

**MEETING**

**LICENSING SUB-COMMITTEE**

**DATE AND TIME**

**THURSDAY 19TH JULY, 2018**

**AT 10.30 AM**

**VENUE**

**COMMITTEE ROOM 1, HENDON TOWN HALL, THE BURROUGHS, LONDON NW4 4BQ**

**TO: MEMBERS OF LICENSING SUB-COMMITTEE (Quorum 3)**

Cllr Linda Freedman

Cllr Val Duschinsky

Cllr John Hart

**You are requested to attend the above meeting for which an agenda is attached.**

**Andrew Charlwood – Head of Governance**

Governance Service contact: Governance Service [governanceservice@barnet.gov.uk](mailto:governanceservice@barnet.gov.uk)

Media Relations contact: Gareth Greene 020 8359 7039

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**ASSURANCE GROUP**

## ORDER OF BUSINESS

Item No	Title of Report	Pages
1.	Appointment of Chairman	
2.	Absence of Members (If any)	
3.	Declaration of Members' Disclosable Pecuniary interests and Non Pecuniary interests (If any)	
4.	Licensing Sub-Committee Hearing Procedure	5 - 8
5.	Review of Premises Licence - After Party, 232 West Hendon Broadway, London, NW9 6AG	9 - 52
6.	Motion to exclude the Press and Public	
7.	Deliberation by the Sub-Committee in Private Session	
8.	Re-admission of the Press and Public: Announcement of the decision of the Sub-Committee	
9.	Any other Item(s) the Chairman decides are urgent	

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# LONDON BOROUGH OF BARNET

## LICENSING SUB COMMITTEE

### HEARINGS PROCEDURE

AGENDA ITEM 4

#### *General points*

The following procedure is based on Regulations made by the Secretary of State under the Licensing Act 2003 (“the Hearings Regulations”) which may be viewed or downloaded from the website of the Department for Culture, Media and Sport by following links from [www.culture.gov.uk](http://www.culture.gov.uk)

The procedure is intended as a general framework to ensure natural justice and a fair hearing. The conduct of individual hearings may vary slightly according to circumstances and the discretion of the Chairman. In all cases, however, this general framework will be followed.

The procedure allows each party a maximum period of 5 minutes in which to present their case (Regulations 16 & 24). At the end of the time allowed, the Chairman will terminate the presentation and the hearing will proceed in the form of a discussion led by the authority to explore points of dispute. The discussion will not be timed.

The procedure is subject to periodic review and amendment to reflect best practice and relevant legislative changes. An updated version of this procedure is published as soon as possible following any such amendments.

#### **Governance Officer**

- To seek nominations for Chairman
- Elect Chairman
- Hand over to the Chairman

#### **Chairman**

- Introduces him/herself and Members of the Committee, and outlines their roles.
- Introduces Licensing, Legal and Governance Officer.
- Explains that Legal and Governance Officers will be present during the Committee’s deliberations to advise only, and that the Licensing Officer will be excluded from deliberations.
- Asks parties present to introduce themselves.
- Outlines procedure to be followed.
- Asks all parties to confirm their understanding of the procedure.
- Clarifies any aspect(s) of the procedure where any parties are uncertain or asks Legal or Governance Officer as appropriate to clarify.

#### **Governance Officer**

- Informs Committee of absent parties.
- Details persons whom a party is seeking permission to represent them at hearing.
- Panel confer regarding permission.
- Chairman announces decision regarding permission.

### **Licensing Officer presents the report to the Committee**

- Is a statement of the facts including details of the application and operating schedule, relevant policy details, detail representations made, a chronology of events and highlights the points on which the Authority requires clarification.

### **Applicant**

- Presents opening submissions and clarifies points raised by Authority in notice of hearing. Time allowed 5 mins.

### **Other parties**

- Presents opening submissions either in person or by spokes person Time allowed 5 mins per interested party.

### **Note regarding use of video evidence**

Video evidence must be in DVD format and will form part of the relevant party's five minutes opening submission. Any party wishing to use video evidence must submit a copy to the Authority along with sufficient, identical extra copies to serve on all the opposing parties – i.e. if the applicant is submitting it, there must be enough copies for all parties making representations and if a party making representations is submitting it there must be a copy for the applicant. The recording must be edited down to the highlights, containing only relevant matter which relates to the written representation previously submitted. In addition, a description of how, when and where the video was recorded and what it contains must be submitted. These must be supplied to the Authority at least five working days before the hearing.

