plans show five spaces marked "restaurants" in the same locations and in total of comparable size to those on the earlier plans. Also two containers marked "food offering" – one to the east and one to the north of the site (50 and 41) both in the same locations where the containers had previously been marked as "bar" in the application and meeting plans and both abutting spaces marked "restaurant".

vi. Ground floor coffee: each set of plans shows a space marked "coffee" close to the north west entrance to the site – on the meeting and up to date plans this is half a container; the precise space on the application plans is not so clear but of roughly comparable size. The application and up to date plans show the same four seating/table facilities alongside – again the meeting plans show no such seating/tables.

vii. First floor bars: the application plans showed three containers marked "bar" each with a "bar canopy" alongside (41,40 and 50) – one to the east of the site and two to the north each abutting restaurants; the meeting plans showed the same three containers marked "bar"; the up to date plans show one container marked "bar" to the north of the site (44) abutting a space marked "restaurant" and in the same location as the container that had been marked "bar" on the application and meeting plans. The two other containers that had previously been endorsed as "bar" previously now show as "food offering" (See above).

viii. Ground floor bars: the application plans and the meeting plans both showed one container marked "bar" with "bar canopy over" in the open area immediately north of the plaza area and to the east of that open area; the up to date plans show three containers marked as "bar" on the ground floor – one in the same location as the one on the application and meeting plans, the other two to the north of the open area and each abutting at a perpendicular angle the southern ends of containers that open to the north of the site onto New Bridge Street.

ix. On the application plans none of the eight units (8, 30, 31, 11,13, 14, 15 and 16) against which the 2 "new" ground floor bars to the north on the up to date plans are now perpendicular to and abutting were marked in any way as to use. They each showed doors opening onto New Bridge Street West to the north of the site. Six of them (8, 30,31, 11, 15 and 16) also showed doors opening to the interior of the site. The meeting plans showed the same although now all such units were marked "retail" except unit 14 which was marked "retail/food offering". For the up to date plans each of those units now still show "retail" or "retail/food offering" marked on them and each open to the exterior of the site onto New Bridge Street but none now have openings into the interior of the site. The up to date plans appear to show that each of the eight containers the two bars abut have been reduced in size to the extent of accommodating the width of the bar containers.

x. Ground floor seating: The application plans had six seating facilities (in the form of bench seating with a table in between) marked on it within the open area on the ground floor which included one to the west of the open area; the meeting plans had no such seating marked on it; the up to date plans show nine such seating facilities all within the open area to the north of the plaza area and the endorsement "seating for 212 people on the ground floor".

xi. First floor seating: the application plans had twelve seating facilities marked on it within the open areas; again the meeting plans had none; the up to date plans show fourteen seating facilities on the first floor and the endorsement "seating for 280 people on the first floor".

xii. Overall site restaurants: the application and meeting plans showed six restaurant facilities on the first floor. The up to date plans show five. In each plan the restaurants are for the most part in the same locations and of comparable size.

xiii. Overall site food offerings: Application plans - two offers (½ a container each – 32 and 9) – both on ground floor; meeting plans – two offers (1 container each – 23 and 24) plus another one possibility (14 marked "retail/food offering") - all on ground floor; up to date plans 4 offers comprising one and one half container on the ground floor (24 and 32) and two offers on the first floor comprising one full unit each (41 and 50) plus another possible one on the ground floor (14 marked "retail/food offering" as previously).

xiv. Overall site coffee offers: each set of plans shows a space marked "coffee" close to the north west entrance to the site on the ground floor with seating shown on the application and up to date plans but not on the meeting plans.

xv. Overall site bars: application plans – four bars each of a container (1 downstairs, 3 upstairs); meeting plans – the same as the application plans; up to date plans four bars each a container (now 1 upstairs, 3 downstairs).

xvi. Overall site seating: Application plans – 18 seating facilities; meeting plans – none shown, up to date plans - 23 seating facilities - 492 people.

20. For the operating schedule, in my view on the basis of the Appellant's submissions the potentially relevant similarities and changes between the operating schedule submitted with the application and the operating schedule Rev G are:

i. Throughout, the operating schedule has offered (and the decision endorsed) a condition at paragraph 1 that "the premises shall operate as a box park style event space with food, drink and retail outlets with external seating and plaza area" and at paragraph 2 that "there will be no change to this operating style without….written notice to the licensing authority which shall include details of the operating style proposed. The licensing authority shall advise within 21 days whether a formal application for a full or minor variation or a new licence is required and the licence holder shall comply with the direction".

ii. Throughout the operating schedule offered restrictions on the carrying on of licensable activities within the Plaza area. They are set out at conditions 4 – 6 of OS Rev G. No further restrictions on the use of the Plaza area were proposed.

iii. Neither the of the operating schedules showed any restrictions as to capacity or any requirement for seating in open areas.

iv. The operating schedule submitted with the application offered no other restrictions (whether temporal, geographic or floor space capacity) on the carrying on of licensable activities throughout the totality of the site than those associated with the Plaza area noted above. OS Rev G offered a number of additional conditions (there were in total an additional 15 offered conditions within this version).

v. OS Rev G12 (i) to (iii) offered restrictions as to the use of the defined trading area across the site such that there would be: a minimum area (percentage and total whichever is greater) of the that trading area devoted to retail use and maximum caps (percentage and totals whichever is the lower) of the amount of the trading area that could be devoted to food led use, wet led use and sale by retail of alcohol within those units devoted to retail use (and, in this latter case, a limit on the number of the individual retail units that could conduct such sales).

vi. OS Rev G 13 offered a restriction on the type of alcohol that could be sold from the retail units and (at 14) that any alcohol sold from containers designated to food led use must be ancillary to sale of substantial food. 15 and 16 offer restrictions on the removal of alcohol in open containers and takeaway food from the premises.

vii. Both the application operating schedule (14) and OS Rev G (29) provides for a minimum pricing policy for alcohol supplied for consumption on the premises and at 13 and 28 respectively restrict the type of alcohol that can be sold from retail

premises the police to request the withdrawal of any brand or size of bottle of alcohol sold for consumption off the premises.

viii. Within OS Rev G there are also included (17 – 19) restrictions as to the leases to be granted to third parties not wholly controlled by the premises licence holder of any part of the trading area for a permitted use that includes the sale by retail of alcohol. Such restrictions include conditions and covenants that must be included in any lease including that if the landlord or DPS requests that the tenant closes the unit the tenant shall do so will immediate effect. Also a requirement to provide prior notice to the Licensing Authority and Northumbria Police details of the proposed lease including various factors including location of the unit(s) or part thereof and also ultimately a right of veto by written notice over any such proposed least to the Licensing Authority or Northumbria Police if they were satisfied the granting of the lease would undermine any of the licensing objectives. If that veto is exercised the proposed lease must not be granted (unless withdrawn or successfully challenged).

21. I am satisfied that the changes shown between the layouts on the application plans and the meeting plans were permissible within that allowed by Hickinbottom J in Taylor. Nor did the changes or other information at the meeting prevent the LSC from fairly exercising its judgment in weighing and balancing the wide public interests that they have a responsibility to do or assessing the impact on the licensing objectives without further consultation or application.

22. The plans continued to show that the application is for the whole premises to be licensed. The changes in layout on the plans show: additional food offering on the ground floor with none to the first floor on either; the same number of restaurants on the first floor of comparable size and in largely the same locations; the same coffee offer on the ground floor in the same location, the same number, size and location of bars on each of the ground floor and first floor; identification of a number of the remaining units on the ground floor for retail when not so identified on the application plans; seating on the application plans is not shown on the meeting plans. The limited changes they represent are in my view well within the parameters Hickinbottom J envisaged as permissible and did not require a fresh consultation exercise nor do they change the nature of the application.

23. Likewise the changes to the operating schedule. In general terms and this was, properly in my view, conceded by Mr Gouriet QC, there is nothing wrong with the applicant consulting with the responsible authorities between the application and decision; it is actively encouraged by and inherent to the statutory scheme and s182 guidance (as acknowledged by Hickinbottom J in the Taylor case) and the NCC SLP. Dependent upon those discussions and advice and representations from the responsible authorities the outcome may result in amendments to the proposed operating schedule. Here the changes to the operating schedule pursuant to those discussions had the effect of restricting the amount, and terms, of the carrying on of the licensable activity of sale of alcohol on the premises. The public had been consulted on an operating schedule that sought no such restrictions.

24. Whilst I appreciate there are other issues about the up to date plans including that the Appellant submits Taylor is no authority that changes to the plans can be made after the grant of the licence that I turn to below, I am also satisfied that the changes shown

between the layouts on either the application or meeting plans and the up to date plans would, on the face of it, fall within what Hickinbottom J said was permissible. A comparison of the layouts shows: again the whole premises as licensed; the Plaza area remains the same; five restaurants on the first floor again in total of comparable sizes and locations to the six in the application and meeting plans; overall on the site an additional food offering (3 ½ to 4 ½ units depending on the use of unit 14 currently marked as "retail/food offering") with more on the ground floor than the application plans and either ½ a unit more or less than on the meeting plans (again depending on the use of unit 14) and 2 on the first floor that were not present on the application or meeting plans; the same coffee offer on the ground floor in the same location as both the application and meeting plans; within the premises the same number and size of bars albeit now there are 3 showing on the ground floor and one on the first floor; increased seating in the open areas on the up to date plans - 23 facilities (for 492 people) compared to 18 in total (and within that an increase in the seating available on both the ground and first floors). In short the up to date plans show overall one less restaurant a larger food offering, the same number of bars and coffee offering and a greater amount of seating. Combined with additional condition 1 imposed by the LSC there is less space on the up to date plans where alcohol can be sold or consumed when not ancillary to substantial food than was the case when the application was submitted and consulted on.

25. For the avoidance of doubt the up to date plans were not accompanied by any further amended operating schedule.

Is it permissible for the changes to the layout on the up to date plans to have been made

26. The Appellant submits that whether within the terms of the original application or not, Taylor is not authority that a further change (within those principles) can take place after a grant. I agree that Hickinbottom J in Taylor is considering only changes made between the time of the application and the relevant meeting and decision. That such a situation may arise is noted in Paterson's Licensing Acts 2018. In a section discussing examples of whether a case should be dealt with by way of appeal or a new application (here using the example the where the applicant to the LSC is the Appellant) it provides the following commentary:

"…..The plans on which the appeal is based are different to those used in the tribunal below. It seems likely that if there is a substantial difference this could reasonably lead an appeal court to reject the application on the basis that it is not a bona fide appeal. However, this is a question of fact and degree. The court should be wary of objectors seeking to elevate any changes to ensure that the appeal fails on a preliminary basis (at Page 1444 5.3)

27. I can see some force in an argument that the principles could in Taylor, in appropriate cases, apply or at least offer guidance to cover amendments post the decision so long as it does not offend the licence conditions as granted.

28. The statutory requirements on the licensing authority of consultation with the public occur before the decision is made. Those who have made relevant representations may attend and take part in the meeting as set out in the Act. Thereafter as is clear from Taylor the LSC may make such an evaluative decision as it considers appropriate in refusing or granting the application (subject to such conditions as they consider appropriate). As long as such decisions do not offend the principles of what is permissible within Taylor they do not need to consult the public further. Here, the LSC

– knowing the layout of the containers on the plans were indicative and about OS Rev G conditions 12(i) to (iii) - did not impose any condition about the specific location of individual units. It did not alter or remove or reduce OS Rev G 12 (i) to (iii). It did impose a condition restricting where alcohol could be sold and consumed when not ancillary to substantial food which in practical terms impacts on where the units involved in such sales must be located. Those decisions did not in my view offend the Taylor principles or require further consultation. Thereafter, the 2nd Respondent had to change the plans further.

29. In my view, whilst some guidance may be taken from Taylor, there are two differences between the up to date plans in this case and Taylor:

    i. The changes to the up to date plans were not made to reflect the changing wishes and intentions of the applicant/2nd Respondent but to reflect the decision of the LSC, following its assessment of the application, by the imposition of additional condition 1. There is little point in the applicant depositing plans with the licensing authority to be issued with the licence that offends one of the very conditions just imposed by the LSC decision.
    ii. The decision about the grant of the licence had been made.

30. Additional condition 1 stated that "all sale or consumption of alcohol in open vessels without the purchase of substantial food is restricted to the ground floor area described as "The Plaza" and the open seated area situated to the north of the Plaza". The Appellant says it is not unusual that when an LSC imposes conditions that require amendments to a layout for parties to briefly leave the meeting, mark rough changes to reflect those conditions on the existing plan and for the matter to be finalised that way. This did not happen here and understandably so. Firstly, it does not appear that there was any discussion with the parties during the meeting about that additional condition before it was imposed. Whether or not that is correct, the style of the operation and the condition imposed by the LSC required the 2nd Respondent to consider how it would meet the condition imposed including the real practical on site implications of it. Even if there were not such practical considerations for the 2nd Respondent, in my view allowing the 2nd Respondent to produce the up to date plans with an alternative layout, and the 1st Respondent to accept them, is permissible in this case. Not because Taylor is extended to permit changes post the grant of a licence (although in my view the principle of Taylor would) but because it is what was required by the decision of the LSC, and was within the grant of the licence.

31. At the time that additional condition 1 was imposed by the LSC it had undertaken its evaluative judgment of the application in promoting the licensing objectives. It had not in my view considered any plans or operating schedule which were amended such that they offended the Taylor principles and required a fresh consultation with the public. Again, notably they had not in doing so, sought to specify or have the 2nd Respondent specify where individual containers devoted to wet led use would placed. Furthermore, as I have set out, I do not consider it did so without sufficient information or experience to make a decision about the application and likely cumulative impact.

32. Of those containers on the up to date plans to be used for the sale of alcohol other than ancillary to substantial food, one is in the same location as was shown on the application

and meeting plans. The Appellant takes no issue with this bar. The other two on the ground floor are to the north of the open area as described at paragraph 19 (viii) above.

33. The Appellant submits that the sale of alcohol without substantial food from within either of these containers offends additional condition 1 as the containers are shown placed immediately beyond and to the north of what the application and meeting plans showed as the open seated area to the north of the Plaza with their server areas on the northern perimeter of that area. Furthermore, even if the area could be extended in that way that the sale within the containers offends additional condition 1. On a proper legal construction the point of sale would take place within the containers (when the bottle was taken from the shelf, when the drink was dispensed from a pump) not in either the Plaza or the open seated area situated to the north of the Plaza. The Respondents submit that I should approach reading the conditions in an holistic rather than purely legalistic way and further that the words of additional condition 1 provide a descriptor of the area rather than a limitation. They submit that the clear intention of the LSC was to restrict by description the location where the sale and consumption of alcohol without food is to be permitted and the movement of open vessels between floors and that the up to date plans are true to that intention.

34. As I have already rehearsed the LSC had a considerable amount of information available to it. I agree one of the clear intentions of the LSC in their conditions was to reduce the location where the sale and consumption of alcohol without food could take place. They chose to do so to the open areas on the ground floor. They did not chose to specify where containers selling that alcohol would be located. I acknowledge the up to date plans show the two containers in which the bars are situated slightly outwith the area that was showing as the open area on the application and meeting plans. But I agree with the 1st Respondent's submission – the area the LSC restricted the sale and consumption of alcohol to was described in condition 1 as the plaza area and the open seated area to the north rather than limited by it. The site of the two bars on the up to date plan remains true to that description. Whilst the legal point of sale will take place within the container, the drinks will be passed from the container to the customer into an open area to the north of the plaza as it is described by additional condition 1 and at the point of the server areas which are right on the perimeter of the area shown on the application and meeting plans. The intention of the LSC was clear that alcohol that was not ancillary to substantial food could only be sold into, and consumed within, that area.

35. Turning to the point of sale submission. To the extent that it is submitted that the two bars to the north are outwith that described by condition 1 as the containers themselves would be, that is dealt with it above. Given he did not make the same point about the first bar that was always on the plans, I am not sure with how much conviction Mr Gouriet QC presses the second issue raised - that even if the containers are located within an area permitted by additional condition 1, the sale would still offend it as the point of sale would be within a container and the containers themselves are not either the Plaza or open area.

36. However, for completeness, it was made clear to the LSC that sales would take place from within containers and that customers would not consume the drinks purchased within the containers. OS Rev G 12(iii) permits shipping container units with an area equivalent of no more than the aggregate of 6 container units or 15 % of the trading area (whichever is lower) to be devoted to wet led use. I have no doubt it was the

intention of the LSC that the restricted sale of alcohol without substantial food would take place from bars into the area described rather than the point of sale itself being in that open area – I am not sure what alternative it is suggested that the LSC may have conceived of but I have no doubt that the intention of the LSC was to allow the sale to be from containers.

37. The Appellant also submits that the way in which the containers for the 2 "new" bars on the ground floor abut the retail units materially effects the nature of the operation from how it was proposed in its application and at the meeting. This submission appears to have arisen out of a question I asked in clarification about the plans and whether the application and meeting plans showed doors opening into the internal area from the retail units to the north of the site. That some of them did and that some of them no longer do so is set out above at paragraph 19(ix) above. I asked Mr Wright about this when he was giving his evidence. He said that had been done on advice. No further clarification was sought from any party. Given the evidence I accept about the manner in which the 2nd Respondent has consulted with the responsible authorities I do not consider it unreasonable to assume that advice came from the responsible authorities. Whilst I heard no evidence about the nature or reasons for that advice I can foresee a number of reasons why it may have been given, for example to limit the number of, and be better able to monitor, the entrances to and exits from the interior of the site, to assist in the prevention of thefts, to assist in the monitoring of numbers on the site. I do not agree that the doors from those retail premises no longer opening into the interior of the site materially affects the nature of the application nor that such a change would have required further public consultation.

38. Whilst there is less scope for people to walk through some individual retail premises into the interior ground floor area of the site, the premises were described as a mix of different activities and they remain so with the same activities to take place as at the time of the application. The up to date plans show that people using the first floor area will need to walk through the ground floor, that there are food offers on the ground floor opening into the open area. Ms Wallis was asked about this particular aspect. She thought that the site still presented a mixed frontage and an open frontage is how you get a better mix of people on the site. She thought that the whole site still presented a mix of offer with the range of entrances and exits being relevant. The offer around the ground floor area helped stop problems arising from the bar because of the way the whole site would have to operate including that those going to restaurants on the first floor would have to walk through the ground floor area. Chief Inspector Pickett who said the up to date plans reflected his impression of how the site would work, also thought that the mix of offer on the site was relevant; that the food and retail elements along with the conditions would prevent it from becoming a vertical drinking site and that those elements had to be protected by the operator.

39. It is also submitted that the location of now three bars around an open area change the style or nature of the premises to too great an extent from that applied for. It effectively creates a large open air bar which was not the basis of the application. At risk of repetition firstly, this was not what was asked for by the 2nd Respondent and secondly, it was in my view permitted by the LSC decision which was given following their evaluative judgment of the application and information they had and which restricted that which was applied for and which was a decision that in my view was permissible. They had sufficient information to make that decision and undertake the assessment it

required. They imposed such restrictions as they saw fit. They did not in that evaluative judgment decide that it was necessary for them to impose restrictions that determined where each container for each licensable activity would be on the site rather to describe a lesser area than the total premises that could be used for the sale and consumption of alcohol other than ancillary to substantial food. Had they considered such a condition necessary they would have imposed it. At the time the public were consulted the application was for the whole of the premises with no restrictions as to the number of bars or where they would be located or any restriction as to sales of alcohol being ancillary to substantial food. That which is shown on the up to date plans is well within that.

Is there a conflict or ambiguity between condition OS Rev G 12(iii) and additional condition 1

40. The Appellant submits there are two interpretations. Either the LSC restricted the sale and consumption of alcohol without substantial food to the plaza area and the open seated area and all that permitted by 12(iii) or it restricted it to the plaza area and the open seated area without condition 12(iii) and only with that bar shown on the ground floor of the meeting plans. On the latter interpretation the additional two bars to the north on the ground floor up to date plans should not be permitted regardless of whether they come within the description given in additional condition 1. Ms Wallis was asked about this in detail in cross examination – she thought the first interpretation was correct and in doing so acknowledged that meant the LSC had made a decision allowing up to six containers to be in that area. In my view also the first interpretation is the accurate one. Under the heading "Conditions" the decision recites that the conditions are to be "those offered by the applicant ….as Revision G…..in addition the Sub-Committee has imposed the following conditions…" and then recites those conditions including condition 1. The two conditions co-exist. The LSC allowed in my view all within OS Rev G 12(iii) but, to the extent it was relevant to that allowed by OS Rev G 12(iii), the location of such provision was to be within the area described in additional condition 1. The bar already shown on the ground floor of the application and meeting plans would come within the cap allowed by OS Rev G 12(iii) but was not the only bar to be allowed in the relevant area. Had the LSC wanted to restrict OS Rev 12(iii) it would have done so by amending those conditions not imposing them as they were offered.

Whether the proposed amended conditions are permissible and if so whether they too are ambiguous or uncertain

41. As set out at section D paragraph 3 the proposed amended conditions were sent by e mail from the 1st Respondent to the Appellant during the course of the appeal on 23rd May 2018. This was after Mr Wright had given evidence in chief and been cross examined by the Appellant and in particular about the proposed layout set out in the up to date plans.

42. There are 3 aspects to the proposed amendment:

i. That the licence will show the opening hours 08.00 am - 00.30 am 7 days a week. The grant was for 09.00 am – 01.30 am 7 days a week.

ii. An amendment to additional condition 1 to:

All sale or consumption of alcohol in open vessels, without the purchase of substantial food, is restricted to:

(a) the ground floor area described as "The Plaza";

(b) the open seated area situated to the north of the Plaza;

(c) and the 3 servery container units marked on the approved plan [bundle 2/630]

iii. An amendment to OS Rev G condition 12(iii) to:

no more than 15% of the Trading Area or an area equivalent to the aggregate internal area of 4 container units (whichever area is the lower) will be devoted to wet led use

43. In closing it was submitted by the 1st Respondent that I should dismiss the appeal and uphold the decision of the LSC subject to those amendments.

44. Mr Gouriet QC submits that I cannot ignore the inference that the actions of the 1st Respondent and the proposed amended conditions were as a result of the 1st Respondent recognising – following the answers of Mr Wright about the up to date plans – that more had been granted than intended and the proposed amended conditions sought to remedy that. I do not agree.

45. All parties had drawn my attention to case law reciting that these proceedings are not of the normal inter partes nature. The Licensing Authority is a public body and appears in the proceedings as such. That public body does not have the individual interest in the proceedings in the way a litigant ordinarily would. I consider there is nothing offensive about the Licensing Authority in principle at this stage in an appeal hearing suggesting alterations or amendments to the conditions. If because information that has come to light whether through evidence or submissions that suggest it would be reasonable approach for the Licensing Authority to propose modifications to the conditions (as long as they are within the decision) there is no reason why they should not. It is not dissimilar to the role the Licensing Authority would take in a compromise situation when they would be continuing to weigh and balance competing interests. It was clear that the 1st Respondent was making a proposal to the Appellant regarding amendments to the conditions. The 2nd Respondent agreed to those proposed amendments. Presumably had the Appellant been open to compromising the appeal on that basis, the Respondents would too.

