

Information for Licensing Sub Committee - inclusion in the hearing papers

New application for a premises licence NEZ 418c Watford Way London NW7 2QJ

This document sets out our case and rebuttal of the points raised in the petition, and identically worded forms that have been received as representations.

To assist the committee with our case a number of documents are attached as an appendix. These include items we have submitted in support of the application, and by way of explaining how the business will operate. Also included are copies of the various documents produced by Mr Patel, who is the owner of a nearby shop “Nisa Day 1” situated at 424A Watford Way London NW7 2QJ. All of these are shown in the appendix.

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Introduction

The applicant has consulted with the expert and professional bodies who ensure that the licensing objectives are upheld by licensed premises.

They have also sought to reach out to everyone who has submitted a representation, and offered the opportunity of a meeting to further explain the business model. The 3 ward councillors have similarly been contacted by email and asked for their views, comments and suggestions. The licensing consultant acting in this matter provided contact details for anyone wishing to obtain additional information or ask any questions. Up to the current date no response has been received from any party.

No representations have been received from any of the responsible authorities, in particular the police who are the experts on crime and disorder, and the council's own departments, Safeguarding Children Board, Health and Safety Team, Nuisance Team, Trading standards and the Licensing team. All of these bodies are experts in their own field, who advise and guide the council.

None of them have raised any concerns or evidence, with regard to the applicant and application, to suggest that it is likely that granting the application would increase the risk to; children and young persons, safety, noise nuisance, sale of illegal goods, or any other person due to the licensable activity.

It is highly unlikely that this family run business would do anything other than fully promote the 4 licensing objectives. It will certainly be an asset to the area, and a vast improvement on what was a run down and unsightly vacant site.

Rebuttal of representations and concern re the submission and relevance of them

Mr Patel has orchestrated a thoroughly unpleasant and vexatious business campaign against the applicant and their application. Mr Patel:

- Produced and delivered a letter encouraging people to make objections against the application (**Appendix 'A'**)
- Encouraged residents and his customers to sign the pre written forms which were attached to the letter and apparently pushed for customers to sign these whenever they were in the store (**Appendix 'B'**) and
- Produced an identically worded document to the first one with a supplementary document attached and headed with the words "Petition" (**Appendix 'C'**).
- Offered to deliver the completed documents himself to the council. It appears that this was the case with most of them.

Trade based objections are irrelevant for the purpose of the licensing act 2003. The content of virtually every objection is identical and they all reference "the need" for additional premises. As you are aware "need" is not a relevant matter for the licensing act 2003, and is clearly explained in Barnet's Statement of Licensing Policy, and the statutory guidance at sect 182 of the Licensing Act 2003.

None of the objectors have outlined what they feel would resolve or reduce their concerns, as per Barnet's statement of licensing policy at paragraph 12.15.

We have also not received a single reply to the explanation letter, that was kindly sent out by the council to every named person.

A number of them have also withdrawn their objections, whilst others have confirmed that they will not be attending the hearing.

We have grave concerns regarding the authenticity of the representations, and that many of these may well have been signed without the signatory realising the full content of the pre written response.

We respectfully request that the officer presenting the information for the hearing includes the number of people who responded to the council's letter, as this would be a reasonable indication of the amount of genuine representations.

You will also note that some of the addresses are shown in Boroughs outside of Barnet e.g. Uxendon Hill HA9 which is in Brent near Wembley stadium.

In all of my 25 years dealing with both the previous licensing act, and the current one. I have never seen a campaign driven by a single person, where all of the responses use the same forms written by that person, and lack any different wording, or reasons for objecting to the application.

We ask that the licensing committee carefully scrutinise this and give due consideration to them being mainly irrelevant, vexatious, lacking in any evidence, and effectively a trade-based objection. One that is principally concerned with "need", and disguised by Mr Patel to appear as genuine representations.

As such we respectfully request that the licensing sub-committee attach no weight to them in reaching their decision.

Rebuttal and Comments re the Representations

Appendix 'A' Information provided to Mr Patel's Customers

This document clearly demonstrates that Mr Patel's campaign and the wording he has provided for the pre written objections is entirely based on the irrelevant (illegal) grounds of a "trade objection" He uses the phrases:

- a) if the above application is granted it would be extremely detrimental to our business
- b) we are seeking the help of the local community
- c) we request your help and assistance to oppose this application
- d) to make the process of application easier we have enclosed a draft template letter
- e) bring it to my shop by the 15th September and I will then send all of the signed copies to the licensing committee

Appendix 'B' (petition)

We respectfully request that the licensing sub committee strikes all of the information detailed in these documents as irrelevant.

