



**CARDIFF COUNCIL**

**LICENSING SUB-COMMITTEE**

**19 February 2016**

**REPORTS**

## *Licensing Sub-Committee - 19/02/2016*

The Sub-Committee is requested to consider and determine the following applications.

<i>Co.</i>	<i>No.</i>	<i>Premises</i>	<i>Address</i>
1125	00180	Floyds	23 High Street, Cardiff
1126	01543	Floyds Bar Café	23 High Street, Cardiff

**LICENSING SUB-COMMITTEE: 19 February 2016**

**Report of the Head of Regulatory Services**

**Application for Premises Licence - Review**

**Application No: CCCP/00180**

**Name of Premises: Floyds**

**Ward: Cathays**

**1. Application**

1.1 An application for a Premises Licence - Review, has been received in respect of the Premises Licence held by Mr Kelvin Evans for Floyds, 23 High Street, Cardiff, CF10 1PT .

1.2 The Premises Licence allows the following licensable activity to be carried out on the **first and second floor** of the premises:

(1) In respect of the following licensable activities:

1. The sale by retail of alcohol for consumption on and off the premises
2. The provision of regulated entertainment in the form of live music, recorded music and performance of dance.
3. The provision of late night refreshment.

(2) The hours that the premises may be open to the public are not specified.

(3) The premises are permitted to provide licensable activities during the following hours:

1. The sale by retail of alcohol for consumption on and off the premises:

Monday to Wednesday: 10:00 to 00:00

Thursday to Saturday: 10:00 to 02:00

Sunday: 12:00 to 00:30

On the Sunday preceding a Bank Holiday the terminal hour shall be 02:00 with the exception of Easter Sunday when the terminal hour shall be 00:30

Except that:

(a) the permitted hours shall end at midnight on any day on which music and dancing is not provided after midnight; and

(b) on any day that music and dancing end between midnight and 02:00, the permitted hours shall end when the music and dancing ends.

2. In relation to the morning on which summer time begins substitution of references to 03:00 for references to 02:00 shall have effect.

3. Except as provided in (4) below, the permitted hours on Sundays shall extend until 00:30 following, except that

(a) the permitted hours shall end at midnight on any Sunday on which music and dancing is not provided after midnight;

(b) where music and dancing end between midnight on any Sunday and thirty minutes past midnight, the permitted hours on that Sunday shall end when the music and dancing ends.

4. On Sundays immediately before bank holidays other than Easter Sunday, the permitted hours shall extend until 02:00 except that

(a) the permitted hours shall end at 00:00 on any Sunday on which music and dancing is not provided after midnight;

(b) where music and dancing end between midnight on any Sunday and 02:00, the permitted hours on that Sunday shall end when the music and dancing end.

On New Year's Eve, from the end of the permitted hours on New Year's Eve to the start of the permitted hours on the following day.

A period of 30 minutes is allowed at the end of each period of permitted hours for the consumption of intoxicating liquor on the premises by persons taking meals there provided the liquor was supplied ancillary to a meal.

5. The provision of regulated entertainment in the form of live music, recorded music, performance of dance:

Monday to Wednesday: 10:00 to 00:00

Thursday to Saturday: 10:00 to 02:00

Sunday: 12:00 to 00:30, except that on the Sunday preceding a Bank Holiday the terminal hour shall be 02:00 with the exception of Easter Sunday when the terminal hour shall be 00:30

6. The provision of late night refreshment:

Monday to Sunday: 23:00 until the permitted closing hour

2. **Details of the Application for Review.**

- 2.1 An application for Review has been received. A copy of the application is enclosed with the report. Brief details are:

Cardiff Council, Pollution Control Team has made an application for review of the premises license at 23 High Street, Cardiff, CF10 1PT on the grounds that the operation of the premises is not conducive to the licensing objective, 'Prevention of Public Nuisance'

The application is supported by evidence that the activity of regulated entertainment at 23 High Street, persistently disturbs local residents in the form of live and amplified music. Whilst the first reports of loud music were received in 2011, complaints have continued on a regular basis which meant the Pollution Control Officers witnessing statutory noise nuisance on numerous occasions within several different flats located in the complex of 26 High Street.

Despite one Abatement Notice being served upon Kelvin Evans the DPS and PLH of 00180, the premises also runs off a second Premises License, 01543. Each DPS for 01543, has also been served with an Abatement Notice when the responsibility of the premises changes hands. In respect of this premises license, 00180, complaints continued to be received and thirty one offences (contraventions of the abatement notice) have been witnessed. With this in mind it is anticipated that further noise nuisance complaints will be received from residents.

Pollution Control therefore wish to apply for a review of the premises licence in order to prevent further public nuisance with emphasis to be placed on:

- \* Improved control of recorded music indoors at the premises.
- \* The reduction of recorded music until 23.00 on any day.
- \* No live music to be played at the premises at any time.
- \* All sources of amplified sound to be tested and connected through a suitable and sufficient noise limiter and installed to a level which is agreed by the local authority. All power points are to be connected to the limiter.