46. Mr Charalambides was clear in his submissions why the amended conditions had been proposed. He had heard the evidence of Mr Wright. He, representing the licencing authority, had heard the concerns raised in cross examination by Mr Gouriet QC on behalf of the Appellant who has a business interest within that council's area about the submitted ambiguity between, or potential different interpretations, of additional condition 1 and OS Rev G 12(iii) and likewise the concerns raised about the inconsistency between those conditions and the lay out on the up to date plans. The 2nd Respondent – another business operator in the same area - took a different view to Mr Gouriet QC. Whilst he made no concessions that the decision or the conditions were wrong or that the up to date plans were not permissible, Mr Charalambides said he

recognised the potential lack of clarity and that certainty could be achieved by the proposed amended conditions which did not extend the licence granted by the decision of the LSC. That he had requested an overnight adjournment was not he said indicative of a flurry of concern about a wrong decision but that he needed time to consider the position and take instructions on the basis of what he had heard. During the adjournment the proposed amended conditions, which the 2nd Respondent agreed with, were provided to the Appellant. I cannot and do not see any reason to go behind the submissions Mr Charalambides made to the court as to the reason for the need to adjourn and consider nor the rationale for the proposed amended conditions. In so far as I consider the proposed amended conditions do not extend the licence granted I see nothing offensive about the approach taken rather that it was a responsible approach of the representative of a public body in the form of a licensing authority reflective of their role in the proceedings.

47. Turning to the proposed amendments themselves.

48. To the extent that it refers to a change of opening hours to 08:00 to 00:30 (rather than 01:30) 7 days per week I consider that permissible. It reduces rather than extends the opening times and considering the evidence I heard, I am of the view that it will promote the licensing objectives. Those who gave evidence about it considered a shorter time between the terminal hour for licensable activities and the closing time of the premises assisted with dispersal. Chief Inspector Pickett having raised it as his one outstanding issue in his statement at [1/19/581], in his oral evidence welcomed the proposed change to assist with dispersal and said that it reflected that his main problems with crime and disorder were after midnight.

49. The proposed amendment to additional condition 1 reflects the layout on the ground floor on the up to date plans and what was seen during the site visit. For the reasons I have given above I consider that amendment to the layout shown on the up to date plans to be permissible. Accordingly I consider to the extent the proposed amended conditions reflect that layout, it too is permissible. Whilst I have set out my interpretation of the relationship between original additional condition 1 and OS Rev G 12 (iii), it has the added benefit or removing any submitted uncertainty or ambiguity about their relationship and does so in a way that again further reduces the scope for the sale and consumption of alcohol other than ancillary to substantial food from both that which was requested in the application and that which was granted by the LSC decision.

50. The final part of the proposed amended condition relates to the proposed amendment to condition 12(iii) to "no more than 15% of the trading area or an area equivalent to the aggregate internal area of 4 container units (whichever is the lower) will be devoted to wet led use". The Appellant says this should not be permissible as it is uncertain and/or inconsistent with the (original or proposed amended) additional condition 1. In my view it is neither. The issue that arises concerns the upstairs bar container shown on the up to date plans and the relationship between "wet led use" (used in OS Rev G 12(iii)) and "sales of alcohol other than ancillary to substantial food" (used in additional condition 1).

i. Mr Wright in his statement at [2/19/50/214] sets out that this bar is intended to operate on a voucher system that will be developed in consultation with the

licensing authority. This was expanded on in his oral evidence. Some of the food offerings on the first floor may not sell alcohol; those that do will be restricted. The voucher system will allow those who buy substantial food at those food offerings to make a purchase of alcohol from the upstairs bar ancillary to that food purchase. The example he gave in his evidence was a pizza and a beer. They will not be able to make more than one such purchase per each sale of substantial food as the voucher will be surrendered on use. The system would be developed in consultation with the licensing authority.

ii. Condition 1 restricts the location for the sale and consumption of alcohol unless ancillary to substantial food. As I have said in my view that condition sits alongside OS Rev G 12 (iii) about a maximum caps on space devoted to wet led use.

iii. The proposed amended condition 1 restricts condition 1 further now describing both the area and reducing the number of containers permitted to sell alcohol when not ancillary to substantial food. The proposed amendment to OS Rev G 12 (iii) proposes a reduction to the maximum amount of space devoted to wet led use (now 15% of the trading area of the total aggregate internal space of 4 containers – whichever is the lower).

iv. Mr Holland was clear that the 2nd Respondent readily agreed to the proposed amendments to condition 1 and OS Rev G 12(iii). The only reason that amended 12(iii) allows the aggregate space of 4 containers for wet led use is in case of disagreement about what amounts to wet led i.e. if the proposed actions in the upstairs "bar" could be interpreted as wet led and therefore not selling alcohol as ancillary to substantial food because the points of sale for food and alcohol take place from different units.

51. It seems to me that the situation is as follows. The proposed "bar" on the first floor cannot offend additional condition 1 whether granted or as proposed to be amended by selling alcohol other than ancillary to substantial food. If it does so the premises license holder is liable to prosecution for breach of his conditions.

52. Given there appears to be some potential for disagreement about the relationship between "wet led use" and "sale of alcohol ancillary to substantial food", the proposed amendment to condition 12(iii) is to my mind appropriate to make sure all are certain; sale and consumption of alcohol other than ancillary to substantial food can only take place as per additional condition 1, but by 12(iii) as amended it is permitted for the operator to have a 4th container on the first floor from which alcohol is sold ancillary to the sale of substantial food but with a different point of sale from the food to which it is ancillary. That others may consider that to fall within the definition of "wet led" is what creates the apparent ambiguity between the proposed amended conditions and requires the clarification. Nothing in the proposed amended conditions takes away from the fact that if the 2nd Respondent were to use that container on the first floor to sell alcohol other than ancillary to substantial food they would be in breach of their licence conditions and liable to prosecution. It does not in my view undermine additional condition 1 nor introduce inconsistency with it.

53. Mr Holland submitted that the 2nd Respondent asked for this amendment to condition 12(iii) for the above purpose of absolute clarity and nothing more. Mr Gouriet QC in

his closing submissions suggested that I should always be mindful that an operator is entitled to exploit any licence to its full. I accept that the condition is sought to ensure certainty and remove any doubt. I consider it does so. On the basis of the evidence I have heard I have no reason to conclude that either it is an attempt by this operator to stretch the conditions and inappropriately exploit the licence nor to doubt that Mr Wright would adopt the approach he has said and consult with the licensing authority about how the voucher system will work. If I am wrong and the operator conducted any activity from that unit that offends additional condition 1 or any other condition of his licence (including those as to his operating style under OS Rev G condition 1) he would be liable for prosecution. If he conducted activity from that container within the licence conditions but in a manner (whether on its own or together with other activities) that had an unanticipated negative impact on the licensing objectives, he risks a review of his licence.

54. Additional condition 2 also means that no one who purchased alcohol from that upstairs bar would be able to take it downstairs and into the area where alcohol can be sold and consumed other than ancillary to substantial food. The retention of the maximum cap within OS Rev 12(iii) has the benefit of retaining the maximum cap of space devoted to wet led use compared to other uses on the site such that no more than an area equivalent to the aggregate total of 4 containers or 15% of the trading area (whichever is lower) can be devoted to such use so assisting in promoting the mix of offer within the premises.

55. Again I consider this proposed amended condition to be permissible.

H.3 IMPROPER DELEGATION

1. In his skeleton argument Mr Gouriet QC submits that decisions to be made about the operation of these premises in the future have been improperly delegated from the elected Councillors of the LSC to officers of the Licensing Authority and other Responsible Authorities [SA/A/1/28 – 29] and that the decision maker should be the LSC and not officers. In closing Mr Gouriet QC maintained there was a "question mark" over the delegation relating to the use of the Plaza area for licensable activities permitted under 4(i) and 4(ii) within Operating Schedule Rev G.

2. A copy of s10 of the Act [A/5/51-52] and NCC's list of delegated functions under s10 is at [A/5/53 – 60]. S10(1) and (2) provides for the delegation of the discharge of a Licensing Committee's functions to be exercised by a Licensing Sub Committee or officer(s) of the licensing authority and in turn for the discharge of functions delegated to a Licensing Sub Committee to officer(s) of the Licensing Authority. By s10(4)(a)(ii):

Arrangements may not be made under subsections (1) or (2) for the discharge by any officer of any function under section 18(3) (determination of application for premises licence where representations have been made)

3. NCC's list of delegated functions at Paragraph 5A.17(1) [A/6/55 – 56] is in accordance with that provision.

4. The Appellant submits that the conditions referred to within the licence offend s10(4(a)(ii) of the Act.

5. I do not agree. S10(4) prohibits the consideration of applications for premises licenses where there are relevant representations to officers. This was such an application and it was heard and determined by a Licensing Sub Committee and not delegated to officers. That LSC imposed such conditions as it thought necessary.

6. The application was for the whole of the premises and remained so at the decision meeting albeit there were changes to the operating schedule following consultation with the responsible authorities. The decision of the LSC was to grant the licence for the whole of the premises subject to conditions that impose restrictions on the operation of the licence. Some were offered, others imposed. They include restrictions as to how, where and when some licensable (and other) activities can take place and the nature of leases. Some such restrictions extended to the requirement for approval from the licencing authority, the police and the environmental health authority before the activities could take place or the lease be issued. Some are not dissimilar to, though not complained of, the requirement under condition 20 of Operating Schedule Rev G that "the CCTV system must be designed, installed and maintained in proper working order to the satisfaction of the Licensing Authority and in consultation with Northumbria Police". The premises cannot operate under the licence until this is done. It requires practical considerations and implementation but the matter need not come back to the LSC to authorise it.

7. The application is perhaps more unusual than others. It is clear that the applicant was asking for some flexibility which the LSC allowed by the conditions. That different conditions and restrictions can be expected for different licences is inherent in the Act, the s182 guidance and NCC SLP all of which make it clear that applications and conditions should be considered on an individual basis with conditions tailored to the individual application and only those considered appropriate to that application being imposed. In his skeleton argument Mr Holland [SA/R2/5/paragraph 10] provides examples of two other licenses operational in Newcastle where similar conditions are imposed. NCC SLP [1/12/18] includes details of the application process for events and the consents required for persons wishing to put on events involving licensable activities on licensed land and the establishment by the City Council of an Events Group. This Group is referred to in OS Rev G condition 6 relating to permission for additional periods when licensable activities may take place on the Plaza.

8. The application for the premises licence has been before the proper sub-committee to allow for their scrutiny and evaluation. The approvals required by the conditions are not decisions on applications for premises licences; they reflect the conditions and restrictions imposed on the premises and which, in my view not incidentally, all the responsible authorities considered to be helpful and supported. The decision of the LSC to grant a licence to the whole of the premises subject to these restrictive conditions does not in in my view amount to a delegation (improper or otherwise) of the s18(3) power.

H.4 NEWCASTLE, NEWCASTLE NTE, EXISTING CUMULATIVE IMPACT

Newcastle

1. At section 3 of the NCC SLP [1/12/204 – 374] it sets out a profile of Newcastle and its people including details about population, its student population, those who work in Newcastle. Also the importance of the licensed and entertainment and leisure sectors to the city in terms of numbers who use the licensed premises at weekends, numbers of visitors to the city, money spent on food and drink by those visitors and the number of jobs supported by such activities. It notes the changes of drinking patterns in Newcastle over the last 5 – 10 years; more people buy drink to consume at home with a reduction in people drinking in bars, clubs and pubs; the rise of "pre-loading" where people drink at home before a night out. More alcohol is purchased from the off than on trade. The average litres of alcohol sold through the off trade per adult in Newcastle was significantly higher than in England. It goes on to consider the impact of alcohol in Newcastle (see paragraph 10 below). Section 5 sets out the Newcastle's specific policies and section 6 relates to management of premises. I have considered them elsewhere where I consider pertinent. Suffice to say they provide a significant amount of detail about the issues relating to different licensed premises and the licensing objectives in Newcastle and set out guidance as to how to promote the licencing objectives and the expectations of the licensing authority.

2. At [2/19/94 and 1/19/168] Mr Wright exhibits the City Council's East Pilgrim Street Frameworks – one for the north (the area in which Stack is located) and one for the south. The documents set out a detailed description of the area and the development plans for the area. It notes that whilst the area has positives there has been a decline and there are several unused or under-used buildings as well as gap sites. It goes on to describe the area as surrounded by a number of identifiable districts including the core shopping area, the civic centre/universities and hospital, Grainger Town and the Quayside and that these areas contain a wide variety of uses of the city centre and generate considerable footfall. At [2/19/112] key pedestrian routes around the north area are shown – there are such routes in each direction north, east, south and west from the site - and pedestrian priority routes to the north, west and south. Mr Wright [2/19/12] agreed with the description of the area and provides details of licences that have in recent years been surrendered and the licenced premises that remain in operation in the area.

3. Mr Turnham added little to any overview of Newcastle. He acknowledged why the local authority would be keen to develop the area in which Stack is located. However his evidence revealed deficiencies in his knowledge about the demographic and geography of some significant Newcastle populations which in turn, and coupled with the above, in my view impacted on the weight I was able to give his evidence at least on the issue of pedestrian routes.

Newcastle NTE

4. Neither Chief Inspector Pickett, Ms Wallis nor Mr Bryce considered that the map of licensed premises produced by the Appellant was accurate. Chief Inspector Pickett agreed that there were a large number of licensed premises to the west and south west of the Stack site and in the CIA but it did not show many establishments both in and

out of the City Centre CIA. Mr Bryce thought the map produced by the Appellant of licensed premises and directions of travel did not accurately capture the nature of the premises. He was concerned about the referencing, trading types (not differentiating appropriately between styles and hours). He said it was not indicative nor reflective of licensed premises in the city and could have misled and resulted in incorrect conclusions being drawn. He produced the alternative map and key referred to previously showing licensed premises by premises type and showing the latest terminal hour for the sale of alcohol and, where relevant, any later hour for those premises for the sale of late night refreshment.

5. However that there are a large number of licensed premises in Newcastle within the beyond the city centre is clear from the map produced by Mr Bryce (although I am unable to draw any comparisons with other cities). It is also clear that there are concentrated areas or clusters of higher numbers of licensed premises.

6. All who gave oral evidence, and Mr Patterson in his written statement, noted that different micro geographies or communities existed within the Newcastle NTE. Mr Robertson to the extent he referred to "no go" areas in his statement appears to do so as well. In answer to a written question from the 2nd Respondent the "no go" areas were said to include the Bigg Market and Collingwood Street. In its development of its CIP and SSA policies the NCC SLP also recognises the different concentration of different licensed premises throughout the city and in the city centre.

7. Each of the witnesses for the 1st Respondent were able to give evidence based on their professional experience working in the city centre of the different micro-communities of the NTE and migration between them. Each drew a comparison between the licensed premises in the Bigg Market (which Mr Smith and Ms Wallis described as covering The Gate, down Newgate Street and then the Bigg Market itself), Collingwood Street (the "Diamond Strip" which in part runs along the bottom of the Bigg Market) and Grey Street (which runs perpendicular to Collingwood street) which are all in close geographic proximity to each other, with a link street between Collingwood Street and part of the Bigg Market. All are within the city centre SSA. Even whilst there are some similarities in some of the venues (Mr Smith referred to the same characteristics of not much seating, dark venues and loud music in the Bigg Market and Collingwood Street venues) migration between these three areas was rare and that different people enjoyed different areas of the city centre NTE in different ways. Mr Smith's experience was whilst they both resulted in loud music vertical drinking establishment they still represented different offers – the Bigg Market offered cheaper drink and had more of a "stack them high" operation whereas the Collingwood Street was considered more of a "trendy" area. Likewise Ms Wallis considered the customers of the Bigg Market area often started at the Gate and moved down into the Bigg Market but not further and that Collingwood Street was considered and presented an ambience of a more "up market" vertical drinking area and attracted a different crowd. Mr Bryce referred to Newcastle having a variety of different offers and agreed with Mr Smith and Ms Wallis that there were very distinct micro-communities within the Newcastle NTE attracting different clientele. Chief Inspector Pickett referred to the Newcastle NTE enjoying several different micro-communities and rarely seeing customers of the Bigg Market going to Collingwood Street or Grey Street and that different people enjoyed the NTE in Newcastle in different ways.

8. Mr Turnham likewise noted the different offer in different areas of the Newcastle NTE including those referred to above. Mr Turnham in his report at [1/14/19 – 402/paragraphs 69 – 89] also detailed his review of the different micro geographics of the City Centre NTE – the site is in a "less intense part of the city centre" than the SSA (paragraph 69), there are very few other premises in the immediate vicinity (paragraph 71), there is moderate footfall (paragraph 72) or notable footfall (paragraph 69), there is a "buffer zone" between the site and the next main concentration of licences on Grey Street (paragraph 73) but in recent years a small number of licenses have opened in that "buffer zone" – a "few independent and more sophisticated bars and restaurants" which do not have the effect of "unduly dragging out the heavily alcohol-focused 18-30 crowd" from the SSA (paragraph 74). He considered that Grey Street – within the SSA – was a success story as it had "been developed effectively and sensitively by the council over the past decade to appeal to a more mature and discerning crowd" such that "despite some late licences located here, there are much lower levels of problems for the police in Grey Street than the remainder of the stress area" (paragraphs 76 and 77). He goes on to consider the remainder of the SSA to the west of Grey Street as being the "highest cluster of licensed premises in the city, the highest number of users, the younger age groups, the latest licences and the highest volume of alcohol-related crime and disorder, public nuisance and issues around feelings of public safety. Streets with high concentration of licences……include the Bigg Market, Collingwood Street and Grainger Street". (paragraph 81). Here he says there is a "materially different type of venue and type of clientele than…in Grey Street….(where) our observations show huge amounts of determined drunkenness, aggression, high levels of vulnerability and an extremely chaotic street scene" (paragraph 82). He describes the areas to the north west and east of the site being quieter. From this he concluded in his report that the vast majority of those visiting Stack will arrive from the west (i.e. stress area) or via the metro station and when their night is over at Stack, "they *(sic)* majority will almost certainly leave the venue to go back to the heart of Newcastle's late-night economy" (paragraph 85). In his oral evidence this conclusion was said to be based on his review BPS (which he considered Stack to be very similar to) and his understanding of NTEs. He did not comment on the evidence of the witnesses for the Respondents about their view of migration of clientele (or lack of) between the different micro communities in any more detail.

Existing cumulative impact

9. That there is cumulative impact on the licensing objectives of crime and disorder and public nuisance within the CIP for Newcastle City Centre is not in dispute.

10. The NCC SLP [1/12/204 – 374] recognises the impact of alcohol and cumulative impact on those objectives in the city more broadly and in the city centre in various sections. Mr Bryce said the City Centre that the NCC SLP CIP had recently been reviewed and the city centre remains a CIP area. He explained that evidential, observational and professional experience was used to identify areas of cumulative impact and Special Stress Areas. It was confirmed there has been a CIP for the City Centre since 2005.

11. Chapter 3 of the NCC SLP it sets out the city profile and impact of alcohol. At paragraph 3.2.3 - 4 about the city overall:

"Overall crime has been increasing over the past few years, mainly due to changes in recording practices. The proportion of crime that is recorded as alcohol related has decreased slightly over the same period. However, residents have identified that 'young people being drunk, rowdy or a nuisance' is the top priority to be addresses, and alcohol related anti-social behaviour carried out by adults and young people is a real issue of concern for certain parts of our City Centre and some of our neighbourhoods."

"Alcohol is a causal factor in crime and disorder in Newcastle. Alcohol was involved in 13% of overall crime in Newcastle which has reduced since 2014/15."

12. Section 7 sets out the NCC SLP Cumulative Impact Policy and the reasons for it. At 7.1.1 in explaining the reason for such a policy:

"There is evidence of a clear positive relationship between increased outlet density and a detrimental effect on the licensing objectives. This shows an association with an increase in alcohol consumption, together with increased alcohol related crime and violence and under 18 alcohol specific hospital admissions. This is also linked to increase noise and disturbance, anti social behaviour and litter, particularly where there is also an increased density in takeaways. Also where licensed premises are clustered together within an area they are more likely to compete on price and promotions which can lead to increased consumption and alcohol related injury and violence."

13. And at 7.1.3 in setting out the reason for adopting Cumulative Impact Special Policies within areas of the city it states that the Licensing Authority:

"has considered the evidence available to is in relation to various parts of the city……..has determined that there are areas within the city where the concentration of particular types of licensed premised is having or is likely to have an adverse impact in those areas contrary to the licensing objectives….has therefore adopted "Cumulative Impact Special Policies" in relation to cumulative impact in a number of areas of the City where the number, type and density of licensed premises are unusual and serious problems of crime, nuisance and anti social disorder may be arising or have been shown to arise or are likely to arise at licenced premises, outside licensed premises or otherwise connected with such premises."

14. At 7.1.4…

"The Licensing Authority has ….. concluded nevertheless that it is necessary to adopt a cumulative impact approach and adopt Special Policies in particular areas of the City. And at 7.1.5 "in coming to the conclusion that it is necessary to adopt Cumulative Impact Special Policies the Licensing Authority has taken account of the Secretary of State's guidance and in each of the areas where a Special Policy will apply, the Authority is satisfied that several of the following factors are occurring or are likely to occur in the areas".

15. Then going on to list 17 factors by bullet point. It is clear to me and was accepted by the Appellant that it is not suggested that all factors apply in each CIA area within Newcastle including the City Centre CIA.

16. 7.3.1 sets out the rationale for the City Centre CIA and the particular issues that the Licensing Authority were concerned about when determining that CIA.:

"The city centre remains a key location for Newcastle in terms of impact on community safety with higher levels of crime, violence, anti social behaviour and public concerns for safety as a result of drunk and rowdy behaviour. These issues are linked to the high density of licensed premises as part of the night time economy which causes hotspots of violent crime, thefts and alcohol related disorder. In addition to the issues caused by the night time economy there are also concerns about a smaller group of individuals who have a disproportionate impact on anti social behaviour and disorder as a result of their chaotic life style and related alcohol use. This manifests itself in a range of issues including street drinking, aggressive begging, rough sleeping and drunk and rowdy behaviour."

17. The witnesses relied on by the 1st Respondent were representatives of the Responsible Authorities which the s182 guidance remind me (through its advice to potential applicants) are to be considered as experts in their field (paragraphs 8.46, 9.12 and

16.8). Mr Rankin, no doubt in recognising this guidance, when appearing for the Appellant at the LSC meeting represented that the LSC should be guided by the police in issues of crime and disorder. Even if I were to set aside the s182 guidance, as my earlier review of their evidence makes clear, all the witnesses for the responsible authorities that I heard from have significant relevant experience of the Newcastle general and City Centre NTE and gave credible and considered evidence. All (other than Mr Savage who gave a statement about a particular issue only) acknowledged the pressures of the city centre NTE and that there is cumulative impact on the licensing objectives. None however thought there were any temporal or geographic "no go" areas in the Newcastle City Centre CIP as asserted by Mr Robertson in his statement.

18. Whilst challenged as to accuracy, methodology and partiality in his approach and presentation, I accept, the evidence of Mr Turnham's observations in Newcastle, show examples of negative cumulative impact on the crime and disorder and public nuisance licensing objectives albeit primarily in relation to the area around the Bigg Market and Collingwood Street within the City Centre SSA. He witnessed incidents of urination, urine trails, littering (described in his observational notes as "huge" near the takeaways in the Bigg Market), drunk people concentrated in particular areas, incidents requiring police attention, large numbers of loud people including abusive language and swearing, incidents of vomiting and piles of vomit, 2 incidents of glass vessels being dropped as well as traffic congestion from taxis dropping people off. He summarises these observations at paragraph 62 of his report:

"…we witnessed 22 incidents of serious public nuisance. This included 2 real-time vomittings, and six piles of vomit, 12 incidents of hyper-intoxication (leading to falling over into other users and into the road or bouncing off shop windows) and two incidents of individuals dropping of glass drinking vessels that smashed. There was too much screaming, shouting, abusive language and public littering to catalogue."

