

Havering Council – Decisions taken by the Licensing Sub-Committee on Monday, 29 June 2015

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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>A1</p>	<p>APPLICATION FOR A NEW PREMISES LICENCE AT ELM PARK EXPRESS, 9 BROADWAY PARADE, HORNCHURCH, RM12 4RS</p>	<p align="right">Licensing Act 2003 Notice of Decision</p> <p>PREMISES Elm Park Express, 9 Broadway Parade, Hornchurch, RM12 4RS</p> <p>DETAILS OF APPLICATION</p> <p>This application for a premises licence is made by Ercan Batit under section 17 of the Licensing Act 2003 (“the Act”).</p> <p>APPLICANT Ercan Batit, 162-164 Deans Lane, London, HA8 9NT</p> <p>1. Details of requested licensable activities</p> <p>This application was for a new premises licence.</p> <p>Details of the application</p>
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		<table border="1" data-bbox="860 448 1758 568"> <thead> <tr> <th colspan="3" data-bbox="860 448 1758 488">Supply of Alcohol, Opening Hours</th> </tr> <tr> <th data-bbox="860 488 1308 528">Day</th> <th data-bbox="1308 488 1576 528">Start</th> <th data-bbox="1576 488 1758 528">Finish</th> </tr> </thead> <tbody> <tr> <td data-bbox="860 528 1308 568">Monday to Sunday</td> <td data-bbox="1308 528 1576 568">08.00hrs</td> <td data-bbox="1576 528 1758 568">23.00hrs</td> </tr> </tbody> </table> <p data-bbox="837 678 1267 715">2. Non Standard Timings</p> <p data-bbox="949 751 1261 788"><u>Seasonal variations</u></p> <p data-bbox="949 826 1039 858">None.</p> <p data-bbox="949 900 1285 936"><u>Non-standard timings</u></p> <p data-bbox="949 962 1039 994">None.</p> <p data-bbox="837 1035 1509 1072">3. Promotion of the Licensing Objectives</p> <p data-bbox="837 1110 2022 1254">The applicant acted in accordance with regulations 25 and 26 of The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 relating to the advertising of the application. The required public notice was installed in the 15 May edition of the Romford Recorder.</p> <p data-bbox="837 1331 1330 1367">4. Details of Representations</p>	Supply of Alcohol, Opening Hours			Day	Start	Finish	Monday to Sunday	08.00hrs	23.00hrs
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		<p>Valid representations may only address the four licensing objectives.</p> <ul style="list-style-type: none"> • The prevention of crime and disorder • Public safety • The prevention of public nuisance • The protection of children from harm <p>There were no representations against this application from an interested party.</p> <p>Responsible authorities’ representations</p> <p>Chief Officer of Metropolitan Police (“the Police”):</p> <p>The Metropolitan Police were making an objection because they believed that granting the premises licence would have a detrimental effect against promoting at least two of the four licencing objectives, namely: -</p> <ol style="list-style-type: none"> 1. Prevention of Crime; 2. Protection of Children from Harm. <p>The premises had come to the polices notice on several occasions, most recently on 22 April 2015 when the premises were brought before the Licensing Sub-Committee following a review by trading standards, when the Sub-Committee had decided to revoke the licence.</p> <p>In January 2015 illicit alcohol and cigarettes were seized as part of a joint operation with HMRC.</p>

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		<p>On 11 December 2014 the premises had sold alcohol to a test purchase officer. PC Davies had been part of that operation and he had established that the seller had not requested identification and had not asked the test purchaser to confirm their age. The seller in question had a current personal licence and had been issued with a fixed penalty notice. During the same operation officers had found a large quantity of foreign cigarettes, that had not been VAT cleared, under the counter.</p> <p>In June 2011 police and Trading Standards officers had carried out a test purchase, on that occasion the Designated Premises Supervisor (DPS), believed to be Mr Cocelli, had sold a bottle of wine to a 16 year old test purchaser. No identification had been requested and the DPS had not asked for the volunteer's age. The DPS had been prosecuted and had pleaded guilty at court.</p> <p>As the police left the premises following the operation on the 11 December 2014 a member of the public entered the shop and attempted to buy some of the cigarettes from underneath the counter. She had been advised that these were no longer available and she seemed to be annoyed. To the police this appeared, on face value, to be the norm for local residents and customers who used the premises on a regular basis.</p> <p>On a previous visit the police found a pick axe handle and a knife under the counter, this raised concerns that the premises would take the law into their own hands. If the new owners were not inclined to sell from under the counter, or not willing to sell to children who use the venue on a regular basis this could lead to problems in the venue with the staff becoming the victims of assaults and potential public order offences.</p> <p>As mentioned above the venue had failed two test purchases in the past, the first in</p>

