

Appendix D

REP A

Jim Whitelegg
Head Of Licensing
Brighton and Hove City Council
(via email)

Date: 3rd February 2023
Our Ref: 2023/00243/EPLICH/EH
Contact:
Phone: REDACTED
Email: Mylene.hayward@brighton-hove.gov.uk

CH COND ENDS 09.02.2023 VALID PPN (A)

Dear Mr Whitelegg

Formal representation for a Licensing Review for Monarch 46-50 Kings Road, Brighton BN1 1NA

Licensing Act 2003 - Complaint Reference : 2023/00243

I refer to a licensing review hearing that has been called regarding the premises known as Monarch 46-50 Kings Road, Brighton, BN1 1NA.

Following a number of noise complaints that the Environmental Protection team have received since this premises was renamed Monarch in 2021 I have concerns about this premises and make a representation on the grounds of “**prevention of public nuisance**” one of the 4 licensing objectives within the Licensing Act 2003.

Since August 2021 there have been 7 noise complaints submitted to the Environmental Protection team, letters have been sent to the designated premises supervisor and also a meeting was held on 20th October 2021 with Andrew Cheeseman, Elis Cheeseman, REDACTED the premises licence holder and the Councils licensing officer at the venue to discuss the ongoing noise issues.

The Environmental Protection team fully support the Police’s application. I note that the Police suggest a variety of options including a period of closure and the ability to amend the licence and conditions attached to it. Should the licence be amended then the Environmental Protection team would like to propose conditions to be attached to a licence under “**prevention of public nuisance**”, I attach these conditions as an appendix A to this letter.

Please do not hesitate to contact me should you wish to discuss the matter further.

Yours sincerely

M L Hayward

Environmental Protection Officer

Appendix A

Proposed Conditions for Monarch Licence under Prevention of Public Nuisance

1. No Noise shall emanate from the premises nor vibration be transmitted through the structure of the premises that gives rise to a nuisance.
2. Speakers shall not be located/operated in the entrance lobby or outside the premises.

In addition the Environmental Protection team would like to propose rewording of the current licence which states under “Times the licence authorises the carrying out of licensable activities”

Performance of Recorded music- to remove outdoors and reword it to Indoors only.

REP B

From: Sarah Leach <Sarah.Leach@brighton-hove.gov.uk>

Sent: 07 February 2023 15:50

To: EHL Safety <EHL.Safety@brighton-hove.gov.uk>

Subject: Representation regarding Monarch Cosmopolitan bar and restaurant 46-50 Kings Road

CH CON ENDS 09.02.2023 VALID PPN (B)

I wish to make representation in support of the review application submitted by the Police on the grounds that the licence holder is undermining licensing objectives of Prevention of Crime and Disorder for erecting an unlicensed structure on the Highway. It is an offence under the Highways Act 1984 to place an item/structure on the highway without the relevant Council permission

The purpose of a Pavement Licence is to ensure all items placed upon the public highway are agreed to ensure they are not a hazard or a dangerous obstruction to the public. It also ensures that where a licence is granted the licensee must adhere to the licence conditions. As the structure was erected without the consent of the Highway Enforcement team and exceeds what we would allow for a temporary structure within a Pavement Licence area we are not in a position to agree an application for a pavement Licence until the structure is removed.

The Pavement licence for the above venue expired on 30 September 2022. It has never been renewed.

A large structure was erected without the permission of the Highways Authority, this would be contrary to the Pavement licence conditions if they were licensed.

On 9th January I requested the structure be removed within 28 days, until the structure was removed I would not agree a Pavement Licence at this location, the structure is still currently on site

This department has since learnt that the premises licence has been suspended. We would therefore not approve any application for a new pavement Licence for this venue as it cannot be seen to be upholding the Licensing objectives.

A formal notice to remove the structure was issued on the 7th February 2022 to Ellis Cheeseman giving him 28 days to remove the structure.

Regards

[Sarah Leach](#)

Senior Highway Enforcement Officer www.brighton-hove.gov.uk

G40 Hove Town Hall

Norton Road

Hove

BN3 3BQ

REP C

Corinne Hardcastle
Licensing Authority
Brighton & Hove City Council
Bartholomew House
Bartholomew Square
Brighton
BN1 1JP

Date: 8 February 2023
Our Ref: 2023/00270/LICREP/EH
Phone: 01273 292494 / REDACTED
Email: donna.lynsdale@brighton-hove.gov.uk

CH CON ENDS 09.02.2023 VALID PCD, PS and PPN (C)

Dear Corinne Hardcastle

Licensing Act 2003

Representation in support of an application by Sussex Police seeking a review of the Premises License - 2023/00246/LAREV

Monarch Restaurant & Bar, 46-50 Kings Road, Brighton BN1 1NA

I write to make a representation on behalf of the Council's Licensing Team, in their capacity as a responsible authority, in relation to the above application made by Sussex Police seeking to review the Premises Licence for Monarch Restaurant & Bar, 46-50 Kings Road, Brighton BN1 1NA.

