

Havering Council – Decisions taken by the Licensing Sub-Committee on Wednesday, 17 May 2023

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

A1	APPLICATION FOR A PREMISES LICENSE - BK 90 RESTAURANT	<p>Licensing Act 2003 Notice of Decision</p>							
		<p>PREMISES BK90 Restaurant & Lounge 2-4 Elmer Gardens Rainham RM13 7BS</p> <p>APPLICANT Mr Alaba Ologun</p> <p>Details of requested licensable activities This application for a premises licence is made by BK90 Restaurant and Lounge Limited under section 17 of the Licensing Act 2003. The application was received by Havering’s Licensing Authority on 28th March 2023.</p> <p>The application seeks to permit the following licensable activities:</p> <p>The application is to permit the following licensable activity:</p> <table border="1"> <thead> <tr> <th align="center" colspan="3">On-supplies of alcohol</th> </tr> <tr> <th align="center">Day</th> <th align="center">Start</th> <th align="center">Finish</th> </tr> </thead> <tbody> <tr> <td align="center">Monday to Sunday</td> <td align="center">12:00</td> <td align="center">23:00</td> </tr> </tbody> </table>	On-supplies of alcohol			Day	Start	Finish	Monday to Sunday
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		<table border="1"> <thead> <tr> <th colspan="3" data-bbox="842 475 1554 507">Opening hours</th> </tr> <tr> <th data-bbox="842 507 1252 544">Day</th> <th data-bbox="1252 507 1404 544">Start</th> <th data-bbox="1404 507 1554 544">Finish</th> </tr> </thead> <tbody> <tr> <td data-bbox="842 544 1252 580">Monday to Saturday</td> <td data-bbox="1252 544 1404 580">12:00</td> <td data-bbox="1404 544 1554 580">23:00</td> </tr> <tr> <td data-bbox="842 580 1252 617">Sunday</td> <td data-bbox="1252 580 1404 617">13:00</td> <td data-bbox="1404 580 1554 617">23:00</td> </tr> </tbody> </table> <p data-bbox="842 651 1503 683">Comments and observations on the application</p> <p data-bbox="842 719 2063 815">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.</p> <p data-bbox="842 852 2047 916">During the consultation period the applicant engaged with various responsible authorities and agreed to add the following conditions to the application’s operating schedule:</p> <ol style="list-style-type: none"> <li data-bbox="869 952 2092 1059">I. The premises shall operate a ‘Challenge 25’ policy whereby any person attempting to buy alcohol who appears to be under the age of 25 will be asked for photographic identification to prove their age. <li data-bbox="869 1064 2092 1128">II. Alcohol shall only be sold to a person sitting down eating a meal and for consumption with that meal. <li data-bbox="869 1133 1868 1169">III. Alcohol shall be sold to customers by waiter/waitress service only. <li data-bbox="869 1174 2092 1393">IV. The premises shall install and maintain a comprehensive digital colour CCTV system. All public areas of the licensed premises, including all public entry and exit points to the street environment, shall be covered enabling facial identification of every person entering in any light condition. The CCTV cameras shall continually record whilst the premises are open to the public and recordings shall be kept available for a minimum of 31 days with date and time stamping. A staff member who is conversant with 	Opening hours			Day	Start	Finish	Monday to Saturday	12:00	23:00	Sunday	13:00	23:00
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		<p>operation of the CCTV system shall be present on the premises at all times when they are open to the public. This staff member shall be able to show the Police or Licensing Authority recordings of the previous two days immediately when requested.</p> <p>V. Management shall make reasonable efforts to minimise any form of noise nuisance upon patrons' dispersal and it will be the responsibility of members of staff to support this policy.</p> <p>VI. Prominent, clear and legible notices shall be displayed on the premises requesting customers to respect the privacy of local residents and to leave the premises quietly.</p> <p>VII. The placing of bottles into receptacles outside the premises by staff shall not take place between 22:00 to 07:00 the following morning.</p> <p>VIII. The manager or supervisor shall be responsible for monitoring noise levels to ensure that any sound within the premises is very reasonable so that local residents are not disturbed.</p> <p>IX. Music shall be played at background level at all times.</p> <p>X. Only five customers shall be allowed to smoke outside in the designated smoking area at any one time.</p> <p>XI. No deliveries shall be received at the premises outside of the following hours:</p> <ul style="list-style-type: none"> • 08:00 to 18:00 Monday to Friday • 08:00 to 13:00 Saturday • No deliveries on Sunday, public and bank holidays <p>1. The Licensing Sub-Committee considered an application for a premises licence for 'BK90 Restaurant & Lounge', situated at 2-4 Elmer Gardens, Rainham, RM13 7BS. Representations were received from the applicant, two Ward Councillors, and forty-four local residents. There were no representations</p>