3. **Relevant Representations**

The application for review has been advertised on the premises as required by the legislation. Any representations received will be enclosed with the report.

**4. Legal Considerations.**

- 4.1 Any decision must be taken following consideration of the representations received with a view to promoting the licensing objectives which are:

Prevention of crime and disorder  
Public Safety  
Prevention of Public Nuisance  
Protection of Children from Harm

- 4.2 In each case the Sub-Committee may make the following determination

- a) To take no action.
- b) To modify the conditions of the licence, by altering, omitting or adding to them, where relevant.
- c) To exclude a licensable activity from the scope of the licence.
- d) Remove the Designated Premises Supervisor.
- e) Suspend the Premises Licence for a period not exceeding three months.
- f) Revoke the Premises Licence.

- 4.3 All decisions taken by the Sub-Committee must (a) be within the legal powers of the Council and its Committees; (b) comply with any procedural requirement imposed by law; (c) be undertaken in accordance with the procedural requirements imposed by the Council eg. standing orders and financial regulations; (d) be fully and properly informed; (e) be properly motivated; (f) be taken having regard to the Council's fiduciary duty to its taxpayers; and (g) be reasonable and proper in all the circumstances.

**5. Recommendation.**

It is recommended that the application for Review be considered and determined on its merits.

**Dave Holland**  
**Regulatory Services**

**29 January 2016**



**CARDIFF**  
**CAERDYDD**

The City and County of Cardiff Council  
Licensing Section, Room 203, City Hall,  
Cardiff, CF10 3ND

Reference number:

**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 in black ink. Use additional sheets if necessary.  
You may wish to keep a copy of the completed form for your records.

**I Cardiff Council Pollution Control**

*(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**

Floyds  
23 High Street  
Cardiff  
CF10 1PT

**Post town** CARDIFF

**Post code (if known)** CF10 1PU

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

Kelvin Evans

**Number of premises licence or club premises certificate (if known)**

00180

**Part 2 - Applicant details**

I am Cardiff Council Pollution Control

Please tick ✓ 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)

3) a member of the club to which this application relates (please complete (A) below)

**(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)**

Please tick ✓ yes

Mr

Mrs

Miss

Ms

Other title  
(for example, Rev)

Surname

First names

Please tick ✓ yes

I am 18 years old or over

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

**(B) DETAILS OF OTHER APPLICANT**

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<b>Name and address</b>
<b>Telephone number (if any)</b>
<b>E-mail address (optional)</b>

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

Name and address POLLUTION CONTROL CITY HALL CATHAYS PARK CARDIFF CF10 3ND
Telephone number (if any) <b>02920 871650</b>
E-mail address (optional) Noise&airpollution@cardiff.gov.uk

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

- Please tick one or more boxes ✓
- 1) the prevention of crime and disorder
  - 2) public safety
  - 3) the prevention of public nuisance
  - 4) the protection of children from harm

**Please state the ground(s) for review (please read guidance note 2)**

Cardiff Council, Pollution Control Team has made an application for review of the premises license at 23 High Street, Cardiff, CF10 1PT on the grounds that the operation of the premises is not conducive to the licensing objective, 'Prevention of Public Nuisance'

The application is supported by evidence that the activity of regulated entertainment at 23 High Street, persistently disturbs local residents in the form of live and amplified music. Whilst the first reports of loud music were received in 2011, complaints have continued on a regular basis which meant the Pollution Control Officers witnessing statutory noise nuisance on numerous occasions within several different flats located in the complex of 26 High Street.

Despite one Abatement Notice being served upon Kelvin Evans the DPS and PLH of 00180, the premises also runs off a second Premises License, 01543. Each DPS for 01543, has also been served with an Abatement Notice when the responsibility of the premises changes hands. In respect of this premises license, 00180, complaints continued to be received and thirty one offences (contraventions of the abatement notice) have been witnessed. With this in mind it is anticipated that further noise nuisance complaints will be received from residents.

Pollution Control therefore wish to apply for a review of the premises licence in order to prevent further public nuisance with emphasis to be placed on:

- Improved control of recorded music indoors at the premises.
- The reduction of recorded music until 23.00 on any day.
- No live music to be played at the premises at any time.
- All sources of amplified sound to be tested and connected through a suitable and sufficient noise limiter and installed to a level which is agreed by the local authority. All power points are to be connected to the limiter.

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

Numerous complaints of loud music have been received by Pollution Control since 2011 in relation to the premises located at 23 High Street, Cardiff, known as Floyds, with the most recent being 20<sup>th</sup> December 2015.

Noise officers have repeatedly brought to the attention of each PLH, DPS, manager(s) and other members of staff, the complaints received from residents pertaining to loud music. Noise officers have continually expressed their concerns of loud music from the premises and the likelihood and effect of its negative impacts upon nearby residents to the clubs management.

Since the service of an Abatement Notice in 2011 upon Kelvin Evans, the Designated Premises Supervisor (DPS), and Premises Licence Holder (PLH), numerous meetings have been held with Pollution Control Officers, Kelvin Evans, his son Ashley Boucher and a member of staff Zack Edwards. (A copy of the Abatement Notice can be found in Appendix A of the report).