This representation is made as the Licensing Team have concerns that the licensing objective of the Prevention of Crime and Disorder, Public Safety and the Prevention of Public Nuisance are not being upheld.

The history of this matter is explained in more detail in the application of Sussex Police.

On 20 October 2021, I accompanied Mylene Hayward, Environmental Protection Officer to a meeting held at the premises to discuss the noise complaints she had received and also to go through the premises licence. This meeting was also attended by Andrew Cheesman, REDACTED and Ellis Cheesman.

On 31 October 2021, Police Licensing conducted a visit and found the premises to be breaching their premises licence. Following this visit, I received an email from Andrew Cheesman, the Designated Premises Supervisor (DPS). A copy of this email and my response can be seen attached as Appendix A.

Following a telephone call from Andrew Cheesman asking if a meeting could be arranged with Police Licensing and myself to discuss the premises Licence. On 12 November 2021, a meeting was held at John Street Police Station. A copy of an email sent to Andrew Cheesman confirming a meeting had been arranged and conformation that he would be attending can be seen attached as Appendix B.

On 2 December 2021, I received an email from Andrew Cheesman which was also sent to PC Hancox and Mark Thorogood from Police Licensing enquiring about holding a 'Dinner and Dance' at the premises. Copy of the email and responses can be seen attached as Appendix C.

On 29 November 2021, I received a phone call from Ellis Cheesman advising that they were going to start selling Shisha and could I provide any guidance. Following this call, I sent Ellis Cheesman information and guidance on selling shisha. Copies of this guidance sent can be seen attached as Appendix D and E.

On 8 July 2022 at 22.15, accompanied by Police Licensing, a visit was made to the premises. At time of this visit we spoke with Ellis Cheesman. Below are the notes I made at the time.

Visit carried out as breaching conditions allowing customers to order from the bar and stand at bar drinking.

Also, loud music.

Spoke to Ellis Cheesman - who had a lot to say on how well he is running the venue - whilst behind him they were still breaching.

Gave words of advice and advised will be monitoring.

On 18 November 2022, I sent an email to Andrew Cheesman and Ellis Cheesman regarding allowing customers to smoke inside a totally enclosed area. A copy of this email and response can be seen attached as Appendix F.

It is my opinion that the premises are poorly run, and I have no confidence in the management of the venue. This venue is situated in CIZ area in the city, where there are already high levels of crime and disorder.

In the circumstances, I fully support the application of Sussex Police and consider that this is necessary to ensure that the licensing objectives of the Prevention of Crime and Disorder, Public Safety and Prevention of Public Nuisance are met.

Yours sincerely

REDACTED

Donna Lynsdale
Licensing Officer
Licensing Team

Appendix A – Email correspondence following breach of conditions on 31 October 2021

Appendix B – Email correspondence confirming meeting 12 November 2021

Appendix C – Email correspondence dated 2 December 2021

Appendix D – Shisha Lounges Guidance Legal Requirements

Appendix E – Guidelines for Shisha Premises

Appendix F – Email correspondence dated 18 November 2022

Appendix A – Email correspondence following breach of conditions on 31 October 2021

CH CON ENDS 09.02.2023 VALID PCD, PS and PPN (C)

-----Original Message-----

From: Andrew Cheesman REDACTED

Sent: 31 October 2021 03:00

To: Donna Lynsdale <Donna.Lynsdale@brighton-hove.gov.uk>;
Kate.Hancox@sussex.pnn.police.uk

Subject: Dancing

Hi Donna

A couple months ago I called re dancing & having a DJ, please can you confirm as Kate is here checking licence, I believed you said it was dancing was deregulated, please could you confirm.

Very sorry if I've interpreted in any way incorrectly.

Best Wishes

Andrew Cheesman
Office REDACTED
Mobile REDACTED

From: Donna Lynsdale
Sent: 02 November 2021 13:23
To: Andrew Cheesman REDACTED
Cc: Kate.Hancox@sussex.pnn.police.uk; Brighton.Licensing@sussex.pnn.police.uk
Subject: Dancing - 2021/02391/LICPRM/EH
Importance: High

Dear Andy

Thank you for your email.

When we had the conversation regarding dancing. The example you referred to was that you hold a couple times a year, afternoon parties for children with special educational needs.

However, I have been advised by Sussex Police Licensing that on Sunday 31 October 2021 at 02:35, PC Hancox and PS Lam visited your premises. At the time of their visit, you had turned one side of your restaurant into a Disco. You had a DJ playing music, customer dancing, vertical drinking.

I draw your attention to the following conditions on your premises licence:

Times the licence authorises the carrying out of licensable activities

Performance of Recorded Music - Indoors/Outdoors: Background music at an acceptable level to create an ambience in the cafe/bar.

Monday to Sunday: 00.00 - 00.00

Annex 2 – Conditions consistent with the Operating Schedule

General

2. During the hours of 01:00–09:00 each day, alcohol will be served to persons seated at tables and ancillary to a main table meal. During all other hours, substantial food shall be available at all times that alcohol is offered for sale.

Between the hours of 01:00–09:00 you should be operating as a restaurant.