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		<p>against the application from responsible authorities.</p> <ol style="list-style-type: none"> 2. The premises is located in a small shopping parade consisting of only 4 commercial units but all selling liquor in a highly residential area. 3. The Sub-Committee must promote the licensing objectives and must have regard to the Secretary of State’s National Guidance created under s.182 of the Licensing Act and the Council’s own statement of Licensing Policy. 4. Please note that all parties were reminded that no fresh evidence could be adduced at the hearing without the consent of all parties, pursuant to regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005. 5. All parties were also reminded that planning and licensing are two separate regulatory regimes. The Sub-Committee’s role was to consider licensing matters and the promotion of the licensing objectives, not to revisit the planning merits of the use of the premises as a restaurant. 6. The Sub-Committee heard from two Ward Councillors. Councillor Natasha Summers informed the Sub-Committee that she had been contacted by more than 44 local residents with concerns about the application, and had attended the site herself on its opening night. Cllr Summers noted that the application site is a very quiet residential area, which would be affected by the premises. Cllr Summers said that the opening event held at the premises had been noisy, and that residents were concerned about anti-social behaviour, sleep deprivation, and the impact of the premises on children. Councillor Graham Williamson noted

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		<p>the planning history of the site.</p> <p>7. The Sub-Committee heard from three local residents. Residents stated that the premises frequently remained open beyond the opening hours set out in the application. Residents also expressed concerns regarding noise from the premises and from the dispersal of customers; litter; parking; anti-social behaviour; and the overall impact of the premises on a residential area with a high elderly population. The Sub-Committee summarised residents’ concerns as including the impact of the premises on the residential character of the area; parking; litter; noise; the combined impact of the premises with existing off-licences on the same shopping parade; the proximity of schools; emergency vehicle access; and the presence of vulnerable adults, particularly elderly people, in the area.</p> <p>8. The Sub-Committee heard from the applicant. The applicant set out his professional experience, including some experience working in a restaurant and as an SIA security officer. The applicant stated that there was a need for restaurants serving African cuisine in Havering. The applicant explained the factual background behind to his decision to open the restaurant and apply for a premises licence. The applicant explained that, when he opened the restaurant, he had been unaware that he needed a premises licence in addition to a personal licence, and that he applied for a premises licence as soon as he realised one was needed. The applicant said that no alcohol had been served to date on the premises. The applicant explained the operating schedule submitted with the application and the way in which he would ensure the promotion of the licensing objectives. The applicant set out his position on some of the concerns</p>

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		<p>raised by objectors. The applicant also addressed some discrepancies in the application form that had been noted by the Sub-Committee. The applicant said that both he, his family and his staff had been subject to harassment and racial discrimination since opening the restaurant.</p> <p>9. Having read all written representations and heard oral representations the members decided to refuse the application for a premises licence.</p> <p>Reasons</p> <p>10. Members' main concern was the applicant's ability to promote the licensing objectives were the licence to be granted. The applicant did not appear to have prior experience operating or managing licensed premises. The Sub-Committee was concerned at the applicant's admission that, even after obtaining a personal licence, he had been unaware of the need to obtain a premises licence to sell alcohol at the restaurant until Council officers had informed him of that need. The Sub-Committee also noted the applicant appeared to be unfamiliar with matters such as the concept of including "drinking up" time in the opening hours for the premises, and the "Challenge 25" policy (referred to as "Challenge 18" in the operating schedule). At the hearing, the applicant stated that a chef who is working at the restaurant four days per week was also a personal licence holder with experience managing restaurants. However, no mention had been made of this in the application documentation, and no evidence was given in support of this contention. Members were therefore unable to verify whether another personal licence holder, or other person with experience managing licensed premises who would be able to support the applicant in running the premises</p>