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		<p>2011, the second in 2014. On both occasions the seller failed to ask for identification or request the person's age. Additionally on occasions when police had visited the premises they had found a child of 14 working behind the counter, on a Friday night. This was clearly not acceptable or appropriate. Police felt that local youths who knew the venue would continue to use it as a source for alcohol, this in the police's opinion was evident in the lack of due diligence by the management and supervisors on the previous underage sales.</p> <p>The police consider that there was a common theme with this venue. Although there was no apparent link between the succession of premises supervisors all had failed in some way, whether it was in selling illegal cigarettes, stocking/buying illicit alcohol or indeed selling alcohol to underage children. The supervisors had a lack of regard for the law and indeed some of the conditions set out in the premises licence.</p> <p>The police did not have the confidence that the new ownership would be any different, despite any assurances that may be given.</p> <p>In their opinion the premises licence should not be granted.</p> <p>Planning Control & Enforcement: None</p> <p>Licensing Authority: The Licensing Authority had made representations against the application based upon their concerns in relation to the prevention of crime and disorder and the protection of children from harm.</p>

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		<p>The premises were called to review by Trading Standards for the selling of alcohol to underage volunteers on two occasions, counterfeit alcohol for sale at the premises, illicit alcohol and cigarettes being sold, other incidents of poor management were pointed out by the Licensing Authority.</p> <p>At the hearing on 22 April the Licence was revoked. This new application had been submitted on 5 May, 13 days later.</p> <p>With this background for the venue, and the application seeking longer hours for the supply of alcohol and seeking to sell alcohol from the entirety of the premises the Licensing authority was of the opinion that the applicant had failed to adequately address the four licensing objectives in the operating schedule.</p> <p>Without correct and robust procedures in place at the premises it might continue to act poorly and possibly illegally, the Licensing Authority have no confidence at this time that the premises would drastically change their operating procedures to stop illegal actions and protect children.</p> <p>The Licensing Authority had further concerns:</p> <ul style="list-style-type: none"> • The applicant Mr Ercan Batit gave his address on the application and his consent to be the Designated Premises Supervisor as 162-164 Deans Lane, HA6 9NT. This is the address of the 'Edgware Supermarket Off Licence – Newsagent' a commercial property and did not appear to be residential. • Enquires were made with Brent Council who confirmed that Mr Ercan Batit was the licence holder and Designated Premises Supervisor for Edgware

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		<p>Supermarket. The address they had on file differed to that given on his application.</p> <ul style="list-style-type: none"> • Further enquiries were made with the London Borough of Hackney who had issued Mr Batit's Personal Licence who advised that the address on their records showed Mt Batit as residing at 8 Windsor House, Manor House, London. N4 2QA. If Mr Ercan Batit had changed address he should have notified the London Borough of Hackney. <p>At the time the Licensing Authority made their representation they did not know whether the previous Licence Holder, Mrs Sarikaya was going to appeal the Sub-Committee's decision to revoke the premises licence. The Licencing Authority advised the Sub-Committee that on the 23 June an appeal was lodged 'Mrs Sarikaya wishes to appeal on the grounds that she wishes to have a licence at the said premises.'</p> <p>This appeal was lodged 8 weeks after this application had been lodged.</p> <p>If the Sub-Committee decided to grant the licence the Licensing Authority would not know who held the licence, who was the Premises Licence Holder or who was the Designated Premises Supervisor, as there would be two valid licences.</p> <p>Public Protection: Trading Services had lodged a representation because of concerns in relation to the licensing objectives of the protection of children from harm and the prevention of crime and disorder.</p> <p>The previous operators of the premises were the premises licence holder, Berta</p>

