



Reference No

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Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form, please read the guidance notes at the end of the form. If you are completing this form by hand, please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written or typed in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

I Lorraine Astill

.....
 (Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable).

Part 1 – Premises or club premises details			
Postal address of premises or, if none, ordnance survey map reference or description			
Its Mustard 116 Albert Road Southsea			
Post town	Portsmouth	Post code	PO4 0JS

Name of premises licence holder or club holding club premises certificate (if known) Joanne Johnstone

Number of premises licence or club premises certificate (if known) 22/03292/LAPREM
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Part 2 – Applicant details	
In what capacity are you applying for the premises licence to be transferred to you?	
I am.	
Please tick <input checked="" type="checkbox"/> yes	
1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)	
2) a responsible authority (please complete (C) below)	yes
3) a member of the club to which this application relates (please complete (A) below)	

(A) INDIVIDUAL APPLICANTS (fill in as applicable)									
Please tick <input checked="" type="checkbox"/> yes									
Mr		Mrs		Miss		Ms		Other title (for example, Rev)	
Surname					First names				
I am 18 years old or over								(Please tick <input checked="" type="checkbox"/> yes)	
Current postal address if different from premises address									
Post town						Post code			
Daytime contact telephone number									
Email address (optional)									
Post Town					Post Code				

(B) DETAILS OF OTHER APPLICANT
Name and address
Telephone number (if any)
Email address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT
Name and address Lorraine Astill - Principal Regulatory Services Officer Portsmouth City Council Civic Offices Guildhall Square Portsmouth PO1 2AZ
Telephone number (if any) [REDACTED]
E-mail address (optional) [REDACTED]

This application to review relates to the following licensing objective(s)	
	Please tick one or more boxes <input checked="" type="checkbox"/>
1) the prevention of crime and disorder	
2) public safety	
3) the prevention of public nuisance	yes
4) the protection of children from harm	

Please state the ground(s) for review (please read guidance note 2)
<p>This application has been made by Regulatory Services (a responsible authority applicant) on the basis that the premises licence holder has failed to uphold the prevention of public nuisance licensing objectives.</p> <p>This has been evidenced by: Causing public nuisance to nearby residents which has resulted in the service of a statutory Noise Abatement Notice under the Environmental Protection Act 1990 by Regulatory Services on 11th April 2023. Contraventions of this notice have been witnessed on 22nd April 2023, 6th May 2023, 3rd June 2023 and 1st July 2023</p>

Please provide as much information as possible to support the application (please read guidance note 3)

The Legislative Reform (Entertainment Licensing) Order 2014 deregulates live music and recorded music. The Act removes the licensing requirements for live music and recorded music where: -

- There is a premises licence or club premises certificate in place permitting 'on sales.
- The premises are open for the sale or supply of alcohol for consumption on the premises.
- Live or recorded music is taking place between 8am and 11pm
- If the music is amplified live music or recorded music (e.g., DJs or a disco for example), the audience consists of no more than 500 people.

Under Section 51 of the Licensing Act 2003 " a responsible authority or any other person can apply for a review of a premise licence".

Upon a Review of the premises licence the Licensing Authority can determine that existing conditions on the premises licence relating to live or recorded music will apply even between 8am and 11pm.

Its Mustard has a premise licence which allows the business to open from 08:00 to 23:00hrs 7 days a week. The Premise Licence Holder and Designated Premise Supervisor is Miss Joanne Johnstone, (appendices 1).

The director and owner of Its Mustard Ltd is Mr Adam Stringer, (appendices 2, 3, and 4).

The Premise

116 Albert Road was previously a retail shop that sold pianos. In February 2021 under Permitted Development the premise was notified by City Planners that they would not need planning permission for the change of use to an A3 (café). The premise has been renovated and now has a glass roof covering an open corridor to the rear courtyard area (see plan and photographs - appendices 5 and 6). Since December 2022, the premise has been operated as a kitchen and bar called Its Mustard.

Its Mustard is located within Albert Road which is a night-time economy area. This area is also a mixture of commercial and residential properties. The premise has residential accommodation on the first floor which belongs to the owner of Its Mustard. Residential accommodation is also located either side of the owner's property on the first floor.

Complaint history

Its Mustard Bar & Kitchen opened on **10th December 2022** (see appendices 7). Subsequently to this, complaints were received by Regulatory Services from the **6th February 2023** and are still continuing to be received.

Regulatory Services have four complaints from separate residents that live in the vicinity of Its Mustard. (23/00307/ENI, 23/00315/ENI, 23/00730/ENI, 23/00734/ENI).

A letter (appendices 8) was sent to the Premise Licence Holder/DPS - Joanne Johnstone, Its Mustard, 116 Albert Road, Southsea, PO4 0JS on the **9th February 2023**. Ms Johnstone did

not respond to this correspondence.

