

Minutes of the Licensing Sub-Committee

24 October 2023

Members Present:-

Councillor Danny Rich (Chair)

Councillor Claire Farrier

Councillor Eva Greenspan

1. APPOINTMENT OF CHAIR

RESOLVED that Councillor Danny Rich be appointed Chair for this Licensing Sub-Committee meeting.

2. ABSENCE OF MEMBERS (IF ANY)

None.

3. DECLARATION OF MEMBERS' DISCLOSABLE PECUNIARY INTERESTS AND OTHER 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 THE TRADING STANDARDS AND LICENSING MANAGER - HARMONY CAFE 125 COLNEY HATCH LANE LONDON N10 1HD

The Sub-Committee considered an application for a new premise licence under section 17 of the Licensing Act 2003 for Harmony Café Colney Hatch Lane London N10 1HD.

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).

Prior to exclusion, parties were notified that the decision of the Sub-Committee would be announced within 5 working days.

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 Sub-Committee hearing held on 24 October 2023 to determine an application for a premises licence.

PREMISES: Harmony Café, 125 Colney Hatch Lane, London N10 1HD

**TO: The applicant
All persons who made representations**

TAKE NOTICE:

THAT following a hearing before the Licensing Sub Committee

ON 24 October 2023

THE LONDON BOROUGH OF BARNET, as the Licensing Authority for the premises

RESOLVED

TO GRANT THE PREMISES LICENCE (with the inclusion of the conditions proposed as part of the application and in addition to those proposed by the Licensing Sub-Committee as may be amended and noted below):

Hours for Licensable Activities:

Sale or supply of alcohol for consumption on the premises:

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

Hours the premises to be open to the public:

Monday to Sunday: 06:00hrs - 23:00hrs

Conditions:

- 1) The Designated Premises Supervisor (“DPS”) is fully aware of her responsibilities under the LA 2003 Act and will be responsible for liaison with the Police and other Responsible Authorities. Should he become aware of any crime and/or disorder either within the premises or connected to the premises he will ensure the authorities are informed and supported in their actions/activities.
- 2) The Licence Holder / Designated Premises Supervisor/ Manager shall actively participate in any local Pub Watch or similar scheme and will co-operate with initiatives promoted and supported by that Organisation. Management will also seek to play an active role in any community initiatives designed to promote “safer drinking” or minimise problems associated with alcohol and the late-night economy of the Borough.
- 3) Management is aware of and fully embrace the recommendations and sentiments of the document developed by the drinks industry in partnership with the Government, called “Social Responsibility Standards for the Production and Sale of Alcoholic Drinks in the UK”.
- 4) Staff will be trained to ask for acceptable means of identification in the form of a Passport, Photo Driving Licence or a “proof of age” scheme card incorporating the “PASS” hologram. Notices shall be displayed in prominent positions around the premises advising customers of the Proof of Age policy in force at the premises.
- 5) CCTV shall be installed to Home Office Guidance standards and maintained in a 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.
- 6) The CCTV cameras installed shall 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.
- 7) The CCTV system shall display on any recordings the correct date and time of the recording.
- 8) A member of staff trained in the use of the CCTV system shall be available at the premises at all times that the premises are open to the public.

- 9) 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 authorized officers of the Local Authority on request.
- 10) 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.
- 11) 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.
- 12) 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.
- 13) 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.
- 14) 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.
- 15) 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.

- 16) 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.
- 17) All deliveries shall take place during the normal working day (i.e. 09:00 to 18:00 daily).
- 18) 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.
- 19) 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.
- 20) The level of sound/noise emanating from the premises shall be arranged so as not to cause a nuisance to local residents.
- 21) The premises will operate a zero-tolerance policy towards drugs.
- 22) A prominent notice will be displayed at the entrance to the premises notifying customers that a Zero Tolerance to Drugs Policy is being operated at the premises.
- 23) The alcohol storeroom will be kept locked at all times including when the premises are open to the public except when access is necessary for replenishment.
- 24) Any alarms installed in the premises shall be maintained in working order.
- 25) The consumption of alcohol is restricted to within the areas edged red identified on the plan attached to the Application.

