

**Havering Council – Decisions taken by the Licensing Sub-Committee on Monday, 1 June 2015**

Agenda Item No	Topic	Decision
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**Note: this decision list is for guidance only. The text of the minutes, which may be different, is definitive.**

**Part A – Items considered in public**

<p><b>A1</b></p>	<p>APPLICATION FOR A TEMPORARY EVENT NOTICE UNDER SECTION 100 OF THE LICENSING ACT 2003.</p>	<p align="center"><b>Licensing Act 2003 Notice of Decision</b></p> <p><b>PREMISES</b> Mirror Restaurant 3-7 Billet Lane Hornchurch RM11 1TS</p> <p><b>APPLICANT</b> Mr Mehmet Ergun Keles Mirror Restaurant 3-7 Billet Lane Hornchurch RM11 1TS</p> <p><b>1. Details of Application</b></p> <p>Mirror Restaurant is located in a parade of commercial outlets at the junction of Billet Lane and High Street in Hornchurch which comprises a part of the St Andrews ward. St Andrews ward is subject to a special licensing policy. The premises has yet to open and is currently being fitted out for the purpose of being a licensed premises. A premises licence application is currently on-going. The site occupies three commercial units knocked into one large venue. A large decked area has been constructed at the front of the premises while the premises' frontage comprises gate fold doors which presumably will be fully open during the warm weather. The commercial properties in this parade of shops have residential properties located above them.</p>
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		<p>The TEN application was submitted by Mr Mehmet Ergun Keles under section 100 of the Licensing Act 2003. The TEN was received by Havering’s Licensing Authority on 14 May 2015.</p> <p>The TEN was originally submitted on the behalf of Mr Keles by his agent with an intention to permit the provision of licensable activity from 2 – 8 June 2015. This original submission was made void, however, as it was contrary to s.101(1)(a) of the Act which requires a minimum of 24 hours between TENs. A previously submitted TEN, or TEN ‘A’, was to end on 1 June 2015. This second TEN, or TEN ‘B’, was subsequently amended to reflect the current dates, i.e. 3 – 9 June 2015.</p> <p>TEN A was a late TEN and, apart from the dates, was identical in content to the standard TEN, TEN B. Both the Police and Havering’s Noise Team submitted objection notices against TEN A. As a result, a counter notice was issued by Havering’s licensing authority. TEN A is therefore not authorised and may not occur.</p> <p>Further to the submission of this TEN, TEN B, discussions between Mr Keles’ agent and the Police resulted in the receipt of a further amendment to the TEN in accordance with s.106 of the Act. This modification reduced the TEN’s terminal hours from 01:00 to 00:30 and reduced the maximum capacity from 250 attendees to 180. These modifications addressed Police concerns.</p> <p>Havering’s Noise Specialist was not involved in the discussion between Mr Keles’ agent and the Police. Havering’s Noise Specialist had concerns about the TEN and submitted an objection notice.</p> <p>At the hearing the sub-committee was informed that the details of TEN is:</p>

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		<p>Monday – Saturday 09:00 – 23:30                      Sunday 09:00 – 23:00</p> <p><b>2. Grounds of Objection</b></p> <p>There was one objection notice made against the TEN from a responsible authority, namely Havering’s Noise Specialist, Mr Marc Gasson, submitted on 18 May 2015.</p> <p>Under the Licensing Act 2003 as amended, the police and environmental health have three working days to lodge an objection to a TEN on the grounds relating to one or more of the four licensing objectives (The Prevention of Crime and Disorder, Public Safety, the Prevention of Public Nuisance and the Protection of Children from Harm).</p> <p><b>3. Details of Representations</b></p> <p>Public Health: - Mr Gasson, the Havering Noise Specialist officer appeared and reiterated his written objection against the applications. He stated that:</p> <p><b>1.</b> He remained concerned about the close proximity of residential properties to the application site. The closest dwelling are immediately adjacent to the premises, with some being above the commercial properties in Billet Lane. Residents are likely to experience unacceptable levels of noise from the following sources:-</p> <ul style="list-style-type: none"> <li>• Amplified music from the venue, particularly if the appropriate noise control measures (i.e. noise limiter and lobbied exits) are not put in place.</li> <li>• Vehicle movements, the premises has no parking spaces which considering the proposed capacity for the venue will mean vehicles will be using the street to park in, potentially directly outside nearby residential properties exposing</li> </ul>

