

## **Decisions of the Licensing Sub-Committee**

10 April 2024

Members Present:-

Councillor Ernest Ambe, Councillor Alison Cornelius, and Councillor Emma Whysall

### **1. APPOINTMENT OF CHAIR**

**RESOLVED** that Councillor Emma Whysall 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 LICENSING MANAGER - BANK FOOD & DRINK, 75 THE BROADWAY NW7 3BX**

The Sub-Committee considered an application for a Variation of a Premises Licence made under section 34 of the Licensing Act 2003 for Bank Food & Drink, 75 The Broadway, Mill Hill, London, NW7 3BX.

### **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 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 five working days.

### **7. DELIBERATION BY THE SUB-COMMITTEE IN PRIVATE SESSION**

The Sub-Committee deliberated in private session, accompanied by the Officer from Harrow and Barnet Public Law (HBPL), the Governance Manager, and the Overview and Scrutiny Manager.

**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 THE VARIATION OF A PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003**

**PREMISES: BANK FOOD & DRINK, 75 THE BROADWAY, LONDON, NW7 3BX (“the Premises”)**

**APPLICANT: ARMANDO LUSHA**

**TAKE NOTICE THAT ON 10 APRIL 2024**

The Sub-Committee convened to determine an application for the variation of a premises licence under s.34 of the Licensing Act 2003.

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

the application to vary a premises licence for Bank Food & Drink, 75 The Broadway, London, NW7 3BX is **GRANTED** subject to the modifications and conditions stated below.

**REASONS:**

The Sub-Committee has considered an application for the variation of a premises licence under the Licensing Act 2003 for the Premises known as Bank Food & Drink, 75 The Broadway, London, NW7 3BX.

The current premises licence already permits the supply of alcohol for consumption on and off the premises between the hours of 10:00 to 23:30 Monday to Sunday as well as other licensing activities as summarised at Annex 1 of the Agenda documents.

The application sought to extend current licensable hours and add additional licensable activities as follows:

**(1) Supply of alcohol for consumption on and off the premises:**

Monday, Tuesday, Wednesday and Sunday: 10:00 to 00:00.

Thursday, Friday and Saturday: 10:00 to 01:00.

**(2) Playing recorded music, live music and anything of a similar description (indoors):**

Monday, Tuesday, Wednesday and Sunday: 10:00 to 00:00.

Thursday, Friday and Saturday: 23:00 to 02:00.

A copy of the existing licence and existing licence conditions was attached at **Annex 1** (pages 17-23). The Premises are situated in an area of mixed commercial and residential properties.

The hearing was held as an in-person meeting. The Sub-Committee consisted of three members. All members of the Sub-Committee were in attendance throughout the hearing, and during deliberation which took place separately in a closed session.

Following the consultation process, the Licensing Authority received two valid representations. One is from the Scientific Services Team for the Council as Responsible Authority, who argue that the application should be refused but if not, then specific conditions should be added to the licence. The objections are based on the prevention of public nuisance, namely that the Responsible Authority considers that the noise generated from the Premises by failing to install noise reducing equipment and its customers, including when they depart the Premises at the end of licensing hours or otherwise loiter around outside, would be excessive and cause too much disruption to residents within the locality.

The second representation was received from a local resident. This objection is based on the prevention of crime and disorder, the prevention of public nuisance, the protection of children from harm and public safety. The objector's objection is based on the noise nuisance and alleged anti-social behaviour caused by customers of the Premises and which says that complaints to the Council have been made. It is also alleged that there have been ongoing breaches of the current licence in that the Premises.

These are shown in full in **Annex 4** to the Agenda and refer to objections cover all four of the licensing objectives.

The Applicant prior to the sub-committee hearing agreed with the Police conditions and the Police as a Responsible Authority has not objected to the variation of the Premise licence at **Annex 3**.

During the hearing, Mr Lusha attended and was represented by Mr Anestis Skoupras, Licensing Agent.

Ms Elisabeth Hammond, the Licensing Officer attended the hearing for the Council.

The local resident, Mr Naim Gecaj and Ms Anna Cane, the team leader for Scientific Services of the Council attended the hearing as objectors to the variation of the Premises licence.

#### *Presentation to Sub-Committee by the Licensing Officer*

The Licensing Officer presented their report to Sub-Committee. The Licensing Officer explained that consultation had taken place once the application to vary the Premise licence had been received and there had been 2 representations received, objecting to the licence being varied, on all four licensing objectives.

It was confirmed there was no objection by the Police, to vary the Premise licence and had agreed conditions with the Police.

