

Decisions of the Licensing Sub-Committee

10 January 2023

Members Present:-

Councillor Claire Farrier
Councillor Philip Cohen

Councillor Richard Barnes

Apologies for Absence

Councillor Zakia Zubairi

1. APPOINTMENT OF CHAIRMAN

RESOLVED that Councillor Richard Barnes be appointed Chair for this Licensing Sub-Committee meeting.

2. ABSENCE OF MEMBERS (IF ANY)

Councillor Zakia Zubairi was absent.

3. DECLARATION OF MEMBERS' DISCLOSABLE PECUNIARY INTERESTS AND NON PECUNIARY INTERESTS (IF ANY)

None.

4. LICENSING SUB-COMMITTEE HEARING PROCEDURE

The Chair explained the procedure that would be followed at the meeting.

5. REPORT OF TRADING STANDARDS & LICENSING MANAGER - FLAVOURS, 218 BURNT OAK BROADWAY, EDGWARE HA8 0AP

The Sub-Committee considered an application for a variation of a premises licence under section 34 of the Licensing Act 2003.

6. MOTION TO EXCLUDE THE PRESS AND PUBLIC

RESOLVED that the parties be excluded from the meeting, together with the press and public, in accordance with the Regulation 14(2) of the Licensing Act 2003 (Hearings and Regulations 2005).

7. DELIBERATION BY THE SUB-COMMITTEE IN PRIVATE SESSION

The Sub-Committee deliberated in private session, accompanied by the Officer from HB Public Law and the Governance Officer.

8. RE-ADMISSION OF THE PRESS AND PUBLIC: ANNOUNCEMENT OF THE DECISION OF THE SUB-COMMITTEE

Notification of decision following a Licensing Panel hearing to determine an application for a variation of a premises licence under section 34 of the Licensing Act 2003

PREMISES: Flavours, 218 Burnt Oak Broadway, Burnt Oak, Edgware HA8 0AP

APPLICANT: Mr Ashok Kumar Gordhandas Tulshidas Modi

TAKE NOTICE THAT ON 10 January 2023 following a hearing before the Licensing Sub Committee (the “Sub-Committee”),

BARNET COUNCIL, as the Licensing Authority for the Premises **RESOLVED that:**

the application for a variation of a premises licence for Flavours, 218 Burnt Oak Broadway, Burnt Oak, Edgware HA8 0AP is **GRANTED, as follows:**

Provision for Late-night refreshment on the premises (indoors)

Monday to Sunday: 23:00 to 03:30am

Provision for the sale of alcohol on the premises (on the premises)

Monday to Sunday: 10:00am to 03:30am

Provision for the performance of live music (indoors)

Monday to Sunday: 10:00am to 04:00am

Provision for the performance of recorded music (indoors)

Monday to Sunday: 10:00am to 04:00am

Provision for the performance of dance (indoors)

Monday to Sunday: 10:00am to 04:00am

Provision for the performance of anything of a similar description to that falling within the definition of the performance of live music, the playing of recorded music and the performance of dance (indoors)

Monday to Sunday: 10:00am to 04:00am

Hours premises are open to the public

Monday to Sunday: 10:00am to 04:00am

AND with the following new or amended conditions agreed with the police:

- (1) The premises shall install and maintain a comprehensive CCTV system to Home Office Guidance standards and maintained in good working condition and recordings shall be kept for 31 days and shall be made available to police and authorised officers from the Council upon request. This must comply with the Data Protection Act including signage.