- 26) The sale and consumption of alcohol on the premises shall be to customers seated at tables. Vertical drinking shall not be permitted.
- 27) The alleyway at the back of the Premises is to only be used for access and egress in the case of an emergency.
- 28) No licensable activities are to take place in the garden area shown in the plan to the application.
- 29) The garden area shall not be used after 19:00 hours each day, save for access and egress in the case of an emergency.
- 30) A telephone number will be made available to any local resident or members of public if any matters of concern arise in relation to the operation of the premises.
- 31) Signs are placed at the exit to the venue reminding patrons of this rule and that it is a residential area and that they are to respect residents with a view to noise generated.
- 32) Waste bottles or other glass shall not be disposed of or transported in bulk through any external area between the hours of 22:00 and 08:00 the following day.
- 33) A person nominated by Management of the Premises shall be responsible for monitoring noise level to ensure, as far as reasonable, that residents are not disturbed.
- 34) No amplification system or speakers will be used in the external areas of the premises.
- 35) No alcohol in open containers will be allowed to be taken outside of the premises.
- 36) No alcohol is to be served to any customer who appears to be showing signs of intoxication, through alcohol or any other drink or substance.

REASONS:

The Licensing Sub-Committee carefully considered all the relevant information including:

- Written and oral representations by all the parties
- The Licensing Act 2003 and the steps that are appropriate to promote the licensing objectives
- The Guidance issued under section 182 of the Licensing Act 2003 (“the Statutory Guidance”)
- The Council’s Licensing Policy
- Human Rights Act 1998

1. The Licensing Sub-Committee hearing was held in person.
2. In making its decision, the Licensing Sub-Committee (“the Sub-Committee”) carefully considered the application and all written representations, as set out within the report, and the verbal representations made at the hearing by the applicant’s representative. Some of the Objectors were also in attendance with some being represented (“the Objectors Representative”). The Sub-Committee considered their written submissions in close detail, especially their concerns about public nuisance relating to noise and a potential increase in anti-social behaviour.
3. The Sub-Committee noted that whilst many of the representations referred to a potential issue of lack of planning permission / change of use to operate the proposed business, this was ultimately not within the remit of the Licensing hearing or the Sub-Committee’s authority to consider. It was also suggested within the representations and by one of the Objector’s that the title deeds to the Premises contained a covenant restricting the sale of alcohol on the land, which again the Sub-Committee were of the view that this was outside of the remit for consideration. Whilst the Sub-Committee considered these issues to be of importance, they noted that irrespective of any granted licence, it would ultimately be for the Applicant to ensure they complied with any other legislative requirements, planning conditions/restrictions or property covenants outside of Licensing. The Applicant’s representative added that the Applicant was working with their solicitors to remove the said historic covenant.
4. In addition, in accordance with Statutory Guidance, the Sub-Committee were aware that the local planning authority are considered a responsible authority and so would have had the opportunity to submit a representation. The Council’s Licensing Policy states:

‘14.2 The Licensing Authority recognises that there should be a clear separation of the planning and licensing regimes in respect of applications to avoid duplication or a re-run of the planning application process but also recognises that some factors affecting the planning decision may also affect the decision of the Licensing Committee.

14.3 The Licensing Authority expects all applicants to ensure that they have both the relevant Licensing and Planning consents in place in relation to their business prior to commencing to trading.’

5. The Licensing Officer introduced the application and noted that an application for the same premises had previously been made where conditions had been proposed by the Police although the application was subsequently withdrawn. The Applicant's representative clarified that following discussions and having noted the concerns raised by the Objectors, the Applicant had decided to not pursue the shisha element to the business and would instead operate as a café which also sold wines and spirits. The café is to open at 6am to provide for breakfast service and will otherwise sell light food. The Applicant company had also since changed their name and would be operating as Harmony Venues Ltd. The Applicant was aware of the concerns raised by the Objectors, notably from local residents concerned that their right to privacy may be interrupted by the use of the back garden. The Applicant's representative therefore explained that they did not intend to use the garden for licensable activities and intended only to make use of it as a possible play area for children visiting the Premises.
6. The Sub-Committee asked several questions including what level of CCTV would be present at the Premises to which the Applicant's representative confirmed that as per the proposed condition within the application, CCTV would be in place, it would record for a period 31 days and be available to the Police as may be required. Furthermore, in queries around the potential congregation of people outside the Premises, the Applicant's representative confirmed that the Applicant had proposed a condition intending to restrict this to 5 people so as to not cause any nuisance. The Sub-Committee acknowledged that this would also address some of the public safety issues raised within the Objectors representations.
7. The Sub-Committee heard that some additional proposed conditions had been agreed between the Applicant's representative and the Objector's Representative prior to the hearing. The conditions agreed and clarified during the hearing were as follows:
 1. The sale and consumption of alcohol on the premises shall be to customers seated at tables. Vertical drinking shall not be permitted.
 2. The alleyway at the back of the Premises is to only be used for access and egress in the case of an emergency.
8. Whilst the Objectors acknowledged the proposed conditions would assist in satisfying some of the Objector's concerns, there was still concerns around the terminal hour of the business / the licensing activity times and the possible noise to an otherwise generally quiet residential surrounding. The Objector's representative proposed that all windows and doors ought to remain shut as a condition of the licence if granted and that the terminal hour and use of the garden to be restricted from that proposed in the application to ensure promotion of the prevention of public nuisance licensing objective. The Objector's representative pointed out that they wished to make the licence, if granted, future proof should anyone else take over the business.
9. In response to further queries regarding planning, the Applicant's representative confirmed that extraction fan requirements would form part of planning, if required and that whilst the Applicant had made an application for an extension