### **Members question Licensing Officer on Policy**

### **Discussion**

#### **Chairman leads a discussion concentrating on points of dispute:**

Chairman asks Applicant what he disputes in other parties' submissions, and asks other parties to comment.

Chairman proceeds through all objectors dealing with all matters of contention.

When Chairman feels all matters have been thoroughly discussed and all parties have been given a fair and equal opportunity to comment and make representations, she/he closes discussion.

### **Determination**

There are two procedures depending on whether or not determination is to be made at the end of the Hearing or within five working days of the Hearing. This later announcement of determination is permitted in terms of the Legislation for certain types of applications.

#### **Chairman informs all present that the Committee will deliberate, that Legal and Governance Officer will remain to advise but will not be part of decision-making process, and that all others must leave (under Regulation 14).**

- Parties, apart from Legal and Governance Officer, leave the room.
- The Committee deliberates, with advice as required from Legal and Governance Officer, and reaches a conclusion. The Legal officer may assist, as required, in formulating the wording of the determination.
- Parties return.
- Chairman reads out determination, and advises it will be sent in <sup>6</sup>

writing to all parties.

- Opportunity for determination to be clarified by any interested party who is unclear.
- Chairman gives advice about appealing against the determination.
- Chairman thanks all for attending and closes the meeting.

### **...Within five working days of the hearing**


- Chairman explains requirement to determine the Hearing within five working days, and advises that the Committee will proceed to deliberate and announce the determination within that time.
- During deliberations, Legal and Governance Officers remain to advise on law and procedure as required. The Legal Officer may assist, as required, in formulating the wording of the determination. The Licensing Officer plays no part in the determination and withdraws for this part of the proceedings.
- Chairman advises all parties that they will receive written notification of the determination within five working days of the Hearing date, together with general information on how to appeal against the determination.
- Chairman thanks all parties for attending and invites the applicant, objector(s), other party(ies) and the Licensing Officer to leave.

### **Information on Appealing against the decision**

You may at any time before the expiration of a period of 21 days from notification appeal to Willesden Magistrates' Court, 448 High Road London England NW10 2DZ (Telephone 020 8955 0555, DX 110850 Willesden 2) by way of Complaint for an Order. The Court may either dismiss the appeal, substitute for the decision appealed against any other decision which could have been made by the Licensing Authority or remit the case to the Licensing Authority to dispose of it in accordance with the directions of the court, and can make such order as to costs as it thinks fit.

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	<p><b>Licensing Sub-Committee</b> <b>Thursday 19<sup>th</sup> July 2018</b></p>
<p style="text-align: right;"><b>Title</b></p>	<p><b>Review of Premises Licence – After Party, 232 West Hendon Broadway, London, NW9 6AG</b></p>
<p style="text-align: right;"><b>Report of</b></p>	<p>Trading Standards &amp; Licensing Manager</p>
<p style="text-align: right;"><b>Wards</b></p>	<p>West Hendon</p>
<p style="text-align: right;"><b>Status</b></p>	<p>Public (with exempt Police Statements in Annex 4 By virtue of paragraph(s) 1 of Part 1 of Schedule 12A of the Local Government Act 1972)</p>
<p style="text-align: right;"><b>Enclosures</b></p>	<p>Report of the Licensing Officer                      Annex 1 – Review Application                      Annex 2 – Information Licence Holder                      Annex 3 – Current Premises Licence                      Annex 4 – Police Representation                      Annex 5 – Extract from Guidance under section 182 Licensing Act 2003                      Annex 6 – Matters for decision</p>
<p style="text-align: right;"><b>Officer Contact Details</b></p>	<p>Mariesa Connolly 0208 359 2125                      mariesa.connolly@barnet.gov.uk</p>

<b>Summary</b>
<p>This report asks the Sub-Committee to consider the application to Review a premises licence under section 167 of the Licensing Act 2003.</p>

<b>Recommendations</b>
<p><b>1. This report asks the Sub-Committee to consider the application to Review a premises licence under section 167 of the Licensing Act 2003 for After Party, 232 West Hendon Broadway, London, NW9 6AG.</b></p>

## **1. WHY THIS REPORT IS NEEDED**

- 1.1 The licensing authority having received a closure order from Willesden Magistrate court, by virtue of section 167 of the licensing act, must carry out a review of the premises licence and within 28 days hold a hearing to determine the review.