19. He also saw two fights (paragraph 58) but none of the other crime and disorder he describes in Newcastle in the preceding paragraphs 55 – 57 of his report.

20. The media images from 2015/16 and other undated images presented by Mr Turnham in his report and provided by Mr Robertson provided little assistance to me in this regard.

21. Whilst Mr Turnham does not refer to "no go" areas in his report he referred to different areas being intense and intimidating. Chief Inspector Picket did not agree that the city centre (and particularly the Bigg Market) was a threatening or frightening area, he considered Newcastle to be a safe city. The local authority witnesses who regularly work in the City Centre often into the early hours sometimes alone, more often with others, did not feel threatened in that environment.

22. Mr Bryce agreed that fights, littering and urinating took place in the City Centre but it was not inevitable that it would be seen on every night – what the CIP means is that such issues may arise but not that they will always be found and also that when found they would be dealt with. He agreed with Chief Inspector Pickett's evidence that those involved in such activities were very much the minority.

23. Chief Inspector Pickett agreed that recent budget cuts and reductions in the number of police officers in Northumbria Police made his job of policing the area and reducing crime and disorder more difficult. This notwithstanding, referring to a report he had

prepared for the Late Night Levy* about the reduction in crime in the city centre and the steps taken to achieve that reduction, the last 12 months had seen a reduction in alcohol related violent crimes in the NTE. He agreed the reduction in such crimes was not greater than 10% but, given there had been a rise in crime as a whole, suggested that the measures taken in the city centre had been successful compared to crime in general within the Northumbria area. He did not agree that crimes were overlooked in order to maintain a police officer presence on the street. He explained the early intervention tactics that may be employed in minor incidents to try to moderate behaviour where appropriate but if matters escalated and an arrest was necessary then this would happen albeit there were times when other measures to calm a situation would be appropriate. (*It was subsequently confirmed that the Late Night Levy is a fee paid by premises operating between midnight and 6 am via the Licensing Authority to the Office of the Police and Crime Commissioner (OPCC) to fund actions tackling crime and vulnerability within the NTE)

24. When it was put that Mr Turnham considered that the police were "coping" he acknowledged it was difficult but that they were coping. He confirmed he was confident in the policing of Newcastle in a licensing context and that there were very detailed plans in relation to Crime and Disorder, public safety and vulnerability.

25. All witnesses for the 1st Respondent were clear that it was very much the minority of those who enjoyed the NTE or particular parts of it that engaged in behaviour that had a negative impact on the cumulative impact of the licensing objectives. Again all of the witnesses both for the 1st Respondent and Mr Turnham considered that the type of crowd attracted to particular premises or an area of premises was a significant determining factor as to the likely cumulative impact. In turn a variety of factors would be relevant in determining that clientele. Chief Inspector Pickett's evidence was clear that it was not just about size and numbers but that the style, the pricing, the management, location and conditions imposed all had a "massive" impact on the clientele likely to be attracted to a venue.

26. Likewise Mr Smith did not consider that it was just the size of crowd that would determine cumulative impact and the impact on licensing objectives but the nature and type of a crowd. He suggested for example that a crowd from Bigg Market venues could cause more problems than say a crowd of the same size from Grey Street venues. He said that most night time weekend visits were intelligence led and invariably took them to the Gate, Bigg Market and Diamond Strip areas and that it was very rare to go to Grey Street.

27. Mr Bryce also considered there was no direct correlation between the numbers of people and the impact on the licensing objectives; it was more about management and positioning and that the nature of an event is more likely to dictate the nature of the dispersal. When looking at licensing applications he would consider or assess the likely clientele. By way of example he felt confident in being able to distinguish different types of venue and clientele by reference to music style. He said it was "imperative" that the nature of clientele and likely impact was considered in any application and for the LSC to take into account and that the LSC were alive to these factors.

28. Ms Wallis also thought that large numbers did not necessarily lead to cumulative impact and that it was necessary to look at the crowd which in turn varied depending on various

factors giving an example of a licenced premises in the Bigg Market with no minimum pricing, strobe lighting, high repetitive beat music which would attract a very different crowd to other premises with a different ambience.

29. Mr Turnham largely agreed with the evidence of the Respondents' witnesses – that location, scale, operating style and most importantly, clientele were critical to the impact of an offer within the NTE on the licensing objectives (albeit he considered that the clientele attracted to Stack would be different to that suggested by the Respondents' witnesses).

30. It was acknowledged by the witnesses for the 1st Respondent that particular initiatives and steps have had to be taken to address and monitor the cumulative impact in the City Centre both by the responsible authorities alone and in partnership with each other and others. This is also recognised in section 6 of the NCC SLP.

31. Chief Inspector Pickett in noting the difficulties said that working in partnership with various organisations including the licenced trade assisted. He confirmed partnership working was ingrained in his work and was inherent in the Act and s182 guidance. He was asked specifically about the image at [1/19A/611] produced by Mr Turham. He could not comment on the comparisons drawn with other cities but explained that the image showed what had been developed in partnership with St John's Ambulance and the North East Ambulance Service (NEAS) as a "safe haven" for vulnerable people to be taken to or to use. It was financed through the Late Night Levy for Friday and Saturday nights when such issues were a feature between 11 pm and 5 am. He described this as a proper and responsible approach to vulnerability that the police undertook in partnership with others and that it was part of the solution to problems associated with the City Centre NTE.

32. Mr Bryce agreed that the frequent visits and monitoring showed that the policy needs regulation. He too referred to other agencies that the licensing authority worked with – enforcement officers, Northumbria police and street marshalls. Likewise Mr Smith's evidence about the basis for and locations of weekend night time visits.

33. Mr Smith gave evidence about the approach of the city in trying to diversify the NTE offer and that consideration of individual characteristics of applications for licenced premises included consideration of the different NTE communities and geographies. He said that restaurants (particularly in light of a number of recent announcements about national chains reducing their offer) were no longer the answer to vertical drinking issues and that premises may have an offer of food but also some other type of diverse activity than just alcohol. He agreed the Vision Statement at paragraph 1 and section at 5.4 "Encouraging Diversity in the Night Time Economy" within the NCC SLP were both relevant to moving towards a more diverse offer across the city. Mr Bryce also referred to the need to diversify the City Centre NTE in his first statement referring to the NCC SLP and the need to balance the ambition to expand the leisure, business and tourism offers to provide and attractive offer for all age groups and continuing to diversify the day and night time economy.

H.5 APPLICATION OF THE NCC SLP AND CIP

1. Section 5 of the Act (reinforced by the s182 guidance) requires that the licensing authority must have regard to its licensing statement. It is agreed by the parties that in my considerations of this appeal I need to take into account, accept and apply the NCC SLP including the rationale for any special policies. The NCC SLP is set out in full at [1/12/204 – 374]. The Cumulative Impact Policy (CIP) is part of the NCC SLP. Given the location of Stack there has been a focus on the CIP and it is obviously an important part of the policy to this case. However it is the SLP, within which it sits, that I must have regard to and there are other parts of that overall policy that in my view are also relevant.

2. In his statement [1/16/52] Mr Bryce sets out information about the NCC SLP including details of and the reasons for the CIP and Framework of hours policy and the vision statement of the NCC SLP. He states the NCC SLP sets out a general approach for making licencing decisions and each application will be considered on it own individual merits.

3. The vision statement for NCC SLP is set out at the very beginning of the document:

"we want Newcastle to offer a diverse choice of high quality, well managed entertainment and cultural venues within a safe environment. We want to promote positive partnership so that regulators, business and residents can live peacefully. We want to provide opportunities for residents, workers and visitors, regardless of age, disability, gender, gender identity, race, religion, sexual orientation or means"

4. Paragraph 2.1.2 [1/12/6] introducing the policy:

"…The Policy sets out a general approach to making licensing decisions. Each application will be considered on its own individual merits…"

5. And at paragraph 2.1.6 [1/12/7] sets out the key aims and purposes supported by the Act which "will therefore be integral to the Policy" which include:

"recognising the important role which pubs and other licensed premises play in our local communities by minimizing the regulatory burden on business, encouraging innovation and supporting responsible premises"

6. Paragraph 4.1.3 [1/12/13] when providing advice about the application process refers to the individual nature of applications:

"It is recognised by the Licensing Authority that licensed premises vary considerably in terms of the offer made, size, occupancy, location, clientele etc. Venues may offer alcohol, regulated entertainment or late night refreshment or any combination of these activities. There is therefore no definitive list of control measures that should be introduced by all premises. Licensed premises will be assessed according to the activities they provide and the individual risks of each premises' activities"

7. Section 4.6 considers events in the city and the flexibility that can be afforded where land (whether Council land or elsewhere) is licensed and persons or organisations wishing to carry out licensable activities on the licensed land are not required to obtain premises licence or Temporary Event Notice –

"This can help to facilitate events that do require a premises licence but which would be impractical to arrange while given the city council a degree of control over the running of the event…….The City Council has established an Events Group whose role is to overview events taking place within Newcastle to achieve their safe delivery and good management"

8. Section 4.8 goes on to acknowledge the relationship between the Licensing Authority and the Planning Authority and that whilst they are separate regimes:

"The policy aims to accord with the vision for the city and …..accepts that the planning system can assist …and …accepts that Local Plans and other strategies can also positively shape and attract development to the benefit of local businesses and residents"

9. Section 5 of the NCC SLP sets out "Newcastle Specific Policies" which includes sections on Good Practice for Licensed Premises, Encouraging Diversity in the Night Time Economy, Framework of Hours, The Operating Schedule, Newcastle Best Practice Scheme, Irresponsible Drinks Promotions and Drunkeness on Premises.

10. At paragraph 5.1.1 all are encouraged to have regard to the Document "Good Practice for Licensed Premises" which is set out in full at Appendix 2 at [1/12/284] and provides the following guidance:

"The behaviour of customers in and around premises is not solely affected by the individual and type and quantity of alcohol consumed, but also by the drinking environment and the way that the premises is managed and operates. Risks associated with licensed premises can vary depending on the type of premises, such as the design, layout and general environment, the location, the policies in place and the events held there. Factors such as venue size, availability of seating and density of customers can help to predict the *likelihood* of disorder. It is vital that premises licence holders and their staff understand how good, efficient and effective management of premises reduces disorder"

11. At 5.2 there is a section entitled Encouraging Diversity in the Night Time Economy:

5.2.1 "The Licensing Authority recognises that Newcastle's night time economy plays an important part in creating a vibrant, sustainable economy for the City. This needs to be balanced with the ambition to expand our leisure, tourism and business offer, providing an attractive offer for all age groups and continuing to diversify both the day and night time economy. The Licensing Authority will explore and support opportunities which are presented to increase events and other activities which are not necessarily alcohol led which are more socially-inclusive and drive the economy."

12. It goes onto analyse the percentage of Newcastle residents who do not drink alcohol or do so infrequently and concludes the at the current night time economy offer is probably not meeting the needs of the majority of the Newcastle residents leading to:

5.2.3 "The Licensing Authority will encourage and influence and more diverse mix of venues, events and visitor attractions so that a wider group of people such as families and older adults can also enjoy their time in Newcastle and this will be balanced against the disturbance to local neighbourhoods. During the consultation on this policy residents and visitors asked for a greater choice of venues, such as music led venues, cultural venues and premises which appeal to mature customers with quieter music"

13. The "Framework of Hours" policy is set out at 5.3 and:

5.3.1 The current staggered closing times of licensed premises that has developed since 2005 in the City Centre CIA has helped to reduce the problems associated with large numbers of people leaving premises at the same time…..However for some residents the later opening hours have brought increased levels of crime, disorder and nuisance. Residents have reported many issues including noise, anti social behaviour and litter which is having an adverse impact on their quality of life……(5.3.2) due to the success of the implementation of the framework of hours within the City Centre CIA the same framework of hours will be adopted throughout the entirety of the City" and then provides a table setting out the framework of commencement and terminal hours for different premises type in different locations.

14. And again in relation to this policy the individual nature of the application process is stressed:

5.3.4 There will be no presumption that applications within the proposed framework of hours will be granted. Each application will be considered on its own merit…...Any applications for later hours outside the framework will also be considered on their individual merits"

15. The important role of the Operating Schedule is set out at 5.7:

5.7.1 (it) outlines how the premises will be operated. This is particularly important in respect of applications made within the CIA. This should include details of how the applicant will promote the four licensing objectives and reduce any potential negative impact from the operation of their business on the local community, depending on the type of premises, location and profile of customers. In appropriate cases this may include minimum pricing conditions. The proposals contained in the operating schedule will form the main body of the conditions to be applied to the licence together with any applicable mandatory conditions, any conditions agreed with responsible authorities during the application process and any conditions imposed by a licensing sub committee where representations have been made"

At 5.7.2 "The Licensing Authority seeks to encourage the highest standards of management in licensed premises and expects the licence holder to continue to manage their premises in accordance with their operating schedule"

16. Within section 5.9 the SLP sets out its position in relation to Irresponsible Drinks Promotions and Drunkeness on Premises:

At 5.9.2 "There is strong evidence that setting a minimum unit price will have an impact on reducing alcohol consumption….(goes onto describe action that may taken where alcohol sold below 50p per unit where there are problems)……(5.9.3) Rather than having to resort to controls of this kind, the Licensing Authority would like to encourage a voluntary code of good practice in relation to drinks promotions including pricing, and to encourage licence holders and others working at the premises to familiarise themselves with the mandatory conditions relating to drinks promotions"

17. Section 6 stresses the importance of good management of licensed premises including important role of the DPS, door supervisors, the dispersal policy at premises, risk assessments, the responsibility of the licence holder for the events or activities on their premises even if promoted or operated by a third party.

18. On a review of the NCC SLP there are a number of themes that arise. They chime with the witness evidence I heard, with the s182 guidance, and the case law I was referred to regarding the context in which licensing decisions are taken - the evaluative balancing exercise in order to reach a decision in the overall public benefit that the Licensing Authority is engaged in.

i. That the city wants to encourage and diversify the licensed sector and NTE and the licensing policy should also be seen within the context of wider plans and vision for the city
ii. That whilst the NCC SLP sets out the general approach to how applications will be considered they will each be considered on their individual merits
iii. That access to licensed activities and alcohol in particular is not necessarily determinative about likely disorder and negative impact either in or around the premises – the environment of the premises, how they are operated and managed are important
iv. Particular measures can assist in reducing alcohol consumption on licensed premises

v. Management of licensed premises and management policies are important and responsible operators should be supported
vi. That a partnership approach is supported
vii. That the NCC SLP has developed specific policies to meet the specific issues and characteristics in Newcastle

19. At 7.11.1 the SLP sets out that Cumulative Impact Special Policies will apply to certain applications within the CIAs and SSAs and they will be dealt with according to the "decision making matrix" which, with explanatory notes/definitions, is at [1/12/261 – 264]. I have reviewed the reasons for that within the previous section about existing cumulative impact.

20. For the City Centre CIA Special Policy 1 applies to the on licence, takeaway premises and off licence category of premises for a wide range of applications including applications for a premises licence. It does not apply to restaurants.

    At the matrix:

"What is the Special Policy? Applications will normally be refused subject to below
What are the General exceptions to the Special Policy? The Special Policy will not apply if the Application can demonstrate that the application/notice (if granted) will not add to the negative cumulative impact on one or more of the licensing objectives
Are the special policies absolute? No – the circumstances of each application will continue to be considered individually and properly and applications that are unlikely to add to the cumulative impact on the licensing objectives are likely to be granted provided always that they otherwise promote the licensing objectives"

21. Section 7.12 is entitled what is the effect of the Cumulative Impact Special Policies? At 7.12.4:

"the onus will be on the application to show there will be no negative cumulative impact. In particular the applicant will need to:
Address the special policy issues in the operating schedule to rebut the presumption of refusal
Demonstrate why the operation of the premises would not add to the cumulative impact and
Convince the licensing authority that it would be justified in departing from its Special Policy in the light of the individual circumstances of the case"

And at 7.12.6: Applicants will be expected to discharge the onus on them where the Cumulative Impact Special Policies apply through the contents of their application and in particular their operating schedule, proposed conditions, operating style and supporting information. They are encouraged to have pre-application discussions with the Licensing Authority and relevant Responsible Authorities and proper consultation with persons likely to be affected by the application so as to address any likely concerns in the application. They should address how the application will contribute to the vision and policies for the City of the Licensing Authority (including the planning and development of the City and its economic, social and environmental well-being). They should address the deliverability of the perceived benefits and the avoidance of negative impacts on the licensing objectives in such a way that provides confidence to the Licensing Authority, Responsible Authorities and other Interested Persons".

22. Special Policy 2 applies for applications for a premises licence for on licence, take away premises and off licences in the City Centre SSA. It is notably different to Special Policy 1:

"What is the Special Policy? Applications *will be refused* subject *to* below" (my emphasis)
"What are the General exceptions to the Special Policy? The Special Policy will not apply if the Application can demonstrate *(1) that there are exceptional circumstances; and that* (2) the application/notice (if granted) will not add to the negative cumulative impact on one or more of the licensing objectives" (my emphasis)

"Are the special policies absolute? No – the circumstances of each application will continue to be considered individually and properly and, *where there are exceptional circumstances*, applications that are unlikely to add to the cumulative impact on the licensing objectives are likely to be granted provided always that they otherwise promote the licensing objectives" (my emphasis)

At 7.12.15 For SSAs the onus on the applicant is the same as for CIAs but also for the applicant to show that there are exceptional circumstances.

23. The site is within the CIA but not the SSA. This was also the position under the 2013 – 2018 NCC SLP at the time of the application and determination. At 7.3.2 the current NCC SLP notes that there were formally two SSAs in the City Centre "dominated by high-volume vertical drinking establishments and have the greatest impact on police resources at night". Going on at 7.3.3:

"it is not proposed to reduce the existing SSAs, in the light of the extensive development to the Grainger Town area and the concentration of premises in the Westgate Road, Neville Street, Collingwood Street corridor (together with evidence of incidents of disorder) it is clear that the current two areas could be amended to better address concerns. The effect will be that the existing two areas will join and it is therefore proposed that there will be one City Centre Special Stress Area".

24. This new joined SSA is then described by reference to street names. At paragraph 7.2.1 it is noted that the two former SSAs are "amalgamated together with an extension of the area covered". In developing, consulting and adopting the SLP for 2018 – 2023 the Licencing Authority considered the SSAs within the City Centre and determined it was appropriate to increase them and amalgamate two previously separate ones. In doing so it clearly had a focus on the city centre, the micro geographies within it and the issues arising that it considered necessary to address. It did not increase the SSA in a way that includes the Stack site nor East of Grey Street above High Bridge Street. There was a greater increase to the West of the SSA than the East. Moreover this was determined at a time it is clear that Newcastle City Council has significant development plans for this specific area.

25. The passages above make it clear that, as with the SLP generally, the policy for applications for premises licences within areas where the Cumulative Impact Special Policies exist quite properly is not absolute and that all applications will be considered on their own merit taking account their specific circumstances. Whilst the applications will "normally" be refused this is not so if the applicant can demonstrate there will not be additional negative cumulative impact on the licencing objectives (the onus being in the applicant to do so) but that those "applications that are unlikely to add to the cumulative impact on the licensing objectives are likely to be granted provided always that they otherwise promote the licensing objectives". Furthermore that the position in the CIP generally and the SSA is differentiated given the different issues – for the SSA as well as the requirement to demonstrate that there will be no additional cumulative impact there must also be exceptional circumstances.

26. The notice of decision of the meeting makes it clear that the LSC considered the CIP and other relevant sections of the NCC SLP at the time of their decision. I too, as I indicated I would, have accepted and applied it in my considerations and decision.

H.6 STYLE OF OPERATION

1. That the style of an operation is important in assessing the likely impact on the licensing objectives and cumulative impact was recognised by each of the witnesses. It is intrinsic within the NCC LSP and the s182 guidance. That differently styled licensed premises can operate in very close proximity to each other, in the same city but attracting different clientele, accessing alcohol in different ways and with different cumulative impact was illustrated in the evidence of each of the witnesses in their comparisons of the Grey Street and the Collingwood Street and Bigg Market areas. Consideration of the Appellant's initial concerns about Pilgrim Street Tipi (the representations made by the Appellant before and at the LSC as to whether the licence should be granted and, if so, the conditions that should be imposed) the actual experience of it and the Appellant's view of it having the benefit of that experience suggest that the initial concerns attached to a new licenced premise may be unfounded or dispelled in part due to the style in which it operates.

2. Mr Wright agreed that operating style of a venue was important in assessing its impact. He said that the intention was for Stack to become a destination venue rather than part of a circuit and to attract the same demographic of customers - both returning and new - to Stack as those that were familiar with their previous operations.

3. He agreed clientele was critical to the likely impact of premises on the licensing objectives and cumulative impact. The demographic they had attracted at previous operations, and that the proposed operating style of Stack intended to attract again was a "more mature" crowd, specifically not those looking for a cheap drink, fast, high beats per minute music venue. All aspects of their operating style – conditioned or otherwise - was designed to achieve this: their music style (type and volume – not "loud rock and popular dance music"); the minimum pricing policy; the door policy; the range of offer at the site; the environment and layout out of the site (e.g. seating, lighting, use of smoke machines); terms within the leases (minimum operating times for retail of food offers, types of alcohol that could be sold); the caps on the alcohol offer (the licence conditions meaning the smallest proportion of the trading area could be devoted to wet led use and the largest had to be to retail and reinforcing and going further than the requirements of the planning permission requirements); their dispersal policy; the way the premises were marketed and presented. In his statement he gave examples of what may appear to be minor matters but which impact - removing the word "Gin" from the summer seasonal offer on the Plaza to [2/19/22/paragraph 82/foot note 2], this had also been referred to by Mr Holland at the LSC meeting and Chief Inspector Pickett was also referred to it when he gave his evidence about the variety of factors including how an operation was marketed would have an effect. Also in his statement Mr Wright referred to the impact of the almost accidental decision to promote Pilgrim Street Tipi as a dog friendly operation [2/19/24/89].

4. He was asked in cross examination about the reason for the terminal hour of midnight it being noted that the transaction numbers dropped at Pilgrim Street Tipi significantly between 11 pm and 1 am. He agreed the later time had commercial and economic benefits as there were still transactions albeit diminished but also considered that the later time helped with gradual dispersal helping to manage cumulative impact outside the site. He did not agree that the later hour was designed to attract customers who would start their evening later on with a view to moving on elsewhere – the example

given being the Bigg Market; the operational style for Stack was designed to attract a different demographic of customers that may be attracted to the offers in the SSA around the Bigg Market. He also thought that the inference that the ground floor area would become a large vertical drinking space did not take into account the operating style of Stack.

5. He considered consistency of offer to their client base to be very important; in ensuring they were able to attract the same demographic of clientele to Stack, customers need to be aware of what was on offer. The 2nd Respondent had made their style in the Tipi operations clear, they were successful and want and intend to continue in that vein with Stack albeit on a larger scale. During the operation of Pilgrim Street, building on their experience of and expanding their capacity from, Central Station Tipi they focussed on the operating style proposed at the time of the application that had been successful previously (seating, operating capacity, music style, mix of offers within the premises) notwithstanding that the licence would to a large extent have permitted more. There had been no problems of negative impact on the licensing objectives.