3. The sale of alcohol and other beverages shall be by waiter/waitress service for consumption by persons seated at tables. There will be no vertical drinking.

Police Licensing have advised that you had high tables where customers were standing at and drinking. Also, customers on the dance floor drinking. This is considered as 'vertical drinking'.

I remind you that non-compliance with conditions constitutes a breach of the Premises Licence issued under the above legislation. Please ensure that all conditions on the

licence are adhered to. It is an offence under the Licensing Act 2003, S136(1) and (4) to carry on unauthorised licensable activities. The legislations states that:-

- (1) A Person commits an offence if –
 - (a) he carries on or attempts to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation, or
 - (b) he knowingly allows a licensable activity to be carried on.
- (4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to an unlimited fine, or to both.

Irrespective of the permission's and restrictions attached to any premises licence, all licensed premises are required to operate with regard to the 4 licensing objectives, which are;

- o The Prevention of Crime and Disorder
- o Public Safety
- o Prevention of Public Nuisance
- o Protection of Children from Harm

Please be aware that any enforcement action is taken in line with our Licensing Enforcement Policy. You are also reminded that at any stage, following the grant of a premises licence, a responsible authority, such as the Police, Environmental Health, or an interested party such as a resident living in the vicinity of the premises, may ask the Licensing Authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.

A copy of this email has also been sent to Police Licensing.

Please do not hesitate to contact me if you wish to discuss the contents of the email.

Regards

Donna Lynsdale | Fair Trading Officer & Licensing Officer (Trading Standards & Licensing), Safer Communities
Brighton & Hove City Council, 2nd Floor, Barts House, Barts Square, BN1 1JP
T 01273 292494 | M REDACTED | donna.lynsdale@brighton-hove.gov.uk

Appendix B – Email correspondence confirming meeting 12 November 2021

CH CON ENDS 09.02.2023 VALID PCD, PS and PPN (C)

From: Donna Lynsdale
Sent: 05 November 2021 15:30
To: Andrew Cheesman REDACTED
Cc: Brighton.Licensing@sussex.pnn.police.uk
Subject: Meeting Request

Hi Andy

Following our conversation regarding a meeting with Police Licensing.

A meeting as been arranged for 12 November 2021 at 11:00 at Police Station, John Street.

Due to covid restrictions, capacity in meeting rooms this invite if for yourself as DPS and REDACTED as PLH. If REDACTED is unable to attend, you can bring Ellis in his place.

Please confirm that you will be attending and who you will be bringing with you.

Many thanks

Regards

Donna Lynsdale | Fair Trading Officer & Licensing Officer (Trading Standards & Licensing), Safer Communities
Brighton & Hove City Council, 2nd Floor, Barts House, Barts Square, BN1 1JP
T 01273 292494 | M REDACTED | donna.lynsdale@brighton-hove.gov.uk

From: Andrew Cheesman REDACTED
Sent: 08 November 2021 09:51
To: Donna Lynsdale <Donna.Lynsdale@brighton-hove.gov.uk>
Cc: Brighton.Licensing@sussex.pnn.police.uk
Subject: Re: Meeting Request

Good morning Donna

Thank you once again for all you help & assistance, Ellis & I will attend, I thank you for setting the meeting up.

Best Wishes

Andrew Cheesman
Office REDACTED
Mobile REDACTED

Appendix C – Email correspondence dated 2 December 2021

CH CON ENDS 09.02.2023 VALID PCD, PS and PPN (C)

From: Andrew Cheesman REDACTED
Sent: 03 December 2021 09:42

To: Mark.Thorogood2@sussex.pnn.police.uk
Cc: Kate.Hancox@sussex.pnn.police.uk; Donna Lynsdale <Donna.Lynsdale@brighton-hove.gov.uk>
Subject: Re: Possible Dinner & Dance at Monarch Restaurant.

Thank you Mark

Please see below

On this basis I will now go back to them.

Best Wishes

Andrew Cheesman
Office REDACTED
Mobile REDACTED

On 3 Dec 2021, at 08:38, Mark.Thorogood2@sussex.pnn.police.uk wrote:

That sounds OK just need to know what considerations you got for security, will they have the whole venue and at the end,

[Yes whole venue](#)

will you open for general public and trade back under your normal licence conditions?

[Undecided](#)

If you do re-open for general public you will need to work out how you will control the switch over as people at the event will need to leave as you will go back to your restaurant conditions and I can't see they will want to sit down and have another meal.

[Agreed, we would need to close to tidy up if we opened or not.](#)

They wont be able to stay on and carry on drinking all night.

[Understand, I wouldn't think they would want too as it's quite along night and I presume most are middle aged to elderly](#)

It could be that you have to totally close down for half hour to clear the venue and then re-open.

[We would close to clean down & restock if we reopen or not.](#)

Many Thanks

Mark.