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1 Where an application is submitted under section 167 of the Licensing Act 2003, the authority must hold a hearing to consider it.

## **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 N/A

## **4. POST DECISION IMPLEMENTATION**

- 4.1 The decision will have immediate effect

## **5. IMPLICATIONS OF DECISION**

### **5.1 Corporate Priorities and Performance**

- 5.1.1 Members are referred to the Council's Licensing Policy for consideration
- 5.1.2 Timely legal and fair decisions support objectives contained within the Corporate Plan. In particular in relation to a "successful London borough" by ensuring that only legal, well regulated licensable activities occur within the borough.

### **5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

- 5.2.1 N/A

### **5.3 Legal and Constitutional References**

- 5.3.1 The Licensing Act 2003 sets out how applications for reviews of premises licence following a closure order should be dealt with.
- 5.3.2 Under the Constitution, Responsibility for Functions (Annex A), the Licensing Act 2003 and associated regulations, as delegated to it by the Licensing Committee, including the determination of review applications.

### **5.4 Risk Management**

- 5.4.1 N/A

## **5.5 Equalities and Diversity**

5.5.1 Licence applications are dealt with according to the provisions of the Licensing Act 2003 and associated Regulations which allow both applications and representations to applications to be made by all sectors of the

## **5.6 Consultation and Engagement**

5.6.1 The statutory consultation process that has been followed in accordance with the Licensing Act 2003

## **6. BACKGROUND PAPERS**

9.1 The closure order, report of the Licensing Officer and necessary appendices are attached to this report.

# Officers Report

**LICENSING ACT 2003**  
**REPORT FOR PUBLIC HEARING**

**Review of the premises licence:**

**After Party, 232 West Hendon Broadway, London, NW9 6AG**

**1. The Application**

The licensing authority having received a closure order from Willesden Magistrate court, by virtue of section 167 of the licensing act, must carry out a review of the premises licence and within 28 days hold a hearing to determine the review.

A full copy of the Closure order is attached to this report in **Annex 1**.

**2. Premises Licence History**

This premises licence was first applied and granted in 7th July 2017. There have been no applications since and the licence holder is Shahla Shayesteh. The premises licence holder informed the licensing team on Thursday 12<sup>th</sup> July 2018 that they had not been at the premises since 21<sup>st</sup> September 2017. The premises licence was surrendered on 12<sup>th</sup> June 2018.

A full copy of the surrender of the premises licence is attached to this report in **Annex 2**.

**3. Current Premises Licence**

The current licence allows the following licensable activities:

**Sale or supply of Alcohol**

Standard Days & Timings

Monday to Sunday 11:00hrs - 22:30hrs

**The hours that the premises are open to the public**

Standard Timings

Monday to Sunday 11:00hrs - 23:00hrs

attached to the premises licence can be found in full attached to this report as **Annex 3**

**4. Representations**

Responsible Authorities

The Licensing Team have received a representation from PC Vicky Wilcock on behalf of the Metropolitan. The Police concerns relate to prevention of Crime and disorder.

Other representations

The Licensing Team have not received any representations from any other parties.

The representation and supporting evidence has been attached to this report in **Annex 4**.

## 5. Guidance

A Section from the Guidance issued under Section 182 Licensing Act 2003 (June 2013) regarding Reviews Is attached to this report in **Annex 5**.

## 6. Determination

The sub-committee shall determine the application in accordance with Section 167 (5) of the Licensing Act 2003.

(a) hold a hearing to consider the order mentioned in subsection (1)(a) and any relevant representations;

(b) take such of the steps mentioned in subsection (6) (if any) as it considers appropriate for the promotion of the licensing objectives.

The steps are-

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Subsection (5) is subject to sections 19, 20 and 21 (requirement to include certain conditions in premises licences).

Where the authority takes a step within subsection (6)(a) or (b), it may provide that the modification or exclusion is to have effect only for a specified period (not exceeding three months).