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		<p>residents to unacceptable levels of noise particularly after the venue has closed at 23:30 hours</p> <ul style="list-style-type: none"> <li>• People noise from both inside and outside the premises but particularly after the premises closes when patrons could be under the influence of alcohol.</li> <li>• People noise from patrons using the outdoor seating area until the specified closing hours.</li> </ul> <p>Mr Gasson noted that the premises has now amended its terminal hours for regulated activities at the hearing.</p> <p><b>4. Applicant’s response.</b></p> <p>Mr G Hopkins, the representative of the applicant addressed the sub-committee and responded to the points made by Mr Gasson - Noise Specialist.</p> <p>The Sub-Committee was informed that the applicant had 25 years’ experience in various restaurant businesses.</p> <p>The operating hours had been amended as stated above.</p> <p>Mr Hopkins advised the sub-committee to be mindful that the premises was a new and untested venue for the potential of noise.</p> <p>The applicant is looking to bring back in to use three units in a flagship area of restaurants.</p> <p>The following series of measures were offered:</p> <ul style="list-style-type: none"> <li>• To close terrace by 22:00 hours daily</li> <li>• No drinks would be taken outside after 22:00 hours</li> <li>• To shut the front windows when music is played from the single vocalist and pianist</li> <li>• That recorded music was to be played in the background</li> <li>• The sub-committee was informed that the premises had been fitted with sound</li> </ul>

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		<p>incorporate a recording facility for a minimum of one calendar month.</p> <p>There will be two personal licence holder on the premises, adequate staff, facility for Taxi cab service, Challenge 25 and as the premises will be operating until 23:30 hours, there was still adequate public transport available.</p> <p>The sub-committee was informed that the premises will be an upmarket restaurant with staff uniformed in black and white. A refusal register would be kept in the premises.</p> <p>Mr Hopkins informed the sub-committee that the premises had agreed with the Police a capacity of 178 including staff.</p> <p><b>5. Determination of Application</b></p> <p><b>Consequent upon the hearing held on 1 June 2015, the Sub-Committee’s decision regarding the application for a Temporary Event Notice for Mirror Restaurant is as set out below, for the reasons stated:</b></p> <p>The Sub-Committee was obliged to determine these applications with a view to promoting the licensing objectives.</p> <p>In making its decision, the Sub-Committee also had regard to the Guidance issued under Section 182 of the Licensing Act 2003 and Havering’s Licensing Policy.</p> <p>In addition the Sub-Committee took account of its obligations under section 117 of the Crime and Disorder Act 1998, and Articles 1 and 8 of the First Protocol of the Human Rights Act 1998.</p>

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		<p><b>Agreed Facts</b></p> <p>Whether the granting of the Temporary Event Notice would undermine any of the four licensing objectives.</p> <ul style="list-style-type: none"> <li>• <b>Prevention of Public Nuisance</b></li> </ul> <p>The Sub-committee noted the concerns of the Noise Specialist that he had not had the opportunity to be consulted. That he had no evidence of and assurance of the sound insulation test to the premises.</p> <p>The sub-committee noted Planning permission was granted in January 2013 for the use of 5-7 Billet Lane as a restaurant but not for unit 3. That a condition limiting opening hours from 1200 to 2300 Monday to Saturday with no opening on Sundays or Bank Holidays. Other conditions requiring certain details – e.g. fume extraction to be submitted prior to the use commencing had also not been submitted.</p> <p>The sub-committee were concerned with the details of events that applied to the TEN.</p> <p>The sub-committee were concerned that the applicant had not made an effort to satisfy the Noise Specialist.</p> <p><b>6. Decision</b></p> <p>Having considered the oral and written submissions of the Noise Specialist in relation to the application, the decision of the Sub-Committee decide is to <b>Refuse</b> the application on the</p>

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		<p>grounds of Public Nuisance.</p> <p>The sub-committee considered the objections from the Environmental Health Authority (EHA) that related to the prevention of public nuisance objective. The EHA objections were centred around noise nuisance from within and outside the premises. Representation was made by the EHA that there had been no sound insulation to test that the arrangements for noise reduction at the premises were adequate. The EHA had advised that there were a number of residential premises adjacent to the application site. The sub-committee was concerned that allowing the event to go ahead would undermine the licensing objective of public nuisance as presented by the EHA. Whilst the applicant had been willing to give undertakings regarding concerns about noise nuisance that could possibly have addressed the concerns of the EHA, the sub-committee noted that it could not impose conditions on the TEN and to allow the event to go ahead would undermine the licencing objective. As part of the consideration of the TEN the sub-committee noted that the premises user had made the TEN application as a means to commence early trading at the premises before the consideration of a full premises licence application. The premises user’s representative informed the sub-committee that no specific event has been planned and the application was to allow the premises to open.</p> <p>The sub-committee also considered the guidance issued under Section 182 of the Licencing Act 2003 in considering this TEN application. The committee noted in particular that at paragraph 7.6 of the guidance the TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required. The sub-committee was not satisfied that the premises user had appropriate planning permission for the TEN.</p>