The Sub-Committee queried a provision in the current licence regarding non-standard timings, namely what was a terminal hour, whether the Premises could remain open for 24 hours on New Years Eve. The Licensing Officer advised that the Applicant would have to provide further clarification.

The Applicant advised the Sub-Committee that a seasonal variation for New Year's Eve to allow the above licensable activities from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day. However, the Applicant advised that they have not remained open for 24 hours.

### Presentation to the Sub-Committee by Applicant's Agent

Mr Skoupras advised the Sub-Committee, that the Applicant was seeking to extend the licensable activity of supply of alcohol for consumption on and off the premises and add playing recorded or live music to the licence.

The Applicant's business has been struggling financially and the purpose of extending the hours was in an effort to make the business viable. In addition to this, the Applicant had been engaging the Council's Scientific Services Team, following their visits and had followed their recommendations. They had also obtained a report from a sound engineer. They had also agreed conditions with the Police. They were happy to agree with any recommendations that the Sub-Committee have.

The Sub-Committee queried with the Applicant whether he had read the concerns of the residents regarding noise nuisance. The Applicant advised the panel that he read these and had taken steps to address these concerns.

The Applicant advised that he placed signage in the Premises for customers to leave quietly when exiting the Premises, had invested £15,000 in order remedy the soundproofing issues, which included works to the roof and the walls of the Premises.

The Applicant is aware that complaints were received by the Council in respect of noise nuisance and has been working to address to this with the Council and local residents. The Applicant further advised the Sub-Committee he understood that extend the hours could upset local residents however he had made changes to the Premises, by installing better soundproofing windows.

Mr Skoupras further advised the Sub-Committee, that the grant of the application would offer greater flexibility to serve customers. The Applicant confirmed that he was happy to follow any recommendations of the Council's Scientific Team and any additional conditions that the Sub-Committee wished to impose on the licence.

The Sub-Committee asked the Applicant about the nature of his business, staffing, and the capacity levels. The Applicant advised his business was a lounge restaurant and that the Premises could hold up to 150 people, the front of the Premises can seat between 50-60 customers and the rear of the Premises which included a sushi bar could seat approximately 95 customers however the Premises has never reached that capacity.

Further queries were made by the Sub-Committee regarding the agreed conditions with the Police that: *"the licence holder will ensure that there is food available to purchase at all times the licensable activity of the sale alcohol is permitted"* as the application did not request a variation of timing for late night refreshments and how would the Applicant achieve this.

Mr Skoupras advised the Sub-Committee when discussing conditions with the Police it was agreed that they would serve cold food as they have a sushi bar as the service of hot food is finished by 11pm. The Applicant further added that the last orders for the Premises in respect of hot food is around 10pm and the kitchen closes at 11pm as all the food is made to order and that he did not want the customers to feel rushed, especially for larger parties that came later in the evening and wanted to extend to hours in order to properly accommodate the customers.

Another query was raised relating to the agreed conditions with the Police that: *“The premises shall not operate routinely as a ‘nightclub’ whereby the premises is open for amplified music for entertainment with dancing. In the event that the premises host such an event (i.e., operate under a TEN) for this purpose, the licence holder/DPS must risk assessment the need for SIA door staff/security)”*. Whether the Applicant would have a dancefloor or have the potential to turn the premises similar to a nightclub.

The Applicant advised the Sub-Committee that the Premises would operate like a lounge, with a DJ but the music would not be too loud however there is no rule against dancing.

The Chair clarified that the Sub-Committee was aware that dancing is not licensable activity unless it was a performance of dance (‘adult entertainment’) which is a type of regulated entertainment.

Mr Skoupras confirmed with the Sub-Committee, that if the Premises were to hold any events that including dancing, they would apply for a temporary event notice.

In respect of staffing, the Applicant advised that as the business is struggling that he previously employed between 26-30 staff members however that staffing number is 16 and depends on demand.

#### *Presentation to the Sub-Committee by the Responsible Authority*

Ms Cane advised the Sub-Committee that the application should be refused for the reasons specified in the Scientific Services objections.

She advised the Sub-Committee that she visited the Premises in March 2024 and found the measures put in place to reduce noise nuisance was not adequate, which would lead to noise nuisance for residents as the Premises is close to residential properties.

Ms Cane advised that the Premises has only one door which goes out on to the main road. There are residential properties above the Premises and within the locality of the Premises most venues are normally closed by 11pm and this Premises is only venue that operates with later hours. The concern of the Scientific Services Team is that later hours would attract larger crowd and parties and would stand out as the only noise source in the area between 11pm to 2am.