A matters for decision sheet is attached at **Annex 6**

Daniel Pattenden  
Licensing Officer  
Monday, 16 July 2018

Annex 1 – Review Application  
Annex 2 – Information from licence holder  
Annex 3 – Current Premises Licence  
Annex 4 – Representation  
Annex 5 – Guidance issued under Section 182 Licensing Act 2003 (June 2013)  
Annex 6 – Matters for Decision

# Closure Order



THE CAFE  
232 West Hendon Broadway  
NW9 6AG

Case number: **011801426230**

## Orders

The court has heard the matters shown below and made the orders listed.

Date: 29 June 2018

**S.McAllister**

*Justices' Clerk*

## Matters and orders

011801426230/1

Application for a closure order following service of a notice on 28/06/2018 in respect of THE CAFE, 232 West Hendon Broadway, NW9 6AG.

Pursuant to section 80 of the Anti-social Behaviour, Crime and Policing Act 2014.

### **Closure order made for The Cafe**

**232 West Hendon Broadway**

**NW9 7ED for 3 months. Access is prohibited to all persons. This order applies to the whole of the premises.**

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# Additional Information

## **Pattenden, Daniel**

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**From:** shahla shayesteh <sholoola@hotmail.com>  
**Sent:** 12 July 2018 16:21  
**To:** Pattenden, Daniel  
**Subject:** LAPRE6/18/58855

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Mr Pattenden,

Thank you for your letter, though I was very shocked to receive it as I informed both the councils business rate department via email and the licencing department via telephone in October 2017 to confirm that I had surrendered the premises. I am not liable or responsible for any activity that has occurred on the premises since this time.

I sincerely hope that the closure order placed on the premises will not affect me in the future should I wish to apply for a premises licence at another time.

Please note that I have forwarded yourself a copy of the aforementioned email I sent to the business rate department in October.

Kind regards,

Shahla Shayesteh

## Pattenden, Daniel

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**From:** shahla shayesteh <sholoola@hotmail.com>  
**Sent:** 12 July 2018 16:22  
**To:** Pattenden, Daniel  
**Subject:** Fw: LAPRE6/18/58855

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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**From:** shahla shayesteh <sholoola@hotmail.com>  
**Sent:** 16 October 2017 09:22  
**To:** businessrates@barnet.gov.uk  
**Subject:** 232 West Hendon Broadway

Dear Miss Payne,

I am writing to inform you that I have surrendered the business premises,

After Party  
232 West Hendon Broadway  
NW9 7ED

I left the premises on 21st of September 2017.

If you have any questions, please do not hesitate to contact me.

Kind regards

Shahla

# Current Premises Licence



## Part 2

**Name, (registered) address, telephone number and email (where relevant) of holder of premises licence**

Shahla Shayesteh  
31 Clovelly Avenue  
London  
NW9 6DT

**Registered number of holder, for example company number, charity number (where applicable)**

N/A

**Name of designated premises supervisor where the premises licence authorises for the supply of alcohol**

Auf Der Mauer Theodore  
8 Oxford Road  
Harrow  
Middlesex  
HA1 4JF

**Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol**

Personal Licence number: LN/000009450/2016/1  
Personal Licence Issuing Authority: HARROW

## Annex 1 – Mandatory Conditions

1. No supply of alcohol may be made under the premises licence-
  - (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
  - (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
2. Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
3.
  - i. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.  
  
(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
    - (a) games or other activities which require or encourage, or are (designed to require or encourage, individuals to—
      - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
      - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
    - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
    - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
    - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
    - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
  - ii. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
  - iii. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—

(a) a holographic mark, or

(b) an ultraviolet feature.

iv. The responsible person must ensure that—

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—

(i) beer or cider: ½ pint;

(ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and

(iii) still wine in a glass: 125 ml;

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.”