Mark Thorogood
Police Licensing Officer

Brighton & Hove Licensing Unit : John Street, Brighton
Telephone: 01273 404 535 **Ext:** REDACTED **Mobile:**
REDACTED
Twitter: @SusPolLicensing

From: Andrew Cheesman REDACTED
Sent: 03 December 2021 08:27
To: Thorogood, Mark 33005 <Mark.Thorogood2@sussex.pnn.police.uk>
Cc: Hancox, Kate DH163 <Kate.Hancox@sussex.pnn.police.uk>;
Donna.Lynsdale@brighton-hove.gov.uk
Subject: Re: Possible Dinner & Dance at Monarch Restaurant.

Thank you Mark, as this will be a weekend day do you foresee any issues as I do not want to say yes we can do it then have an issue, as I understand so far they wish to arrive around 1900hrs called to dinner at 1945 raffle at 2145 entertainment band or DJ from 10pm carriages at 0130hrs, if they keep to this agenda will it ok?

Best wishes,

Andrew Cheesman

Mobile REDACTED
Office. REDACTED

On 3 Dec 2021, at 08:09, Mark.Thorogood2@sussex.pnn.police.uk wrote:
Good Morning,

You will need to secure the date first and then apply for your TEN with that date on it.

Many Thanks

Mark.

Mark Thorogood
Police Licensing Officer

Brighton & Hove Licensing Unit : John Street, Brighton
Telephone: 01273 404 535 **Ext:** REDACTED **Mobile:**
EDACTED
Twitter: @SusPolLicensing

From: Andrew Cheesman REDACTED
Sent: 02 December 2021 17:59
To: Thorogood, Mark 33005 <Mark.Thorogood2@sussex.pnn.police.uk>; Hancox, Kate DH163 <Kate.Hancox@sussex.pnn.police.uk>; Donna Council Licencing Lynsdale

[<donna.lynsdale@brighton-hove.gov.uk>](mailto:donna.lynsdale@brighton-hove.gov.uk)

Subject: Fwd: Possible Dinner & Dance at Monarch Restaurant.

Hi All

Please see below,

Can we book a date in advance or will we need to secure a Tens first then give the date?

I look forward to your response.

Best Wishes

Andrew Cheesman

Office REDACTED

Mobile REDACTED

From: REDACTED REDACTED

Date: 29 November 2021 at 16:11:36 GMT

To: Andrew Cheesman REDACTED

Subject: Possible Dinner & Dance at Monarch Restaurant.

Hello Andy.

Firstly can I say how much colleagues enjoyed the ABBA evening you put on at Monarch recently.

I have been asked to contact you as Chairman of REDACTED, to see if we can arrange a dinner dance at Monarch either on a Friday or Saturday evening.?

The feed back I am getting is the place and the food is amazing I totally agree as I have eaten there myself.

I would be grateful if you could confirm we can book, so I can come back to you with possible dates and numbers.

Look forward to hearing from you.

Kind regards.

REDACTED

REDACTED

REDACTED

Telephone: REDACTED

Mobile: REDACTED

Email: REDACTED

Appendix D - Shisha Lounges Guidance Legal Requirements

Shisha Lounges

Officers from the Neighbourhood Community & Safety Officers work closely together to ensure business owners are compliant with the Health Act 2006.

You may receive visits from Food Safety Officers, Licensing Officers, Health & Safety Officers and Fair Trading/Trading Standard Officers. All officers are trained to identify non-compliances of various legislation

We work closely with Trading Standard Officers, to ensure the tobacco used is legal and therefore safe. During these enforcement/compliance visits, we may take the shisha pipes and tobacco as evidence, which is then used, in the Magistrates court to secure a conviction.

Being in control, or allowing people to smoke in an enclosed space, such as an illegal shisha bar, is an offence. You could be fined and ordered to cover the court costs of the council if found guilty.

Shisha Lounges: Business Guidance

If your business supplies shisha in water pipes to customers, you need to do so legally. Following this guide will enable you to do this but failing to comply may result in prosecution or having your pipes and shisha tobacco seized and your customers being fined.

The council and its partners will take action to ensure businesses keep to the law. It is important that users of shisha are made aware of the health issues. A misleading but commonly held belief is that smoking through a water pipe 'purifies' the smoke.

The law will affect your business in a number of ways. Below is a list of Frequently Asked Questions (FAQs) to help you understand the law.

Where can customers smoke?

Water pipes can be smoked in open air **when there is no roof or ceiling above the smoker**. They can also be smoked in some circumstances where there is a roof or ceiling, but only if at least 50 per cent of the walls of the structure are permanently open. Any opening that can be closed - for example by a door, window or shutter - is counted as closed. We can provide more advice that is detailed.

As with smoking a cigarette the smoking of shisha/water pipe is not permitted within substantially and fully enclosed public spaces or workplaces because of the Smoke Free laws. These smoking laws apply to water pipes whether or not the shisha product being smoked contains tobacco or not. Therefore, unless your business has access to a legal smoking area you will not be able to supply shisha in water pipes.

Smoking shelters

If you construct a shelter for shisha users, it may require planning permission. Please contact the Council's Planning Department ([Link?](#)) for advice prior to construction.

How is the law enforced?