Further to this, Ms Cane advised that on a visit she noted that there no staff or measures in place directing customers to leaving quietly.

The Sub-Committee asked Ms Cane when the last visit to the Premises was, and whether works were carried out to minimise noise nuisance. The Sub-Committee were informed that the last visit was on 11 March 2024. In respect to limiting the noise nuisance there were no noise limiters in place, that the fire door was not suitably soundproof and there was no control of customers leaving the Premises. Ms Cane further advised that the Applicant needs to demonstrate that they could manage their customers and noise before extending hours.

Ms Cane acknowledged that the noise could be reduced however the Scientific Services would want to see measures in place before the application is granted.

Presentation to the Sub-Committee by local resident

Mr Gecaj advised that the Sub-Committee, when the Applicant first occupied the Premises and work was being carried the water was cut off and his family was left without water for two days.

He further advised the Sub-Committee that due to noise emanating from the Premises it had affected his son and his struggled to sleep in turn had affected his son's school attendance. The Applicant allegedly has a 60-inch TV, and it can be heard in his bedroom.

The Premises had also affected Mr Gecaj, he is employed as a bus driver and there are occasions that he cannot sleep until 2pm due to noise coming from the Applicant's customers. Mr Gecaj informed the Sub-Committee due to the lack of sleep; he had an incident whilst driving at work, which resulted in his termination.

He further advised that he had made attempts to communicate with the Applicant, but the Applicant did not seem to take the concerns of residents onboard.

The Sub-Committee asked Mr Gecaj, that living above a restaurant would it be reasonable to expect there would be some inconvenience. Mr Gecaj acknowledged that there would be, however he had purchased his property 20 years ago and it was previously a bank. He further advised when it was converted to a restaurant a large commercial fan was place by his window which caused noise nuisance. He had to instruct solicitors to challenge the position of the fan.

He further advised that he could hear customers leaving and staff shouting. Mr Gecaj referred to specific incidents that did not relate to the application. The Sub-Committee reminded Mr Gecaj that they cannot consider matters that fall outside the licensing objectives.

Further enquiries were made with Mr Gecaj in respect of music being played. He advised that music was being played during the daytime but not in the early hours of the morning.

Mr Skoupras provided a letter from Chalset Sound Engineering Technology dated 9 April 2024 which advised that the noise limiter does not exceed 88.7 decibels. Mr Skoupras advised that the music had been tested at very high level. However, the Sub-Committee raised that the decibel level was tested when the Premises was empty, and noise would generally become louder with customers.

The Sub-Committee asked the Applicant whether he would agree to install a noise limiter in the Premises to a level which has been agreed with the Scientific Services Team. The Applicant confirmed that he would, and they had already installed two noise limiters 1 being located that 1m away from the closest neighbouring window and one by the front.

The Sub-Committee enquired with Ms Cane what would be the recommended limit. Ms Cane advised that there was not a specific number but there is a British Standard, and the recommended limit would be done in conjunction with a noise consultation.

In respect of the fire door not being soundproof, the Applicant confirmed that he had ordered a new door to comply with the Scientific Services recommendations and it is expected to arrive at the end of the month (April).

Further queries were raised with the Applicant in respect of Mr Gecaj's representations pertaining to customers loitering outside the Premises and moving customers on. The Applicant advised that he has two people at the front door, who are dressed smartly but has not employed SIA security.

He further advised that if the licence is granted, he would employ SIA security but not everyday as it is unaffordable. If there were events on Thursday to Saturday, he would be able to do this. In addition to this there are currently notices in the Premises which ask the customers to leave quietly.

In respect of the fan, the Applicant advised that as the kitchen closes at 10pm, they would try and close the ventilation system by 11pm to further reduce noise.

Ms Cane advised the Sub-Committee that noise relating the fan was not included in their objections. However, under planning conditions, the fan noise output will be 5 decibels below background levels, operating in a different regime than initially envisioned. This is being addressed through ongoing consultations but believes that this has been addressed.

The Chair explained that as they are deciding whether to modify the conditions of the licence or to reject the whole or part of the application, they would consider the hours and days being proposed.

The Applicant and Mr Skouporas confirmed that they were content with any recommendations that is made by Sub-Committee. They would reduce the late hours, allow music to stop 1 hour before the Premises closes to allow for dispersal of customers, serve cold food and close the Premises with the Sub-Committee's recommendations.

## **Decision**

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

- Written and Oral representations 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
- Barnet Council's licensing policy
- The Human Rights Act 1998

Following representations from interested parties about noise nuisance, the Sub-Committee decided to vary the operating hours set out in the application with modification.