6. Mr Wright also explained the management style proposed for Stack. It too was built on the experience at Pilgrim Street Tipi but had increased threefold. It is set out at [2/19/61 – 63/ paragraphs 262 – 273]. It had been developed in consultation with and in response to issues and concerns raised by the responsible authorities. The evidence of the witnesses for the responsible authorities is clear that management arrangements for Stack had been a concern for some at the time of the application. Their statements set out how the operating schedule was developed during their consultation and that previous concerns about the proposed management had been met by additional conditions in OS Rev G as well as other conditions that give the responsible authorities a significant degree of control over the ongoing operation – for example in relation to leases and requirements before events take place.

7. To the extent that I have considered the comparison to be relevant, I consider that a number of the features of Stack's proposed and conditioned operational style differ to that at BPS.

8. In my view Mr Wright clearly demonstrated that he understood the importance of the operating style both on the 2nd Respondent's business interests but also on the impact it would be likely to have within the premises and more widely outside the premises.

9. The conditions on the licence offered by the 2nd Respondent as Conditions 1 and 2 within OS Rev G are in my view not insignificant. That they are not always imposed is readily seen by a comparison with Pilgrim Street Tipi licence. The conditions are:

   OS Rev G condition 1 - The premises shall operate as a box park style event space with food, drink and retail outlets with external seating and plaza area

   OS Rev G condition 2 - There will be no change to this operating style without proper written notice to the Licensing Authority, which shall include details of the operating style proposed. The Licensing Authority shall advise within 21 days whether a formal application for full or minor variation or a new licence is required and the licence holder shall comply with the direction

10. OS Rev G Condition 1 was described by Mr Charalambides in closing as "aspirational" and that it may be too subjective in the context of prosecuting a breach of licensing conditions. Mr Holland did not agree. Aspirational or not, they are not meaningless or without importance. The 2nd Respondent in his application, plans, presentation and representations to the LSC has been clear about the operational style – not every aspect of which is subject to conditions. OS Rev G Condition 1 as a minimum requires event space, a mix of food drink and retail and external seating and a plaza area. OS Rev G Condition 2 ties the 2nd Respondent to the style set out in OS Rev G Condition 1 and what he must do if he proposes to change that style.

11. In my view a combination of OS Rev G Conditions 1 and 2 supplement and add to the statutory provisions. Where any premises licence holder intends to carry out activities in a way that he considers may not be in accordance with his licence he may apply to vary the licence under s34 of the Act for example to extend the scope of the licence or to amend or remove a condition. He is not required to but the risk in not doing so is his. The licence is always subject to the statutory right under s51 of the Act whereby a responsible authority or interested party may apply to the licensing authority for a review of the licence on the basis of relevant representations founded on grounds that are relevant to one or more of the licensing objectives and for interested parties that they are not frivolous, vexatious or repetitive. Again such an application would be subject to notice, advertisement and decision making requirements. Such an application would according to Hickinbottom J in Taylor [A/17/212/paragraph 39]:

"..be appropriate were a licence holder performs licensable activities, within the scope and in accordance with the terms and conditions of the licence but nevertheless those activities impact adversely on local residents, by causing unanticipated disorder or a public nuisance. It might be prompted by, eg, a change in the manner in which the business in conducted (albeit within the scope and conditions of the licence) or merely busier trade".

12. Here if the 2nd Respondent proposes to operate in a style that would offend OS Rev G condition 1 he cannot make that call on risk as to whether or not he applies for a variation. He must by OS Rev G condition 2 notify the licensing authority and comply with their written direction as to whether a formal application for a full or minor variation or a new licence is required. Thereafter the relevant public consultation and, if relevant representations are made, LSC evaluation of the application that will follow. Breach of OS Rev G condition 2 would be liable to prosecution. Even if I accept that there may be some attendant problems in prosecuting a breach of OS Rev G condition 1 – and I do not consider it to be as subjective as Mr Charalambides does – there is no such issue with OS Rev G condition 2. Likewise the 2nd Respondent is in a more restrictive position so far as reviews are concerned. Ordinarily were he to change his operating style (within the conditions of his licence) there may or may not be an application for a review and if so only on the basis of relevant representations. Here the 2nd Respondent, if he proposes to change his operating style, cannot just do so and hope no review comes along. He must notify the Licensing Authority with all that flows from it.

13. So far as any vagueness in the words contained in Condition 1 apply they are of course subject to: Conditions 12(i) to (iii) of OS Rev G imposing caps on the minimum and maximum areas (total and percentages) to be devoted to retail, wet let and food let offers; OS Rev G conditions 4(i) and (ii) to 6 which impose temporal and other conditions on the use of the Plaza area for licensable activities; and the additional conditions imposed by the LSC as to where alcohol not purchased ancillary to

substantial food could be supplied and consumed and the movement of alcohol between floors.

14. Other conditions on the licence will in my view on the basis of the evidence I heard also impact on operating style and likely clientele demographic. The minimum pricing policy which the witnesses for the responsible authorities considered important in this regard and which Mr Bryce confirmed is not routinely imposed but is generally offered for those premises operating in the successful Grey Street. Mr Robertson himself points to a minimum price policy as being an important factor in the development of Harry's Bar. The conditions as to approvals relating to the activities taking place on the Plaza. The conditions relating to management. The conditions relating to leases and prior approvals before those leases are let. The caps on minimum and maximum types of use for containers within the trading area. The restrictions on the sale of alcohol not ancillary to substantial food. The restriction on the type of alcohol that can be sold from retail units. Conditions relating to noise management. The conditions relating to entrance monitoring and the training of staff engaged in such monitoring. The condition allowing the police to request, and requiring the licence holder to consider, the withdrawal of any brand or size of bottle of alcoholic drink from sale for consumption off the premises. The credible age condition. The requirement to comply with the written notice of the police of a "high risk occasion" not to sell alcohol beyond 11:00 hours.

15. Neither the 2nd Respondent nor the witness Mr Wright are by any means inexperienced in the licensed trade in Newcastle. It seems to me that the 2nd Respondent had given a great deal of considered thought – whether for his own business interests or not - to the style of operation. That style is one that is designed to attract a demographic of clientele and deter others. Furthermore it is based on previous successful operations of the 2nd Respondent – successful both in terms of their business interests and the licensing objectives. It is one that they are committed to in this operation. I have given my assessment of Mr Wright's evidence and him as a witness earlier. I have no reason to doubt his evidence on this point than any other. The witnesses called by the 1st Respondent were clear that the style of operation proposed was a relevant factor in helping them assess the impact of this application. Whilst Mr Turnham did not agree with the other witnesses about the clientele likely to be attracted to Stack, he too agreed operational style was very important in assessing the likely impact of premises. Over and above the intended operational style of the 2nd Respondent, as I have set out above, I consider that a number of the conditions imposed both individually and taken together both chime with the proposed operational style of the 2nd Respondent and go a long way to conditioning it.

H.7 CAPACITY AND CHURN

1. NCC SLP [/12/295 – 296/] at Appendix 2 Good Practice Guidance for Licensed Premises provides guidance in calculating maximum occupancy of premises and ensuring they are not exceeded. It recommends a calculation is undertaken using different floor space factors figures as set out below to obtain a maximum capacity number.

Use of room or floor	Floor space factor (m sq per person)
Area for standing	0.3
Amusement arcade, assembly hall, bingo hall, club concourse, crush Hall, dance hall, venue for pop concert and like occasions, queuing Area, bar area without seating	0.5
Bar	*0.3 to 0.5
Bowling alley, billiard room	10
Restaurant	*1.0

*depending on the amount of seating and tables to be provided

Note: Toilets, stairway enclosures, bar serving areas, DJ booths, stores, fixed furniture and similar areas are to be excluded

2. During the hearing the Appellant produced a print out from the Newcastle City Council website entitled "Occupancy Capacities" that had the same table but with an additional note "where any room or floor is to be used or is likely to be used for a variety of purposes, the occupancy load factor giving the greatest occupancy capacity is to be utilised". It had been printed that day but no further information was provided as to where on the website it had come from. It is not within the NCC SLP 2013 – 2018 [1/11/141 – 203] which does not include within it the Good Practice Guidance contained in the current NCC SLP.

3. Both tables are preceded by a paragraph saying the guidance is provided to assist applicants and is based on Building Regulations 2000 Approved Document B (Fire Safety), 2006 Edition: Volume 2: Buildings other than dwelling houses.

4. Plans were produced by the 2nd Respondent to identify the space in open areas on the site – the capacity plans. Each of the capacity plans use the footprint of the open area shown on the up to date plans which if anything disadvantages the 2nd Respondent on this issue. (I have earlier dealt with the issues raised about the permissibility of the up to date plans and the proposed amendment to condition 1 relating to them). No submissions were made by either party that the figures or plans in so far as they were provided by the 2nd Respondent or taken from the NCC SLP or website were themselves inaccurate or in any way so my further considerations of them are on that basis.

5. The additional condition 1 of the LSC was to restrict the sale and consumption of alcohol to the ground floor area described as the Plaza and the open seated area to the north of the Plaza. In their reasons the LSC said such restriction will prevent the premises operating as a vertical drinking establishment and that with the additional conditions they were satisfied there would be no cumulative impact. The basis of the Appellant's closing submissions are set out at section E paragraph 1 (vi). The Appellant's written closing document went on to state that it had not been demonstrated that a minority of those drinking in the disputed area will not add to the cumulative problems currently impacting adversely on the licensing objectives. Then at paragraph 20 and 21 to refer to the bars intended for sale of alcohol without food and the restrictions on the locations for such sales within context of the LSC's decision. The

oral submissions – whilst raising a number of other issues – took the same approach and also referred to the vertical drinking permitted on the ground floor. There were no figures provided for the occupancy of restaurants but the cumulative impact policy within the NCC SLP – and it is cumulative impact and the failure to apply that policy that the Appellant complains of – does not apply to restaurants. In his evidence, Mr Turnham said that it was the area for vertical drinking that was a factor (along with scale and numbers of people) that gave him the most concern about impact.

6. Accordingly, whilst I do not ignore the fact that there is additional capacity on the first floor I too have focussed my considerations on the ground floor area(s) or, to borrow the phrase from Mr Gouriet QC, the "disputed area".

7. Plan 3 at [2/28/729] shows the first floor. It does not show a calculation of the area in square meters but the area hatched red shows the open areas on the first floor (excluding entrances, exits, egresses, structures and stairways) and a maximum occupancy of 810 was given by the 2nd Respondent - I assume based on a 0.5 m sq per person multiplier.

8. Plan 2 at [2/28/624] shows the ground floor at times outside the seasonal periods. The available area (excluding entrances, egresses, stairways and structures) is shown hatched in red and is 624 m sq. A 0.5m sq per person factor gives a maximum occupancy of 1248, a factor of 0.3 m sq per person gives a maximum of 2080.

9. Plan 4 at [2/28/730] breaks down Plan 2 into the Plaza area (blue hatching) and the open area to the north of the Plaza (red hatching). The available area in the Plaza area is 330 m sq giving a maximum occupancy of 660 (0.5. m sq per person factor) or 1100 (0.3.m sq per person factor). During the seasonal period when the Plaza area is being used for licensable activities in accordance with 4(i) a structure will be present which will be determinative of capacity in that area and when present – as with Pilgrim Street Tipi – will be 180. The open area to the north of the Plaza is 294 m sq giving maximum occupancies of 588 (0.5 m sq per person factor) or 980 (0.3 m sq per person factor).

10. For each of the plans 2 – 4 referred to above:

    i. when I have referred to "structures" it does not include any seating, tables, planting or other features whether permanent or temporary rather the "permanent" structures such as the containers and stairways.
    ii. I have differentiated between times when the Plaza area will be used for licensable activities during the seasonal periods permitted under 4(i) and others when not. For the avoidance of doubt I acknowledge that OS Rev G 4(ii) permits other times during the year when that area will be used for licensable activities subject to the written approval of the Licensing Authority following submission and assessment of an operating policy for such events. I acknowledge that such events may alter the maximum potential or operational capacity.

11. Plan 1 at [2/28/727] shows the Pilgrim Street Tipi as constructed which was a smaller area within the curtilage of the ground floor area of Stack. The area for standing outside the Tipi structure and any other structures in that space is shown hatched in blue as 395 m sq. The factor 0.5. m sq per person applied gave a capacity of 790 (the 0.3 m sq per person factor would give 1316), within that same area there was seating for 84 people,

the Tipi structure itself had a capacity of 180. The total possible occupancy was therefore 1,054 (0.5 m sq per person factor) or 1580 (0.3 m sq per person factor). The evidence of Mr Wright which was not challenged was that Pilgrim Street Tipi operated with an operational capacity of 800 (including the outside area and the Tipi structure itself) [2/19/26/paragraph 102].

12. The licence granted imposes no condition about capacity whether in total or in separate areas or floors. When asked at the meeting the 2nd Respondent said it would be approximately 1500. There are conditions within OS Rev G that impact on capacity. By condition 1 there will be external seating. By condition 5 the licensable activities during the seasonal events that take place on the Plaza will take place in accordance with the layout of the approved plans. It is envisaged this will be a Tipi structure with a maximum capacity of 180. By conditions 4(ii) and 6 any additional periods of licensable activities within the Plaza must be approved in writing by the Licensing Authority following their consultation with the Police and Environmental Health Department. Notice must be given with, amongst other things an operating policy which will be referred to the Major Events Group or other such body as the Licensing Authority consider appropriate. Minimum requirements for such an operating policy are set out at 6(ii) and include a risk assessment. By condition 9 the operator and DPS shall conduct a risk assessment for the general operation of the premises and in the case of individual bespoke events. By condition 10 the maximum number of persons permitted on the premises at any one time shall not exceed a figure prescribed by the risk assessment carried out by the premises licence holder in accordance with fire safety legislation. Conditions 9 and 10 add to the guidance contained within NCC SLP [1/12/294 – 296] as to what "should" happen and what it "expects".

13. The Appellant submits I should consider any assessment of capacity on the worst case scenario assuming the licensee would exploit all that was available so the highest figures (applying the 0.3 factor), the 2nd Respondent submits the lower (applying the 0.5 factor) and possibly lower than that once I take into account objects such as tables, bench seating and planting and other features that will be present.

14. Applying the 0.3 factor to the disputed area outside the seasonal period the maximum occupancy on the ground floor is 2080; approximately double the maximum capacity of Pilgrim Street Tipi and 2 ½ times its operational capacity. Within the seasonal periods it is 1160 (180 Plaza, 980 open area to north of Plaza); 106 (roughly 10%) above the maximum capacity of Pilgrim Street Tipi and roughly 1 ½ times its operational capacity.

15. Applying the 0.5 factor for the disputed area outside the seasonal period the maximum capacity is 1248 so approximately 200 or roughly 18% higher than the maximum capacity of Pilgrim Street Tipi and approximately 450 or roughly 50% higher than its operational capacity. Within the seasonal periods it is 768 (180 Plaza and 588 open area) so lower than both the maximum and operational capacities of Pilgrim Street Tipi.

16. I cannot determine a precise maximum occupancy figure for the disputed area but for the following reasons I consider it more likely to be in the region of the lower figures set out calculated applying the 0.5 factor.

i. Using the NCC SLP table the 0.3 factor should only be applied for standing areas or a bar. Given that for a bar there is said to be a range of 0.3 – 0.5 depending on the amount of seating and tables to be provided I consider it reasonable to assume that 0.3 would apply where there either no or de minimis seating only. The factor given for a bar area without seating is 0.5. The parties were not able to assist me with that apparent contradiction. It is possible that it means the area around the bar itself.

ii. The impact of the proposed and conditioned operating style of Stack which to a not insignificant extent is restricted by OS Rev G condition 1 reinforced by OS Rev G condition 2. If the 2nd Respondent deviates from this operating style he risks prosecution if he does not comply with OS Rev G conditions 1 or 2 and review of his licence in any event if he operates in a style that means that premises have a negative impact on the licensing objectives.

iii. Where seating is provided it will reduce maximum occupancy or capacity –the overall space on which to calculate maximum occupancy reduces (see guidance above) and the numbers of people who can be accommodated in the area where seating is provided is restricted by the amount of seating provided. I acknowledge that the licence granted does not impose any specific condition of amount of seating or where it will be. Condition 1 of OS Rev G commits the 2nd Respondent to a style including external seating. The additional condition 1 imposed by the LSC and as proposed in its amended form agreed by the 2nd Respondent refers to the area to the north of the Plaza as the open seated area. The plans submitted by the 2nd Respondent with the application include significant seating within the disputed area. This is not individual seats but bench seating with a table area between them. The up to date plans again include the same seating and a figure is given of seating provision for 212 people on the ground floor. The evidence of the 2nd Respondent at this appeal was that there would be seating as was the information provided to the LSC. I accept the evidence of the 2nd Respondent that it intends to provide seating within the disputed area. The provision of seating is entirely consistent with all else that was said in Mr Wright's evidence about the proposed style of operation at Stack as is the presence of other features which would also reduce the available space.

iv. The up to date plans show that there will be at least one food offering on the ground floor adjacent to the disputed area and the site visit made it clear that was to be so. The up to date plans show two food offerings. There is no restriction on those customers purchasing food from the first floor food offerings from returning to the ground floor to eat it.

v. Ms Wallis gave evidence about how the maximum occupancy amounts had been reached and confirmed that the 0.5 factor had been used. She said she had considered the total area, made reductions for entrance and exits areas as it was important not just to consider the occupancy but how people would leave a space and so the entrances and exits should not be compromised. She had taken into account space for circulation and "dead sight lines" (ie when events were on where people would not stand). She had considered the operating style proposed, the mix of offer within the premises and the likely fixtures and furnishings. She had borne in mind that there would be health and safety and

fire risk assessments that impacted on capacity. She had consulted with the head of Building Control and noted that he had agreed the 0.5. factor would be the most appropriate. She was satisfied that the 0.5 factor was the appropriate calculation for the illustrative calculations.

vi. By way of example as to why the 0.5 factor was inappropriate, Mr Gouriet QC when questioning Ms Wallis, said that the layout at Stack as shown on the up to date plans and that shown on the Pilgrim Street Tipi plans (Plan 1 above) did not bear comparison and yet the same factor had been used. I am not satisfied that suggested lack of any comparison bears scrutiny. On Plan 1 above for Pilgrim Street Tipi all fixed units around the exterior perimeter of the outside standing area (food, bar and retail units, toilets) and entrances and exits, seating, fire pits had been excluded from the area used for the calculation. The plans produced for the purpose of calculating maximum capacity at Stack similarly exclude those units around the exterior of the space and entrances and exits and have not put any proposed seating or other fixtures in. In any event, as I have noted in paragraph 11 above, the 0.5 factor for the outside space at Pilgrim Street Tipi gave a maximum standing occupancy of 790, and seating as 84. The Tipi itself had a maximum occupancy of 180. The total maximum occupancy was 1054. The undisputed evidence was that the operation ran with an operational capacity of 800. If it were accepted that the two do not bear comparison in terms of layout and style then it would be preferable to draw comparisons between the notional factor that would have provided the operational capacity of Pilgrim Street Tipi than the factor used to produce the maximum potential capacity.

vii. Whilst I acknowledge as set out elsewhere that the comparisons between Pilgrim Street Tipi and Stack are not absolute, experience of this operator in this location operating under a less conditioned and less restrictive licence for later hours for the same licensable activities does not lead me to conclude that I should assume they will exploit the licence on this issue to its maximum extent. Of note one of the Appellant's concerns in his representations to the Licencing Authority at the time of the application for Pilgrim Street Tipi is that "the premises are extremely large with a capacity of 2,600 people" (this I assume was based on the application of the 0.3 sq m per person factor) and drew the comparison that the premises "are 160% larger than the similar premises near Central Station last year" [1/2/238 - 239]. As above it is not disputed that when operational Pilgrim Street Tipi the 2nd Respondent operated those premises with an overall operational capacity (including the Tipi) of 800.

viii. I also note that the NCC SLP guidance (and the website page) both say that bar server areas should not be included in the calculation but are included within the areas on Plan 2 - 4.

17. In his statement Mr Wright provided evidence about trading patterns [2/19/48/paragraphs 204 – 205], capacity [2/19/51/paragraph 217] as well as visitor numbers and transactions at Pilgrim Street Tipi [2/19/29 – 31/paragraphs 116 – 122] which was explored further in his oral evidence.

18. So far as capacity for Stack was concerned he did not provide the figure of approximately 1500 at the LSC meeting but agreed that was the figure used. Any capacity limit would need an accurate fire assessment to have taken place which would include numbers for both the ground and first floors. He was candid that he hoped the operation would be economically viable and for that a good footfall was required but there would be a breakdown in the offer between retail, food and wet led albeit all customers would not be looking for all that was on offer.

19. He agreed the total count of visitors (402,636 – paragraph 118) represented the total number of visitors from midday on each operational day as that was when the door staff came on site and operated the counting system; that the average number of arrivals per hour (430) was calculated by dividing the total number of counted visitors to the site over the trading period by the total number of trading hours; there was no breakdown of numbers in any particular hour including those that could be considered peak times; that arrivals in peak hours could be higher; that the figures within paragraph 120 of his statement demonstrated the numbers of transactions that took place per hour rather than numbers of people – in the overall period between 12 noon and 1 am over the trading period there were 100,540 transactions, that was divided into the figure of 402,636 to produce an average figure of approximately 4 transactions per visitor but, given the total visitor numbers were not broken down per hour, it did not provide a breakdown or average figure for numbers of transactions for visitors in each hour. His assessment of the data, with which I agree, is set out at [2/19/29 – 31 paragraphs 116 – 122]. 77% of all bar transactions took place between 3 pm and 10 pm, 7 pm to 8 pm was the peak trading time in terms of transactions, declining thereafter between 8 pm and 9 pm and again 9 pm and 10 pm. The trading period between 11 pm and 12 midnight accounted for 4.2% of bar transactions (with a daily average of 60) and between 12 midnight and 1 am for 2 % of bar transactions (with a daily average of 29 transactions). These figures ignore any inflation caused by delay from recording of the 2 non-live tills. Subject to these figures he could not give a more detailed indication of how trading patterns or visitor numbers fluctuated within any given day or overall and he agreed that it was not possible to extrapolate these figures to Stack.