Despite the meetings and assurances from the DPS and his staff, the department had witnessed sixteen offences between August 2012 and December 2012, so regular and extreme were the offences, a warrant was granted by a Magistrates Court to undertake a seizure of all equipment used in the emission of amplified music. The responsible DPS at the time, was successfully prosecuted for failure to comply with the requirements of an Abatement Notice and for wilfully causing a Statutory Noise Nuisance due to amplified music. (A copy of the prosecution report can be found in Appendix B of this report).

During the prosecution which took place between 4<sup>th</sup> September 2013 and 22<sup>nd</sup> November 2013, the Pollution Control Department witnessed six additional offences of the Abatement Notice and one further offence in December 2013. (Copies of the official notifications of offence can be found in Appendix C of this report). The then DPS and PLH Kelvin Evans, formally removed himself as DPS and his son Ashley Boucher took over. The PLH became 'Floyds Cardiff Limited'.

Whilst the narrative below is the same as that in the review for license 01543, the letter dated 22<sup>nd</sup> November 2013 has been included as Appendix Ci. The letter was addressed to Mr Clive Pursey, Council Solicitor and formally signed by Kelvin Evans, expressing his wishes that he has no more association with the Premises License and will undergo a formal transfer.

It must however be noted that the transfer of DPS and PLH only occurred on License reference 01543, and not 00180. Therefore Mr Kelvin Evans still remains the PLH and DPS on this premises license which is also requested to be reviewed.

Following on from the successful prosecution, a meeting at 23 High Street was arranged for 11<sup>th</sup> December 2013, with Pollution Control Officers, Ashley Boucher DPS, Zack Edwards – member of staff, and Paul Trew- Acoustic Consultant. The aim of the meeting was to set a noise limiter to a level where the volume could not be increased beyond a certain level, and tamper proof seals were used to ensure the limiter was not overridden. Photographs were taken by Paul Trew the Acoustic consultant as evidence and sent through to the department for reference. Copies of these photographs can be found in Appendix D of this report.

Unfortunately complaints continued to be received by the department and on 17<sup>th</sup> January 2014, Night Time Noise Officers attended 23 High Street, Cardiff as they had heard loud music in a complainant's property. The Officers attended 23 High Street and spoke to Zack Edwards at the time, as well as taking photographs of the tamper proof seals which had been altered. These photographs can be found in Appendix E of this report.

On 22<sup>nd</sup> January 2014 a letter was sent to Ashley Boucher DPS, informing him of the loud music and tampered seals which Officers witnessed on 17<sup>th</sup> January 2014, which also requested that a

further meeting be held. This letter can be found in Appendix F of this report. No response was made by Ashley Boucher following the request for a meeting, however an email was sent to the case office, from Paul Trew- Acoustic Consultant on 27<sup>th</sup> January 2014 where he had advised that he visited 23 High Street, Cardiff.

The content of the email stated that the glue on the stickers had been dissolved by the condensate of the smoke machine. New photographs were taken and forward in the email. The email conversation and photographs can be found in Appendix Fi, of this report.

Additional complaints were made by residents on 8<sup>th</sup> February 2014 due to amplified music. Officers attended the complainant's property and found that the music was audible and likely to be a statutory nuisance. It was the decision of the case officer to explore the reason as to why the volumes of the music were being increased, and following a phone call to Ashley Boucher on 11<sup>th</sup> February 2014, a site meeting was held between Pollution Control Officers, Ashley Boucher DPS, Zack Edwards- member of staff and Paul Trew-Acoustic Consultant on 12<sup>th</sup> February 2014.

During the meeting it was discovered that not all amplified equipment were connected to the noise limiter as was advised in December 2013. This meant that the music levels could be increased and that the use of the limiter was redundant. It was agreed at the meeting that by 14<sup>th</sup> February 2014, brackets would have been fabricated to secure the volume controls, and that the volume control would not be turned past the halfway mark. Photographs were taken of each amplifier for reference and can be found in Appendix G of this report.

Despite assurances during the meeting, a letter was hand delivered to 23 High Street and )  
J... .. at 4.30pm on 14<sup>th</sup> February 2014, detailing the meeting of the 12<sup>th</sup> February and advising that the limiter is ineffective in its current guise. Furthermore, should the music be witnessed from a complainants property which amounts to a statutory nuisance, the department would have no choice other than to serve an Abatement Notice. A copy of this letter can be found in Appendix H of this report.

On 23<sup>rd</sup> February 2014 Night Time Noise Officers were called to attend a flat in ) High Street as they were affected by loud music emanating from 23 High Street, Cardiff. The Officers were satisfied that the volume of the music amounted to a statutory noise nuisance and visited the club. Whilst at the club they spoke to Zack Edwards to inform him of what they witnessed and took photographs of the amplifiers which had not been connected through the limiter. The volume dials had moved. A copy of the photographs taken that night can be found in Appendix I of this report.

On 24<sup>th</sup> February 2014, an Abatement Notice was served upon Ashley Boucher DPS OF Premises License 01543, in relation to the Statutory Noise Nuisance witnessed by the Night Time Noise Officers, this can be found as in Appendix J of this report.