- (2) The CCTV cameras shall be installed to cover all entry and exit points enabling clear facial recognition images and a clear head and shoulder image of every person entering or leaving in any light condition.
- (3) The CCTV system shall display on any recordings the correct date and time of the recording.
- (4) The CCTV system shall continually record and cover areas where alcohol is kept for selection and purchase by the public, whilst the premises is open for licensable activities. It shall operate during all times when customers remain on the premises.
- (5) All recordings will be stored for a minimum period of 31 days with date and time stamping.
- (6) The Licence holder/DPS/Manager shall inspect and test that the CCTV is operational and working correctly on a weekly basis. A signed and dated record of the CCTV examination and any findings shall be kept on the premises and made available to the police and authorised officers of the Local Authority on request.
- (7) The Premises Licence holder shall make sure that all staff are trained in the main principles of the Licensing Act 2003, notably the promotion of the four licensing objectives, and the specific conditions of this premises licence before being allowed to sell alcohol.
- (8) All staff will receive refresher training every six months about their responsibilities under the Licensing Act 2003 and training records will be available to police and authorised officers on reasonable request.
- (9) An incident log shall be kept at the premises, and made available for inspection on request to an authorised officer of the Council or the Police, which will record the following:
 - (a) all crimes reported to the venue
 - (b) all ejections of patrons
 - (c) any complaints received
 - (d) any incidents of disorder
 - (e) any faults in the CCTV system or searching equipment or scanning equipment
 - (f) any refusal of the sale of alcohol
 - (g) any visit by a relevant authority or emergency service.
- (10) Alcohol is to be served in polycarbonate, plastic or shatter-proof glasses. No bottles shall be given to customers.
- (11) No person shall be allowed to leave or enter the premises whilst in the possession of any open drinking vessel, whether empty or containing any beverage.

- (12) A "Challenge 25" proof of age scheme shall be operated at the premises where the only acceptable forms of identification are the following recognised photographic identification cards: a driving licence, a passport, a military identification card or a Proof of Age card carrying a 'PASS' logo.
- (13) Notices advertising that the premises operates a "Challenge 25" scheme shall be displayed in a clear and prominent position at the premises entrance. All occasions when persons have been refused service shall be recorded in the premises register.
- (14) The premise licence holder or Designated Premises Supervisor shall ensure that all management and staff who are not personal licence holders are fully trained and briefed on the four licensing objectives and Challenge 25 and they are adhered to.
- (15) All deliveries shall take place during the normal working day (i.e. 09:00 to 18:00 daily).
- (16) Signage requesting customers to be respectful of others when entering or leaving the premises shall be installed in a prominent position by the premises' exit.
- (17) No more than 5 patrons shall be allowed to gather/smoke outside the premises at the same time and this shall be monitored regularly to ensure the potential for noise nuisance is controlled.
- (18) The level of music, noise and vibration emanating from the premises shall be arranged so as not to cause a nuisance to local residents and shall not be audible within any noise sensitive premises after 2300 hours.
- (19) There shall be a minimum of three door supervisors on any day when the premises are open for the sale of alcohol past 0100 hours, two shall be to control entrance to the premises and one to control order within the premises.
- (20) Door supervisors shall wear clothing that can be clearly and easily identified on CCTV.
- (21) A register/log containing the names, badge number, dates & times of duty security staff and any incidents that occur shall be kept and made available to the Police and Licensing Authority.
- (22) The total number of people on the premises including staff and performers shall not exceed 90.

The numbering above reflects the numbering of the conditions agreed with the police which are set out in Annex 3 of the response pack.

Condition 4 a-j of Annex 2 of the existing licence is replaced by conditions (1) to (6) of the conditions agreed with the police.

Condition 9 of Annex 2 of the existing licence is replaced by condition (16) of the conditions agreed with the police.

The premises shall operate a last admittance policy for patrons whereby the last patron shall be admitted to the premises at 3:00am.

REASONS:

1. The Panel convened to determine an application for a premises licence for Select Bar & Lounge, 318 Ballards Lane, London N12 0EY ("**the Premises**") under the Licensing Act 2003.
2. The application, which is set out in Annex 1, seeks the hours for licensable activities, which are as follows:

Provision of Live Music (indoors)

Monday to Sunday: 10:00am to 04:00am

Provision of Recorded Music (indoors)

Monday to Sunday: 10:00am to 04:00am

Provision of Performances of Dance (indoors)

Monday to Sunday: 10:00am to 04:00am

Provision of Anything of a similar description to live music, recorded music or performances of Dance (indoors)

Monday to Sunday: 10:00am to 04:00am

Provision for Late-night refreshment on the premises

Monday to Sunday: 23:00 to 04:00am

Provision for the Supply of Alcohol on the premises

Monday to Sunday: 10:00am to 04:00am

Hours the premises are open to the public

Monday to Sunday: 10:00am to 05:00am

The applicant seeks to include conditions on the licence, which are set out in section M of the application form which is contained in Annex 2. These include conditions relating to not selling alcohol for the consumption of people off the premises and putting up signage requesting customers to leave the Premises quietly as well as in relation to the "Challenge 25" policy.