On **11th March 2023** a complainant left a voice message at 23:15hrs stating that it is kicking off at Its Mustard and would like to log their call.

On **29th March 2023** the investigating officer visited Its Mustard to follow up on outstanding food hygiene legal requirements and to discuss the noise complaints. The officer requested that Mr Stringer contacted her with details of the glazing for the glass roof and to inform her if a noise volume limiting device had been installed at the premise. Ms Johnstone was present at the premises and said that she would be in contact. No further information was provided after this visit.

On **8th April 2023** the duty out of hours officer received three calls from different local residents concerning loud music coming from Its Mustard. (See appendices 9).

On the **8th April 2023** a statutory noise nuisance was witnessed by loud music coming from Its Mustard. The duty officer approached the bar to speak to DPS. The DPS not present but owner Adam Stringer was. Mr Stringer was under the influence of drink and would not listen to the officer's request to reduce the volume of the music. He made reference to loud music coming from other bars on Albert Road. It was explained to him that the music was travelling through the structure of the building and causing a disturbance to a local resident.

Mrs Johnstone was contacted on **11th April 2023** as a complaint had also been received concerning an alarm sounding in Its Mustard. It was requested that she visited the bar to silence the alarm. This was complied with.

In relation to the statutory nuisance being witnessed on **8th April 2023**, and under the Environmental Protection Act 1990 Sc 79 (g) a noise abatement notice was served on Joanne Johnstone [REDACTED] ref 12/LWA/23, the notice and the covering letter was sent by post and email on **11th April 2023**. (See appendices 10, and 11). A noise abatement notice was also served on Mr Adam Stringer ref 11/LWA/23 (see appendices 12 and 13

On **13th April 2023** Ms Johnstone left a voice message saying she did not have an indication on how bad the situation was only other than the other letter she had received and from the meeting with the officer. She claimed that they had tried to work with the complainant. She made allegations that they have gone above and beyond what is required, and they feel that the local authority is making it difficult to operate the bar as they have only been open for 4 months. She claimed that other bars in the area were making more noise than Its Mustard.

The investigating officer called Ms Johnstone back on **14th April 2023**. Ms Johnstone made allegations that the complaints have not been dealt with properly as she had only received one letter prior to the noise abatement notice being served and one visit from an officer where a discussion took place after a food inspection. She reiterated that she had not been given the opportunity to deal with the noise issue and she was not in the right frame of mind as her friend had committed suicide. During this conversation the investigating officer advised Ms Johnstone that there was right of appeal for the noise abatement notice but Ms Johnstone said she did not believe that they would be successful in their claim so they would not be appealing. Ms Johnstone said that they had cancelled all entertainment for the weekend. The investigating officer advised Ms Johnstone that the premise was not suitable for regulated entertainment provided by a DJ as the bass penetrates through the structure of the building and also the glass roof does not help contain the noise.

Breach of abatement notice 22nd April 2023 (1)

On **22nd April 2023** at 14:57hrs one of the complainants left a voice message on the night noise phone reporting loud music from Its Mustard. A further call was made by the same complainant at 18:16hrs stating the music level was getting louder. The officer visited the complainant at 19:27hrs and witnessed a contravention of the noise abatement notice. The officer did not visit the bar but noticed that there was a DJ set up in the premise when he walked past.

A letter was sent to Joanne Johnstone (premise license holder and DPS) and Adam Stringer on **25th April 2023** (see appendices 14 and 15) notifying her that a contravention of the noise abatement notice had been witnessed. Joanne Johnstone called the investigating officer in response to the receipt of this correspondence and requested a meeting with the manager as she felt that she had been misinformed. A meeting was arranged **27th April 2023** to discuss the noise complaints and issues raised.

Meeting at Its Mustard on 27th April 2023

A meeting took place at Its Mustard 116 Albert Road, Southsea on **27th April 2023**. Allegations were made by both Mr Stringer and Ms Johnstone that the business had not been helped by the local authority. During this meeting Mr Stringer requested assistance with setting noise levels. It was explained to him that they might not agree with the noise levels set as the volume may be lower than they would like and also this would not give them a defense if formal action was to be taken. It was agreed that an appointment would be made with the complainant and themselves so that noise levels could be set.

On **28th April 2023** one of the complainants was contacted, and it was agreed that they would participate with setting noise levels with Its Mustard. The date of Thursday 4th May at 10:00am was proposed.

Further complaints received by Regulatory Services

Three voice messages were left by different complainants on **29th April 2023** in relation to loud music from a DJ at Its Mustard, which started at 16:30hrs.

One of the complainants said that due to the volume of the music they are unable to remain in their home.

A further message was left by one of the complainants at 20:58hrs stating that the music was very loud and could be heard in every room of their house.

