



Havering
LONDON BOROUGH

Public Protection

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My Reference: PJJ/013047

Dear Sir

Licensing Act 2003
KC's Bar 155 Billet Lane Hornchurch RM11 1UR
Application to vary a premises licence

Further to the above I can confirm that this Licensing Authority wishes to make representation *against* this application based upon our concerns in relation to public safety, the prevention of public nuisance and the prevention of crime and disorder.

The application

This application seeks to extend the latest terminal hour during which licensable activity may be provided at the premises to 02:00, to add an additional licensable activity (films) to the ambit of the licence, to permit alcohol *off* supplies to be made and to remain open to the public until 02:30.

Currently KC's Bar may provide licensable activity for a maximum of 89 hours per week. The application seeks to increase that maximum to 110 hours per week and even more via non-standard timing when a given week has a bank holiday in it. To address this increase in hours the operating schedule seeks to remove 15 of the existing annex 2 conditions and modify 4 existing conditions. Effectively, then, the application seeks a 23% *increase* in licensable hours. This increase is to be supported by a 37.5% *decrease* in conditional elements governing these extended hours. Given that this premises is in one of Havering's two Special Policy Areas (SPA) this Licensing Authority finds it difficult to rationalise how the provision of licensable activity for a *longer* period is able to be mitigated by *fewer* control measures than exist currently.

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Conditions to be removed

Annex 2 of the premises licence contains self-imposed conditions which are there to prevent potential problems from arising pursuant to providing licensable activity. We should remember that conditions are not there as mere decoration on a licence. Each condition has a specific and identifiable purpose. Each is designed to promote the licensing objectives. The application seeks to remove 15 of these existing conditions. The Licensing Authority is unable to understand how the *removal* of conditions can *aid* the promotion of the licensing objectives when *extended* hours are sought.

A brief examination of a number of those conditions seeking removal may give a general feel for the direction this application appears to want to take the licence.

Condition 1 restricts the premises' clientele to individuals over 25 years of age apart from those attending private functions. Inherent in this condition is a large degree of control over customer behaviour. The host is known to premises' management having pre-booked the function while all attendees are guests of the host and thus more likely to behave considerately. The removal of this condition will permit anyone from the age of 18 to attend the premises throughout the week and until 02:30 at the weekend without that behavioural control measure being in place.

As we know, the other licensed premises in this SPA are all restricted to "over-21's". It is reasonable to suggest that this over-21's restriction helps prevent Hornchurch town centre from suffering the anti-social behaviour problems which beset Romford town centre. It is further a reasonable assumption to make that if this condition is removed other premises in the SPA may abandon their – in many instances, voluntary – commitment to an over-21's restriction.

A *Challenge 25* policy is to be employed at the premises whereby an individual seeking to purchase alcohol who appears to be under 25 years of age is required to provide proof that he or she is over 18. The presence of Challenge 25 without an additionally imposed age restriction lends weight to the view that the premises is seeking a customer base which includes anyone aged 18 or over. While it is entirely legal for 18-year-olds to purchase and consume alcohol the other licensed premises in this SPA have, via their often voluntary over-21's restrictions, striven over the preceding years to promote the licensing objectives in order to keep Hornchurch town centre as free from anti-social behaviour as may reasonably be possible. The removal of condition 1 from this licence may set an unpalatable precedent. What message might it send to the other premises in the SPA?

Condition 3 prevents patrons taking alcohol from the premises. This condition is there to ensure that premises' patrons remain within the premises rather than spill out onto the public highway consuming alcohol with the potential nuisance problems this implies. The request to remove this condition appears to be made in conjunction with the operating schedule's requirement to permit alcohol supplies to be made for consumption *off* the premises thus tacitly permitting alcohol bought at KC's Bar to be consumed to the rear of the premises, in the immediate SPA vicinity and beyond.

Condition 8 requires that provision is made to safely evacuate disabled customers from the premises in case of emergency. It is unclear why this condition might no longer apply.

Conditions 9, 23, 24 and 25 relate to staff first-aiders and the provision of first-aid equipment. The operating schedule appears no longer to want staff to be first-aid trained

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nor to provide appropriate first-aid supplies in order that accident victims may receive immediate treatment. The removal of these first-aid conditions should be considered in conjunction with the application to permit anyone aged 18 or over to frequent the premises and to make alcohol available for consumption *off* the premises.

First-aid is an essential and potentially life saving response to a personal injury situation so we should consider how the removal of first-aid conditions seeks to *promote* public safety. The licence holder previously felt these conditions were appropriate. The operating schedule does not make clear why this view has changed.

Condition 32 requires the DPS to hold a drugs awareness qualification. This qualification is gained subsequent to the holder having received appropriate training. Such training includes* implementing a drugs strategy, how to deal with drug users and dealers, how to comply with the requirements in relation to confiscated drugs, how to comply with the requirements of public safety and how to eliminate drugs from licensed premises. The operating schedule no longer wants the DPS to be trained in relation to drug awareness. (* Details provided via the BII syllabus.)