None of it has any relevance for the licensing act 2003. The content is purely trade based, and with reference to need for another premises. Neither of which carry any weight in the licensing sub committee's determination.

Appendix 'C' pre written objection provided by Mr Patel

For ease of reference we have broken this down into 6 paragraphs which will be addressed below:

- 1) Introduction/outline of application – we have no comments regarding this
- 2) Introduction/outline of application – we have no comments regarding this
- 3) Introduction/outline of application – we have no comments regarding this
- 4) It is not a matter for the licensing act to address, limiting or setting targets for the number of premises permitted to sell alcohol in a particular area. If this was indeed a particular issue in the ward it would have been included as part of a cumulative impact area. There is no data to support such an area for this ward.
The case for "need" and the number and type of premises is a matter for planning. No evidence has been provided by Mr Patel or any of the other objectors that these premises would increase, crime, disorder or public nuisance. If these are at problematic levels, then they must be caused by the premises currently selling alcohol in the area, including Mr Patel's own shop. However, during my communications with the Police, they are unaware of these issues and have no data to support this. Barnet Councils own analysis on "*alcohol-related ambulance call outs*" confirms that the Mill Hill ward is the 2nd lowest out of the 21 wards, returning a figure of 7.5 cases per 10,000 head of population.
Barnet as a Borough had the 2nd lowest crime rates for Violence, sexual offences and Drugs out of all the 32 London Boroughs (year to June 2019) Mill Hill is also amongst one of the safest wards in Barnet for all crimes. There are also no recent incidents, actions or operations in relation to alcohol related crime and disorder or children being at risk due to licensed premises, recorded on the Police Safer Neighbourhood Team site. This alone would discount the allegations and fears contained in this paragraph. There is certainly no evidence, or likelihood that granting a licence to these premises is more likely than not to change this.
- 5) As per the information above, there is no evidence to support that this ward suffers from higher levels of noise nuisance and anti-social behaviour, or that it has been occurring since 2003 and has been caused by the 2003 Licensing Act. This act didn't come into effect until the

24th November 2005. I was certainly not aware of any issues or increase in the incidents complained of. As stated in bullet point 4, even if the issues complained of were facts, they would currently be happening and have a causal link to the all licensed premises, of which Mr Patel's shop is one of them.

- 6) The presence of 2 girl's schools in the nearby area is not a matter for the licensing sub committee to consider. The safeguarding children from harm team have not flagged any issues in relation to this application or the applicant, and no evidence has been provided that the applicant, or indeed the premises, present any threat to children or anyone else's safety.

Similarly, there is absolutely no evidence or reasonable cause that; alcohol sales will increase if a premises licence is granted, alcoholics will gather in the underpass, or incidents of broken glass will increase.

With regard to public nuisance during the night, this is a matter covered by the operating schedule, the conditions volunteered, and the professionalism of the operator. It is highly unlikely that these premises will cause any issues.

The request made by all of the representations is exactly the same, that the licensing authority should refuse the application. Ordinarily, and in all similar applications I have ever seen, a reasonable and proportionate request is made. It is inconceivable that virtually every single representation makes exactly the same request, with none of them outlining what they feel would resolve or reduce their concerns. This is shown as good practice and set out in Barnet's Statement of Licensing Policy at paragraph 12.15

Legislation – Guidance – Barnet’s SLP – Regulation’s

Sect 182 Guidance April 2018

Each application on its own merits

1.17 Each application must be considered on its own merits and in accordance with the licensing authority’s statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

Relevant, vexatious and frivolous representations

9.4 A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a business person that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

9.5 It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

9.6 Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate.

9.12 Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority’s main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority’s main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations

from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

9.14 Licensing authorities are not expected to act as responsible authorities on behalf of other parties (for example, local residents, local councillors or community groups) although there are occasions where the authority may decide to do so. Such parties can make relevant representations to the licensing authority in their own right, and it is reasonable for the licensing authority to expect them to make representations themselves where they are reasonably able to do so. However, if these parties have failed to take action and the licensing authority is aware of relevant grounds to make a representation, it may choose to act in its capacity as responsible authority.

9.15 It is also reasonable for licensing authorities to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority. For example, the police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each responsible authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other responsible authority.

Disclosure of personal details of persons making representations

9.26 Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearings) Regulations 2005 to provide the applicant with copies of the relevant representations that have been made.

9.27 In exceptional circumstances, persons making representations to the licensing authority may be reluctant to do so because of fears of intimidation or violence if their personal details, such as name and address, are divulged to the applicant.