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		<p>Sarikaya and the designated premises supervisor, Caner Cocelli. The representation again detailed the history of the premises.</p> <p>One of the concerns of the sub-committee when it revoked the previous licence was the continued involvement of Mr Cocelli in the business.</p> <p>The speed with which the application had been received raised concerns that the new operators might not be independent and sufficiently far removed from the previous operators to make a material difference at the premises. It also seemed unlikely that the premises had been sold in such a short time.</p> <p>Background enquiries had raised the following concerns:</p> <ul style="list-style-type: none"> • Mr Caner Cocelli and Mr Ercan Batit appeared to have lived at the same address in the past, at 103 Hickory Close, London between 1999 and 2003. • Mr Cocelli and Mr Batit had both been the directors of two companies, ZMD Ltd and Berkay Ltd. • The Companies House record for Berkay Ltd gives Mr Caner's address as 162-164 Deans Lane, the same address as that used by Mr Batit on the current application. <p>There had been significant failures at 9 Broadway parade and the Sub-Committee need to be sure that the new operators are willing and able to make the necessary changes to prevent any reoccurrence. They were particularly concerned at the applicants close relationship to Mr Caner Cocelli.</p> <p>The Sub-Committee's attention was also brought to the fact that Mr Ercan Batit had</p>

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		<p>been cautioned for selling alcohol to a minor at Edgware Supermarket in 2007. It was acknowledged that this offence was historic and there was no evidence of any further problems.</p> <p>London Fire & Emergency Planning Authority (“LFEPA”): None</p> <p>Health & Safety Enforcing Authority: None.</p> <p>Public Health: None</p> <p>Children & Families Service: None</p> <p>The Magistrates Court: None</p> <p>5. Applicant’s response</p> <p>Miss Aysel Guler of Ivy Solicitors responded on behalf of the applicant Mr Ercan Batit.</p> <p>With regard to the hours of operation Miss Guler informed the Sub-Committee that Mr Batit only wished to operate the same hours as the previous licence, i.e. 0800 to 2300 Monday to Saturday, and 0800 to 2230 on Sunday.</p> <p>She also advised the Sub-Committee that he only wished to display alcohol for sale on the shelves and fridges running along the right hand wall of the premises as you entered the premises.</p>
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		<p>Mr Batit was in the process of acquiring the business from Mrs Sarikaya and it was planned that this would be concluded on 1 July 2015 following a stocktake to assess the value of the stock he was acquiring. Evidence was produced by Miss Guler to show that Mr Ercan Batit had become the Director and sole share holder in the company Hasan Limited on 1 June 2015, the same day as Mrs Sarikaya resigned as a Director. This was the company which owned the business. Mr Batit indicated that in acquiring the Company he would not be making any payment for goodwill.</p> <p>Mr Batit had instructed solicitors Stanley Goldman, to act on his behalf, in the acquisition of the lease to 9 Broadway Parade from Mr Caner Cocelli. Ivy Solicitors were acting for Mr Cocelli.</p> <p>Mr Batit had 12 years experience in running a licensed premises, having owned the Edgware Supermarket for 12 years. In that time there had only been one incident, in 2007. On that occasion Mr Batit had not been in the premises and had been let down by his employees. To rectify this problem he insisted there were always two people trained as Designated Premises Supervisors so one was always available. He would follow this model with Elm Park Express.</p> <p>Miss Guler stressed that it was important to consider the reasons for the revocation of the previous licence. This was directly related to management’s failure to follow their own procedures. Mr Batit did not intend to risk his own investment or his standing as a Designated Premises Supervisor by making the same mistakes.</p> <p>Miss Guler produced copies of the refusals register from the Edgware Supermarket</p>

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		<p>to show that Mr Batit and his staff had been approached by minors for the sale of alcohol and these sales had been refused. This demonstrated that he was a responsible person.</p> <p>At the Edgware premises he worked 10 to 15 hours per day and employed his brother and one other person, both these persons were trained DPS's.</p> <p>From 1 July he will be concentrating his activities at 9 Broadway Parade and will be employing one other person Hussain Kaya as a second DPS to assist him. They will be employing a third person, part time to stack shelves. This was someone who was currently employed at 9 Broadway Parade.</p> <p>Miss Guler then addressed the issue of Mr Batit's address. He did own a freehold property but this had been leased out and he was waiting for the tenants to move out. Evidence was produced to show he lived at the same address as Mr Sahin Simsik, 199 St Edmund Road, Edmonton, although on occasion he stayed with his girlfriend. He used the 162-164 Dean Lane address because he spent more time there and it was easier to access his mail if it was delivered there. He had picked up on the failure to advise the London Borough of Hackney of his change of address and had notified them of the change.</p> <p>Mr Batit had known Mr Cocelli for many years. He had purchased the 162-164 Deans Lane business from Mr Cocelli in 2004. Mr Cocelli had no connection with ZMD Limited, this had been an error on behalf of the companies accountants.</p> <p>Mr Batit had decided to acquire the 9 Broadway Parade business in April having</p>