On 13<sup>th</sup> March 2014, a third site meeting was held at 23 High Street in the presence of Pollution Control Officers, Ashley Boucher DPS, Zack Edwards- member of staff and Paul Trew- Acoustic Consultant. The aim of the meeting was to witness securing of the volume controls on the amplifiers. The brackets were made of flimsy plastic and secured by numerous tamper proof seal. The Pollution Control Officers were not enamoured with the material that was to prevent the dials being altered. A letter dated 14<sup>th</sup> March 2014 was sent to Ashley Boucher-DPS, conforming the visit and concerns regarding the limiter. This letter can be found in Appendix K in the report.

For six weeks between March and May 2014, the complainant who resided at ) High Street was away, and therefore a night time assessment was not able to be carried out until May 11<sup>th</sup> 2014. Pollution Control Officers, Zack Edwards, and Paul Trew- Acoustic Consultant attended the meeting at 22.00, where it was established that the limiter as was set on 13<sup>th</sup> March 2014 was still at the same level.

However, despite the efforts of the Pollution Control team, two offences of the Abatement Notice

were witnessed on 23<sup>rd</sup> May 2014 and 31<sup>st</sup> May 2014. The two notifications of offence can be found as Appendix L in this report.

The formal notification of offence, for the offence dated 31<sup>st</sup> May was hand delivered to the registered address of the DPS- Ashely Boucher on 3<sup>rd</sup> June 2014. On 4<sup>th</sup> June 2014, an application was received by the Licensing Department at Cardiff Council to vary the DPS to Zack Edwards. As a result the Pollution Control Department served an Abatement Notice upon Zack Edwards as the Person Responsible for likely occurrence of a Statutory Noise Nuisance due to amplified music. The Abatement Notice can be found as Appendix M in this report.

Furthermore an application was received by the Licensing team on 2<sup>nd</sup> July 2014 to transfer the Premises Licence Holder from 'Floyds Cardiff Limited' to 'Barsfresh Limited' on Premises License 01543. The PLH, and DPS for Premises License 00180 remains Kelvin Evans.

Due to an appeal of the original sentencing of Mr Kelvin Evans, the appeal was heard at Cardiff Crown Court in November 2014, whereby the original finding was upheld.

In September 2015, the Pollution Control department started to receive complaints about loud music emanating from 23 High Street. These complaints have resulted on officers having been called into a complainants property on seven occasions resulting in seven offences of the Abatement Notice served upon Mr Evans, under Section 80 of the Environmental Protection Act 1990. I enclose a copy of the Notifications of Offence as Appendix N.

Since the notifications of offence have been hand delivered to Mr Evans, he has responded to the department via telephone to Mr W. Lane, Operational Manager, Neighbourhood Services, and in writing to Mrs Williams, case officer. Whilst the letter dated 2<sup>nd</sup> December 2015, states that Mr Evans is not connected with the business which operates out of 23 High Street, I can confirm that at the date of writing this review 29<sup>th</sup> December 2015, Mr Evans is still the DPS and PLH of premises License 00180. I attach a copy of Mr Evans letter as Exhibit O.

Research with Companies House established that 'Barsfresh Limited' was established on 26<sup>th</sup> June 2014, a copy of the registration can be found in Appendix P of this report.

Kelvin Evans, Ashley Boucher and Zack Edwards, all remain associated with the premises known as Floyds, 23High Street, Cardiff, CF10 1PN.

Kelvin Evans owns the building known as 23 High Street, Cardiff, as well as holding one of two premises licences for the building which includes regulated entertainment, reference 00180, for which he is DPS and PLH.

Ashley Boucher is Kelvin Evans son, whilst he was DPS, his registered address was that of [redacted] where Kelvin Evans lives. He is also a registered director of 'Barsfresh Limited' as registered with Companies House, which runs off Premises License 01543.

Zack Edwards is currently the DPS of 'Barsfresh Limited' and is also named as a director of the company which is registered with Companies House.

A statement has been provided by Kirstie Barker of the Licensing team detailing the history of the PLH and DPS, this can be found in Appendix Q of this report.

A statement has also been provided by PC Tim Davies of South Wales Police, who works in the Cardiff Police Licensing team. A copy of this statement can be found in Appendix R.

Since the Pollution Control department have been investigating complaints of noise from 23 High Street, the department have served one Abatement Notice on Mr Evans for the premises license 00180, and three Abatement Notices on two other DPS and one PLH, relating to Premises License 01543. In respect of Mr Evans, officers of the department have witnessed 31 breaches of

the Abatement Notice served upon him, and obtained a warrant from the magistrates court to undertake a seizure of all amplified equipment used in the emission of music, including a successful prosecution and appeal.