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		<p>(given his own apparent inexperience), does work at the venue. Overall the Sub-Committee was not confident that, were the application to be granted, there would at all times be a person on the premises with the necessary skills, experience and ability to manage the premises in a way that promotes the licensing objectives.</p> <p>11. The Sub-Committee also accepted that there had been noise and disturbance associated with the premises, particularly on opening night, and that such disturbance had not been appropriately managed. The applicant appeared to accept that some disturbance had already taken place at the venue. Members noted that this disturbance had taken place before the premises began selling any alcohol. Members were concerned that disturbance and anti-social behaviour associated with the premises would only increase were the licence granted, contrary to the licensing objectives (particularly the prevention of crime and disorder and the prevention of public nuisance).</p> <p>12. Members further considered that inadequate steps had been taken to put in place relevant policies for the protection of customers, staff and residents in future, as required by the Havering Statement of Licensing Policy 2021-2026. No staff training on the sale of alcohol had yet taken place. The applicant did not appear to have any documented drugs policy or a condition requiring the use of a drugs policy. The Sub-Committee was also worried about how the dispersal of customers from the premises would be managed, given the nature of the representations before them. Members were concerned in this regard that, when asked whether there was a dispersal policy for the premises in the operating schedule, the applicant was initially unable to identify the condition relating to</p>

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		<p>the dispersal of customers from the premises, which had been included in the operating schedule following engagement between the applicant and responsible authorities. This appeared to Members to indicate that the applicant had not appreciated either the reason for, nor the importance of, the condition. This added to Members’ concerns regarding the applicant’s knowledge and experience managing licensed premises, and his ability to operate the premises in a way that would limit further noise nuisance caused by the dispersal of customers from the restaurant. .The Sub-Committee had particular regard to sections 16 and 19 of the Statement of Licensing Policy in this respect.</p> <p>13. Finally, the Sub-Committee concluded that the applicant had given inadequate consideration to the location of the premises within a quiet, deeply residential area, and the steps that should therefore be taken to promote the licensing objectives in a way that protected neighbouring residents from crime, anti-social behaviour and nuisance if a premises licence were granted. Members noted the observations made by residents and Ward Councillors as to the character of the area, and the impact that the operation of the premises was already having on that character.</p> <p>14. Overall, the Sub-Committee therefore concluded that it did not have sufficient confidence that, were the application granted, the applicant would be able to manage and operate the venue in a way that promoted the licensing objectives.</p>

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		<p>Equality Considerations</p> <p>15. In reaching its decision the Sub-Committee considered its duty under s.149 of the Equality Act 2010 to have due regard to the need to:</p> <ul style="list-style-type: none"> a. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; b. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; c. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. <p>16. The Sub-Committee were concerned to hear the applicant's allegations of discrimination and harassment directed against him and his family. The applicant referred to documentary evidence and records which might substantiate these allegations. However, none of this documentation was provided to the Sub-Committee in advance of the hearing and, in the absence of agreement by all other parties, the Sub-Committee was unable to accept any further evidence from the Applicant at the hearing. For this reason, the Sub-Committee did not consider that it was able to make a finding that any discriminatory conduct had taken place, or that it had influenced any of the representations made to the Sub-Committee.</p>

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		<p>17. The Sub-Committee also noted the applicant’s evidence that a wide range of customers frequent his restaurant. Members agreed with the applicant’s representations that there is a strong need for a greater provision of West African food in the wider Havering area, as reflected in the information given in paragraph 3.7 of the Statement of Licensing Policy. On balance, however, the Sub-Committee did not consider that this demand outweighed the reasons identified above for refusing the application.</p> <p>Right of Appeal</p> <p>Any party who has made a relevant representation may appeal to the Magistrates’ Court <u>within 21 days of notification of the decision.</u></p> <p>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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