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		<p>spoken to his friend Mr Cocelli. He would still be buying the business. He had been aware that Mrs Sarikaya intended to appeal the decision to revoke the previous licence but he understood that she was to withdraw the appeal.</p> <p>When asked what steps he would take to ensure he does not suffer the same problems as the previous owners, Miss Guler explained that Mr Batit would be installing an alarm linked to both the police and his mobile. Additionally he would be displaying extra Challenge 25 posters above the alcohol displays. Both he and Mr Kaya were already trained as DPS's. He would ensure that any new member of staff received suitable training. On being questioned he agreed to install new electronic tills with prompts.</p> <p>Miss Guler stated that her client could understand the Sub-Committee's concerns re alcohol and tobacco, but the risk of problems at these premises was no greater than any other premises. He was open to accept any conditions required by the Licensing Officer.</p> <p>6. Determination of Application</p> <p>Decision</p> <p>Consequent upon the hearing held on 29 June 2015, the Sub-Committee's decision regarding the application for a Premises Licence for Elm Park Express.</p> <p>The Sub-Committee was obliged to determine this application with a view to</p>

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		<p>promoting the licensing objectives, which are:</p> <ul style="list-style-type: none"> • The prevention of crime and disorder • Public safety • The prevention of public nuisance • The protection of children from harm <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 s17 of the Crime and Disorder Act 1998, and Articles 1 and 8 of the First Protocol of the Human Rights Act 1998.</p> <p>Keith Bush, Trading Standards explained that the most recent copies of the Refusals Register were in accordance with current practice. However, one page was missing. The Sub-Committee also had some concerns as it was difficult to follow who had been refused a sale.</p> <p>Having listened carefully to all the evidence and having acknowledged that the applicant is not connected to the previous history of the premises we have concerns regarding the application itself. The application, which was completed by a licensing consultant in Dudley, was deficient in part. It did not offer any measures beyond those expected in all applications and does not offer effective measures which were aimed at preventing a re-occurrence of previous poor</p>

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		<p>practice at the premises. Despite seeking clarification from the applicant we felt this was not forthcoming.</p> <p>We sought clarification on a number of occasions regarding the ownership/ transfer of the lease and other legal matters. We remain concerned regarding the status and role of Mrs Sarikaya and Mr Cocelli with the business in light of the evidence presented by the applicant and the relevant authorities. In particular, the Sub-Committee noted that Mrs Sarikaya was still running the shop and selling alcohol at the premises. On 1 June 2015 the applicant became the sole director of Hasan Ltd following Mrs Sarikaya’s resignation on the same day as sole director from the same company. The Sub-Committee noted that Mrs Sarikaya lodged her appeal against revocation of the premises licence she held at Barkingside Magistrates Court on 2nd June 2015.</p> <p>The Sub-Committee noted that Ivy Solicitors representing the applicant, Mr Batit, at the licensing hearing was the same firm representing Mr Cocelli in the transaction for the sale of the commercial property to Mr Batit. Miss Guler was unable to provide any information about the stage the lease transfer had reached. This gave the Sub-Committee concern that there was a real risk that Mr Cocelli, could still be involved in the management of the premises at Elm Park Express as, Miss Guler had acknowledged, Mr Batit and Mr Cocelli had known each other for many years and had been business partners and, had entered a similar transaction, the sale of the Edgware Supermarket, in 2004. Furthermore, the Sub-Committee noted that Artemis & Co, the Accountants who had acted for Mr Batit for over 10 years were not prepared to provide a letter to the Sub-Committee to support what Miss Guler described as an administrative</p>

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		<p>error that they had made in respect of ZMD Limited Company House records which confirmed Mr Cocelli as having had a connection to ZMD Limited</p> <p>These are all matters which do not convince us that the licensing objectives would be satisfactorily discharged. On the basis of these considerations we are not prepared to grant the Licence.</p> <p>7. Right of Appeal</p> <p>Any party to the decision or anyone who has made a relevant representation [including a responsible authority or interested party] in relation to the application may appeal to the Magistrates' Court <u>within 21 days of notification of the decision</u>. On appeal, the Magistrates' Court may:</p> <ol style="list-style-type: none"> 1. dismiss the appeal; or 2. substitute the decision for another decision which could have been made by the Sub Committee; or 3. remit the case to the Sub Committee to dispose of it in accordance with the direction of the Court; and 4. make an order for costs as it sees fit.

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		James Goodwin Clerk to the Licensing Sub-Committee
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