**Summary**

- Complaints relating to 23 High Street, Cardiff were first received in 2011.
- Numerous complaints have been received by the department in respect of loud music emanating from 23 High Street, from several different properties.
- Since the department has been investigating complaints of noise from music one Abatement Notice has been served on Mr Evans for Premises License 00180.
- 31 breaches of the Abatement Notice under the Environmental protection Act 1990 have been witnessed by officers from Pollution Control.
- There are two Premises Licenses for the same building.
- The Premises License Holder and Designated Premises Supervisor has not changed since enforcement action has been taken, by means of formal notification of offence, prosecution, seizure of noise equipment.
- After the seizure and prosecution, the noise nuisance has continued.
- Residents from one of the flats at High Street have had to leave or temporarily relocate as the noise was continuing until the premises license allowed.
- Management of the noise emanating from 23 High Street is not effective.
- The current Premises licence allows regulated entertainment to cease at 02.00hours.
- Live music is unable to be controlled by a noise limiter.

**T**

Have you made an application for review relating to the premises before

NO

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**  
NO



Please tick ✓

yes

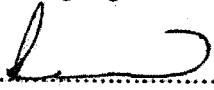
- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

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

**Part 3 – Signatures** (please read guidance note 4)

**Signature of applicant or applicant's solicitor or other duly authorised agent** (please read guidance note 5). If signing on behalf of the applicant please state in what capacity.

Signature



Date 30<sup>th</sup> December 2015

Capacity Senior Environmental Health Officer

<b>Contact name (where not previously given) and postal address for correspondence associated with this application</b> (please read guidance note 6) Rebecca Williams Pollution Control Cardiff Council City Hall Cathays Park	
<b>Post town</b> Cardiff	<b>Post Code</b> CF10 3ND
<b>Telephone number (if any)</b> 02920 871650	
<b>If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)</b> noise&airpollution@cardiff.gov.uk	

**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.

**LICENSING SUB-COMMITTEE: 19 February 2016**

**Report of the Head of Regulatory Services**

**Application for Premises Licence - Review**

**Application No: CCCP/01543**

**Name of Premises: Floyds Bar Café**

**Ward: Cathays**

**1. Application**

1.1 An application for a Premises Licence - Review, has been received in respect of the Premises Licence held by Barsfresh Limited for the Floyds Bar Café, 23 High Street, Cardiff, CF10 1PT.

1.2 The Premises Licence allows the following licensable activity to be carried out in the **basement, ground floor, first and second floor** of the premises:

(1) In respect of the following licensable activities:

1. The sale by retail of alcohol for consumption on and off the premises.
2. The provision of regulated entertainment in the form of films, indoor sporting events, live music, recorded music, performances of dance and anything of a similar description.
3. The provision of late night refreshment.

(2) Unless otherwise indicated the premises may be open to the public during the following hours and for any hours consequential to the non standard timings:

Monday to Sunday 07:00 to 02:30

Up to 12 extensions of one hours (excluding TEN's) each year. The operator will submit written details of such an occasion to Police and Council Enforcement Officer at least 7 days prior.

(3) The premises are permitted to provide licensable activities during the following hours:

1. The sale by retail of alcohol for consumption on and off the premises:

Monday to Sunday: 10:00 to 02:00

2. The provision of regulated entertainment in the form of films, indoor sporting events, live music, recorded music, performances of dance and anything of a similar description (all indoors only):

Monday to Sunday: 10:00 to 02:00

3. The provision of late night refreshment (indoors):

Monday to Sunday: 23:00 to 02:00

4. Up to 12 extensions of one hours (excluding TEN's) each year. The operator will submit written details of such an occasion to Police and Council Enforcement Officer at least 7 days prior.

**2. Details of the Application for Review.**

2.1 An application for Review has been received. A copy of the application is enclosed with the report. Brief details are:

Cardiff Council, Pollution Control Team has made an application for review of the premises license at 23 High Street, Cardiff, CF10 1PT on the grounds that the operation of the premises is not conducive to the licensing objective, 'Prevention of Public Nuisance'

The application is supported by evidence that the activity of regulated entertainment at 23 High Street, persistently disturbs local residents in the form of live and amplified music. Whilst the first reports of loud music were received in 2011, complaints have continued on a regular basis which meant the Pollution Control Officers witnessing statutory noise nuisance on numerous occasions within several different flats located in the complex of 26 High Street.

Despite four Abatement Notices being served when the responsibility of the premises changed hands, complaints continued to be received, and twenty nine offences (contraventions of the notice) have been witnessed. With this in mind it is anticipated that further noise nuisance complaints will be received from residents.

Pollution Control therefore wish to apply for a review of the premises licence in order to prevent further public nuisance with emphasis to be placed on:

- \* Improved control of recorded music indoors at the premises.
- \* The reduction of recorded music until 23.00 on any day.
- \* No live music to be played at the premises at any time.
- \* All sources of amplified sound to be tested and connected through a suitable and sufficient noise limiter and installed to a level which is agreed by the local authority. All power points are to be connected to the limiter.

3. **Relevant Representations**

The application for review has been advertised on the premises as required by the legislation. Any representations received will be enclosed with the report.

4. **Legal Considerations.**

- 4.1 Any decision must be taken following consideration of the representations received with a view to promoting the licensing objectives which are:

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Public Safety  
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- a) To take no action.
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- c) To exclude a licensable activity from the scope of the licence.
- d) Remove the Designated Premises Supervisor.
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- f) Revoke the Premises Licence.