4. 1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

2. For the purposes of the condition set out in paragraph 1 -

(a) "duty" is to be construed in accordance with the Alcoholic Liquor Act Duties 1979

(b) "permitted price" is the price found by applying the formula –

$$P = D + (D \times V)$$

Where -

(i) P is the permitted price

(ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -



- (i) The holder of the premises licence
  - (ii) The designated premises supervisor (if any) in respect of such a licence,
- or

(iii) The personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from the paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

4. (1) Sub-paragraph (2) applies where the permitted price given by paragraph (b) of paragraph 2 on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

## **Annex 2 – Conditions consistent with the operating schedule**

5. A CCTV system will be installed that complies with the following:
- a. Digital recording colour CCTV comprising of a multi camera system
  - b. The head unit (recorder) for storing the images will store such data on a hard drive or a similar quality medium
  - c. If the head unit (recorder) is kept on the premises it must be located in a secure cabinet or other secure area, preferably out of the sight and reach of the public.
  - d. A CD, DVD burner or USB type device will also form part of the system to facilitate making copies of the footage
  - e. The quality of the images must be of a sufficiently high standard to allow identification of the subject matter
  - f. Cameras will cover key areas identified by the operator and Police. These will include clear headshots of persons entering the shop area, the till area and areas where alcohol are displayed for sale.
  - g. Images must be retained for a minimum period of 31 days before overwriting
  - h. The images will be made available in reasonable time on demand by the Police and authorised officers of the London Borough of Barnet

- i. At all times when the premises are open there shall be at least one person who is capable of operating the CCTV system if required to do so by the Police or authorised officers of the London Borough of Barnet
  - j. This system will be fully maintained at all times to ensure correct operation
- 6. A refusals / incidents register shall be maintained at the premises recording
  - a. All known incidents of crime and disorder occurring at the premises with dates and times
  - b. Details of occasions when the emergency services are called to the premises
  - c. All refusals of alcohol sales and confrontational ejections from the premises.
  - d. This register will be available for inspection by a police officer or other authorised officer on request
- 7. Alcohol will only be consumed by persons seated at a table or kept sealed to be taken away from the premises with a takeaway meal.
- 8. All service of alcohol will be made by waiter/waitress.
- 9. There will be no vertical drinking
- 10. The premises shall operate a challenge 25 style policy. Anyone attempting to purchase alcohol who appears under the age of 25 years shall be required to produce valid photo ID (such as a photo card driving licence, passport or PASS accredited age verification card) to prove they are 18 years or older. Failure to produce acceptable ID shall result in a refusal of the sale. This refusal shall be documented in the refusals / incident log.
- 11. Spirits will only be sold from the premises as part of a mix with non-alcoholic beverages. There shall not be more than a single 25ml measure in any product per 500 ml of mixer.
- 12. There will be no sales/ supplies of beers, ales, lagers or ciders or anything similar of 6% ABV or above.
- 13. Sales of alcohol to be delivered will be paid for by card to ensure an age verification process takes place at the point of payment. The delivery will be signed for and the person signing for the delivery must be able to prove they are over 18 if it is not the person named on the card used for payment.
- 14. Delivery notes will be kept logged and stored for a minimum period of 12 months and should be available for inspection upon request by a police officer or authorised person of the local authority. This can be in the form of a note book carried by the delivery driver (kept on the premises when not out making deliveries) or delivery notes filed at the premises after the delivery is made. Each note should include the reference number from the form of ID given and details of the person taking the delivery (i.e. driving licence number/ passport number and full name and date of birth)
- 15. A personal licence holder will be present at all times on the premises or written permission given to non licence holders.
- 16. Prominent, Clear notices will be displayed at the exit requesting the public to respect the needs of nearby resident and to leave the premises and area quietly.

### **Annex 3 – Conditions attached after hearing by the licensing authority**

#### **Annex 4 – Plan**

As submitted to the Council with the application for the grant of a premises licence under schedule 8 of the Licensing Act 2003. Reference LAPRE1/17/55868

# Representations



London Borough Barnet  
Licensing Team  
Barnet House  
1255 High Road  
Whetstone  
London  
N20 0EJ

**BARNET POLICE STATION**

**Please post to:**

**Licensing Office @SA  
Colindale Police Station  
GRAHAM PARK WAY  
LONDON  
NW9 5TW**

**Telephone: 020 8733 4195**

**Email: [barnet.licensing@met.police.uk](mailto:barnet.licensing@met.police.uk)**

**Date: 10<sup>th</sup> July 2018**

**Ref: LAPRE6/18/58839**  
**CC: London Borough of Barnet**

**Police Representation to Review of Premises Licence**

<b>Section</b>	<b>167</b>						<b>Licensing Act 2003</b>
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**Notice Received: 3<sup>rd</sup> July 2018**  
**From: Licensing – Barnet Council**  
**Premises: After Party 232 West Hendon Broadway NW9 7ED**