Officers who identify an illegal smoking area in use may take the shisha pipes and tobacco as evidence, which is then used, in the Magistrates court to secure a conviction.

Being in control or allowing people to smoke in an enclosed space such as an illegal shisha bar is an offence, and you could be fined money and ordered to cover the costs of the council if found guilty.

What are the offences?

- **Failure to display a no smoking sign** - up to £1,000 if prosecuted and convicted by a court or £200 fixed penalty notice on whoever manages or occupies the premises.
- **Smoking in a no smoking place** - up to £200 if prosecuted and convicted or a penalty notice of £50 on the person smoking.
- **Failing to prevent smoking in a Smoke Free place** - up to £2,500 maximum fine on whoever manages or occupies the premises if prosecuted and convicted.

What can I sell?

You can only sell tobacco products that have been legally imported into the UK - anything imported illegally will be seized by Trading Standards, HMRC or the Police. The vast majority of shisha products containing tobacco are not imported legally and will not have had the required duty paid on it.

What warnings do I have to display?

Any premises selling tobacco products has to display large notices stating: "It is illegal to supply tobacco products to anyone under the age of 18." This notice should be displayed in areas where customers can receive tobacco. We can supply copies of this notice upon request.

The water pipes themselves should be labelled with the same written and picture warnings that are on cigarette packs if they are supplied with a tobacco product in them.

Who can I sell to?

No tobacco product can legally be supplied to anyone under 18 years old. Given that water pipes are normally shared, you must check the ages of the whole group and any friends who subsequently join them. It may be sensible to allow only over 18s into the premises. ³

How can I ensure the safety of employees and customers?

Supplying shisha will involve additional risks, which you should assess and control. Risk assessments must be documented where you employ five or more staff. Risks include infectious diseases, burning charcoal and spillages. Staff should be trained to control the risks and respond to incidents.

You should also take the additional risks into account when completing the Fire Risk Assessment and Emergency Plan for the premises. You can get more guidance on these requirements from the East Sussex Fire & Rescue. Fire exits should be unlocked and clearly signposted.

To minimise the transference of infection, water pipe mouthpieces and hoses should be cleaned thoroughly and disinfected between users. Disposable mouthpieces are recommended. If your staff light the pipes, they should use their own personal mouthpiece and then put a clean one onto the pipe.

Approval of a shisha bar/lounge

A shelter must comply with the 50 per cent wall rule. The premises must also have planning permission, a valid fire safety certificate and keep noise, light pollution and exposure to second hand smoke or smoke infiltration into Smoke Free areas to a minimum. A shisha premises will be allowed to operate if the Smoke Free team is satisfied that it complies with all the requirements.

What will happen if I don't follow this advice?

Non-compliant businesses can expect regular visits from the council and their partners until we are satisfied the place is compliant with the Health Act 2006

It is highly likely that the owners of non-compliant businesses will be prosecuted and if you are licensed to sell alcohol, your licence may also be at risk.

Appendix E - Guidelines for Shisha Premises

Guidelines for Shisha Premises



Is Shisha covered by the smokefree legislation?

Yes. The Smokefree (Premises & Enforcement) Regulations 2007 prohibit the use of shisha pipes in all enclosed public places and workplaces. The law prohibits the smoking of tobacco and anything that contains tobacco and any other substance. Therefore, it applies to all manufactured cigarettes, hand-rolled cigarettes, cigars, herbal cigarettes and pipes, including hookah water pipes, whether or not the particular product being smoked is tobacco or not.

Anything that can be smoked is prohibited by this legislation, not just tobacco.

What are the health facts about shisha smoking?

Using a waterpipe to smoke tobacco (or smoke from non-tobacco mixtures) is NOT A SAFE alternative to cigarette smoking. Shisha smokers are at risk of the same kind of diseases as are caused by cigarette smoking, including cancer, heart disease and respiratory disease as well as adverse effects during pregnancy. In addition, the following can be attributed to shisha smoking:

- Using a waterpipe to smoke tobacco poses a serious potential health hazard to smokers and others exposed to the smoke.
- Shisha smoke (even if the shisha mixture does not contain tobacco) contains high levels of chemicals and poisons, including carbon monoxide and heavy metals.
- Many of these chemicals are known to cause mouth and lung cancers, heart disease, respiratory and other diseases.
- Even though it has passed through water, the levels of toxins in shisha smoke can be as high or higher than in cigarette smoke.

- Shisha smokers may absorb higher concentrations of these chemicals because of higher concentrations in the smoke itself, or because they may smoke for several hours at a time and may inhale moisturized, less irritating smoke more deeply.
- In a shisha session lasting 60 minutes, a smoker can inhale as much smoke as a cigarette smoker would inhale from 100 – 200 cigarettes. Shisha and second-hand-smoke.
- Non-smokers, particularly pregnant women, children and the elderly are at risk from breathing in shisha smoke.
- Smokefree legislation was implemented to protect people from the harmful effects of second-hand-smoke in enclosed workplaces and public places. Second-hand smoke from shisha is an extremely harmful mixture of tobacco smoke (or smoke from non-tobacco mixtures) and smoke from the fuel (charcoal).