3. The Premises are currently licensed and are situated in an area of mixed commercial and residential properties.
4. The Licensing Panel carefully considered all the relevant information including:

- Written and Oral representations made by all the parties
 - The Licensing Act 2003 and the steps appropriate to promote the Licensing Objectives
 - The guidance issued under section 182 of the Licensing Act 2003
 - The Statement of Licensing Policy of the London Borough of Barnet of January 2020
 - The Human Rights Act 1998
5. As part of the consultation process the Authority received no representations from Responsible Authorities, but the Applicant consulted with the Police and agreed to the proposed conditions with the Police which are set out in the correspondence shown in Annex 3. The Police proposed that the sale of alcohol should be restricted to the hours of 10:00am to 3:30am from Monday to Sunday and the conditions relate to the CCTV system, the training of staff and numbers of SIA/door supervisors at the Premises, and for the number of people to be admitted to the premises.
 6. No representations were received from residents in the surrounding area objecting to the Application. One representation was received from the Ward Councillor which is shown as Annex 4 and relates to the prevention of public nuisance and the prevention of crime and disorder. It can broadly be described as objecting to the licence on the basis of anti-social behaviour in the area and noise levels in a residential area. The representation is essentially that the Premises were located in the Council's Cumulative Impact Zone.
 7. The Applicant was present at the hearing and was also assisted by his premises manager. In his oral representations, the Applicant confirmed that he had agreed to adopt all of the conditions proposed by the Police which therefore amended his application with regards to the sale of alcohol from Monday to Sunday from 10:00am to 3:30am. The Applicant explained that he had invested a lot of money in the Premises and that he was losing bookings to other establishments due to the restricted hours of his existing licence. He said he had soundproofed the Premises and that there had not even been complaints about noise by the people living above the Premises. He said that he would ensure that the last entry was at 3:00am and that the Premises would close at 4:00am. He would not always stay open until 4:00am but he wanted to be able to do so when they had bookings without having to apply for a temporary event notice every time that they had bookings. He explained that it would take about two weeks to make a temporary event notice application.
 8. The Ward Councillor advised that she had been to the Premises and had had food there and that she was sympathetic to the application but she was concerned that there was sheltered housing in the area and about the impact on residents and local businesses of the application. She said that the Police had told her that they thought that 1:30am would be a reasonable time and she had discussed the problems with street drinking in the area. When questioned about the existing licence that the Premises had the Ward Councillor conceded that she was not

aware of any problems with the Premises but said that they had a Public Space Protection Order and that the problem in the area was with street drinking. The Ward Councillor suggested that the applicant could make a temporary event notice application if he wanted to have longer hours.

9. The Sub-Committee took on board their concerns about the prevention of public nuisance and noise levels and considered there was a risk that such nuisance might occur. The issue is then, if the Sub-Committee decided to grant the licence, whether the conditions offered by the Applicant would be sufficient to address these concerns, given the representations from the Metropolitan Police Service.

10. The Statutory Guidance states that:

“2.15 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.

2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.”

11. The Licensing Authority’s own Statement of Licensing Policy 2020 also states how it considers the issue of public nuisance at section 9 of the Policy, stating that:

“9.1 In addition to the requirements of the Licensing Authority to promote the licensing objectives, the London Borough of Barnet also has a duty under the Environmental Protection Act 1990 to do all it reasonably can to prevent nuisance, including noise.