There was no officer available to witness the noise on this occasion.

The duty out of hours officer received a call from one of the complainants on **30th April 2023**. The officer visited the complainant at 19:16hrs and could hear a low-level continuous bass beat. The noise stopped shortly after the officer had arrived.

Correspondence concerning dates for the setting of noise levels at Its Mustard

Mr Stringer (the owner of the business Its Mustard) sent an email on **2nd May 2023** stating that they have used sound insulation in the weak areas in the wall that was pointed out to him

during the meeting on the 27th April 2023. He said that he had had a meeting with his sound engineers seeking advice on the best way to reduce the noise levels and it was hoped that once it had been installed the music would be consistent and not cause a nuisance to neighbours'. He proposed a date of **Saturday 20th May 2023** for the sound test to be carried out as they needed to spend time decorating for the Kings Coronation.

The investigating officer replied to Mr Stringers email and informed him that due to upcoming planned events at Its Mustard complaints could be received and potential evidence collated for further breaches of the noise abatement notices, if a statutory noise nuisance is witnessed. The officer indicated that it was crucial to try to set some noise levels prior to these events and asked if Mr Stringer or Ms Johnstone were available on **Thursday 4th May 2023**.

Mr Stringer responded to the officer's email on **3rd May 2023** by stating that he had other commitments with his printing business in London and could not spare the time to be available on **Thursday 4th May 2023** as he was already committed to meeting deadlines. He said that Ms Johnstone had been on vacation and only arrived back that evening and it was vital that they are able to prepare for the Kings Coronation on the Saturday. He did however say that all equipment being purchased for future events would be submitted to PCC before the week ending **12th May 2023** and that installation will take place no later than **19th May 2023** when testing of the equipment can take place.

The investigating officer replied to Mr Stinger's email dated **3rd May 2023** and advised to reduce the volume of the music and bass being provided by the DJ for the Kings Coronation celebrations.

On the **4th May 2023** Mr Stringer sent an email to the Public Protection email inbox requesting an appeal of the noise abatement notices. Mr Stringer was informed by email that the time period for the right to appeal for the notice had expired. Details were also provided in a separate email to Mr Stringer detailing the difference in legislation between the Licensing Act and the Environmental Protection Act.

Further complaints received by Regulatory Services

On **5th May 2023** a complainant left a voice message at 19:53hrs requesting that her call be logged as there was heavy bass coming from Its Mustard. She said that the noise started at 19:30hrs and it could be heard throughout her flat.

Breach of noise abatement notice 6th May 2023 (2)

A visit was made to the complainant's property at 18:30hrs on **6th May 2023**. Bass music was travelling through the structure of the building and was clearly audible throughout the complainant's home. The level of the music was causing a statutory nuisance which was in breach of the noise abatement notices served on Its Mustard Ltd and Joanne Johnstone.

A call was made to Joanne Johnstone to inform her that high bass levels had been witnessed emanating from Its Mustard and it was requested that the volume of the DJ be reduced. Ms Johnstone said that she would do this.

A further visit was made to the complainant on **6th May 2023** at 22:05hrs upon entering the complainant's courtyard loud music could be heard coming from the rear of Its Mustard. Vibrations from the music in commercial premise (Its Mustard) below could be felt under foot. The music could be heard throughout the complainant's property and there was not a room within their premise where they could escape the noise. The level of the music was causing a

statutory nuisance. Noise from customers in the courtyard at Its Mustard could also be heard. From within the complainants home a female's voice was heard shouting "last orders".

On **13th May 2023** a letter (appendices 13) was sent to both Ms Joanne Johnstone and Mr Adam Stringer informing them of the contravention of the noise abatement notice. The letter was sent via email and by post.

Ms Johnstone replied to the correspondence on **16th May 2023** in response to the contravention of the noise abatement notice. She apologised for the "level of the music not being how we require it" and said that they are doing everything that they can to resolve the problem. She said that their sound equipment is on its way.

Further complaints received by Regulatory Services

The complainant left a voice message at 22:11hrs on the out of hours mobile reporting that there has been music on **13th May 2023** and the bass beat could be heard throughout their property.

A complainant contacted Regulatory Services on **16th May 2023** notifying the service that Its Mustard have a DJ planned for **Saturday 20th May 2023**. The liaison officer notified the complainant that the investigating officer was on leave and that no one would be available to monitor the noise on this date.

On **20th May 2023** the complainant left a voice message at 15:37hrs stating that the DJ is playing loud music which can be heard throughout their property.

On **25th May 2023** an email was sent to Ms Joanne Johnstone; she was again advised that the sound insulation between the commercial and residential uses on the first floor was not sufficient for the type of entertainment that they are providing. It was recommended that they cancelled the entertainment that they had planned for the **4th June 2023** until mitigation measures had been put in place. The officer also requested that they be notified once the business had received their new sound system.