Legal Considerations

If you are considering purchasing or converting premises where shisha is to be carried out then we advise you to contact the Council, **BEFORE** you start trading or carry out any refurbishment work, to ensure that the premises meets with building, health and safety, fire, environmental, licensing, smokefree, trading standards and planning legislation. This will avoid unnecessary costs from the outset and also, we may be able to assist with the planning and design of your premises.

Under the new Smokefree (Premises & Enforcement) Regulations 2006 nearly all public places and workplaces that are enclosed or substantially enclosed must be smoke-free.

The Health and Safety at Work etc Act 1974 also places a duty on businesses to protect employees, customers and others that come onto their premises to protect them from the harmful effects of second hand-smoke.

For shisha premises both sets of legislation are equally important and have to be complied with at the proposal stage.

Definition of “enclosed premises” is as follows:

Premises will be considered to be “enclosed” if they have a ceiling or roof, and except for doors, windows or passageways are wholly enclosed, whether on a permanent or temporary basis.

Definition of “substantially enclosed” is as follows:

- If 50% of the walls or more are missing, then it is legal to smoke in the area.
- If more than 50% of the walls are present then it is illegal to smoke in the area.

When determining the area of an opening, no account can be taken of openings in which there are doors, windows or other fittings that can be opened or shut.

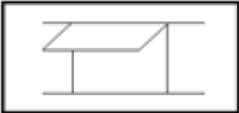
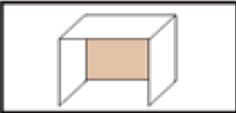
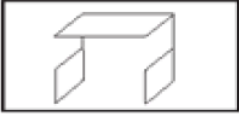
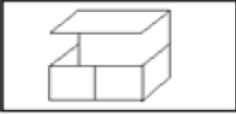
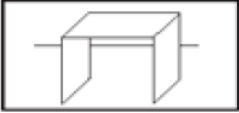


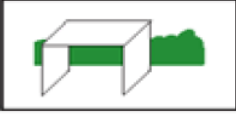
A roof includes any fixed or movable structures, such as canvas awnings.

Any area used for ventilation must not be obstructed by drapes, curtains, etc.

Tents, marquees or similar constructions will also be classified as enclosed premises if they fall within the definition (note that tent/marquee side-panels will be classed as rolled down even when they are rolled up). In general, if an opening or cover can be closed, the 50% rule will be calculated on the basis that those openings are closed.

Therefore, anyone considering starting-up a shisha business is advised to get clear and detailed advice before carrying out any refurbishment work or entering into legally binding contracts.

Smoking Areas

Acceptable	Unacceptable
	
	
	
	

The must not be "enclosed or substantially enclosed". This means an area with a ceiling or roof - except for doors, windows and passageways - that is either enclosed (permanently or temporarily); or has an opening less than half of the area of its walls. This is commonly referred to as the 50% rule. A roof includes any fixed or movable structure, such as canvas awnings. Tents and marquees etc. are also classified as enclosed premises if they fall within the above definition.

"Substantially enclosed" premises have a ceiling or roof, but any openings in the walls have a total area, which is less than half of the area of the walls, including other structures that serve the purpose of walls and constitute the perimeter of the premises.

When determining the area of an opening, no account can be taken of openings in which doors, windows or other fittings can be opened or shut. A roof includes any fixed or moveable structure or device that is capable of covering all or part of the premises, and includes, for example, a retractable canvas awning.

In summary, a smoking area with a roof and walls where the permanent openings have a total area that is less than the total area of walls will be classified as "substantially enclosed" and will not fall within the provisions of the health legislation as a smoking shelter.

Be aware: You need to make sure that you're proposed smoking area is not "substantially enclosed" – if it is then it clearly would not comply with the smoke free regulations, and you will be wasting your time and money.

You should also be aware that siting a smoking shelter too close to walls of adjacent buildings or fences could have the effect of enclosing the structure to the point where it would become "substantially enclosed."

Main Factors

The following factors should be considered carefully to ensure your proposal or premises comply fully with all relevant legislation (not just the Smokefree legislation).

Planning/Building Control Implications

Most shisha premises will require planning permission. Premises that are compliant with the Smokefree legislation are not guaranteed to get planning permission.

Premises that have planning permission are not exempt from complying with Smokefree law. In addition, approval under the Building Regulations may be required.

Trading Standards Implications

It is illegal to sell tobacco-containing products to persons under 18 years of age and businesses need to take steps to ensure this does not happen. Refusals must be noted and be made available for inspection. Suitable signage also needs to be in place.

Tobacco containing products need to be correctly labelled.

Licensing Implications

Shisha premises constructed on licensed premises for customers and staff should be aware of restrictions within their licence, particularly involving outside areas. It is strongly advised that the Premises Licence holder looks carefully through their licence **before** using the premises for shisha smoking as there may have conditions relating to its use. You are advised to look through your license carefully and check what you are licensed to do and if you require a variation?