- 4.3 All decisions taken by the Sub-Committee must (a) be within the legal powers of the Council and its Committees; (b) comply with any procedural requirement imposed by law; (c) be undertaken in accordance with the procedural requirements imposed by the Council eg. standing orders and financial regulations; (d) be fully and properly informed; (e) be properly motivated; (f) be taken having regard to the Council's fiduciary duty to its taxpayers; and (g) be reasonable and proper in all the circumstances.

5. **Recommendation.**

It is recommended that the application for Review be considered and determined on its merits.

Dave Holland  
Regulatory Services

29 January 2016



**CARDIFF**  
**CAERDYDD**

The City and County of Cardiff Council  
Licensing Section, Room 203, City Hall,  
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Reference number:

**Application for the review of a premises licence or club premises certificate under the  
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**I Cardiff Council Pollution Control**

*(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**

<b>Postal address of premises or, if none, ordnance survey map reference or description</b> Barsfresh Limited 23 High Street Cardiff CF10 1PT	
<b>Post town</b> CARDIFF	<b>Post code (if known)</b> CF10 1PU

<b>Name of premises licence holder or club holding club premises certificate (if known)</b> Barsfresh Limited
--

<b>Number of premises licence or club premises certificate (if known)</b> 01543
--

**Part 2 - Applicant details**

I am Cardiff Council Pollution Control

Please tick ✓ 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)

3) a member of the club to which this application relates (please complete (A) below)

**(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)**

Please tick ✓ yes

Mr

Mrs

Miss

Ms

Other title  
(for example, Rev)

Surname

First names

Please tick ✓ yes

I am 18 years old or over

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

**(B) DETAILS OF OTHER APPLICANT**

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<b>Name and address</b>
<b>Telephone number (if any)</b>
<b>E-mail address (optional)</b>

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

Name and address POLLUTION CONTROL CITY HALL CATHAYS PARK CARDIFF CF10 3ND
Telephone number (if any) 02920 871650
E-mail address (optional) Noise&airpollution@cardiff.gov.uk

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

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

Please tick one or more boxes ✓

- 
- 
- 
-



**Please state the ground(s) for review (please read guidance note 2)**

Cardiff Council, Pollution Control Team has made an application for review of the premises license at 23 High Street, Cardiff, CF10 1PT on the grounds that the operation of the premises is not conducive to the licensing objective, 'Prevention of Public Nuisance'

The application is supported by evidence that the activity of regulated entertainment at 23 High Street, persistently disturbs local residents in the form of live and amplified music. Whilst the first reports of loud music were received in 2011, complaints have continued on a regular basis which meant the Pollution Control Officers witnessing statutory noise nuisance on numerous occasions within several different flats located in the complex of 26 High Street.

Despite four Abatement Notices being served when the responsibility of the premises changed hands, complaints continued to be received, and twenty nine offences (contraventions of the notice) have been witnessed. With this in mind it is anticipated that further noise nuisance complaints will be received from residents.

Pollution Control therefore wish to apply for a review of the premises licence in order to prevent further public nuisance with emphasis to be placed on:

- Improved control of recorded music indoors at the premises.
- The reduction of recorded music until 23.00 on any day.
- No live music to be played at the premises at any time.
- All sources of amplified sound to be tested and connected through a suitable and sufficient noise limiter and installed to a level which is agreed by the local authority. All power points are to be connected to the limiter.

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

Numerous complaints of loud music have been received by Pollution Control since 2011 in relation to the premises located at 23 High Street, Cardiff, known as Floyds.

Several complaints continue to be received every month with the most recent being 20<sup>th</sup> December 2015.

Noise officers have repeatedly brought to the attention of each DPS, manager(s) and other members of staff, the complaints received from residents pertaining to loud music.

Noise officers have continually expressed their concerns of loud music from the premises and the likelihood and effect of its negative impacts upon nearby residents to the clubs management.

Since the service of an Abatement Notice in 2011 upon Kelvin Evans, the then Designated Premises Supervisor (DPS), and Premises Licence Holder (PLH), numerous meetings have been held with Pollution Control Officers, Kelvin Evans, his son Ashley Boucher and a member of staff Zack Edwards. (A copy of the Abatement Notice can be found in Appendix A of the report).

Despite the meetings and assurances from the DPS and his staff, the department had witnessed sixteen offences of the Environmental Protection Act between August 2012 and December 2012, so regular and extreme were the offences, a warrant was granted by a Magistrates Court to undertake a seizure of all equipment used in the emission of amplified music. The responsible DPS at the time, was successfully prosecuted for failure to comply with the requirements of an Abatement Notice and for wilfully causing a Statutory Noise Nuisance due to amplified music. (A copy of the prosecution report can be found in Appendix B of this report).