The Sub-Committee is not wholly persuaded that the application seeking to extend the licensable activities to the hours sought would further the licensing objectives, in particular the prevention of public nuisance.

The Sub-Committee accepted that there were some issues in this area with noise nuisances but did not find that the granting of this variation of the licence would make those issues worse, if the Applicant was to install the correct equipment/devices to

reduce noise emanating from the Premises and follow the recommendations of the Council's Scientific Services Team.

The Sub-Committee recognises that the Applicant is willing to work with the Council's Scientific Services to ensure that Premises is to the standard required to minimise noise nuisance. In addition to reducing the proposed hours, the Applicant confirmed that they would content to proceed to the Premises being closed later, on Friday and Saturday.

The Sub-Committee took into consideration the proposed recommendation by the Scientific Team in order reduce noise nuisance and achieve a balance between the interests of local residents and the needs of the Applicant's business.

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.*

.....

*2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.*

.....

*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.”*

Having taken all the representations into account, the statutory provisions and the Statutory Guidance issued under section 182 of the Licensing Act 2003 and the Council’s Licensing Policy, the Sub-Committee has decided to **GRANT** the application to vary the premises licence with the following modifications:

**(a) Supply of alcohol for consumption on the premises**

Monday to Thursday 10:00 to 23:30  
Friday to Saturday 10:00 to 00:30  
Sunday 10:00 to 23:30

**(b) Live music and Recorded music**

Monday to Thursday 10:00 to 23:30  
Friday to Saturday 10:00 to 00:30  
Sunday 10:00 to 23:30

**(c) Hours premises are open to the public**

Monday to Thursday 10:00 to 00:00  
Friday to Saturday 10:00 to 01:00  
Sunday 10:00 to 00:00

Additional Conditions to be added to the existing Licence conditions in Annex 3 of the licence:

1. The Premises shall not be used under the varied terms of this licence until they have been insulated so as to prevent the transmission of excessive airborne or impact sound to neighbouring residential dwellings. The insulation works shall be installed in accordance with details submitted to and approved in writing by the Council’s Consumer and Public Protection Department and shall thereafter be maintained to the same standard.
2. An acoustic report from an independent suitably qualified Acoustician shall be submitted to the Council’s Consumer and Public Protection Department to assess whether any further acoustic works are necessary to protect residents living in neighbouring dwellings from noise and vibration. The works required to be carried out to achieve compliance with the recommendations of that report shall be completed to the written satisfaction of the Council’s Consumer and Public Protection Department and shall thereafter be maintained to the same standard.
3. A noise limiter must be fitted to the musical amplification system set at a level determined by and to the satisfaction of an authorised officer of the Council’s Consumer and Public Protection Department, so as to ensure that no noise nuisance is caused to local residents or businesses. The operational panel of the noise limiter shall then be secured by key or password to the satisfaction of officers from the Council’s Consumer and Public Protection Department and

access shall only be by persons authorised by the Premises Licence holder. The limiter shall not be altered without prior agreement with the Council's Consumer and Public Protection Department. No alteration or modification to any existing sound system(s) should be affected without prior knowledge of an authorised Officer of the Council's Consumer and Public Protection Department. No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.

4. The rear fire door of the Premises located in the garden room must be constructed to provide sound insulation to prevent noise nuisance within neighbouring dwellings and be approved by the Council's Consumer and Public Protection Department.
5. No music or amplified sound shall be generated within the Premises so as to give rise to nuisance within neighbouring dwellings.
6. No noise or vibration shall be generated within the Premises shall give rise to a nuisance to the occupiers of neighbouring properties.
7. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
8. Persons wishing to leave the premises to smoke shall not be permitted to take drinks outside with them.
9. A minimum of two SIA door supervisor(s) shall be on duty at the entrance of the Premises on Friday and Saturday from 10 pm until 30 minutes after the Premises closes to the public and the customers have left its vicinity. At least one of the SIA door supervisors must be female are used to search female customers.
10. Customers shall be supervised when leaving the premises and shall be asked to leave quietly.
11. The door supervisor(s) shall properly control customers outside the Premises so that they leave quickly and quietly and do not congregate on the pavement outside the Premises causing noise and nuisance to residents living in the vicinity.
12. All reasonable steps shall be taken to stop customers congregating on the highway outside the Premises within 50 meters of the Premises.

The Sub-Committee would like to remind the Applicant that a breach of the licence including the conditions set out above could result in a review of the conditions and even a revocation of the premises licence.

### **Right to Appeal**

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 CHAIR DECIDES ARE URGENT**

None.

The meeting finished at 1.20 pm