9.28 Where licensing authorities consider that the person has a genuine and well-founded fear of intimidation and may be deterred from making a representation on this basis, they may wish to consider alternative approaches.

9.29 For instance, they could advise the persons to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.

9.30 The licensing authority may also decide to withhold some or all of the person's personal details from the applicant, giving only minimal details (such as street name or general location within a street). However, withholding such details should only be considered where the circumstances justify such action.

Hours of trading

10.14 Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.

10.15 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

The need for licensed premises

14.19 There can be confusion about the difference between the “need” for premises and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy.

Licensing hours

14.51 With regard to licensing hours, the Government acknowledges that different licensing approaches may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make such decisions based on their local knowledge and in consultation with other responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

14.52 Statements of licensing policy should set out the licensing authority’s approach regarding licensed opening hours and the strategy it considers appropriate for the promotion of the licensing objectives in its area. The statement of licensing policy should emphasise the consideration which will be given to the individual merits of an application. The Government recognises that licensed premises make an important contribution to our local communities, and has given councils a range of tools to effectively manage the different pressures that licensed premises can bring. In determining appropriate strategies around licensed opening hours, licensing authorities cannot seek to restrict the activities of licensed premises where it is not appropriate for the promotion of the licensing objectives to do so.

STATEMENT OF LICENSING POLICY - LONDON BOROUGH OF BARNET January 2020

5. Approach to licensing applications

5.1 When exercising its licensing functions the Licensing Authority will not be influenced by the question of need. **The question of whether or not there is a need for any particular premises is a commercial matter which is not relevant to the Licensing Authority's considerations**. The issue of need may be a matter for planning consideration or for the market to decide and does not form part of this licensing policy statement.

4. Fundamental Principles

4.5 In determining a licence application the overriding principle will be that each application will be determined on its individual merits.

4.6 Nothing in the Licensing Policy will:

- Undermine the rights of any person to apply the 2003 Act for a variety of permissions and have the application considered on its individual merits.
- Override the right of any person to make representations on any application or seek a review of a licence or certificate where they are permitted to do so under the Act.

4.7 The decision taken by the Licensing Authority will be focused on matters that are within the control of the individual licensees and others granted relevant permissions. Accordingly, these matters will centre on the premises and places being used for licensable activities and the vicinity of those premises and places. The Licensing Authority will focus on the direct impact of activities taking place at the licensed premises on both adults and children living in, working in or visiting the area concerned.

4.8 In taking its decisions, the Licensing Authority will take into account that licensing law is not the primary mechanism for the control of anti-social behaviour once individuals are beyond the direct control of the premises concerned. Nonetheless, licensing law will be part of a holistic approach to the management of the evening and night-time economy in town and city centres

4.9 Licence conditions imposed will be relevant to the individual application and appropriate to meet the licensing objectives. Licence conditions will not be imposed where other regulatory regimes, such as fire safety legislation, provide sufficient protection for patrons and other members of the public.

4.14 Appropriate weight is given to all relevant representations made to the Licensing Authority. This does not include those representations which are considered to be frivolous, vexatious or repetitious, which will be disregarded.

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12. Representations

12.1 Representations should be made in writing to the licensing authority. The interested party must ensure they include their name, address and contact details. Please be aware that the Licensing Act 2003 requires all parties that wish to make a representation against an application ensure that their name and addresses are included in the representation to make it valid.

12.2 The name and address is required so that the Licensing Authority and the applicant or their representation can validate that the person making the

representation is qualified to do so in terms of living or working in the vicinity of the premises concerned.

12.3 In exceptional cases an interested party can request the Licensing Authority to withhold their details, in any event the original letter must contain the information required.

12.4 All representations will be available in the public domain and some will be contained in reports that will be able to be viewed on the website.

12.5 All representations must be about the likely effect of granting the licence or certificate on the promotion of at least one of the four licensing objectives. It would be wise, therefore, to explicitly link any representation to one or more of the objectives.

12.6 It will also assist if the representations are specific to the premises and evidence based. Interested parties may, therefore wish to talk to the relevant responsible authority beforehand, or document problems themselves by, for example, keeping a diary or photographic evidence of any incidents.

12.7 The Licensing Authority will need to be satisfied that there is an evidential and causal link between the representations made, and the effect on the licensing objectives.

12.8 In addition, the Licensing Authority can only consider representations that are not “vexatious” or “frivolous”. Whether representations are frivolous or vexatious will be for the Licensing Authority to determine. For example, the Licensing Authority might find the representations were vexatious if they arise because of disputes between rival businesses or they might be frivolous representations if they plainly lacked seriousness.