**For the following reason(s) Police are in support of the review of the premises licence of After Party 232 West Hendon Broadway NW9.**

The police have been receiving intelligence relating to drug activity connected to a premises nearby since April 2017. It is only after numerous reports and attempted visits/ visits to that premises that someone came forwards to police to disclose what was happening at this premises. A licence was granted in 2017, but the premises had always appeared closed since.

- 21<sup>st</sup> June 2018 intelligence from a reliable source that 232 West Hendon Broadway was selling Khat (a class B drug) to another a few doors up.
- On 22<sup>nd</sup> June 2018 a search warrant was issued under Section 23 Misuse Of Drugs Act 1971 to PC Karaiskou for 232 West Hendon Broadway
- On 28<sup>th</sup> June 2018 the warrant was executed on 232 West Hendon Broadway at the same time as the other premises connected to the intelligence.
- Following the substances found at both premises, both were issued with a closure notice by the Metropolitan Police.
- On 29<sup>th</sup> June 2018 a Closure Order was granted at Willesden Magistrates Court prohibiting access to all persons applying to the whole property for a period of 3 months.
- A person claiming to be the manager of this premises was to be interviewed under caution in relation to the supply of the class B drug.

**The Police respectfully request consideration of the licence to be revoked in order to fully promote the 4 licensing objectives.**

Yours Sincerely,

*Vicky Wilcock*

Licensing Office  
Barnet Borough  
Metropolitan Police Service.

# Guidance issued by Home Office on Reviews

# 11. Reviews

## The review process

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.3 An application for review may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent written application. The licensing authority may also agree in advance that the application need not be given in writing. However, these applications are outside the formal electronic application process and may not be submitted via GOV.UK or the licensing authority's electronic facility.
- 11.4 In addition, the licensing authority must review a licence if the premises to which it relates was made the subject of a closure order by the police based on nuisance or disorder and the magistrates' court has sent the authority the relevant notice of its determination, or if the police have made an application for summary review on the basis that premises are associated with serious crime and/or disorder.
- 11.5 Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.
- 11.6 Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities. Further information on how licensing authorities should achieve this separation of responsibilities can be found in Chapter 9, paragraphs 9.13 to 9.19 of this Guidance.

- 11.7 In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives. Following the grant or variation of a licence or certificate, a complaint regarding a general issue in the local area relating to the licensing objectives, such as a general (crime and disorder) situation in a town centre, should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time, could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.
- 11.8 Where a licensing authority receives a geographic cluster of complaints, the authority may consider whether these issues are the result of the cumulative impact of licensed premises within the area concerned. In such circumstances, the authority may also consider whether it would be appropriate to include a special policy relating to cumulative impact within its licensing policy statement. Further guidance on cumulative impact policies can be found in Chapter 13 of this Guidance.
- 11.9 Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent written representation. The licensing authority may also agree in advance that the representation need not be given in writing.
- 11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.
- 11.11 If the application for a review has been made by a person other than a responsible authority (for example, a local resident, residents' association, local business or trade association), before taking action the licensing authority must first consider whether the complaint being made is relevant, frivolous, vexatious or repetitious. Further guidance on determining whether a representation is frivolous or vexatious can be found in Chapter 9 of this Guidance (paragraphs 9.4 to 9.10).

## Repetitious grounds of review

- 11.12 A repetitious ground is one that is identical or substantially similar to:
- a ground for review specified in an earlier application for review made in relation to the same premises licence or certificate which has already been determined; or
  - representations considered by the licensing authority when the premises licence or certificate was granted; or
  - representations which would have been made when the application for the premises licence was first made and which were excluded then by reason of the prior issue of a provisional statement; and, in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or grant.