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		<p><b>7. Appeal</b></p> <p>Any party to the decision may appeal to the Magistrates Court within 21 days of notification of the decision. On appeal, the Magistrates Court may make an order for costs as it sees fit.</p> <p>Taiwo Adeoye Clerk to the Licensing Sub-Committee</p>

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		<p>On 14 May 2015 the Licensing Authority received from you, Mehmet Ergun Keles, a standard temporary event notice (“the notice”) in respect of proposed temporary licensable activities due to take place on 3<sup>rd</sup> to 9<sup>th</sup> June 2015 at Mirror Restaurant 3-7 Billet Lane Hornchurch RM11 1TS. The licensing authority has received an objection under s.104 (2) of the Licensing Act 2003 (“the Act”) from a relevant person. Further to a hearing to determine this opposed TEN the licensing authority has declined to approve your TEN in accordance with s.105(3) and has issued this counter notice based upon concerns in relation to the matters listed below. A full decision notice further to s.105 (3) (b) (i) will be provided in due course.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th align="left">Licensing Objective</th> <th align="center">Enter X where relevant</th> </tr> </thead> <tbody> <tr> <td>Prevention of Crime &amp; Disorder</td> <td></td> </tr> <tr> <td>Prevention of Public Nuisance</td> <td align="center">X</td> </tr> <tr> <td>Public Safety</td> <td></td> </tr> <tr> <td>Protection of Children from Harm</td> <td></td> </tr> </tbody> </table> <p>A copy of this counter notice will be sent to the chief of police and the local authority exercising environmental health functions for the area in which the premises specified in the temporary event notice you gave is situated.</p> <p>The Licensing Act 2003 makes provision for you to appeal against this counter notice under the provisions of Schedule 5, part 3, para.16 (see over).</p> <p>Under s.136 of the Licensing Act 2003, a person commits an offence if he carries on a licensable activity on or from any premises otherwise than under and in accordance</p>	Licensing Objective	Enter X where relevant	Prevention of Crime & Disorder		Prevention of Public Nuisance	X	Public Safety		Protection of Children from Harm	
Licensing Objective	Enter X where relevant											
Prevention of Crime & Disorder												
Prevention of Public Nuisance	X											
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		<p>with an authorisation; or if he knowingly allows a licensable activity to be so carried on. A person convicted of such an offence is liable to imprisonment for a term not exceeding six months or to an unlimited fine or to both.</p> <table border="1" data-bbox="842 590 1977 951"> <tr> <td data-bbox="842 590 1059 836"><b>SIGNATURE</b></td> <td data-bbox="1059 590 1547 836">Clerk to the Licensing Sub-Committee On behalf of the Licensing Authority</td> <td data-bbox="1547 590 1673 836"><b>DATE</b></td> <td data-bbox="1673 590 1977 836"></td> </tr> <tr> <td data-bbox="842 836 1059 951"><b>Name of officer signing</b></td> <td colspan="3" data-bbox="1059 836 1977 951"></td> </tr> </table> <p><b>RIGHT OF APPEAL</b></p> <p>All parties are reminded of their right to appeal against this decision to the Magistrates' Court by virtue of Schedule 5 s.181 of the Licensing Act 2003. Any appeal must be made within the period of 21 days beginning with the date on which you are notified of the decision appealed against.</p>	<b>SIGNATURE</b>	Clerk to the Licensing Sub-Committee On behalf of the Licensing Authority	<b>DATE</b>		<b>Name of officer signing</b>			
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		<p>An appeal may be commenced by a notice addressed to:</p> <p><b>The Clerk to the Court Romford Magistrates' Court C/o 850 Cranbrook Road Barkingside Ilford IG6 1HW</b></p> <p><b>Tel: 020 8437 6525</b></p> <p>Parties are advised to contact the court office to check the form of notice required and the fee payable.</p>
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