Access/Egress

The shisha premises must be suitable for everyone to use as stipulated in the Disability Discrimination Act 1995 requirements. The design must consider wheelchair users and therefore be safe for people to enter and leave the premises. It must also consider visual and hearing impairments, and consider the following:

- Any steps must have their edges highlighted with high visibility/contrasting Paint
- Safety and information signs should be in large print or braille (where possible)
- Signs must be positioned where everyone can read them.
- Careful consideration should also be given to how your customers and employees will enter and leave the shisha premises
- Consideration should also be given to vehicles – Have you arranged for car parking, deliveries etc.

Smokefree Areas

Measures should be taken to prevent smoke getting into smokefree areas by the provision of two sets of doors that are offset. These doors should be fitted with closures.

A minimum distance of 1.5m between shisha premises and adjacent properties or other smokefree areas must be maintained at all times to prevent second-hand smoke issues from arising.

Location Considerations

This is probably the most sensitive issue. The positioning of the shisha premises will have an effect on adjoining properties (this includes commercial premises as well as residential properties).

Location of the proposed shisha premises is extremely important to get right at the planning stage, as putting right any mistakes will be costly.

You also need to bear in mind when the premises will be open, i.e., evenings, at night, or at weekends, as this could lead to complaints of noise nuisance, car parking, antisocial behaviour etc.

Where possible shisha premises should be sited away from private housing where smoke and noise may become an environmental issue.

It is the responsibility of business operator and their staff at the premises to ensure noise from all external areas is kept to a minimum. You should display posters asking customers to keep noise to a minimum.

To avoid problems with neighbours the following advice should be considered:

- Shisha premises should be sited away from domestic premises and if possible with some form of insulation between customers and residents to help mitigate the noise.
- Speak to your neighbours and advise them what you plan to do and get their suggestions.
- Display posters advising your customers to keep noise to a minimum in external areas.

Anti-Social Behaviour

Shisha premises will attract young people during evening periods. Try and ensure your premises are monitored and covered by CCTV. This will help ensure groups do not

congregate in these areas. This will also avoid complaints to the police or the local authority by your neighbours.

Security and Lighting

You must ensure you have adequate lighting both inside and outside your premises to allow your customers to enter and leave safely, especially if your premises will be used at night. Lighting can also be a statutory nuisance. You should also think about the direction of lighting and where possible direct it away from any domestic premises.

Noise Nuisance

You must minimise (if not eliminate) noise as a result of loud music/TV's, customers entering or leaving, particularly late at night. This will prevent noise nuisance issues with adjoining premises.

Where there will be regular entertainment, e.g. music, TV's, etc., be aware that this will increase the amount of noise emanating from your premises. Provision of lobby doors predominantly used as an entrance/egress will minimise any such issues. These doors should be fitted with self-closing devices to help minimise the amount of noise that escapes when people enter or leave your premises. This also has the added effect of limiting smoke getting back into your premises.

Heating

If you wish to provide heating in your smoking area then you must fully consider all the health and safety implications. Where possible you must provide permanently fixed radiant heaters positioned so that they cannot be tampered with or pose a burning danger to those within the smoking area. It would be preferable that the heating levels can be altered (by trained employees only), so a suitable temperature can be reached. Where possible it is advised that gas heaters should not be used. These can be easily tampered with and pose an additional fire hazard. However, where there is no alternative the duty holder must complete a risk assessment in accordance with current legal requirements. Regular servicing and maintenance by a Gas Safe registered engineer will also be required.

Employees and Other Persons

Shisha businesses need to ensure that employees and any other persons, i.e. contractors, maintenance persons, local authority officers etc. that come onto the premises are not exposed to the harmful effects of second-hand-smoke. This is a requirement under the Health and Safety at Work etc. Act 1974.

To this end, businesses will need to provide suitable and sufficient risk assessments, identify controls, how safeguards are to be implemented etc.

Overall

The onus is the business operator to comply with all of the above requirements.

Appendix F – Email correspondence dated 18 November 2022

CH CON ENDS 09.02.2023 VALID PCD, PS and PPN (F)

From: Donna Lynsdale

Sent: 18 November 2022 13:14

To: Andrew Cheesman REDACTED; REDACTED; Ellis Cheesman REDACTED

Cc: Brighton.Licensing@sussex.police.uk; Pavement Licensing
<Pavement.Licensing@brighton-hove.gov.uk>; Mylene Hayward

<Mylene.Hayward@brighton-hove.gov.uk>

Subject: Monarch Restaurant & Bar, 46-50 Kings Road, Brighton BN1 1NA -
2022/03141/LICPRM/EH

Dear Andrew Cheesman

Monarch Restaurant & Bar, 46-50 Kings Road, Brighton BN1 1NA

Premises Licence Number: 1445/3/2021/04304/LAPRET

I am writing to you in your capacity as the Designated Premises Supervisor (DPS) for the above premises.

On Friday, 11 November 2022, you were visited by Sussex Police Licensing. It was noted during their visit you had customers smoking Shisha and Cigarettes/Tobacco in an enclosed area.