20. Mr Turnham addresses the issue of churn at [1/14/394/paragraphs 41 – 46 and 1/14/402/paragraph 86] concluding that a reasonable assumption would be that Stack will see approximately 10,000 visitors over a typical busy weekend night (using a capacity of 1500) so a churn figure of approximately 7 times the capacity. His interpretation, which was based on a number of factors, was in my view flawed:

i. He considered data of churn figures provided by local and national operators of night time economy city centre venues on a typical busy evening which he said corroborated this figure. As a result of written questions asked by the 2nd Respondent and evidence at the appeal further information as given about these operators.
    a. The only local operator from whom he sought such information was Harry's Bar and was provided by the Appellant. They were for a six week period, Friday and Saturday nights, over December 2017 into January 2018 so in his view a busy into a quiet period. The underlying data was not provided.
    b. Information about the other operators were commercially sensitive and so he was unable to provide full information other than there were two, they were both based in London and both single establishment bars or bar/restaurants. They "verified the figures we gave were in the correct range for an evening and

night time economy venue". They were not BPS or BPC or any other box park that he had sought to draw comparisons with in his report.

ii. He drew comparisons with the figures provided for Pilgrim Street Tipi which he considered were in line with the above. Again there are difficulties:
    a. He estimated the churn figure of people who were served at Pilgrim Street Tipi bars was 7. This on the basis of 402,636 total visitors divided by the number of days of operation (72).
    b. He concluded this was very likely to be an accurate figure for the evening and night time portion of trading. This based on the total figures and, whilst he had been unable to ascertain whether they related to a night time only or day time as well, the licence for Pilgrim Street Tipi stipulated that door supervisors were required only after 8:00 pm and the door supervisors do the counting in nearly every venue. In his evidence he said he had taken no steps to ascertain if they were evening/night time only. There was not such a condition on the licence for Pilgrim Street Tipi. At the time of the application for Pilgrim Street Tipi it was said that door staff would come on at 12 noon and Mr Wright's unchallenged evidence was that they did so and completed a count of who was on the site when they started and then counted visitors in from then. The figure of 402,636 and any churn figure that can be derived from it based on those counted by door staff represents the total from 12 noon over the trading period not those over the evening/night time period.
    c. When challenged about his assessment of the Pilgrim Street Tipi figures and churn in evidence and why he had not sought to clarify the times the visitor numbers related to or referred to the evidence available to him he said because his fundamental view was that Stack and Pilgrim Street Tipi were different operations and that the proposed operation at Stack would attract a much greater number of people for the vertical drinking and food offer than Pilgrim Street Tipi (as was submitted more generally by the Appellant).
    d. At paragraphs 87 and 88 in summarising Stack he repeats the churn figure of 10,000 "through the venue's doors" on a busy night which will create "at least 20,000" movement into and out of the area in the same period. At this stage of his report is, this figure is said to be based on the figures for Pilgrim Street Tipi only.

iii. The whole assessment appears to be based on "this kind of venue as well as bars and pubs which form part of a 'drinking circuit'" [1/14/394/paragraph 42] rather than nightclubs and up market restaurants where churn is lower because they are destinations in their own right. Also in his report he refers to churn figures being different for different types of venues – restaurants and night clubs that are destinations would have a lower churn – there was no consideration of this in connection with the restaurant offer at Stack, nor the evidence of the witnesses for the Respondents about their view of the improbability of Stack forming part of any drinking circuit in Newcastle and particularly not a drinking circuit involving those premises in the west area of the SSA.

iv. It concerns me that the approach taken by Mr Turnham to arrive at a churn figure appears to be by: (i) comparing with Pilgrim Street Tipi which, when challenged about his application of the data and his approach to, he then effectively said was irrelevant as it was a different operation and; (ii) to satisfy himself he was correct, comparing with data (about which a limited amount of information was available) from sources that

again include his client and then two other operations which from the information available appear not compare with the proposed operation in Stack and are based in London; (iii) not comparing with figures for the box park operations that in all other respects he thought would be of assistance in his report and on which much of the rest of his evidence and conclusions were based. In fact I am not clear from his report and evidence whether Mr Turnham started with a figure based on his experience and then compared it with Pilgrim Street Tipi and the data he got from the other 3 operators, whether he started with his assessment of data from Pilgrim Street Tipi and compared or sought verification from the other sources or, whether he started with the one or more of the other three sources and then drew comparisons with Pilgrim Street Tipi.

21. It is clear that the number of people who visit a premises on any one day or night is not the same as the maximum or operational figure for those premises. It depends on the numbers of people attending and the turnover or churn of visitors. The Respondents accept that and that it will result in more people attending than the capacity. The Appellant in his submissions and questions accepted that there would be times when full capacity was not reached.

22. The 2nd Respondent was able to give evidence about the figures applying to Pilgrim Street Tipi and accepted the limitations to that. I have set out later in this assessment section my view of the value of comparisons with Pilgrim Street Tipi more generally. I found Mr Turnham's evidence on this point to be of little assistance whether he referred to churn or footfall/movement figures (where he doubled the 10,000 to produce a figure of 20,000 footfall) in determining with any accuracy how many people would visit Stack on an evening/night time. In my view his assessment was flawed and again demonstrated some of the concerns I outline elsewhere in my assessment of his evidence. Chief Inspector Pickett in his evidence considered it unlikely that the site would reach full capacity at the terminal hour as a matter of routine – it would he thought depend on a variety of factors.

23. From the evidence I received and for the reasons given in paragraphs 15 and 16 above I consider the maximum capacity of the disputed area to be approximately 1280 or 200 more than the maximum capacity at Pilgrim Street Tipi (450 more than its occupational capacity) outside of the seasonal periods. Within the seasonal period I consider the maximum capacity at Stack to be likely to slightly lower than both the maximum and operational capacities of Pilgrim Street Tipi. The operational capacity of Stack may be lower than those maximum capacities.

24. In relation to churn and so how many people will visit overall on any one day or night, I am not able to conclude more than: there will be days and nights when the numbers of people coming to the premises will be greater than the capacity and sometimes significantly more so; there will be days and nights when the premises do not at any one time reach capacity - the overall numbers who do visit may well be greater than the capacity; there will inevitably be busier nights and days determined by a variety of factors; there will be peak times within the trading periods – in terms of average bar transactions over the trading period, peak times for Pilgrim Street Tipi appear to have been between 5 pm and 9 pm, dropping off over the next two hours and significantly so for the following two hours until 1 am; different churn figures are likely to apply to different types of premises depending upon the activities and their operation; some licensed premises report a churn figure of approximately 7 on busy weekend nights.

H.8 COMPARISONS WITH PILGRIM STREET TIPI

1. The Appellant submits that the differences of scale and type of operation between Pilgrim Street Tipi and the proposed operation at Stack are so great that no comparison of assistance can be drawn. There is no doubt that, albeit the operation proposed at Stack covers the same licensable activities, it is larger than that at Pilgrim Street Tipi and incorporates a wider range of offer. Both Respondents agree that and in my view did not seek to draw absolute comparisons. For the reasons already set out I consider that this was information was properly made available to the LSC such that they could appreciate it and turn their mind to it. I consider that comparisons between the two are not without any significance (nor were they to the LSC) and do offer some assistance. At the outset some comparison of the licences is worth consideration.

i. Pilgrim Street Tipi operated under a premises licence with opening hours from 08:00 hrs to 01:30 hrs permitting the sale of alcohol by retail (for consumption both on and off premises), performance of dance and similar, exhibition of film, performance of live music and similar, playing of recorded music and similar supply of alcohol for sale both on and off the premises, late night refreshment. Each activity was permitted for each day between 10:00 hrs and 1:00 hrs other than exhibition of film where it was 08:00 hrs to 01:00 hrs and late night refreshment only required for 23:00 hrs to 01:00 hrs. A seasonal extension was provided to cover the period of time between 01:00 hrs on 1st January until 08:00 hrs/10:00 hrs on 1st January. The licence for Stack permits the same licensable activities for the same times subject to a terminal hour of 12 midnight and for 365 days of the year rather than the seasonal period for Pilgrim Street Tipi.

ii. Other than by the mandatory conditions and one condition imposed (offered in OS Rev G) to restrict off sales of alcohol to gift products from the retail units marked on the approved plans at Pilgrim Street Tipi there were no further temporal or geographic restrictions imposed on the sale or consumption of alcohol nor any caps placed on the minimum or maximum amount of operators or that amount of space (actual or percentage) permitted to be devoted to wet led, food led or retail, there was no condition for alcohol sales or consumption to be ancillary to substantial food. As with Stack the same minimum pricing policy condition for the sale of alcohol was imposed again having been offered in the operating schedule; no condition imposed a capacity restriction other than not to exceed a figure prescribed by the risk assessment carried out by the Premises Licence Holder in accordance with fire safety legislation (again offered by the 2nd Respondent as with Stack); there was no condition requiring seating to be provided. There was no condition relating to style of live or recorded music (and similar), film or dance (and similar) nor any further temporal or geographic restrictions on any of these activities.

iii. There was no "operating style" condition nor any requirement to provide written notification to the Licensing Authority before any change to the operating style or requirement to comply with the direction of the Licensing Authority to make a full application, minor or full application on such notification. The requirements relating to risk assessment for individual bespoke events was the same but there was no condition as with Stack to consult the licensing authority or any other responsible authority about any particular events. There were less specific

restrictions regarding the members of the management team that would be on site at any time. The conditions contained in OS Rev G at 17 – 19 about leases to third parties was not included. There was no restriction as with Stack on the removal of alcohol in open containers or vessels from the premises nor takeaway food. There were similar conditions to Stack as to CCTV and noise management but no condition that noise from the premises shall not be audible beyond the boundary of the premises to as to cause a nuisance to nearby residents (as there is with Stack). There were no conditions (as there are with Stack at OS Rev G at 25 – 27) with required actions should anti social behaviour be caused outside the premises, nor training of staff in identifying, dealing with, refusing access to and removal of "street drinkers", nor for the compilation or retention of records of persons banned from entering the premises and purchasing alcohol. There was no condition – as there is with Stack (OS Rev G 31) requiring the premises not to sell alcohol after 11:00 hrs following written notification from Northumbria Police that a "high risk occasion" is to occur in the City Centre.

2. In short the restrictions imposed by conditions on the licence at Pilgrim Street were far less extensive than those for Stack.

3. In my view the additional conditions and restrictions in the licence for Stack are pertinent to Stack. They recognise the scale of the operation proposed, the range of activities and the concerns raised by the Responsible Authorities and in the NCC SLP for this area. Each of Mr Bryce, Ms Wallis and Chief Inspector Pickett set out in their evidence the steps taken from the application being submitted about the development of the Operating Schedule until it reached OS Rev G and how the additional conditions addressed their concerns. By the time of the meeting Ms Wallis had withdrawn her representations, Mr Bryce spoke positively about the development and Chief Inspector Pickett had some residual areas of concern. Each of Mr Bryce and Chief Inspector Pickett welcomed the additional conditions imposed by the LSC. Witnesses were challenged as to how the conditions addressed their former concerns about vertical drinking. They all felt that the combination of additional condition 1 and the caps in place under OS Rev G condition 12 met their concerns as they would reduce the availability of vertical drinking within the premises compared with the application. In his statement for this appeal the only measure that Chief Inspector Pickett thought would assist would be a measure to prevent an extended drinking up period and encourage responsible dispersal. To that end he welcomed the proposal that came with the proposed amended conditions for the opening times to be reduced to 00:30 hours

4. Pilgrim Street Tipi operated for each day except Christmas day between 27th October 2917 and 7th January 2018, 72 in total. Its capacity was not insignificant and in my assessment bears some resemblance to that available in the disputed area at Stack (see comparisons in Capacity section). Between the monitored hours of 12 noon and 1 am there were an average of 5,592 visitors per day with an average of 430 arrivals per hour. There were 10 food led outlets operated by external providers to whom units were let, 5 bars (4 operated by DHL leisure division and the 5th by an external operator selling cocktails) and 6 x A1 retail/amusement type offerings. There were child and family friendly activities and offers, the hosting of 2 school choirs and a charity night. There were at least 3 and up to 5 live acoustic acts per week and DJ led entertainment 4 – 5 nights per week. This was during a period of time that Mr Turnham describes as one of the two most alcohol intensive times of the year. It was operated by the same operator

as is proposed by Stack under the same management structure (which is proposed to expand for Stack) and in the same City in the same location as is proposed for Stack. There were no problems relating to the licensing objectives that concerned the police or other responsible authorities other than one noise complaint from a resident at Bewick Court which, according to the evidence of Ms Wallis, was dealt with swiftly and appropriately. On 3 occasions the operators called the police as set out in Mr Wright's statement [2/19/28] - each occasion he, in my view correctly, assesses the call to the police as being indicative of good management of the site.

5. Notwithstanding that the conditions would have allowed it to it did not deviate from its operating style in any way that could or would be likely to impact on the licensing objectives e.g. music or event style. Mr Wright, Mr Patterson and witnesses for the 1st Respondent all gave evidence about the demographic of customer that attended Pilgrim Street Tipi which was not challenged. Mr Wright's clear evidence was that it was the operator's intention to attract the same demographic to Stack, that in all respects Stack was to operate in a style designed to do so and he considered consistency of offer to be very important. That operating style was set out in the information available to the LSC and in evidence to this Court.

6. Chief Inspector Pickett was asked about the comparison. He agreed that the Pilgrim Street Tipi and Stack operations were different but that the comparisons were of assistance. He thought the scale (in terms of retail, increased food and access to alcohol) was different but he did not consider the style of operation would be greatly different. When suggested to him would it be better to grant a licence with an 11 pm terminal hour to test out the operation he thought not as he already had seen how Pilgrim Street Tipi had operated under a licence with a terminal hour for 1 am. Whereas often a new operator or premises would apply for a Temporary Event Notice, e.g. over a busy weekend, here he had two test operations – Pilgrim Street Tipi and Central Station Tipi- to consider already.

7. A comparison of the concerns of the Appellant raised in the Pilgrim Street Tipi application and (now withdrawn) appeal and those for Stack suggest caution should be taken in any presumptive approach to assessing of forecasting likely negative impact. Pilgrim Street Tipi was a licenced premise in the same location, in the same city, run by the same company, for the same licensable activities with a less restrictive licence The same and worse fears about that operation were expressed by the Appellant in their representations to the LSC as with Stack. The grounds for appeal against the grant of that licence were very similar to those against Stack. The Appellant withdrew that appeal and in his submissions in these proceedings accepted the merit of Pilgrim Street Tipi and the lack of problems relating to cumulative impact or anything else. In closing – other than the question mark over improper delegation – Mr Gouriet QC said there were no outstanding concerns for the Appellant about the two seasonal periods on the Plaza at Stack.

H.9 COMPARISON WITH OTHER OPERATIONS

1. During the course of the appeal evidence was introduced seeking to draw comparisons with the proposed operation of Stack and others elsewhere most notably Boxpark Shoreditch (BPS) and Boxpark Croydon (BPC) both in London. They are set out primarily in the witness statement of Mr Wright and the report of Mr Turnham and

were explored more in evidence. In summary Mr Turnham's evidence was that the experience of BPS mostly but also to some degree BPC assisted the Court in understanding the likely impact of Stack on the licensing objectives and cumulative impact within Newcastle and that it would be negative.

2. The 2nd Respondent disputed this conclusion and the basis on which it was premised. Mr Wright did not think that the comparisons with Boxpark Shoreditch were valuable; their location and operation were different – he felt the way it was designed, layout and operated (eg smoke machines, changing coloured lighting – more like and open air enclosed night club) was very much targeted towards a younger crowd.

3. It was difficult at times to get a clear picture of exactly what assistance Mr Turnham thought could be obtained from a comparisons with any suggested general model of a Box Park operation

i. He agreed with Mr Charalambides that the s182 guidance encourages a very local approach to assessing the likely impact of licences and did not encourage a national comparative approach and that in this case the NCC SLP was a paramount document. He commented though that that the guidance was not mandatory, nor exhaustive and the LSC, whilst no doubt experienced and trained, did not have the experience he had in other areas and that BPS was incredibly instructive as to what Stack would bring.

ii. He agreed with Mr Charalambides that the only common features that could be said to be the same for any box park were – they would be in a defined location, would have multiple units, there may be an open space within them, there may be restaurants – some of which may sell alcohol, there would be bars, they may be open or covered and they would incorporate the use of shipping containers or similar in their architecture.

iii. When asked by Mr Holland he said it was not just the shipping containers but the method of operation (scale and type), customers, proximity to other NTE users.

iv. His own conclusions were that BPS and BPC were very different operations with very different scale, style, offer, clientele and impact. In any event he concludes at [1/14/418/paragraph 180] that "Box Park Shoreditch is the only example that has been trading long enough for us to reasonably understand the impact locally of this new urban phenomenon"

v. His own conclusions were that whilst venue capacity, location, alcohol availability and entertainment type are material considerations in forecasting cumulative impact, clientele is critical and that it was necessary to look at the type of customer likely to be attracted to premises that were licensed.

vi. When being questioned by Mr Charalambides he said that in the case of Box Parks a particular model is developing. When challenged that it all depended on the specifics of the premises and the application he said he could not agree with that.

vii. Notwithstanding his qualifications about the application of any general model of Box Park operations (and setting aside any comparisons with Stack) in his report he sought to draw general conclusions about them and/or "pop up malls":

a. Box parks need to cross subsidise retail, food and community events with alcohol and all those reviewed were "highly dependent on selling alcohol to help cross subsidise the less economically viable parts of their business particularly the retail and community events. [1/14/38/paragraph 181]
b. The ability of individual restaurants inside 'pop up' malls to sell alcohol has proven problematic [1/14/38/paragraph 182]
c. Temporary pop up malls have not, so far, proved 'temporary' [1/14/38/paragraph 183]

viii. During re-examination he said the concerns he had about Stack were about the cumulative impact of a large vertical drinking space being created on the ground floor with up to 6 bars and that those concerns existed regardless of any comparison with BPS (the box park he thought bore the most similarity to Stack).

4. Mr Wright in his statements also notes the differences between BPS and BPC. This evidence was not challenged. He also gave evidence in his statement that the second Appellant did not propose to model itself on BPS or any other box park operation. He and colleagues had visited BPS as well as other mixed offers to consider the practical possibilities that may be gained from the use of shipping containers. The assistance he took from those comparisons as to how Stack would operate were limited and are set out in his statement [2/19/19/69 and 2/19/20/72 – 79].

5. Accordingly I could not and do not conclude that there is any particular model of Box Park operation from which I can draw assistance.

6. Given the above and the conclusions of Mr Turnham in his evidence and his report that BPS "help us understand the probable impact of Stack" I have focussed on the evidence relating to those comparisons. I note at the outset that BPS operated in London whereas the premises I am considering operate in Newcastle. I did not have a comparable depth of information about the NTE and the area more generally in which BPS is located as I did for Newcastle and the location of Stack. I did not hear evidence approaching the level of detail I received from the witnesses called by the 1st Respondent about the specifics of the NTE in the area around BPS. This I consider relevant given that all witnesses – including Mr Turnham – agreed there were a variety of factors that would assist in predicting or determining the cumulative impact of different licenced premises. I have reviewed it elsewhere – style, location, scale, existing NTE, clientele.

7. Mr Turnham concluded that the type of clientele and attendant cumulative impact implications for that were likely to be the same at Stack as at BPS. In summary his conclusions about the clientele at BPS were that they were early 20s to early 30s and some older and that as the evening went on they were more focussed consuming alcohol, becoming more intoxicated and, on leaving, the majority moved on to other nearby late licenced premises. That BPS had quickly become part of a "drinking circuit". During his observations of the dispersal of BPS on the night he visited he reported 18 incidents of negative cumulative impact behaviour. On the basis of his research and observations into BPS he concluded that it was almost certain that BPS would not get a licence now.

8. Mr Turnham's conclusion that the impact of Stack can be better understood by the impact of BPS is based on the following factors.

i. The clientele at Stack would be the same as those at BPS. This appears to be based on Mr Turnham's view that Newcastle City Centre NTE has many offers of vertical drinking establishments and that Stack would be the same as well as a conclusion that the operating styles of BPS and Stack would be the same. It does not take account of, in my view, the considered and nuanced evidence of the witnesses of the responsible authorities about the specifics of the clientele of the different offers within the Newcastle NTE, the very limited migration between the sometimes very close different micro-geographies (which to a lesser extent Mr Turnham reported and agreed existed) including between those areas where some aspects of the offer may be the same but still attracting a different clientele. It also takes no account of the intended operating style of the operator of Stack – music style (live and recorded), door policy, management style, lighting and minimum price condition as set out in the evidence of Mr Wight. To the extent that he was able to comment on each of these things (music style, lighting) Mr Wright's second statement sets out how these differ to BPS. There is no evidence before me about any minimum pricing condition at BPS; a condition the witnesses for the Respondents considered to be material – as from his statement Mr Robertson appears to. The management style is an issue that Mr Turnham thought particularly problematic at BPS but for the reasons I have explained elsewhere it is not so for Stack. The intended operating and management style at Stack is based on the same operators' previous experience in other operations including at the same location and its success in discouraging a clientele that Mr Turnham considers to be problematic at BPS. Mr Turnham considered there had been a change in clientele at BPS – it started off with a "hipster type" crowd but moved to the clientele he now describes – younger and more alcohol focussed. The "hipster" crowd was the very type of clientele Ms Wallis thought would be attracted to Stack, such clientele also being attracted to a number of the licenced premises to the east of the city centre and other licenced premises around Stack; Mr Bryce referred to the craft ale type crowd. Chief Inspector Pickett thought Stack would attract a different clientele demographic to that at the Bigg Market and Collingwood Street venues. Particularly given the evidence about the intended operating style and the differences in the micro communities within the Newcastle NTE, there was no real explanation why Mr Turnham did not consider that Stack too could or would attract such a clientele or, if it did at the outset, why it would change.

ii. The problems of cumulative impact on dispersal would be the same. This was in large part based on the clientele that Mr Turnham thought would attend Stack, comparisons with dispersal at BPS, and his understanding of the NTE in Newcastle clientele. I have considered clientele and migration of clientele within the Newcastle NTE above. In so far as Mr Turnham bases this comparison on a view that (a) the clientele demographic of BPS and Stack will be the same and/or (b) that clientele demographic is the same as for the Bigg Market/Collingwood Street venues would be the same, the limitations I have set out elsewhere in my view apply equally here.

iii. So far as BPS's dispersal Mr Turnham's evidence was that on the night he visited approximately 60% of the clientele leaving at closing time went in the direction of the nearby main stress area of later licensed premises and he assumed most of them would be going to licensed premises rather than passing through although could not

be sure. That there are a large number of licensed premises in immediate proximity to BPS is evidenced by both Mr Turnham and Mr Wright. The site visit and plan produced by Mr Bryce demonstrates that Stack is not in the epicentre of licensed premises in Newcastle City Centre. Mr Wright thought the premises in the immediate vicinity of BPS were not comparable to those in the immediate vicinity of Stack (see paragraph 71 of his report where he comments there are very few licensed premised in the immediate vicinity of Stack). Mr Turnham agreed the same volume of the same type were not found in the immediate vicinity to Stack as BPS. But it was the further afield Bigg Market and Collingwood Street destinations he thought the customers from Stack would primarily migrate to and from albeit having to pass through the cross streets to and Grey Street itself to do so. He considered it likely that a significant proportion of customers at Stack would pre load on alcohol before moving onto those other premises within the CIA mostly passing through, the cross streets close by and Grey Street (possibly damaging their ambience as they did) to attend the later licensed premises in the Bigg Market and Collingwood Street. Again in my view this takes no account of the evidence of the responsible authority witnesses about migration (or lack of it) within areas of the Newcastle NTE. It is also to some extent difficult to reconcile with Mr Turnham's evidence of his observations in Newcastle that the NTE in these locations was properly starting to get going at about 23:00 hours with customers arriving having pre loaded on drink at home. The view that pre loading would take place at Stack seems at least in part to be based on Mr Turnham's view that a proportion of customers at BPS when he visited appeared to be using it as a starting point for a night out.

iv. Problems about dispersal he thought were likely to be further exacerbated at Stack by the lack of a closing time especially if music was to continue being played. Whilst he conceded that was an error on his part he thought a closing time of 01:30 hours with a terminal hour of midnight meant the same concerns remained. The proposed new closing time of 00:30 hours was not available to Mr Turnham when he gave his evidence but it is in line with what he thought was the norm – a 30 minute drink up time. In his report he also thought that problems on dispersal would be exacerbated by the potential simultaneous use of the Pilgrim Street Tipi and Stack licences allowing the operator to create a space within the premises where alcohol could be purchased by up to 800 customers until 01:00 hours again without a closing time and so the attendant dispersal issues. He again conceded he was wrong about this being a possibility (both about simultaneous use and in any event about Pilgrim Street Tip not having a terminal hour). Mr Wright did not consider it likely that the premises would be at full capacity at the terminal hour based on his experience of the previous operations and the intended style at Stack nor that there had been problems with dispersal at those operations. Mr Wright in his statement [2/19/52/224 – 225] sets out the 2nd Respondent's dispersal policy in previous operations – a 20 minute drink up time, a reduction in the volume of music for 10 minutes and switched off completely after that. Chief Inspector Pickett did not consider that the premises would likely be at full capacity at closing time in part in reference to the Pilgrim Street Tipi operation on the same site but it that it would depend on a variety of factors on different days. He welcomed the proposed new closing time of 00:30 considering it would help with dispersal. Mr Turnham also considered that the interaction between the clientele leaving BPS and those already in the immediate area caused cumulative impact problems – albeit from his

observation notes not the fights he would expect to see in Newcastle. Mr Wright's evidence was that there were a large number of other people (100's and 100's) aged roughly 18 – 21 on the streets outside BPS when it closed many queuing for other licensed premises. The unlikely comparison that affords with Stack is evidenced both by Mr Wright's and Mr Turnham's evidence about the licensed premises in the immediate area around Stack and BPS and the photographs of each area that both exhibited as well as the map of licensed premises produced by Mr Bryce.