at the back of the Premises, this was still going through planning and building control. The Applicant's representative added that the Applicant intended to play light background music and would otherwise be happy to accept a condition to limit the use of the garden area to 7pm or similar. The Sub-Committee noted section 9.4 of the Council's Licensing Policy which gives examples of effective management to prevent nuisance includes 'The times of operation of outside areas where persons congregate for periods of time, such as beer gardens.'

10. The Panel considered the Statutory Guidance which states:

"2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP)."

However, the Panel also noted that under Public safety:

"2.7 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning"

11. Whilst the Objectors raise some concerns of a potential rise in anti-social behaviour and crime and disorder, the Panel noted that it ultimately, it is for a licence holder to ensure they are operating in compliance with their licence and to propose measures to promote the licensing objectives and tackle any issues. They were also aware that the Police had not put in a representation and that these issues seemed to be adequately addressed by the Applicant.

Furthermore, the Statutory Guidance states the following:

"Public Nuisance

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.

2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

.....

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.*

12. The Sub-Committee noted the extensive conditions proposed in the application and operating schedule and the fact that these were not opposed. They also noted no responsible authorities had made any representations. Whilst there were representations referring to potential issues under the licensing objective of the Protection of Children from Harm, the Sub-Committee were aware that these were mainly in reference to the use of the Premises as a shisha lounge which was no longer intended and that the conditions otherwise covered the possible issues arising from alcohol under the same licensing objective.
13. The Sub-Committee has therefore decided to GRANT the application for a premises licence, incorporating the conditions as set out above being those proposed by the Applicant in their application / operating schedule where these were relevant, plus additional conditions 26 to 29, with the full list of amalgamated and amended conditions to be added to the Premises Licence set out at the beginning of this Decision.
14. The Sub-Committee considered that the additional proposed conditions numbered 26 to 29 would assist in further promoting the licensing objectives and in mitigating the potential of public nuisance from use of the garden area which was a key concern of the Objectors. The Sub-Committee determined that a condition restricting the opening of doors and windows was not required and that restricting the hours of use of the garden area was sufficient in mitigating the potential noise issue.
15. The Sub-Committee resolved to amend the following conditions proposed by the Applicant:

- Condition numbered 20 above regarding noise was amended to provide more clarity and to remove the additional wording 'and shall not be audible within any noise sensitive premises' as this was considered too open to individual interpretation.
- A condition relating to opening hours was removed as the Sub-Committee deemed this superfluous and covered by the granted times in any case.
- A condition relating to alcohol drinks promotion was removed as the Sub-Committee noted this is already dealt with by the mandatory conditions.
- Condition numbered 25 above was amended to added reference to the area being edged red in the plan to the Application for clarity.

The Sub-Committee further considered the conditions proposed within the remainder of the operating schedule offered by the Applicant. Within these, the Sub-Committee considered that many of the conditions were either duplicated, redundant or otherwise covered by legislation or other policies and therefore not necessary. Accordingly the Sub-Committee added the conditions numbered 30 to 36 as slightly re-worded for clarity from the Applicant's operating schedule as the Sub-Committee deemed these conditions necessary to promote and uphold the licensing objectives.

16. The Sub-Committee was satisfied the Applicant had otherwise addressed the issues raised by the Objectors and the Sub-Committee and that they had suggested ways to minimise or deal with such potential issues. Whilst some of the suggestions within the operating schedule do not form conditions of the license, the Sub-Committee would expect that these suggestions are implemented to ensure the Licence is not breached. Overall, the Sub-Committee felt that these would go some way in preventing issues and promoting the licensing objectives.

17. The Panel would like to remind the Applicant that a breach of the licence times and conditions could result in a review of the premises licence, and potential modification of the conditions and even a revocation of the premises licence.

Right to appeal

Any party aggrieved with the decision of the Sub-Committee on one or more of the grounds set out in schedule 5 of the Licensing Act 2003 may appeal to the Magistrates' Court within 21 days of notification of this decision.

Date: **24 October 2023**

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

None.

The meeting finished at 11.45 am