9.3 For all license applications the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for nuisance having regard to all circumstances of the case, and will particularly consider the following:

- The steps the applicant has taken or proposes to take to prevent noise and vibration escaping from the premises, including music, noise from ventilation equipment and human voices. Such measures may include sound proofing, air conditioning, acoustic lobbies and sound limitation.
- The steps the applicant has taken or proposes to take to prevent disturbance created by patron arriving or leaving the premises.”

12. As for Crime and Disorder, the Statutory Guidance says that Licensing Authorities should look to the Police as the main source of advice on this issue and should also seek to involve the local Community Safety Partnership (CSP).

13. The Authority’s Statement of Licensing Policy also considers the Licensing Objective in section 5 of the Policy and amongst other things states:

“5.11 The effect of a Cumulative Impact Zone for the areas listed in Appendix 4 is that where relevant representations are received on any new applications for a premises licence to sell alcohol off the premises, or on a material variation to an existing such premises licence there will be a presumption under the special policy that the application will be refused.

5.12 The Cumulative Impact Zone is intended to be strict, and will only be overridden in genuinely exceptional circumstances. A ‘rebuttal presumption’ will be applied to every application in a CIZ unless it can be demonstrated that the granting will not negatively impact on the licensing objectives. The licensing authority will always consider the individual circumstances of each application; even where an application is made for a proposal that is apparently contrary to the CIZ.

...

5.17 The Licensing Authority recognises though that where no relevant representations are made in relation to an application in a cumulative impact area, the application must be granted in terms consistent with the applicants operating schedule.

...

5.19 It therefore also recognises that, within the Cumulative Impact Policy areas, it may be able to approve licences that are unlikely to add significantly to the existing problems, and will consider the circumstances of each individual application on its merits.”

14. The Panel noted this guidance and the comments in the Licensing Authority’s statement of licencing policy and noted the oral and written representations that had been received from the ward councillor of her concerns about noise and anti-social behaviour. In respect of the issue of the Premises being in the Cumulative Impact Zone, the Sub-Committee noted that the application was for a variation to the licence of a premises with alcohol only to be supplied for consumption on the premises and that the problems in the Cumulative Impact Zone were with street

drinking. Furthermore, the ward councillor had heard of no complaints about the premises in question.

Decision

15. Having taken all the representations into account, the statutory provisions and the Revised Guidance issued under section 182 of the Licensing Act 2003 and the Council's Statement of Licensing Policy, the Sub-Committee grants the applicant's application subject to the amendments proposed by the Police and accepting the amended proposed licensable hours from the Applicant for both the provision of late-night refreshment and the supply of alcohol on the premises, terminating at 03:30am Monday to Sunday, for last admittance to be at 3:00am and for the Premises to close and all other licensable activities to end at 04:00am on Monday to Sundays.
16. The Sub-Committee considers the Applicant's conditions set out in the application as amended and agreed with the Metropolitan Police Service would satisfy the licensing objectives concerning the prevention of crime and disorder and the prevention of public nuisance.

17. The Licensing Panel has therefore decided to **GRANT** the amended application for a premises licence, amended as follows:

Provision for Late-night refreshment on the premises (indoors)

Monday to Sunday: 23:00 to 03:30am

Provision for the sale of alcohol on the premises (on the premises)

Monday to Sunday: 10:00am to 03:30am

Provision for the performance of live music (indoors)

Monday to Sunday: 10:00am to 04:00am

Provision for the performance of recorded music (indoors)

Monday to Sunday: 10:00am to 04:00am

Provision for the performance of dance (indoors)

Monday to Sunday: 10:00am to 04:00am

Provision for the performance of anything of a similar description to that falling within the definition of the performance of live music, the playing of recorded music and the performance of dance (indoors)

Monday to Sunday: 10:00am to 04:00am

Hours premises are open to the public

Monday to Sunday: 10:00am to 04:00am

With the conditions agreed with the Police

Right to Appeal

17. Any party aggrieved with the decision of the Licensing Panel on one or more grounds set out in schedule 5 of Licensing Act 2003 may appeal to the local Magistrate's Court within 21 days of notification of this decision.

9. ANY OTHER ITEM(S) THE CHAIRMAN DECIDES ARE URGENT

None.

The meeting finished at 1.10pm