v. The dependence on alcohol would be the same. This related to the mix of offer on the site and Mr Turnham's conclusion referred to above about BPS (and other box parks) being highly dependent on alcohol sales to cross subsidise the other offer at the premises. Whether or not this was in fact a trend or an operating style decision was challenged. In any event however this conclusion took no account of the requirements within both the planning and licence permissions for minimum levels of retail and food offers and maximum levels of wet led offers. Nor did it take any account of Mr Wright's evidence about the terms of leases for retail and food operators on the site requiring them to be open 7 days per week for minimum hours (7.30 pm for retail and 10:00 pm for food). Mr Turnham believed that the conditions within the premises licence as granted relating to caps was unique. He confirmed there was no condition within the licence for BPS with similar caps relating to types of offer and also that BPC had never had any retail element. He felt unable to comment on whether the retail element of Stack would be likely to be more successful at Stack given that the site is at the bottom of Northumberland Street one of the main shopping streets in Newcastle. He speculated that the minimum retail requirements for retail in both the planning and licence permissions could have been expected to be higher in previous years. Overall, he said he could not apply the trend to dependence on alcohol sales he had identified elsewhere to this particular site. Again this comparison was therefore of limited assistance.

vi. The problems at BPS relating to individual restaurants selling alcohol would likely be the same at Stack. [1/14/39/182]. This due to a condition in their leases (at BPS) that was identified by Mr Turnham in his report as being one of the most serious problems at BPS. He thought this, combined with the proposed DPS and Licence holder requirements for Stack, meant it was arguable Stack will not be able to deliver the licensing objectives and that one DPS per alcohol retailing unit would be preferable. This makes no reference to, nor draws any comparison with, the lease arrangements at Stack that are set out in detail within OS Rev G and effectively provide the police and licencing authority with a right to veto proposed tenants and the significant covenant and rights of the operator over the individual operations within leases that are granted. As set out in the witness statements which were unchallenged these conditions were offered following significant consultation with the responsible authorities and met the very concerns that they had identified about the potential impact of individual leases and management at the outset. The statements and the various operating schedules from application to OS Rev G set out clearly those changes. I do not have details of the leases for BPS nor any conditions that were imposed about them or the management of the premises overall and Mr Turnham refers only to this one problematic clause in the leases. Mr Turnham in his report and his oral evidence was clear that there were significant issues in general about the management approach at BPS. Other than the initial concerns raised by the responsible authorities met by the additional OS Rev G

conditions, no such concerns were or are raised about the management proposed at Stack. Nor does the Appellant raise any concerns about the management of Stack specifically conceding there was no suggestion the premises would be anything other than managed well internally. On the evidence available to me I cannot conclude that similar problems will arise at Stack as those referred to by Mr Turnham.

vii. The NTEs are comparable. At paragraph 94 of his report Mr Turnham says that Shoreditch is of a similar scale and intensity to Newcastle. Following a written request from the 2nd Respondent he sought to clarify that statement [1/14/19A/31] setting out the similarities but without reference to any underlying data other than an invitation to view www.police.uk. Again, I refer to the evidence of the respondent witnesses about the specifics of the Newcastle NTE.

viii. The locations are comparable. One of the reasons that Mr Turnham did not consider that BPC was comparable in impact to BPS or Stack was because of its location which differs as it is further from the main area of licensed premises, less residential and has good transport links to assist with dispersal. I deal with proximity to other licenced premises elsewhere. Mr Wright notes from his visit to BPS and BPC that in fact BPS has a local train station in closer proximity than the station at BPC. I have no evidence before me about the bus links in Shoreditch but struggle to accept that there is not a comprehensive bus service in Shoreditch. Mr Turnham makes no reference to the metro station, bus services and availability for taxis in very close (and in some cases immediate) proximity to Stack referred to in Mr Wright's statement [2/19/9/paragraph 41] all of which were also easily observed during the site visit. It is accepted that there is no significant residential population in close proximity to Stack and specifically stated by the Appellant that no part of the appeal complained of the potential for noise affecting the residents in the one nearby residential block

ix. It is unlikely that it will remain 'temporary'. When asked about this Mr Turnham said he acknowledged this was not necessarily a factor to consider now but he was flagging it up as, if successful it would be likely that an application to extend the licence as had happened at BPS. This in my view is not a significant issue for a number of reasons. The planning and licences permissions for Stack are both time limited. Mr Wright explains in his statement the details of how the 2nd Respondent came to obtain the lease for this site and the limitations on that. If Stack is successful and somehow the lease arrangements allowed the 2nd Respondent or others to continue to operate Stack, an application would need to be made to extend both the planning and licence permissions. Such applications (whether to extend the period of the licence or any other aspect of it) would undergo the normal procedure before any such permissions were given which would undoubtedly consider the past performance and impact of the operation and either refuse or grant with such conditions as considered necessary. This is not a matter that concerns me at this stage.

x. The scale of Stack is larger than BPS which therefore means any cumulative impact from Stack would be greater than that from BPS. This relates to capacity which I have considered elsewhere. The overall capacity at Stack is greater as it is for the disputed area. Every witness for the 1st Respondent and again Mr Turnham were

clear that there is not necessarily a correlation between numbers of people attending licenced premises or events and cumulative impact. I accept that evidence and therefore conclude that the scale of stack is not necessarily determinative that it will add to negative cumulative impact whether at a level comparable to or greater than BPS.

xi. Stack's operating times are later than BPS. This Mr Turnham felt meant the clientele was more likely to be akin to that at the Bigg Market/Collingwood Street and/or would feed into those venues either during the evening or on closure. I need not repeat what I have said elsewhere about the Newcastle NTE and clientele attending and migrating between different types of venues and areas. The closing time does not add anything to this in my view. I note also that Chief Inspector Pickett was not concerned about the closing time – he welcomed its reduction from 1 am by the LSC but when asked by the Appellant whether a closing time of 11 pm was preferable he did not consider it would make any material difference.

xii. In his oral evidence Mr Turnham also commented that people were attracted to new or gimmicky operations – as they had been at BPS they would be likely to be attracted to Stack as a Box Park. It was clear from the evidence that a license had been granted to a licensed offer at nearby Gateshead Quays which uses shipping containers to create a form of "Box Park" (which I believe is now operational). Mr Wright agreed that any gimmick or unique selling point that may have been derived from the use of shipping containers had been diminished by that.

9. For the reasons I have given, I considered the comparisons sought to be drawn with box parks in general or BPS particularly to be of limited assistance. In any event I note that at the close of his re-examination Mr Turnham said his concerns about Stack would remain the same setting aside any comparison with BPS – it was an issue about the opportunity for vertical drinking created by the ground floor bar area.

10. Before concluding this section, I note that the issue of cumulative impact at BPS and BPC were raised by Chief Inspector Pickett at the LSC as set out in the note of the decision and his statements. He had contacted his colleagues in those areas to gather information about them. Referring to them he cautioned against allowing Stack to turn into a "Boozepark". I acknowledge that the LSC did not have all the information about BPS available that this appeal hearing has received. However, given his approach to this application, his relevant experience and roles, and my assessment of Chief Inspector Pickett as a witness I have no reason to doubt that if additional concerns of relevance had been raised or if particular conditions would alleviate such concerns arising out of comparisons that could be drawn, he would have brought them to the LSC's attention. As it is, with the information he had then and the additional evidence he read and heard at this appeal, he supports this application and welcomes the conditions imposed by the LSC.

H.10 CLIENTELE AND MIGRATION OF CLIENTELE

1. I have reviewed the evidence of relevance I received in this appeal about clientele demographics and migration of clientele in other sections of this assessment. I do not

propose to repeat it here. In summary the conclusions I can draw from that evidence are set out below.

2. A range of factors will assist in determining the clientele that will be attracted to a particular type or group of licenced premises. Such factors include location, the surrounding NTE, the operating style of an offer including for example pricing.

3. Similarly a range of factors will assist in determining the way in which clientele access alcohol in licensed premises.

4. Behaviour attributable to clientele of licensed premises that adds to the cumulative impact on the licensing objectives of crime and disorder and public nuisance includes violence, other criminal behaviour, rowdy, loud and sometimes abusive behaviour, littering, public urination and defecation, other anti-social behaviour. It is not suggested that all members of a particular clientele demographic are likely (or not) to behave in such a manner. Nonetheless, the clientele likely to be attracted to licenced premises and the way in which they access alcohol are important considerations in assisting in the assessment of likely cumulative impact.

5. Problems associated with cumulative impact on those licensing objectives are more frequently observed in Newcastle where there are a cluster (or circuit) of premises with offers including high capacity, high vertical drinking capacity, limited or no seating, low priced alcohol, loud high beats per minute music.

6. The good internal operation of a licensed premise is not a guarantee that there will not be cumulative impact on the licensing objectives from its operation. There are no concerns raised by Appellant about the internal operation of Stack, the issue is about the cumulative impact of the clientele of the premises on the licencing objectives in the wider CIA.

7. Migration of clientele between different licensed premises or areas of licensed premises will likely vary dependent on a number of factors including dispersal, location, the surrounding NTE, the offer available in the individual and general licensed premises in the relevant area. In Newcastle City Centre the evidence of the witnesses from the responsible authorities was that migration was limited between the different micro communities within the NTE.

8. Whilst clientele may migrate between different licensed premises or different areas of licensed premises (or indeed other areas where there are not licensed premises) that will not necessarily add to negative cumulative impact on the licensing objectives in those areas.

H.11 LOCATION

1. This is an important consideration but again there is little I consider necessary for me to add about Stack's location not covered elsewhere in this assessment.

2. It is within and towards the eastern perimeter of the CIA but not the SSA for Newcastle City Centre.

3. It is not in my view a site in the epicentre of licensed premises within Newcastle City Centre. It is not within the former or current SSA, Mr Turnham considered there were

less cumulative impact issues in this area, he refers to "intense" areas and "hot spots" - it does not appear from his evidence that he suggests it falls within any such area. There are a large number and range of licensed premises in Newcastle and the City Centre. To the west of the CIA there is a higher concentration of bars. Between that area and the site there are other licensed premises but a lower concentration and more mixed. There are some licensed premises in close proximity to Stack including the cross streets to Grey Street.

4. It is in relatively close – but not immediate - proximity to those licensed premises to the West of the CIA in the Bigg Market and "Diamond Strip" areas

5. It is located on a site that is towards the eastern edge of the CIA and the city centre more generally where a number of licenses have been surrendered in recent years. It is close to a main retail offer in the city

6. Some licensed premises remain in the immediate area as set out in Mr Wright's statement. They are not according to all witnesses similar in style to those premises in the Bigg Market or Collingwood Street; Mr Turnham specifically noted the difference to the licenced premises in those areas from those in the cross streets to, and in, Grey Street which are closer to Stack. There are other licenced premises to the east of the site outwith the CIA. Ms Wallis provided a description of those premises in her evidence. They are not as concentrated as those within the west area of the CIA.

7. There are according to the city council East Pilgrim Street Framework plan, key pedestrian routes in each direction immediately around the site and there are pedestrian priority routes to the north, west and south. The site visit showed the immediate proximity of a number of bus services to the site and a close metro station and taxi ranks. At [2/19/104] the framework plan shows other nearby metro stations. There are main roads to the immediate east and north of the site. This accords with the evidence of Mr Wright.

8. The letters of support for this application give a flavour of some of the local businesses to the site that support the application.

9. It is not in an area where there is a significant residential population.

10. It is in the same location where the 2nd Respondent operated Pilgrim Street Tipi.

11. The East Pilgrim Street Framework described the positive aspects of the area but also notes its decline. It provides details about the nature of the other city centre communities near to the site including retail, university and the hospital and civic centres. Mr Wright [2/19/12] agreed with the description of the area and Mr Turnham that he could understand why the Local Authority would be keen to develop the area.

H.12 EXPERIENCE OF OPERATOR

1. Mr Wright who gave evidence on behalf of the 2nd Respondent is the head of its leisure division. He has considerable experience in the NTE in Newcastle. The 2nd Respondent

has experience in licensed premises in the Newcastle and surrounding NTE operating a number of venues and this aspect of their business has grown in recent years.

2. The fact that this has been done successfully and responsibly does not of course offer any guarantee regarding future operations. But it is not of no significance nor in my view should it be completely ignored particularly when that experience includes a recent operation of licenced premises with the same licensable activities, a less restrictive licence that could have been exploited more than it was, on the same site, and on which they now intend to build. At least part of their model has been tested and successfully so without, according to the evidence of the responsible authorities and the operator, a negative impact on the licensing objectives or additional cumulative impact on them in the CIA. The Appellant himself has no outstanding concerns about that operation of that aspect of Stack (other than the question mark over improper delegation). The evidence of Mr Wright that I have reviewed elsewhere in this assessment was clear about all the operator intends to take from that experience and build on for a larger scale operation and the demographic of clientele it targets by that operating style. No doubt that is in large part a business decision on the part of the 2nd Respondent but it also in the past has not led to a negative impact on the licensing objectives or cumulative impact on them in the area.

3. The 2nd Respondent has also in my view demonstrated an appropriately responsible approach to his application in terms of discussions and consultations with the responsible authorities.

4. Whilst it is not an overwhelming or determinative consideration I do not consider it unreasonable to take into account that previous experience or approach in this appeal nor would it have been so for the LSC when determining the application. Confidence in what the operator says must have some relevance and particularly so for premises that are not currently operational.

H.13 LIKELY ADDITIONAL CUMULATIVE IMPACT OF STACK

1. The evidence of each of the witnesses for the 1st Respondent was that Stack as licensed would not in their view add to the negative cumulative impact on the licencing objectives. The witnesses relied on by the 1st Respondent were representatives of the Responsible Authorities which the s182 guidance remind me (through its advice to potential applicants) are to be considered as experts in their field (paragraphs 8.46, 9.12 and 16.8). This is reiterated by Black J in R (OTA Thwaites Plc) v Wirrral Borough Magistrates' Court [2008] EWCH 838 (Admin) [2009] PTSR 51 at paragraph 55 [A/12/143] in which she cautions justices in appeals about measuring their own views against the evidence that is heard which may require them to adjust their own impression. This she says is particularly so when that evidence comes from witnesses of the responsible authorities and anxieties held should be scrutinised particularly carefully when the responsible authorities raise no objections. Mr Rankin, no doubt in recognising this guidance, when appearing for the Appellant at the LSC meeting represented that the LSC should be guided by the police in issues of crime and disorder. Even if I were to set aside the s182 guidance, as my earlier review of their evidence makes clear, all the witnesses for the responsible authorities that I heard from in my view have significant relevant experience of the Newcastle general and City Centre NTE and gave straight forward, credible, considered and reliable evidence.

2. This view of these witnesses was based on their experience of working within the Newcastle NTE, and with licensed premises within Newcastle including their assessment of applications and seeing them in operation. Their conclusions, drawing on that experience, that Stack would not add to the negative cumulative impact in the CIA were based on:

    i. How the Newcastle NTE and the micro communities within it operate
    ii. The different styles of offer in operation within licenced premises within Newcastle and locations of such offers
    iii. The impact that the different style of offer within licensed premises and groups of licenced premises have on the way in which alcohol is accessed and the clientele that are attracted to them
    iv. The cumulative impact issues caused within the CIA from different types of premises or groups of different types of premises and the clientele attracted to them and the relevance of that consideration in assessing applications
    v. The clientele that they considered would be attracted to Stack and the manner in which alcohol would be available in Stack
    vi. That the vast majority of customers to the Newcastle NTE – whether generally or in specific areas or premises – presented no problems. It was a small minority that caused problems related to the licensing objectives or added to the negative cumulative impact of the licensing objectives
    vii. The migration of clientele, or lack of, between the different areas of licenced premises in the different micro communities
    viii. The location of Stack and that location in relation to other licenced premises within Newcastle, the CIP, the SSA and the particular areas referred to – Grey Street, the cross streets to Grey Street, the Bigg Market and the "Diamond Strip"
    ix. Their experiences of the operator for Stack and their previous operation of Pilgrim Street Tipi
    x. How the operating schedule was developed and had addressed their former concerns and the approach of the operator to this application
    xi. The style of operation conditioned and proposed at Stack in terms of the site as a whole, the ground floor offer and the variety of the offer available throughout the site. Mr Wright gave evidence about the proposed operating style on behalf of the 2nd Respondent – what it entailed, how it had developed, the reasons for it and the success that style had achieved in previous operations both in business terms and in relation to the licensing objectives.

3. The witnesses had been involved in the application process and – other than Mr Smith – had commented on the application at that stage. They were present at the meeting and both Mr Bryce and Chief Inspector Pickett made representations. Where it was put to them by the Appellant, the witnesses' views remained the same taking into account the layout on the up to date plans. Chief Inspector Pickett welcomed the proposed amended conditions in that they reduced the operating hour – the one outstanding concern raised in his statement – and provided certainty about the location of containers selling alcohol other than ancillary to substantial food. The up to date plans were, he said in accordance with how he envisaged the site operating following the decision of the LSC. Likewise Ms Wallis. Mr Bryce was not asked specifically about the up to date plans. He was the last witness to give evidence and having sat through the preceding evidence was

undoubtedly aware of the submitted issues arising from the up to date plans. On the basis of the evidence he gave I have no reason to conclude that had those up to date plans altered his assessment or presented concerns to him he would have raised it.

4. In closing Mr Gouriet QC raised two concerns about the witnesses for the 1st Respondent. Firstly that there were credibility issues with plenty of examples within the evidence. He felt that there was a possibility the witnesses were taking a stand because of the enthusiasm they had for the overall site and that had clouded their view about other aspects. The credibility issues were not of the truth and lies version but about exaggeration. I anticipate there is enthusiasm for the operation from the witnesses – it is in my view one that falls within the policies, expectations and vision of the NCC SLP relating to diversification of the NTE, the framework of hours, irresponsible drinking, mix of offers, the importance of responsible management. Moreover it does so in their view with conditions, a proposed operating style and in a location that, for the reasons the witnesses gave, meant that they did not consider it would add to the negative cumulative impact on the licencing objectives and from an operator they have relevant positive previous experience of.

5. Even within that context I did not consider their evidence to demonstrate overwhelming enthusiasm or clouded judgment as a result of it. None suggested otherwise than the City Centre suffered from cumulative impact on the licensing objectives of crime and disorder or public nuisance or disputed that which is set out in the NCC SLP about that. Each who had been involved in the consultation were clear about the concerns they had when the application came in for consideration, each set out how negotiations and discussions had taken place with the 2nd Respondent and how the operating schedule had been substantially adapted and developed to meet those concerns and how the individual and combination of the conditions in OS Rev G satisfied those concerns. Their statements and the different versions of the Operating Schedule as it developed show the attention to detail in that process and that the witnesses involved took a rigorous approach to it. Each who still had outstanding concerns at the time of the meeting raised them then and welcomed the additional conditions imposed by the LSC. Chief Inspector Pickett still raised the issue of the operating time for the premises in his statement for this appeal – relating it to dispersal at the premises.

6. Chief Inspector Pickett and Ms Wallis were the two witnesses (in the context of the up to date plans) asked about the size of area on the ground floor available for the sale and consumption of alcohol otherwise than ancillary to substantial food and the potential for vertical drinking on the site. It was suggested that the conditions imposed by the LSC could not reasonably have alleviated concerns they had previously had about this. Neither suggested that there was no such possibility nor that it was not a large space rather that the space and the opportunity would not dictate the cumulative impact. Both gave – in my view considered and credible - reasons why that potential in this case (again based on location, the space within the overall site, the conditions offered and imposed, the operating style, their experience the Newcastle NTE and migration within it) did not lead them to conclude that the site or the ground floor would become dominated by vertical drinking or would lead to additional negative cumulative impact.

7. Secondly Mr Gouriet QC submitted he had concerns relating to the understanding the local authority witnesses had of cumulative impact. He gave the example of the evidence each had given about the recent event "This is Tomorrow" that had taken place at Spillers' Quay the preceding bank holiday weekend. It was a large event, operating from 3 pm to 11 pm with 13 – 15,000 attendees on the Friday night and 5,000 on the Saturday night, there were 5 bars (a gin bar, 3 large beer bars, another smaller bar), retail and food outlets, a stage and concert (Mr Bryce described it as "Rock" music). This was first referred to by Ms Wallis when giving examples of her experience. She said that event and its dispersal had not resulted in crime and disorder, nor noise nuisance issues, it had been a destination venue and a well attended, enjoyed and managed event. She was not questioned about it further by the Appellant.

8. Mr Smith had also worked at the event between 3 pm to 7.30 pm. Ms Wallis had worked until 11.00 pm. He said it was well run and there were no issues. He agreed that cumulative impact related to impact on the licensing objectives away from the premises but that could not be traced back to particular premises and that Stack was within the City Centre CIP. He had undertaken little monitoring on site but had focussed on monitoring the licensed premises around the area – the quayside and to the East to the Free Trade PH. He drew on a map where he had been involved in monitoring activity and that there had been no cumulative impact issues in those areas. It was clear that he did not monitor the City Centre area and he did not suggest otherwise.

9. Mr Bryce had worked at the event with Mr Smith in the daytime covering the same area and venues. Thereafter, from 7.30 pm until 2.30 am he conducted licence activities with a licencing team; for the majority of this time he was in the City Centre. He said he had observed the pressures of the NTE at that time but it was nothing different from a standard Saturday night into early Sunday operation. He did not witness any public nuisance of anti social behaviour, there were issues of traffic management when the city centre was congested but not related to licensed premises, any issues of people spilling into roadways were as controlled as they could be, enforcement officers were out but he was not drawn to any issues of littering. He did not see any littering, nor any fouling or drunken rowdy behaviour adding to the cumulative impact in the area. He thought that the vast majority of attendees would, if moving on afterwards, go to different areas than the Bigg Market and Collingwood Street. He could not make a sweeping generalisation but his observations suggested, and his professional opinion was, that the clientele was different and they were better suited to different micro communities of the NTE noting that Newcastle NTE has significant offerings other than those in the Bigg Market and Collingwood Street. He agreed he could not say none attending at Spillers' Quay would go into the City Centre CIA nor that all moving on to other venues would have gone to those to the east (the area he and Mr Smith had been in earlier) but he considered the significant number who went on elsewhere would go to different areas such as Ouseburn and Jesmond where there are different operations.