During the prosecution which took place between 4<sup>th</sup> September 2013 and 22<sup>nd</sup> November 2013, the Pollution Control Department witnessed six additional offences of the Abatement Notice and one further offence in December 2013. (Copies of the official notifications of offence can be found in Appendix C of this report). The then DPS and PLH Kelvin Evans, formally removed himself as DPS from this premises license in a formal letter dated 22<sup>nd</sup> November 2013. This can be found in appendix Ci. From receipt of this letter Kelvin Evans son Ashley Boucher took over and became the DPS,. The PLH became 'Floyds Cardiff Limited'.

Following on from the successful prosecution, a meeting at 23 High Street was arranged for 11<sup>th</sup> December 2013, with Pollution Control Officers, Ashley Boucher DPS, Zack Edwards – member of staff, and Paul Trew- Acoustic Consultant. The aim of the meeting was to set a noise limiter to a level where the volume could not be increased beyond a certain level, and tamper proof seals were used to ensure the limiter was not overridden. Photographs were taken by Paul Trew the Acoustic consultant as evidence and sent through to the department for reference. Copies of the photograph can be found in Appendix D of this report.

Unfortunately complaints continued to be received by the department and on 17<sup>th</sup> January 2014, Night Time Noise Officers attended 23 High Street, Cardiff as they had heard loud music in a complainant's property. The Officers attended 23 High Street and spoke to Zack Edwards at the time, as well as taking photographs of the tamper proof seals which had been altered. These photographs can be found in Appendix E of this report.

On 22<sup>nd</sup> January 2014 a letter was sent to Ashley Boucher DPS, informing him of the loud music and tampered seals which Officers witnessed on 17<sup>th</sup> January 2014, which also requested that a further meeting be held. This letter can be found in Appendix F of this report. No response was made by Ashley Boucher following the request for a meeting, however an email was sent to the case officer Miss R L Thomas, from Paul Trew- Acoustic Consultant on 27<sup>th</sup> January 2014 where he had advised that he visited 23 High Street, Cardiff.

The content of the email stated that the glue on the stickers had been dissolved by the condensate

of the smoke machine. New photographs were taken and forward in the email. The email conversation and photographs can be found in Appendix Fi, of this report.

Additional complaints were made by residents on 8<sup>th</sup> February 2014 due to amplified music. Officers attended the complainant's property and found that the music was audible and likely to be a statutory nuisance. It was the decision of the case officer to explore the reason as to why the volumes of the music were being increased, and following a phone call to Ashley Boucher on 11<sup>th</sup> February 2014, a site meeting was held between Pollution Control Officers, Ashley Boucher DPS, Zack Edwards- member of staff and Paul Trew-Acoustic Consultant on 12<sup>th</sup> February 2014.

During the meeting it was discovered that not all amplified equipment were connected to the noise limiter as was advised in December 2013. This meant that the music levels could be increased and that the use of the limiter was redundant. It was agreed at the meeting that by 14<sup>th</sup> February 2014, brackets would have been fabricated to secure the volume controls, and that the volume control would not be turned past the halfway mark. Photographs were taken of each amplifier for reference and can be found in Appendix G of this report.

Despite assurances during the meeting, a letter was hand delivered to 23 High Street and the registered address of the DPS, at 4.30pm on 14<sup>th</sup> February 2014, detailing the meeting of the 12<sup>th</sup> February and advising that the limiter is ineffective in its current guise. Furthermore, should the music be witnessed from a complainants property which amounts to a statutory nuisance, the department would have no choice other than to serve an Abatement Notice. A copy of this letter can be found in Appendix H of this report.

On 23<sup>rd</sup> February 2014 Night Time Noise Officers were called to attend a flat in 23 High Street as they were affected by loud music emanating from 23 High Street, Cardiff. The Officers were satisfied that the volume of the music amounted to a statutory noise nuisance and visited the club. Whilst at the club they spoke to Zack Edwards to inform him of what they witnessed and took photographs of the amplifiers which had not been connected through the limiter. The volume dials had moved. A copy of the photographs taken that night can be found in Appendix I of this report.

On 24<sup>th</sup> February 2014, an Abatement Notice was served upon Ashley Boucher DPS, in relation to the Statutory Noise Nuisance witnessed by the Night Time Noise Officers, this can be found as in Appendix J of this report.

On 13<sup>th</sup> March 2014, a third site meeting was held at 23 High Street in the presence of Pollution Control Officers, Ashley Boucher DPS, Zack Edwards- member of staff and Paul Trew- Acoustic Consultant. The aim of the meeting was to witness securing of the volume controls on the amplifiers. The brackets were made of flimsy plastic and secured by numerous tamper proof seal. The Pollution Control Officers were not enamoured with the material that was to prevent the dials being altered. A letter dated 14<sup>th</sup> March 2014 was sent to Ashley Boucher-DPS, confirming the visit and concerns regarding the limiter. This letter can be found in Appendix K in the report.

For six weeks between March and May 2014, the complainant who resided at 23 High Street was away, and therefore a night time assessment was not able to be carried out until May 11<sup>th</sup> 2014. Pollution Control Officers, Zack Edwards, and Paul Trew- Acoustic Consultant attended the meeting at 22.00, where it was established that the limiter as was set on 13<sup>th</sup> March 2014 was still at the same level.