It was very disappointing that you were not complying. In November 2021, following a telephone conversation with Ellis, I sent guidance on Shisha and Smoking Shelters (copy of email attached). However, you clearly had not utilised or followed any of this guidance provided.

In line with Chapter 1 of Part 1 of the Health Act 2006 (smoke-free premises, places and vehicles) it is against the law to permit smoking in any area of a premises that is considered to be enclosed or substantially enclosed. The definition for enclosed and substantially enclosed are detailed in The Smoke-Free (Premises and Enforcement) Regulations 2006 (see below for extract). But, put simply, for a structure to be classified as 'outdoors' it can have:

- A roof with 50% of the walls. (If a shelter is nearer than 1.5 metres to any other walls this would classify as one of the shelter walls); or
- Have no roof and 3 -4 walls e.g. a walled courtyard with no roof. If a roof was put over it (even if the roof is temporary) it would not be compliant, the roof would have to be removed.

Please be aware that if an officer visits the above premises and finds evidence of smoking, a person found smoking is likely to be issued with a fixed penalty of £50 or if

convicted by a court, receive a fine of up to £200. Alternatively, a person who manages or controls the premises may commit the offence of **failing to prevent smoking in a smoke-free place**. In this case, a fine of up to £2500 may be imposed on whoever manages or controls the smoke free premises.

I have attached further guidance to this email.

A copy of this email has also been sent to Police Licensing and Pavement Licensing.

Please acknowledge receipt of this email and advise on actions you will be taking to address the above breaches.

Regards

Donna Lynsdale | Fair Trading Officer & Licensing Officer (Trading Standards & Licensing), Safer Communities
Brighton & Hove City Council, 2nd Floor, Bartholomew House, Bartholomew Square,
Brighton BN1 1JP
T 01273 292494 | M REDACTED | donna.lynsdale@brighton-hove.gov.uk

From: Andrew Cheesman REDACTED
Sent: 18 November 2022 17:55
To: Donna Lynsdale <Donna.Lynsdale@brighton-hove.gov.uk>
Cc: REDACTED; Brighton.Licensing@sussex.police.uk; Pavement Licensing <Pavement.Licensing@brighton-hove.gov.uk>; REDACTED; REDACTED; REDACTED; REDACTED; REDACTED; REDACTED; REDACTED; REDACTED
Subject: Re: Monarch Restaurant & Bar, 46-50 Kings Road, Brighton BN1 1NA - 2022/03141/LICPRM/EH

Dear All

We installed some removable windows last week due to trying to stop the drug dealers leaning over the fence interfering with customers, this happens any time from 2300hrs onwards on ship street Kings Road & Middle Street through to 0600hrs the following day, this allows us to meet our council & Police requirement of a substantial boarder, all of which can be moved in parts.

As you all know by my numerous videos & images to Police & pleas for help from councillors in my area REDACTED for better lighting & street furniture etc to try to help us improve the area , for which council officers have still ignored us despite REDACTED chasing them, we have been liaising with Police Licencing for may many months taking images of dealers & their vehicles & helping attacked victims.

All off the windows are removable see pic below of 6th November without windows, the windows were installed on the 10th November.

Unfortunately I was not on duty until 2300hrs so missed Licencing visit.

I can assure you we have had well over 10 Police Licencing spot checks (8 officers in one night) visits this year with no faults found for our premises including the Shisha which we have had throughout the year, this was an oversight with the new windows put in which will not happen going forward, please bear in mind your guidance was a year ago & hands up we did not check it before installing windows.

Donna please can I request you to pop down so we can see wether we can agree going forward as after seeing your diagrams it may be difficult to do Shisha.

Councillors, I have a large bundle of evidence, video images & emails what's Apps, of our area late at night particularly 0300-0600hrs I would like to show you so we can all work together for a better seafront, as many of you know this is my 25th year on the Seafront and I've never seen it so lawless.

Police Licencing are brilliant & extremely helpful, but the Police generally are very understaffed with operation Marble finishing at 0400hrs as it did 20 years ago & it hasn't changed with the times, even with the clubs now open to 0500hrs often later in the summer & 999 is not always very responsive as my evidence will show & REDACTED also has some records off.

So in summary yes I acknowledge we FAILED with the Shisha, BUT you do need to see the bigger picture of the area on why we put the temporary windows in but in our keenest overlooked the 50/50 rule.

We now find our selves in particularly after 0300hrs a troubled area, we've added more lighting more cctv and more security & an ID scanner but with no visible help from our peers & other licence premises not reporting incidents (hiding them) we feel a bit let down.

I've worked many years with many of you with our Hospital transport, special needs Taxis, Buddies24hour / Monarch Taxi marshals, starting the safe haven project & you know I only ask for something if it's needed & at the moment the top seafront road is neglected I'm afraid & needs help to transform the seafront top road back to where we were a few years ago with no open drug dealers which in turn cause the aggressive behaviour & fights.

I'm open to any visits that we can make the area better, as REDACTED can confirm I offered my own money to help make the are more friendly including bikes racks but this has not been accepted, very disappointing.



Best wishes,

Andrew Cheesman

Mobile REDACTED
Office. REDACTED