12.9 It is also important that an applicant is able to respond to a representation, for example, if they believe that it is not a “relevant” representation. If interested parties are concerned about possible intimidation, they could consider asking the appropriate responsible authority to make a representation on their behalf.

12.10 If no relevant representations are made, the licence or variation must be granted, therefore interested party representations are very important.

12.11 It may be beneficial for those wishing to make a representation to get the backing of other people living, or businesses operating in the vicinity of the premises.

Note 12.12 is apparently missing from the policy (Typo ?)

12.13 If any party is considering raising a petition, it is important to ensure that the Licensing Authority can determine whether all the signatories are within the ‘vicinity’ of the premises. So, including addresses and indicating clearly what representation(s) they are all making is essential.

12.14 If interested parties want to ask another person, such as an MP or local Councillor to represent them, it is advisable to make such a request in writing so that the individual can demonstrate he or she was asked.

12.15 Representees should address how they would like the situation to be rectified. The Licensing Authority often has to balance conflicting needs when determine licensing applications, it is beneficial for representees to outline what they feel would resolve or reduce their concerns.

14. Integrating strategies & avoiding duplication

14.1 The Licensing Authority recognises the need to avoid, so far as possible, duplication of the existing legislation and other mechanisms to deal with any environmental or other impacts on the leisure economy such as:

- Planning controls
- Positive measures to create a safe and clean town centre environment
- Powers of the Licensing Authority to designate public places where the consumption of alcohol is not permitted
- Police enforcement of disorder and anti-social behaviour
- Prosecuting of personal licence holders and staff selling alcohol to those underage.

- Police and the Licensing Authority's powers to close down instantly any licence premises on the ground of disorder or likely to cause disorder or excessive noise emanating from the premises
- Environmental Protection Act 1990
- Children Act 1989
- Health and Safety at Work Act 1974 etc.
- Powers of the police/local residents/businesses ability to seek a review of a licence.

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.

CONFIDENTIAL

Licensing Act 2003

18 Determination of application for premises licence

(1) This section applies where the relevant licensing authority—

(a) receives an application for a premises licence made in accordance with section 17, and
(b) is satisfied that the applicant has complied with any requirement imposed on him under subsection (5) of that section.

(2) Subject to subsection (3), the authority must grant the licence in accordance with the application subject only to—

(a) such conditions as are consistent with the operating schedule accompanying the application, and
(b) any conditions which must under section 19, 20 or 21 be included in the licence.

(3) Where relevant representations are made, the authority must—

(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

(4) The steps are—

(a) to grant the licence subject to—

(i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and
(ii) any condition which must under section 19, 20 or 21 be included in the licence;
(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
(c) to refuse to specify a person in the licence as the premises supervisor;
(d) to reject the application.

(5) For the purposes of subsection (4)(a)(i) the conditions mentioned in subsection

(2)(a) are modified if any of them is altered or omitted or any new condition is added.

(6) For the purposes of this section, “relevant representations” means representations which—

(a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives,

(b) meet the requirements of subsection (7),

(c) if they relate to the identity of the person named in the application as the proposed premises supervisor, meet the requirements of subsection (9), and

(d) are not excluded representations by virtue of section 32 (restriction on making representations following issue of provisional statement).

(7) The requirements of this subsection are—

(a) that the representations were made by an interested party or responsible authority within the period prescribed under section 17(5)(c),

(b) that they have not been withdrawn, and

(c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

(8) Where the authority determines for the purposes of subsection (7)(c) that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for its determination.

(9) The requirements of this subsection are that the representations—

(a) were made by a chief officer of police for a police area in which the premises are situated, and

(b) include a statement that, due to the exceptional circumstances of the case, he is satisfied that the designation of the person concerned as the premises supervisor under the premises licence would undermine the crime prevention objective.

(10) In discharging its duty under subsection (2) or (3)(b), a licensing authority may grant a licence under this section subject to different conditions in respect of—

(a) different parts of the premises concerned;

(b) different licensable activities.

Hearings Regs

STATUTORY INSTRUMENTS - 2005 No. 44

LICENCES AND LICENSING

The Licensing Act 2003 (Hearings) Regulations 2005

19. The authority shall disregard any information given by a party or any person to whom permission to appear at the hearing is given by the authority which is not relevant to—
(a) their application, representations or notice (as applicable) or in the case of another person, the application representations or notice of the party requesting their appearance, and
(b) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a chief officer of police, the crime prevention objective.

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End of Report