10. Mr Gouriet QC submitted this evidence demonstrates a lack of understanding on the part of these witnesses of cumulative impact and its relevance to this case; given the circumstances of the event it does not follow that there would not be cumulative impact from Stack. The example given was introduced by Ms Wallis as an example of her

experience of assessing different types of applications not as evidence that there would be no cumulative impact from Stack. It having been referred to by Ms Wallis, both Mr Smith and Mr Bryce were asked about it and gave evidence about the nature of the event and the impact or otherwise they observed from it. Both said they did not observe a negative impact on the licencing objectives or additional cumulative impact from this operation. Mr Smith did not purport to suggest that he had undertaken observations within the city centre. Mr Bryce gave evidence about what he saw in the city centre on that night and how it compared to other nights and where he thought the patrons from this event who went on elsewhere during or after it would have gone to.

11. At its height this was evidence, that was not in my view undermined, by way of an example from the witnesses of their experience of licences and licensed events and premises in Newcastle and that large scale licensed events could take place without a negative impact on the licencing objectives in the licensed premises concerned and surrounding areas that they monitored. The evidence each was able to give was limited to the times and locations of their monitoring. The witnesses did not seek to translate it further and draw the conclusion that therefore Stack would not add to cumulative impact in the City Centre CIP.

12. This evidence from these witnesses and put in the context of their other evidence and experience does not lead me to the conclusion that there are doubts about their credibility or their experience of or ability to assess cumulative impact in this case.

13. The Appellant submits that, whilst he has no burden to prove that there will be additional cumulative impact from Stack, the Respondents have not shown that it will not and further, that it will in fact do so. The Appellant relies on his submissions about the evidence from the witnesses for the respondent and the evidence called on his behalf.

14. Mr Robertson's evidence in my view adds little if anything. He did not attend so I did not hear evidence from him. In his statement [1/13/1 – 6] there is very little relating to the licensing objectives (paragraph 6 and possibly paragraphs 8 and 10) and none relating to the likely cumulative impact on the licencing objectives of Stack. I have set out previously my assessment of this evidence.

15. Mr Turnham was the other witness for the Appellant. He concluded in his report [1/14/42/paragraph 193] that, however well operated, Stack will unavoidably add to the negative cumulative impact being felt in Newcastle City Council Centre. This remained the same in his oral evidence. This conclusion was based on a number of factors but primarily his understanding of the Newcastle City Centre NTE, how NTE's work and his comparison of Stack with other Box Park operations. Setting aside his comparisons with other Boxpark operations on which he had in significant respects relied on in his report to reach a number of his conclusions, he thought that Stack as licensed would inevitably lead to additional negative cumulative impact because of the creation of the downstairs bar area.

16. He, whilst not agreeing with the witnesses for the 1st and 2nd Respondent about their application in this case, considered that a number of factors were relevant in the assessment of likely cumulative impact on the licencing objectives from Stack – the

clientele likely to be attracted, the scale, the hours, the number of bars and retailers of alcohol, the use of the Plaza space for events given issues found with these in other Boxparks and the location.

17. I have reviewed Mr Turnham's evidence in detail elsewhere both in my review of witnesses and as relevant issue within this assessment section. I do not suggest that Mr Turnham has no experience of or knowledge of cumulative impact issues. Rather that for the reasons I have given, I felt I could not accept Mr Turnham's evidence as independent expert evidence and that the weight I could give it was reduced. Furthermore for the reasons I have given in other sections of this assessment, significant parts of his evidence were of limited assistance to me.

18. Mr Gouriet QC also submits on behalf of the Appellant that even if I were to set aside all of the evidence relied on by the Appellant, firstly that the LSC either did not or could not have grappled with the issue of cumulative impact in this application and secondly, whether or not the LSC did so, there can be no sensible conclusion other than that Stack, given its capacity, is bound to add to the negative impact on the licencing objectives in the CIP. I have set out my considerations of the LSC decision and the information available to it. The reasons could have been more detailed but I do not agree that I can conclude that the LSC did not or could not properly turn their mind to the issue of cumulative impact in their decision nor that its decision itself demonstrates that. On the second point, in my view the evidence I heard from all witnesses, like the NCC SLP and the s182 guidance does, made it clear that the issue of cumulative impact is more nuanced than that; it is quite simply not as straight forward as suggested that one can say scale or capacity determines actual or likely cumulative impact.

19. A particular point from Chief Inspector Pickett's evidence was referred to. When asked by Mr Rankin he accepted it was "not fanciful" to suggest that 25% of the patrons of Stack would go on elsewhere into the CIA. He also acknowledged that the majority of licenced premises in the CIA were to the west of the site. This does not in my view undermine the evidence I heard. Firstly it should not be put any higher than as said in the question; "it was not fanciful". Chief Inspector Pickett's evidence overall was much more considered than this. He said that the routes people would take on leaving Stack would depend on where they were going on to. He, like the other witnesses, thought that there were distinct micro geographies within the Newcastle NTE, with little migration between them, that different clientele were attracted to different types of offer and he did not anticipate the clientele attracted to Stack would be the same as those attracted to the offer available in the Bigg Market and Collingwood Street. Secondly, when giving his evidence he was clear that, whilst there may be migration of clientele from Stack through other areas in the CIA including some remaining at premises within the CIA and the SSA, he did not believe such migration if it occurred would add to the negative cumulative impact on the licencing objectives given his views about how Stack would operate and the clientele it would attract. That it is not just about numbers – both on the site and leaving the site going elsewhere - chimes with all the other evidence I heard. I note that the issue of whether there would be migration of clientele and, if so, the impact of that migration on disorder and nuisance was the very issue being considered by Black J in the passage referred to in paragraph 1 above.

H.14 REPRESENTATIONS – RELEVANT, VEXATIOUS, FRIVOLOUS

1. It is submitted by the Respondents that the representations of the Appellant are vexatious and/or frivolous. By s18 of the Act:

S18(3) Where relevant representations are made the authority must –
(a) Hold a hearing to consider them….and
(b) Having regard to the representations take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives

By s18(6) ….'relevant representations' means representations which –
(a) Are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives
(b) Meet the requirements of subsection (7)

By s18(7) (c) The requirements of this subsection are …. in the case of representations made by a person who is not a responsible authority that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious

By Schedule 5 Part 1 Para 2:
2(3) where a person who made relevant representations in relation to the application desires to contend that the licence
1. ought not to have been granted or that
2. on granting the licence the licencing authority ought to have imposed different or additional conditions or to have taken a step in 18(4)(b) or (c) he may appeal against the decision

2(4) in sub paragraph 2(3) "relevant representations" has the meaning given in s18(6)

2. The Act provides no further definition of frivolous or vexatious but I have considered paragraphs 9.4 – 9.6 and 9.9 of the s182 guidance.

3. It was submitted by the Respondents and not challenged by the Appellant that this court is entitled to consider whether the representations of the Appellant are frivolous and/or vexatious and therefore not relevant. Further that if the court considered that the appeal was in fact an attempt to "prosecute a representation that was in reality frivolous or vexatious, or both, then it should dismiss it" [SA/R2/2/35]. This is supported by Schedule 5 Part 1 Para 2(3) of the Act which allows only a person who has made relevant representations to appeal against the decision to grant a licence and the role of the court in conducting a hearing de novo. Paragraph 9.9 of the s182 guidance (referring to the LSC hearing but in my view equally applicable at the appeal) provides for the possibility that representations may not be considered frivolous or vexatious at the outset but may be so considered following the hearing.

4. The Respondents' submissions fall into two categories: firstly that the representations themselves were vexatious and/or frivolous and, if not, secondly that the manner in which the Appellant conducted the proceedings demonstrates that the representations were in fact vexatious. The Respondents submit that whether taken alone or together they show that in reality the Appellant's representations were vexatious and/or frivolous.

5. Dealing with the submission that the representations themselves were vexatious and/or frivolous; the Respondents submit that the statement of Mr Robertson demonstrates in

fact that the appeal was based on (a) his perception of the economic disadvantage to his business interest were the licence to stand and/or (b) his assertion that he had some years ago received some assurance from, or come to some form of agreement, with the City Council that following the development of Harry's Bar there would be no further premises licences granted in the City Centre.

i. The 2nd Respondent says it is clear from the language used in Mr Robertson's statement that his representations are about his financial interests and nothing more. I agree that his statement clearly reveals a financial concern.

ii. The Act is clear that relevant representations must be about the likely effect of the grant of the premises licence on the licensing objectives. The s182 guidance [A/18/299paragraph 9.4)] provides the following directly relevant guidance:

    a. A representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried out from premises on the objectives…."

iii. The effect on the business of one other licensed operator other than as relating to the licensing objectives does not in my judgment fall within that definition of a relevant representation within the Act.

iv. In his skeleton argument [SA/A/1 – 2] Mr Gouriet QC relying on a passage from R (OTA Hope and Glory) v City of Westminster [20011]EWCA Civ 31 submits that "the economic disadvantage to a competitor is as much in that balance *(of Licensing decisions weighing competing considerations)* as the economic benefit to a proprietor" and that Mr Robertson is "perfectly entitled to try to protect his business interests….by asking that the council's licensing policies (as well as the Licensing Act 2003) be adhered to". The passage relied on refers to the balancing exercise the committee must make in "weighing a variety of considerations" determining whether a licence should be granted rather the representations that may result in a hearing under s18(3) of the Act.

v. I accept the list of "considerations" is not likely intended to be exhaustive but does not to my mind stretch to changing the definition of relevant representations found in the Act nor suggest that the potential or feared economic disadvantage to an existing competitor should as a matter of course be such a "consideration". That there is a difference between relevant representations and the considerations to be weighed by the licencing committee is also in my view set out by Hickinbottom J in Taylor v Manchester City Council & Anor [2012] EWHC 2467 (Admin) [A/17/209/paragraph 23] "relevant representations are defined….that definition is important: representations to be relevant have to be about the effect of the licence on the promotion of the public interest licensing objectives set out in section 4 although evidence of the actual or potential impact of the licence on individuals may be relevant to the various strands of public interest involved" See also [A/17/203/paragraph 13] "it is noteworthy that all of these *(the 4 licensing)* objectives are essentially concerned with the public interest; although of course evidence of how a licence might affect individuals <u>may</u> be relevant

to the assessment of that public interest" (my emphasis). See also paragraphs 68 and 72.

vi. In my assessment of Mr Robertson's statement earlier I acknowledge his assertion that some form of assurance had been given, albeit on the evidence I have received I do not accept it was. In my view the words contained in the statement [1/13/375 – 380] at paragraphs 16, 17, 21, 29 and 31 are rightly interpreted as his assertion that he had been given an assurance and that assurance had been breached. Mr Gouriet QC in his response to the Respondents' closings sought to dispel such an interpretation and stated that the he could say on Mr Robertson's behalf that there had never been such a promise but that Mr Robertson merely felt aggrieved that he had invested in the city and he knew and had been reminded at the time that there was a CIP. An assurance is not a reminder. The 1st Respondent served evidence in direct contradiction to Mr Robertson's statement on this point which was accepted by the Appellant. Mr Robertson's statement remained as a served and relied on witness statement. Mr Robertson was a witness for the Appellant. Had he wanted to explain the misunderstanding of his statement he could, as requested by both Respondents, have attended to do so. He chose not to. Even if such an assurance had been given I do not consider that such a representation would be relevant as it is not about the likely effect of the grant of the premises licence on the promotion of the licensing objectives (S18(6)(a)) nor would it alone meet the requirements of s18(7) (as required by s18(6)(b)).

vii. The Respondents (particularly the 2nd Respondent) submit that in reality the Appellant's representations and complaint in this appeal are based on the above considerations and therefore not relevant. It may be that somehow Mr Robertson believed he had received some assurance from the City Council about future licences or simply that he feels aggrieved. I do not doubt his interest in the application for Stack was piqued by his business and financial interest in Harry's Bar. However – as the Act and then specifically the s182 guidance makes clear – neither prevent him from making relevant representations about the impact on the licencing objectives. I consider that other (albeit limited) parts of Mr Robertson's statement, the grounds of appeal, the Appellant's skeleton argument and then further argument developed during the appeal (as well as the representations before and at the LSC) raised representations that are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives and so, on the face of it, relevant representations. On their own they do not give rise to the interpretation that they are frivolous or vexatious.

6. Turning to the second issue, namely that the manner in which the Appellant conducted the proceedings demonstrates that the representations were in fact vexatious or frivolous.

i. The Respondents referred specifically to: the statement of Mr Robertson that was disputed (in part by undisputed evidence), that he was asked to attend, that he did not attend but was still relied on; the map that was produced by Mr Rankin for the first time during cross examination of Chief Inspector Pickett purporting to show licensed premises in the City Centre and directions of travel and was said to have been created by his client (I assume therefore Mr Robertson) but no information about when or how or what it was based on and then almost immediately was said not to be accurate but to show the general position only; the evidence of Mr

Turnham who was produced as an independent expert when such independence was undermined at least in part by the actions of the Appellant and the fact that there had been no mention of expert evidence prior to the service of evidence; the fact that the Appellant raised for the first time, either in the context of the LSC decision or the appeal, the preliminary point referred to in the Appellant's skeleton argument served shortly before the appeal at the time of mutual exchange of those documents between the parties; the apparent allegation or at least suggestion of misleading conduct on the part of the 2nd Respondent (although during closing for the 1st Respondent Mr Gouriet QC confirmed there was no suggestion of bad faith being made by the Appellant); that the shape of the Appellant's arguments changed as the appeal progressed.

ii. I have in large part dealt with each of these issues as they have arisen elsewhere in this judgment including consideration of the weight to be given to evidence. In relation to Mr Turnham having raised it as a possibility in their skeleton arguments neither respondent sought to apply for his evidence to be excluded. I note also that it was clear during this appeal that he had been relied on previously by the "successful party" in licence appeal proceedings in Newcastle when at least one of the parties (or the same legal representatives) had been involved. I doubt that the Appellant or his legal representatives anticipated that all of Mr Turnham's evidence would come out as it did. In terms of raising a preliminary matter, it would have been preferable if it had been raised earlier but the parties will recall it was something that caused me some thought and, whilst I ruled against the submission made by the Appellant, I did say that it was an issue I needed to keep under review as the case progressed. Likewise it would always be preferable for all issues to be clear at the outset of the case but it is not unusual for cases to develop as evidence is heard.

7. Paragraph 9.9 of the s182 guidance recommends that "in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation". I have taken that into account and also the nature of the licence and the evidence I have heard and read. I agree the conduct of the Appellant was surprising at times. However, I am not satisfied that I can draw the conclusion that the totality of the representations made by the Appellant were not about the likely effect on the licensing objectives nor that the totality of the representations were vexatious and/or frivolous. The conduct of the Appellant does not lead me to the conclusion that the representations were in fact vexatious and/or frivolous. Neither does the fact that the Appellant has sought to object to and appeal against other premises licences (sometimes when others have not) persuade me otherwise.

8. Given the Appellant's acceptance of the evidence of Mr Savage in this case, I would be surprised if the Appellant were to repeat representations contained in Mr Robertson's statement as to any assurance received from the City Council in any objections to applications or appeals against grants of licenses that he may be involved with in the future. Firstly, it is not in my view a relevant representation, secondly he appears to accept it did not happen. How any Committee or Court would deal with that would be a matter entirely for them taking account of the full circumstances of that application or appeal but it may more readily call into question Mr Robertson's motivation.

H.15 PROVISION OF SERVICES REGULATIONS 2009/2999

1. The Regulations are at [A/10/105 – 121]. The 2nd Respondent submits that to allow the representations of the Appellant would offend the Regulations specifically regulations 21(1)(f)(i) and 21(1)(e)(ii). This on the basis that the representation of Appellant is from a competing operator who wishes to protect its profit line" [SA/R1/1/40] and is made in furtherance of an asserted assurance from the Licensing Authority about the grant of any further premises licence purportedly made at the time that Harry's Bar was being developed and it does not advance a bona fide concern of the effect of the grant of the premises licence on the licensing In his skeleton argument Mr Holland also relied on the fact that it was apparent from the papers in this case that the Appellant had objected to four previous applications for premises licenses (SA/R1/1/41) in two of which it had been the sole objector.

2. It is not challenged by the Appellant that the Licensing Authority is a "competent authority" (Regulation 1(1)) nor that the sale by retail of alcohol is a "service activity" (Regulation 1(1)).

3. The Appellant submits that Regulation 21(1)(e) does not apply whether the Appellant is financially motivated or not. Put simply even if the Appellant were financially motivated it does not lead to regulation 21(1)(e)(ii) namely that the Licensing Authority has made access to, or the exercise of the sale by retail of alcohol subject to, a case by case application of an economic test making the granting of authorisation subject to an assessment of the potential or current economic effects of the activity. I agree. I have outlined above my view of the representations made by the Appellant. I am not satisfied that I can conclude that the representations of the Appellant were solely about financial impact. Even if I am wrong about that neither the LSC nor this court have made the consideration of the 2nd Respondent's application subject to such an assessment.

   Regulation 21(1)(f)(i) provides that "a competent authority must not make access to, or the exercise of, a service activity subject to ….. the direct or indirect involvement of competing operators, including with consultative bodies in the granting of authorisations". Regulation 21(3) provides that "paragraph (1)(f) does not effect …… a consultation of the public at large". I again agree with Mr Gouriet QC's submissions that 21(1)(f)(i) does not apply as the Appellant responded to a consultation of the public at large. Even if this is wrong I do not accept that allowing the Appellant to make representations at the LSC stage or to appeal the LSC's decision makes the access to or the exercise of the relevant service activity to be subject to the direct or indirect involvement of competing operators. If it is extended to that then one interpretation is that no person who feared economic loss to their business by the grant of a licence could object to an application of appeal a grant whether or not their representations were relevant.

I CONCLUSIONS AND DECISION

1. For the reasons given in the relevant sections of my assessment in this judgment, whilst I have commented on some of the individual representations of the Appellant, I do not conclude that the representations of the Appellant were in total or in reality frivolous and/or vexatious. Nor do I conclude that allowing the representations or appeal or the

Appellant's involvement in the LSC decision making process of the appeal offend the Provision of Services Regulations 2009/2999.

2. For the reasons I have given in my assessment of the relevant issues on each of the points:

i. I do not conclude that the OS Rev G 12(iii) condition and additional condition 1 were incompatible or inconsistent. I am satisfied that the LSC intended for them to operate together.

ii. I do not conclude that the plans submitted with the application were not compliant with the 2005 Regulations.

iii. I am satisfied that the changes shown on the plans between the application and meeting plans were within that permitted by Hickinbottom J in Taylor v Manchester City Council & Anor [2012] EWHC 2467 (Admin).

iv. I do not conclude that the changes to the plans from meeting to up to date plans were outwith the changes permitted under the Taylor principles between the application and decision stages. If Taylor has no application at the post decision stage, I am satisfied that the changes were permissible as falling within the licence applied for and in accordance with the grant and not demonstrating such a change to the nature of the operation that it required further consideration by the LSC or consultation.

v. I do not conclude that the changes to the operating schedule or the layout shown on the plans required a further consultation exercise nor that the case should be remitted to the LSC for further consideration.

vi. I do not conclude that the conditions within OS Rev G requiring authority from the Licensing Authority and other responsible authorities amount to improper delegation of the LSC decision under s18(3) of the Act.

3. It seems to me in any event that had I determined otherwise on either or a combination of the above points as discrete issues and concluded for those reasons that the decision of the LSC is wrong, I would have fallen into the error cautioned against in R (OTA East Herts District Council) v North and East Herts Magistrates' Court [2018] EWHC 72 (Admin) in turn referring to R (OTA Townlink Ltd) v Thames Magistrates' Court [2011] LLR 392 by equating the idea of an illegal decision with a wrong decision rather than considering the merits of the decision itself and whether it should be upheld.

4. I acknowledge that Mr Gouriet QC submits that some of the above matters – if not fatal to the decision themselves – set the scene or the context as to how the LSC made a decision that he submits is wrong. This goes to the information available to the LSC and their ability to make a decision and assessment of that information.

5. For the reasons I have given at the outset of the assessment section of this judgment I do not consider that the information available to the LSC at the time the decision was made was insufficient whether in quality or quantity nor that it was misleading as to the nature of the application such that the LSC was unable to make an informed decision about the application before them or the likely cumulative impact of it. The information

was substantial and relevant to the application the LSC had to determine and the issues they were required to consider. Nor am I satisfied on the evidence I have received that the LSC was incapable whether rendered so by reason of the information it had or for lack of experience of making that decision. Specifically I am satisfied that: the issue about the potential for the licence permitting a large area for the sale and consumption of alcohol was raised at the LSC; the information was clear that there were proposed caps on different uses of the containers and that the layout of containers on the plans was indicative only; the information was not misleading as to the use or potential use of the Plaza area nor in its comparisons with the Pilgrim Street Tipi operation.

6. If the LSC considered they did not have sufficient information it could and, in my view, would have required that by further information being provided. The members of the LSC are experienced in their locality in assessing a wide range of premises licence applications and other applications such as applications to vary and reviews of licensed premises when unanticipated problems associated with the licensing objectives arise. That experience goes equally to knowing what information they need and with what degree of specificity to make their assessments and decisions for varying types of applications. There is no evidence on which I could base a conclusion that they were incapable of identifying the information needed to make the decision in this case or, if it were required, requesting it.

7. I do not accept the LSC did not address the issue of cumulative impact in their decision again either due to any deficiency in the information available to them or any other reason. I am not satisfied that in granting a licence of this nature in which the LSC did not specify the particular location of each container means that they did not consider or could not have considered cumulative impact of the operation. I am inclined to agree with Mr Holland's submission that there was little else remaining for the LSC to consider at that meeting. The decision of the LSC specifically refers to them being satisfied that there would be no negative cumulative impact on the licensing objectives. They linked their assessment of likely cumulative impact - in a similar way to the witnesses at that hearing - to the different ways in which customers would purchase and consume alcohol and particularly the opportunities for vertical drinking. The decision notes that relevant sections of the NCC SLP were taken into account including the CIP for the area. The LSC was referred to cumulative impact on a number of occasions by those at the meeting. Specifically Chief Inspector Pickett referred to the CIP and it was he who also raised outstanding concerns about areas that would be wet led and food led and delineation between them.

8. I do not accept that the LSC made a decision that they did not intend to or which has been misinterpreted. Again they are experienced in such applications. It had before it an application with a wealth of information, for the totality of the premises for all licensable activities applied for. It was the LSC that created the space that has become the "disputed area" not the 2nd Respondent who asked for it. It is difficult to see how in doing so they somehow did so accidentally or inadvertently. Neither the readily acknowledged mistake made by Mr Smith in his statement nor the submissions made about the presumed understanding of the LSC of the information available persuade me otherwise.

9. Nor do I consider that the LSC decision is confused or inconsistent or irrational so demonstrating that the information was deficient in some way or by reason of any such deficiency.

10. The LSC could have requested further information if it considered it necessary, they could have made different decisions about the conditions imposed or refused the application altogether. They did not do so. In my view the LSC made a decision in which it:

i. Considered the potential throughout the premises for vertical drinking opportunities and reduced that potential space by the additional conditions.
ii. Left OS Rev G 12 (iii) in place which places a cap on the maximum space within premises devoted to wet led use whether determined by the size of containers or percentage compared to the overall defined trading area throughout the premises.
iii. Reduced the area within the premises in which alcohol could be sold and consumed when not ancillary to substantial food which, whilst not specifying the location of individual containers, reduced the area within the site where such containers devoted to wet led could be placed.
iv. By additional condition 2, reinforces the impact of additional condition 1. It prohibits the movement of alcohol in open vessels such that it prevents those who have bought alcohol not ancillary to substantial food from taking it to consume in another area where such sale or consumption is not permitted and preventing those that have purchased alcohol ancillary to substantial food on the first floor from bringing it downstairs to consume within the ground floor area.