However, despite the efforts of the Pollution Control team, two offences of the Abatement Notice were witnessed on 23<sup>rd</sup> May 2014 and 31<sup>st</sup> May 2014. The two notifications of offence can be found as Appendix L in this report.

The formal notification of offence, for the offence dated 31<sup>st</sup> May was hand delivered to the registered address of the DPS- Ashley Boucher on 3<sup>rd</sup> June 2014. On 4<sup>th</sup> June 2014, an application was received by the Licensing Department at Cardiff Council to vary the DPS to Zack Edwards. As a result the Pollution Control Department served an Abatement Notice upon Zack Edwards as

the Person Responsible for likely occurrence of a Statutory Noise Nuisance due to amplified music. The Abatement Notice can be found as Appendix M in this report.

Furthermore an application was received by the Licensing team on 2<sup>nd</sup> July 2014 to transfer the Premises Licence Holder from 'Floyds Cardiff Limited' to 'Barsfresh Limited'.

Due to an appeal of the original sentencing of Mr Kelvin Evans, the appeal was heard at Cardiff Crown Court in November 2014, whereby the original finding was upheld.

In September 2015, the Pollution Control department started to receive complaints about loud music emanating from 23 High Street. As result of this, a letter was addressed to Bars Fresh limited on 25<sup>th</sup> September 2015 advising them of the complaint. Despite this letter, on 25<sup>th</sup> November 2015, an Abatement Notice was served upon Bars Fresh Limited at 23 High Street in respect of a Statutory Noise Nuisance due to amplified music emanating from the same address. Since the service of the Abatement Notice, five offences of the Section 80 of the Environmental Protection Act have been witnessed by officers of the Noise Pollution Team. Since the initial letter on 25<sup>th</sup> September, neither director of Bars Fresh Limited have contacted the department to discuss the on-going issues of noise nuisance due to amplified music. I enclose a copy of the initial letter, the Abatement Notice and the Notifications of Offence as Appendix N.

Research with Companies House established that 'Barsfresh Limited' was established on 25<sup>th</sup> June 2014, a copy of the registration and directors can be found in Appendix O of this report.

Kelvin Evans, Ashley Boucher and Zack Edwards, all remain associated with the premises known as Floyds, 23High Street, Cardiff, CF10 1PN.

Kelvin Evans owns the building known as 23 High Street, Cardiff, as well as holding a second premises licence for the building which includes regulated entertainment, reference 00180, for which he is DPS and PLH.

Ashley Boucher is Kelvin Evans son, whilst he was DPS, his registered address was that of [redacted], where Kelvin Evans lives. He is also a registered director of 'Barsfresh Limited' as registered with Companies house.

Zack Edwards is currently the DPS of 'Barsfresh Limited' and is also named as a director of the company which is registered with Companies House.

A statement has been provided by Kirstie Barker of the Licensing team detailing the history of the PLH and DPS, this can be found in Appendix O of this report.

A statement has also been provided by PC Tim Davies of South Wales Police,, who works in the Cardiff Police Licensing team. A copy of this statement can be found in Appendix P.

Since the Pollution Control department have been investigating complaints of noise , the department have served four Abatement Notices on the three DPS's and one company at the premises, witnessed 29 breaches of the Abatement Notices and obtained a warrant from the magistrates court to undertake a seizure of all amplified equipment used in the emission of music.

### Summary

- Complaints relating to 23 High Street, Cardiff were first received in 2011.
- Numerous complaints have been received by the department in respect of loud music emanating from 23 High Street, from several different properties.
- Since the department has been investigating complaints of noise from music four Abatement Notices have been served on three different DPS, and more recently on the company Bars Fresh Limited.
- 29 breaches of the Abatement Notice under the Environmental protection Act 1990 have

been witnessed by officers from Pollution Control.

- The Premises License Holder and/or Designated Premises Supervisor has changed usually after enforcement action has been taken, by means of formal notification of offence, prosecution, seizure of noise equipment.
- After the seizure and prosecution, the noise nuisance has continued.
- Residents from one of the flats at : High Street have had to leave or temporarily relocate as the noise was continuing until the premises license allowed.
- Management of the noise emanating from 23 High Street is not effective.
- The current Premises licence allows regulated entertainment to cease at 02.00hours.
- Live music is unable to be controlled by a noise limiter.

Have you made an application for review relating to the premises before

Please tick ✓ yes

NO

If yes please state the date of that application

Day Month Year

1	1	1	1	1	1	1	1	1
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**If you have made representations before relating to the premises please state what they were and when you made them**

NO

Please tick ✓

yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

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

**Part 3 – Signatures** (please read guidance note 4)

**Signature of applicant or applicant's solicitor or other duly authorised agent** (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature



Date 30<sup>th</sup> December 2015

Capacity Senior Environmental Health Officer

**Contact name (where not previously given) and postal address for correspondence associated with this application** (please read guidance note 6)

Post town

Post Code

Telephone number (if any) 02920 871650

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) noise&airpollution@cardiff.gov.uk

**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.