A voice message was left by the complainant at 13:59hrs and 22:17hrs on **27th May 2023** (see appendices 19) reporting that there had been loud music from a DJ playing again at Its Mustard. They said that it could be heard in every room of their property.

On **2nd June 2023** a voice message was left by the complainant at 20:19hrs stating that extremely loud music is playing again at Its Mustard, and it could be heard throughout their property.

Breach of noise abatement notice 3rd June 2023 (3)

The duty out of hours officer received two calls from different residents on Saturday **3rd June 2023** concerning loud music emanating from Its Mustard (see appendices 20). One of residents reported that the front door to the premises was open and music could be heard above the traffic on Albert Road.

An officer visited one of the complainants at 20:50hrs on Saturday **3rd June 2023**. Loud music could be heard from the rear of Its Mustard as the officer entered the complainant's home. Lyrics to the tracks being played were clearly audible and the volume of the music was causing a statutory nuisance in breaching the noise abatement notice.

A telephone call was made to Joanne Johnstone to notify her of the complaint, but her phone was turned off.

On **7th June 2023** a letter (see appendices 21 & 22) was sent to both Joanne Johnstone and Adam Stringer in relation to the contraventions of the noise abatement notice witnessed by the officer on 3rd June. No response was received by Regulatory Services in relation to this correspondence.

Further complaints received by Regulatory Services

On **10th June 2023** a complainant left a voice message at 17:40hrs. They said that the DJ started at 16:45hrs (see appendices 23) and that it was really loud as usual. The music can be heard everywhere in their home.

Breach of noise abatement notice 1st July 2023 (4)

Three complaints were received by local residents in relation to loud music emanating from Its Mustard on 1st July 2023.

Noise monitoring equipment had been placed within the fourth complainants' home as they had notified Regulatory Services prior to the event that Its Mustard had advertised on Facebook and Instagram that a DJ was playing at 116 Albert Road on 1st July (see appendices 24).

Upon analyzing the recordings made by the complainant, the loud music in particular heavy bass was present within the complainant's home from 15:55hrs to 22:38hrs (last recording made), therefore causing a statutory nuisance for approximately six hours.

CONCLUSION

The Responsible Authority has instigated this review due to concerns that, despite giving clear guidance and warnings as regards to complying with licensing objectives, the licence holder has continued to operate in contravention of prevention of a public nuisance.

The statutory guidance issued in accordance with section 182 of the LA03 offers the following relevant guidance which the Licensing Authority must have regard to when considering a review application:

Paragraph 11.10

Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence/certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

Paragraph 11.18

Where responsible authorities such as the environmental health officers have already issued warnings requiring improvement - either orally or in writing - that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.

Paragraph 11.20

In deciding which powers to invoke, it is expected that licensing authorities should, so far as possible, seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than appropriate and proportionate response to address the causes of concern that instigated the review.

Where the Licensing Authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- Modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition).
- Exclude a licensable activity from the scope of the licence.
- Removal of the Designated Premises Supervisor.
- Suspend the licence for a period not exceeding three months
- Revoke the licence

Having regard to the facts presented within this review, it is clear that the premises licence holder has consistently failed to act on advice of the other responsible authorities in terms of complying with the premises licence and has continued to breach the requirements of the LA03.

It is therefore recommended that the most appropriate step for the Licensing Sub-Committee to consider is to impose the following condition on the current premises licence:

1. (a) **The provisions of Section 177A of the Licensing Act 2003 relating to live and recorded music no longer apply in respect of this licence, and**
- (b) **The provision of any regulated entertainment consisting of a performance of live music and/or playing of recorded music shall be excluded as a licensable activity under the scope of this licence.**

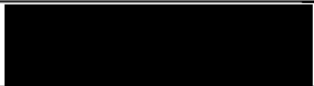
Please tick yes

Have you made an application for review relating to the premises before?	No
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If yes, please state the date of that application

	Day	Month	Year

If you have made representations before relating to the premises, please state what they were and when you made them

Please tick <input checked="" type="checkbox"/> yes	
<ul style="list-style-type: none"> I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate. 	Yes
<ul style="list-style-type: none"> I understand that if I do not comply with the above requirements my application will be rejected. 	Yes
<p>IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION</p>	
<p>Part 3 – Signatures (please read guidance note 4)</p>	
<p>Signature of applicant or applicant’s solicitor or other duly authorised agent (See guidance note 5). If signing on behalf of the applicant, please state in what capacity.</p>	
Signature	
Date	10 th July 2023
Capacity	Principal Regulatory Service Officer

<p>Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)</p> 			
Post town		Post code	
Telephone number (if any)			
If you would prefer us to correspond with you by email, your email address (optional)			

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details, for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.