11. In doing so, whether of their own volition or because of the representations made by Chief Inspector Pickett at the meeting and others before the meeting, the LSC clearly turned their mind to and addressed those outstanding concerns about spaces devoted to wet led and food led offer within the premises, delineation between the two and the opportunities for vertical drinking within the premises.

12. In my view, as I have said the LSC received sufficient information about the premises and proposed operation on which to make its decision and, whilst the reasons provided in the notice could have been fuller, they demonstrate that the LSC clearly linked the potential opportunities for vertical drinking throughout the premises to their consideration of cumulative impact. It determined that in the context of this application the reduced opportunity for that vertical drinking by the additional conditions imposed together with the conditions offered by OS Rev G, left them satisfied that there would not be cumulative impact on the licensing objectives. It is not in my view irrational for the LSC to have concluded that for this application and these premises.

13. The evidence I received from the witnesses for the 1st Respondent was in my view considered, credible and consistent. I did not agree with Mr Gouriet QC's assessment of it being exaggerated due to an over enthusiasm for the project nor that it demonstrated a misunderstanding of cumulative impact; I thought it was measured and balanced. Their evidence considered the factors I have reviewed in my assessment section of this judgment that are relevant to the assessment of the application and the likely additional cumulative impact of Stack and the individual and collective conditions. Each concluded that when considering this application for these premises, in this location, operating as it is styled and conditioned to, and applying their relevant

experience of the city centre CIA, it would not add to the cumulative impact on the licensing objectives relevant to this appeal. That evidence was not rebutted by that called by the Appellant. I am clear that in saying that I do not say the Appellant has a burden of proving cumulative impact. I have accepted and applied the NCC SLP CIP. I have applied it to the evidence I have heard. I considered the evidence that there would not be cumulative impact from the Respondents' witnesses to be strong and convincing. The evidence and submissions of the Appellant did not undermine that nor persuade me otherwise. On the evidence I received I am satisfied that Stack will not add to the negative cumulative impact on the licensing objectives of public nuisance and crime and disorder in the city centre CIA.

14. As well addressing the CIP I am also satisfied that the operation is consistent with other policies within the NCC SLP and through the conditions proposed within OS Rev G promotes the licensing objectives and addresses concerns particular to the area in which it is located (e.g. re street drinking, noise from the premises, minimum pricing).

15. All parties referred me to R (OTA Chief Constable of Nottinghamshire) v Nottingham Magistrates' Court [2009] EWHC 3182 (Admin) [38] in which Moses LJ, noting that licensing appeals are not of the usual adversarial nature stated:

'the decision in relation to the appeal as to the licence, or as to conditions on the licence, is not a decision similar to that which he [the judge / bench] would be accustomed to resolving in the course of ordinary litigation. There is no controversy between parties, no decision in favour of one or other of them, but the decision is made for the public benefit one way or the other in order to achieve the statutory objectives.'

16. This 'public benefit' is explained further by the Court of Appeal in Hope & Glory:

41. … the licensing function of a licensing authority is an administrative function. By contrast, the function of the district judge is a judicial function. The licensing authority has a duty, in accordance with the rule of law, to behave fairly in the decision-making procedure, but the decision itself is not a judicial or quasi-judicial act. It is the exercise of a power delegated by the people as a whole to decide what the public interest requires. (See the judgment of Lord Hoffmann in *Alconbury* at para 74.)

42. Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance. Although such questions are in a sense questions of fact, they are not questions of the "heads or tails" variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact.

17. And, R (OTA Taylor) v Manchester City Council [2012] EWHC 3467 (Admin) [9] where Hickinbottom J setting out the above paragraphs from Hope & Glory (CA) adds:

"That chimes with the White Paper, Toulson LJ again stressing the essentially evaluative nature of the decision making process in most licensing matters, which demands a complex balancing exercise, involving particularly the requirements of various strands of the public interest in the specific circumstances, including the specific locality. He also marked the fact that Parliament has determined that, in this context, local authorities are best placed to make decisions of that nature."

18. I was taken through this case in great detail. I received a considerable volume of documentary and oral evidence and submissions. As I have noted above Mr Gouriet QC submitted that taken together a number of the points he raised provided a context in which the decision was made and, at least in part, explained how a wrong decision came to be made. Nonetheless it seemed to me that at times I was being asked to focus on specific points in isolation – to look at the detail only rather than also the bigger picture: the operating schedule and individual conditions within it and individual changes to it; whether each condition is sufficiently precise as to render a prosecution if breached; the cumulative impact policy only within the NCC SLP (understandable to a degree given the location of Stack within the CIA but not rendering the rest of it irrelevant); whether the plans were complaint with the 2005 Regulations; whether the changes to the plans were permissible; the "disputed area" alone and the conditions relevant to that alone rather than the premises as a whole and the overall conditions.

19. Whilst of course the details and specific issues are important both individually and together, the decision and conclusions I have to reach are not (as was observed in Hope & Glory) "of the heads and tails variety." Standing back and looking at all the evidence I have received in the round, taking account of all the detail, the defects the Appellant submits existed in the decision making process, applying the relevant statutory provisions and policies, can the decision of the LSC properly be described as wrong.

20. When I do so it appears to me that the decision taken by the LSC in this case bears the hallmarks of that evaluative decision process referred to in Taylor in which it has weighed competing interests to come to a decision balancing those interests and meeting the overall public interest rather than an irrational decision as submitted by the Appellant.

21. That there may be a risk with any application particularly where the premises are not operational, does not prevent the grant of a licence. But such risk has to be balanced by the LSC along with all the other factors they are bound to consider and in their application of the NCC SLP CIP. It was neatly demonstrated in the answers Chief Inspector Pickett gave to questions put to him by the Appellant about alternative suggested ways the application could have been dealt with (reduced terminal hour and an outright refusal). He compared the approach he could take (always chipping away at hours, objecting to every application) to the more balanced approach he said he did take in assessing each case on its own circumstances. That fears of risks are not always well founded is perhaps demonstrated comparing the Appellant's fears about the Pilgrim Street Tipi operation and the reality of it.

22. Taking that guidance from Hope and Glory, Taylor and Nottingham, looking at the evidence I have received, applying the statutory provisions and guidance, applying the NCC SLP and particularly the CIP, I am not satisfied on a balance of probabilities that the decision of the LSC is wrong.

23. Again on the basis of all the evidence and information I have considered, the statutory provisions and guidance and the NCC SLP about the importance of tailoring conditions on a case by case basis and only imposing those that are appropriate to the individual application, I do not consider it appropriate to impose the additional conditions suggested by Mr Gouriet QC in his closing submissions (if I were to dismiss the appeal)

- capacity limit, a seating requirement for the downstairs area or a reduced terminal hour.

24. I do however, agree that the proposed amended conditions provide an appropriate degree of certainty to the submitted ambiguity and in doing so do not extend but reduce that which was applied for and granted. On the evidence I heard the reduction in the operating hours would further promote the licensing objectives. S 181(1)(b) of the Act permits me to substitute for the decision appealed against any other decision which could have been made by the licensing authority. I consider the proposed amended conditions fall within that provision.

25. Accordingly the appeal is dismissed. The decision of the LSC is upheld subject only to it being amended to show opening hours of 08:00 hours to 00:30 hours and the proposed amended conditions to additional condition 1 and condition 12(iii) within OS Rev G. The licence should now be issued subject to those conditions.

District Judge (Magistrates' Court) Meek

13th August 2018

APPENDIX 1

IN THE NEWCASTLE MAGISTRATES COURT 22ND-24TH MAY 2018

AND IN THE MATTER OF AN APPEAL UNDER THE LICENSING ACT 2003

BETWEEN:

ENDLESS STRETCH LTD

Appellant

-v-

NEWCASTLE CITY COUNCIL

1st Respondent

-and-

DANIELI HOLDINGS LTD

2nd Respondent

FILE 1

A. CORE BUNDLE

B. APPELLANT'S EVIDENCE

C. 1ST RESPONDENT'S EVIDENCE

B (2) APPELLANT'S ADDITIONAL EVIDENCE

2ND RESPONDENT'S EVIDENCE - See File 2

APPENDIX 2

IN THE NEWCASTLE MAGISTRATES COURT 22ND-24TH MAY 2018

AND IN THE MATTER OF AN APPEAL UNDER THE LICENSING ACT 2003

BETWEEN:

ENDLESS STRETCH LTD

Appellant

-v-

NEWCASTLE CITY COUNCIL

1st Respondent

-and-

DANIELI HOLDINGS LTD

2nd Respondent

FILE 2

D. 2ND RESPONDENT'S EVIDENCE

APPENDIX 3

IN THE NEWCASTLE MAGISTRATES' COURT 21st-24TH MAY 2018

AND IN THE MATTER OF AN APPEAL UNDER THE LICENSING ACT 2003

BETWEEN:

ENDLESS STRETCH LTD

Appellant

-v-

NEWCASTLE CITY COUNCIL

1st Respondent

-and-

DANIELI HOLDINGS LTD

2nd Respondent

APPELLANT'S LAW BUNDLE /INDEX

---

1. Licensing Act 2003 sections 16-23
   pages 1-10
2. LA 2003 sections 29-32
   pages 11-14
3. LA 2003 section 178
   pages 15-16
4. The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005
   pages 17-50
5. LA 2003 section 10
   pages 51-52
6. Newcastle City Council list of delegated functions under section 10

   pages 53-60
7. R(OTA) Extreme Oyster v Guildford Borough Council [2013] EWHC 2174 (Admin)
   pages 61-80
8. R(OTA) Hope and Glory Public House v City of Westminster Magistrates' Court [2011] EWCA Civ 31
   pages 81-96

9. R(OTA) Luminar Leisure Ltd v Wakefield Magistrates' Court [2008] EWHC 1002 (Admin) pages 97-104

APPENDIX 4

IN THE NEWCASTLE UPON TYNE MAGISTRATES' COURT

B E T W E E N : -

ENDLESS STRETCH LIMITED

Appellant

- and -

(1) NEWCASTLE CITY COUNCIL

(2) DANIELI HOLDINGS LIMITED

Respondents

RESPONDENTS' JOINT BUNDLE OF AUTHORITIES
FOR THE APPEAL LISTED TO COMMENCE ON 21 MAY 2018

18.	Guidance issued by the Secretary of State pursuant to s.182 of the Licensing Act 2003, 1 April 2018	228
19.	*R (on the application of East Herts District Council)* v. *North and East Herts Magistrates' Court* [2018] EWHC 72 (Admin)	383
20.	*R (on the application of Townlink Limited)* v. *Thames Magistrates Court* [2011] EWHC 898 (Admin)	389
21.	*R (on the application of Westminster City Council)* v. *Middlesex Crown Court, Chorion plc and Fred Proud* [2002] EWHC 1104 (Admin)	408
22.	*Kennedy* v. *Cordia (Services) LLP* [2016] UKSC 6	420

**STACK, FORMER ODEON SITE, PILGRIM STREET,
NEWCASTLE UPON TYNE NE1**

OPERATING SCHEDULE

1. The premises shall operate as a box park style event space with food, drink and retail outlets with external seating and plaza area.

2. There will be no change to this operating style without proper written notice to the Licensing Authority, which shall include details of the operating style proposed. The Licensing Authority shall advise within 21 days whether a formal application for full or minor variation or a new licence is required and the licence holder shall comply with the direction.

3. Licensable activities are only permitted during the hours stated on this licence and between the dates of 1st January 2018 and 1st April 2022.

4. The period during which licensable activities may take place in the Plaza area (hatched blue on the approved plan) is limited to:-

   i) two seasonal periods not exceeding twelve weeks in duration;
   ii) such additional periods as may be approved in writing by the Licensing Authority, following consultation with the Police and Environmental Health Department, such approval not to be unreasonably withheld.

5. The events permitted under condition 4(i) above will take place in accordance with one of the layout schemes as depicted in the approved plans and the premises licence holder will give a minimum of 4 weeks' notice to the Licensing Authority of the dates during which these events will run prior to licensable activities commencing. These events will take place during the months of October/November/ December or May/June/ July/August unless otherwise agreed with the Licensing Authority.

6. Prior to providing licensable activities in any additional periods pursuant to condition 4(ii) above notice will be given of the details of each event as follows:-

   i) Unless otherwise agreed, no later than 42 days prior to the scheduled start date of an event the premises licence holder must ensure an operating policy is submitted to the Licensing Authority who shall refer the matter to the Major Events Group, or any other body as it shall deem appropriate, for comment and advice. As a minimum, the operating policy will include:-
      a) a detailed plan showing site layout and emergency egress points;
      b) staffing monitoring and general management of the area on a daily basis;
      c) suitable and sufficient risk assessment;
   ii) The event may not proceed until the licensing authority has approved the proposals in writing.

7. The operator shall ensure that at all times when the premises are open for any licensable activity there is sufficient, competent staff on duty at the premises for the purpose of fulfilling the terms and conditions of the licence and for preventing crime and disorder.

8. At any time when the premises are open to the public, the management team then on the premises shall include no less than three personal licence holders.

9. The operator and designated premises supervisor shall conduct a risk assessment for the general operation of the premises and in the case of individual bespoke events.

10. The maximum number of persons permitted on the premises at any one time shall not exceed a figure prescribed by the risk assessment carried out by the premises licence holder in accordance with fire safety legislation.

11. The designated premises supervisor shall ensure that there are effective management arrangements in place to enable him/her to know how many people there are in the premises at times prescribed within the management risk assessment.

12. The user of the aggregate internal trading area of the shipping container units hatched green on the approved plan ("the Trading Area") will comply with the following requirements:

    (i) at least 50% of the Trading Area or an area equivalent to the aggregate internal area of 20 container units (whichever area is the greater) will be devoted to retail use ("the Retail Trading Area"), and sales by retail of alcohol shall not be permitted in more than 15% of the Retail Trading Area or an area equivalent to the aggregate internal trading area of 3 container units (whichever is the lower) and (save with the prior agreement in writing of the Licensing Authority and Northumbria Police) shall not be conducted by more than four individual trading units.

    (ii) no more than 35% of the Trading Area or an area equivalent to the aggregate internal area of 14 container units (whichever is the lower) will be devoted to food led use;

    (iii) no more than 15% of the Trading Area or an area equivalent to the aggregate internal area of 6 container units (whichever area is the lower) will be devoted to wet led use.

    For the purposes of this condition a container unit means a 40' high cube standard container.

13. Alcohol sold from the Retail Trading Area (as defined in condition 12(i)) is restricted to premium product (such as craft or artisanal beers, ale and ciders, fine wines, spirits and liqueurs), packaged in sealed containers for consumption off the premises.

14. Alcohol sold from the containers designated for food led use, under condition 12(ii), will only be sold for consumption as an ancillary to a sale of substantial food.

15. Patrons will not be permitted to remove alcohol in open containers or vessels from the Premises.

16. Patrons will not be permitted to remove takeaway food from the Premises after 11pm.

17. The premises licence holder shall not part with possession of any part of the Trading Area to any third party not being an entity wholly controlled by it for a permitted use that includes the sale by retail of alcohol (or otherwise allow any such party into occupation of the Trading Area), otherwise than pursuant to written lease, and, prior

to entering into such lease, it shall give to the Licensing Authority and the chief officer of Northumbria Police notice in writing of its proposal, identifying on the notice:

(a) the name and address of the proposed tenant;

(b) the name and address of the proposed guarantor (if any);

(c) the location of the unit(s) or parts thereof within the Trading Area proposed to be let;

(d) the commencement date and term of the proposed lease;

(e) the permitted use under the proposed lease;

(f) whether or not the proposed lease differs in any material particular from the current standard lease provided to the Licensing Authority and the chief officer of Northumbria Police (and if so, in what regard).

18. Where either the Licensing Authority or the chief officer of Northumbria Police so notified under condition 17 is satisfied that the exceptional circumstances of the case are such that granting the lease would undermine any of the licensing objectives, it/he must give the premises licence holder a notice stating the reasons why it/he is so satisfied. Such notice must be given within the period of 14 days beginning on the day on which it/he is notified of the premises licence holder's proposal. If a notice is given then the premises licence holder must not grant the proposed lease unless or until the notice is withdrawn or quashed by a court of competent jurisdiction.

19. The standard lease of any unit(s) or part thereof within the Trading Area referred to in condition 17(f):

(a) shall contain the following covenants:

(1) The tenant shall permit the landlord and the Designated Premises Supervisor immediate entry onto that unit at any time.

(2) If the landlord or the Designated Premises Supervisor requests that the tenant closes the unit, the tenant shall do so with immediate effect.

(3) Where the permitted use includes the carrying on of any licensable activities, if the landlord or the Designated Premises Supervisor requests then with immediate effect the tenant shall restrict the licensable activities conducted from the premises, whether by type of activity, day, time, or, in relation to the sale by retail of alcohol, to restrict the types, prices, and/or unit sizes of alcohol sold.

(4) Where the permitted use includes the carrying on of the licensable activity of the sale by retail of alcohol

(i) The tenant shall at all trading times maintain a working radio link with the Designated Premises Supervisor and will obey the instructions of the Designated Premises Supervisor in relation to the management of the Premises or any part thereof, including the exclusion of any person from the unit, whether such instruction is given by radio or in any other form.

(ii) The tenant shall procure that each individual sale of alcohol on the unit must be made or authorised by a member of the tenant's staff who is a personal licence holder.

(iii) If the permitted use restricts the sale of alcohol to alcohol to be consumed off the Premises only, then sales of alcohol may only be made in sealed containers on terms that they are not to be opened and that their contents are not to be consumed on the Premises.

(5) Insofar as the same affect the unit and its occupation thereof, the tenant shall comply with any conditions of this licence prevailing from time to time either by directly so complying or by not interfering with the compliance by others (including the landlord and other tenants of the Premises).

(6) The tenant shall refrain from taking any act or intentionally omit to take any act which act or omission would be reasonably likely to bring about an application to review this Licence and/or enforcement action in relation to this Licence and/or the service of a closure notice in respect of the Premises.

(7) The tenant shall not apply for any premises licence or temporary event notice pursuant to the Licensing Act 2003 in respect of the unit, and shall only undertake any licensable activities under the authority of this Licence.

(b) shall give the landlord the right to terminate the lease with immediate effect in the event of any breach by the tenant of any of the said covenants.

20. A CCTV system shall be designed, installed and maintained in proper working order, to the satisfaction of the Licensing Authority and in consultation with Northumbria Police. Such a system shall:-

i) Be operated by properly trained staff;
ii) Be in operation at all times that the premises are being used for a licensable activity;
iii) Ensure coverage of all entrances and exits to the licensed premises internally and externally;
iv) Ensure coverage of such other areas as may be required by the Licensing Authority and Northumbria Police;
v) Provide continuous recording facilities for each camera to a good standard of clarity. Such recordings shall be retained on paper or otherwise may be put on tape or otherwise (for a period of 28 days), and shall be supplied to the Licensing Authority or Police Officer on request;
vi) During times licensable activities are provided, a member of management or staff will be contactable and trained in the retrieval of CCTV footage, with the ability to download relevant footage onto a disc within a reasonable time of any request from Northumbria Police to do so.

21. There will be a radio link between each container unit that retails alcohol and the main security staff at the premises. The radio shall be kept in good working order, operated by a responsible member of staff and used to report incidents of crime and disorder to the security team and other users.

22. Noise from the licensed premises, including noise from patrons or amplified regulated entertainment, shall not be audible beyond the boundary of the premises so as to cause nuisance to nearby residents.

23. There will be in place noise management measures including the installation of a noise limiting device on the amplification systems used on the premises, regular noise monitoring during times when regulated entertainment is taking place, and event information sharing with residents at Bewick House.

24. During all hours that the premises are open to the public the entrance(s) to the site will be monitored by a member of staff.

25. If the general public congregating outside the premises are causing anti-social behaviour, the management shall request that they leave, and if the problem persists the Police shall be called to support.

26. Staff tasked with monitoring the entrance and the site generally will be trained in how to identify, deal with and refuse access to, and remove from the site, street drinkers. Such training will be documented and include:
    i) what to look for in identifying street drinkers;
    ii) identifying known street drinkers and associates using intelligence kept and collected at the premises and in association with partner agencies;
    iii) the law;
    iv) how to refuse entry;
    v) conflict situations and management support, and
    vi) a scenario based questionnaire.

27. The premises will operate and retain a record of persons banned from entering or purchasing alcohol from the premises, which will form part of staff training and shall include those persons considered to be street drinkers or known associates. Such information shall be supplied from partner agencies and through the site's own records, including CCTV and staff knowledge.

28. The premises licence holder shall consider any request from Northumbria Police to withdraw any brand of alcohol drinks or size of bottle of alcohol sold for consumption off the premises. Such request must only be made by the police acting reasonably and based on proper evidence that the sale of such products is detrimental to licensing objectives. The request may only be made by an officer having the rank of Chief Inspector or higher.

29. a) Every supply of alcohol for consumption on the premises under the premises licence shall be at not less than the minimum price calculated in accordance with the following or as varied in accordance with this condition:-

    Bottle/330ml of beer, lager, cider, perry or similar £3.50
    Pint glass of beer, lager, cider, perry or similar £3.50
    125ml of wine or similar £3.50
    175ml of wine or similar £4.00
    250ml of wine or similar £4.50
    Bottle/750ml of wine or similar £13.00
    Measure/25ml of spirits, liqueurs or similar £3.50
    Measure/50ml of spirits, liqueurs or similar £4.50
    Measure/50ml of fortified wine or similar £3.50

b) Where alcohol is supplied under the premises licence of a type not expressly referred to above, the minimum price applicable to the supply shall be the minimum price for the type of alcohol referred to above that is most similar to that supplied.

c) The minimum price shall be varied every two years following discussion with the Premises Licence Holder as follows: unless the Licensing Authority considers it appropriate not to do so:

i) The "retail prices index" shall be as defined in section 989 of the Income Tax Act 2007 (being currently, the general index of retail prices (for all items) published by the Statistics Board or, if that index is not published for a relevant month, any substituted index or index figures published by the Board).

ii) The first variation shall take place on the 1st December 2016 and each subsequent variation shall take place in every two years thereafter.

iii) The varied minimum price shall be the sum produced by multiplying the minimum price then applicable by a figure expressed as a decimal and determined by the formula:
1 + (RD – RI)/RI

Where RD is the retail prices index for the 1st September 2016 or each subsequent second anniversary of 1st September 2016 and RI is the retail prices index for the 1st September 2014 (or each subsequent second anniversary of 1st September 2014).

iv) The figure determined in accordance with this formula is rounded to the nearest third decimal place.

v) If in relation to any two year period RD is equal to or less than RI, the figure determined in accordance with the formula shall be 1 and there shall be no change in the minimum price for that year.

vi) The varied minimum price shall after application of the formula be rounded up or down to the nearest £0.05.

vii) Before the 1st December 2016 and each second anniversary of 1st December 2016, the Licensee shall give notice to the Licensing Authority of the varied minimum prices calculated in accordance with this condition unless otherwise agreed.

30. All members of staff at the premises including door supervisors shall seek "credible photographic proof of age evidence" from any person who appears to be under the age of 21 years and who is seeking to purchase or consume alcohol on the premises. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence or proof of age card carrying a "PASS" logo.

31. The premises shall not sell alcohol until after 11:00 hrs following receipt, not later than 24 hours in advance of a notice in writing from Northumbria Police, advising that a "high risk occasion" is to occur in the City Centre, and which explains the occasion of which there is concern. A notice so served shall be effective for the single day described therein.

32. If the premises is no longer operated by Steve Howe or Neill Winch Directors of Danieli Holdings Limited and Stack Containers Limited the premises licence shall cease to have effect.

Rev G