- 11.13 Licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a further means of challenging the grant of the licence following the failure of representations to persuade the licensing authority on an earlier occasion. It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, it is recommended that more than one review originating from a person other than a responsible authority in relation to a particular premises should not be permitted within a 12 month period on similar grounds save in compelling circumstances or where it arises following a closure order.
- 11.14 The exclusion of a complaint on the grounds that it is repetitious does not apply to responsible authorities which may make more than one application for a review of a licence or certificate within a 12 month period.
- 11.15 When a licensing authority receives an application for a review from a responsible authority or any other person, or in accordance with the closure procedures described in Part 8 of the 2003 Act (for example, closure orders), it must arrange a hearing. The arrangements for the hearing must follow the provisions set out in regulations. These regulations are published on the Government's legislation website ([www.legislation.gov.uk](http://www.legislation.gov.uk)). It is particularly important that the premises licence holder is made fully aware of any representations made in respect of the premises, any evidence supporting the representations and that the holder or the holder's legal representative has therefore been able to prepare a response.

## **Powers of a licensing authority on the determination of a review**

- 11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.
- 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.
- 11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.
- 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:
- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
  - exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
  - remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;



- suspend the licence for a period not exceeding three months;
  - revoke the licence.
- 11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
- 11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.
- 11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.
- 11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

## Reviews arising in connection with crime

- 11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises; money laundering by criminal gangs, the sale of contraband or stolen goods, or the sale of firearms. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.
- 11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

- 11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder.
- 11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:
- for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
  - for the sale and distribution of illegal firearms;
  - for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
  - for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
  - for prostitution or the sale of unlawful pornography;
  - by organised groups of paedophiles to groom children;
  - as the base for the organisation of criminal activity, particularly by gangs;
  - for the organisation of racist activity or the promotion of racist attacks;
  - for knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter;
  - for unlawful gambling; and
  - for the sale of smuggled tobacco and alcohol.
- 11.28 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

## **Review of a premises licence following closure order**

- 11.29 Licensing authorities are subject to certain timescales, set out in the legislation, for the review of a premises licence following a closure order. The relevant time periods run concurrently and are as follows:
- when the licensing authority receives notice that a magistrates' court has made a closure order it has 28 days to determine the licence review – the determination must be made before the expiry of the 28th day after the day on which the notice is received;

- the hearing must be held within ten working days, the first of which is the day after the day the notice from the magistrates' court is received;
- day (there must be five clear working days between the giving of the notice and the start of the hearing).

## **Review of a premises licence following persistent sales of alcohol to children**

11.30 Where persistent sales of alcohol to children have occurred at premises, responsible authorities should consider applying for a review of the licence, whether there has been a prosecution for the offence under section 147A or a closure notice has been given under section 169A of the 2003 Act. In determining the review, the licensing authority should consider revoking the licence if it considers this outcome is appropriate. Responsible authorities should consider taking steps to ensure that a review of the licence is routine in these circumstances.

# Matters for Decision

# MATTERS FOR DECISION

## An application made under Section 167 of the Licensing Act 2003

After Party, 232 West Hendon Broadway, London, NW9 6AG

### **Determination in accordance with Section 167 (5) of the Licensing Act 2003.**

The relevant licensing authority must—

- (a) hold a hearing to consider the order mentioned in subsection (1)(a) and any relevant representations;
- (b) take such of the steps mentioned in subsection (6) (if any) as it considers appropriate for the promotion of the licensing objectives.

The steps are-

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Subsection (5) is subject to sections 19, 20 and 21 (requirement to include certain conditions in premises licences).

Where the authority takes a step within subsection (6)(a) or (b), it may provide that the modification or exclusion is to have effect only for a specified period (not exceeding three months).

### **Notification in accordance with Section 167 (12) of the Licensing Act 2003.**

Where a licensing authority determines a review under this section it must notify the determination and its reasons for making it to—

- (a) the holder of the licence,
- (b) any person who made relevant representations, and
- (c) the chief officer of police for the police area (or each police area) in which the premises are situated.

**S 168 Provision about decisions under section 167**

(1) Subject to this section, a decision under section 167 does not have effect until the relevant time.

(2) In this section “the relevant time”, in relation to any decision, means—

(a) the end of the period given for appealing against the decision, or

(b) if the decision is appealed against, the time the appeal is disposed of.

<b>Steps taken (if any)</b>	<b>Reason(s)</b>

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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