Condition 31, which is to remain intact, requires that the premises implements a written drugs policy which shall *detail the strategies to minimise the use and supply of illegal drugs within the premises*. One might expect that the DPS would be central to this implementation as it is the DPS who is required to be in day-to-day control of the premises. This policy has been provided to the Licensing Authority prior to this application being submitted and is attached in full below. It includes the following undertaking:

- *It is the aim of the company that all employees will obtain a Drugs Awareness qualification by BII or a similar accredited body, no matter what position they hold within the company.*

Given that the site's own drugs policy aims to obtain a drugs awareness qualification for "all employees" it is not clear why the operating schedule seeks to remove the DPS from this requirement as it is in apparent opposition to the premises' own, conditionally required, drugs policy, particularly since this policy requires the DPS to provide new employees with their "initial drugs awareness training." If the DPS has not received such training, how may the requisite knowledge be passed on to new employees? This inconsistency causes this Licensing Authority some concern.

Condition 34 requires that if premises' patrons are to be searched upon entry door supervisors of both sexes are to be on duty at all times. It is not clear what is the premises' current policy in relation to searching patrons, but removing this condition appears to imply that searching patrons upon entry will not occur. Again, we need to consider the wisdom of removing this condition if under-21's are to be freely permitted on the premises.

Finally, condition 40 requires the licence holder to liaise with the Licensing Authority and appropriate responsible authority, i.e. Havering's Noise Specialist, in relation to the specification and orientation of all speakers in the premises. This condition guarantees that expert knowledge is applied to the premises' sound system to ensure the venue's neighbours are not disturbed by music provided at the premises, as we should remember, until 01:00 on Thursdays and 02:00 on Fridays and Saturdays. The operating schedule seeks to remove this condition, effectively declining the expert help available from

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Havering's Noise Specialist. How might such a position *promote* the prevention of public nuisance? This inconsistency causes this Licensing Authority some concern.

Conditions to be modified

Condition 5 currently requires two door supervisors to be on duty from 19:00 until closing time Thursdays, Fridays and Saturdays. The modification will see the need for door supervisors entirely removed on a Thursday. The operating schedule appears to tacitly acknowledge the modern adage that "*Thursday is the new Friday*" as the Thursday terminal hour seeks to be increased until the current Friday and Saturday terminal hour of 01:00. If there is now an anticipated demand to supply alcohol and entertainment to patrons until 01:00 on Thursdays why might the need for door supervisors dissipate on this day?

We are of the view that security concerns are not solely linked to specific days of the week, but rather more to the terminal hours of the premises. Later hours attract greater numbers of patrons keen to extend their evening's celebrations. Extended alcohol consumption periods contribute directly to anti-social behaviour problems: the longer a person is able to consume alcohol, the more influence alcohol will have on that individual.

Additionally, the application seeks to permit the consumption of alcohol to take place off the premises. If this is the case then the need for door supervisors might appear to be greater than that which exists currently as premises' patrons will legitimately be able to consume alcohol bought at KC's Bar away from the premises. One might reasonably expect door supervisors to encourage patrons to remain on site with the glasses of alcohol they purchased there. Thursdays will see no door supervisors present at all. The operating schedule appears to require a greater freedom for patrons to consume alcohol which is to be mitigated by a reduction of supervisory measures. This inconsistency causes this Licensing Authority some concern.

Licensing policies 17 and 12

As mentioned previously KC's Bar is located in a SPA which covers the entire St Andrews ward. Havering's licensing policy 17 states thus:

Licensing Policy 017 Location, cumulative impact and saturation

It is the LLA's policy to refuse applications in the St Andrews ward area for pubs and bars; late night refreshment premises offering hot food and drink to take away; off licences; and premises offering facilities for music and dancing other than applications to vary hours with regard to licensing policy 012.

This policy recognises that the St Andrews ward has reached a saturation point in relation to certain types of licensed premises. The addition of further licensed premises within this area would have a detrimental cumulative impact upon the area's overall ability to promote the licensing objectives. In order that Havering is able to ensure the successful promotion of the licensing objectives this policy's guideline is that further premises licences should not be granted; however, all applications are required to be considered on their individual merits.

KC's Bar already has a premises licence in force and might appear to be outside the ambit of policy 17 insofar as it is seeking to vary its licence conditions. In this circumstance policy 17 refers us to policy 12 which states:

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Licensing Policy 012 Hours

The LLA is committed to protecting the amenity of residents and businesses in the vicinity of licensed premises. Applications for hours set out below in this policy will generally be granted subject to not being contrary to other policies in the statement of licensing policy. Applications for hours outside the hours listed will be considered on their merits.

Regulated activities will normally be permitted:

- *until 11.30 pm in residential areas*
- *until 00.30 am in mixed use areas*
- *no limits in leisure areas*

We can see that an application to vary a premises' existing hours which is outside the policy's guidelines will be considered on its merits. An application which seeks to go beyond these guideline hours must successfully demonstrate that it should be considered an exception to licensing policy 12's guidelines. In other words, an application must provide compelling evidence to support the view that policy 12 should **not** apply to the application and that *the amenity of residents and businesses in the vicinity of the licensed premises* would not suffer adversely should the application be granted.

This Licensing Authority is of the view that this application has failed to demonstrate this for the reasons provided previously.

Further to this, KC's Bar lies in a vicinity comprised of commercial and residential properties. This renders it a *mixed use area*. As such the guideline terminal hour for the provision of licensable activity is 00:30. The premises licence already permits licensable activity to be provided beyond this guideline hour.

An exception to licensing policy 12?

What might reasonably commend an application to be considered an exception to the general guidelines of licensing policy 12?

Licensing policy 12 begins with the statement that the *LLA is committed to protecting the amenity of residents and businesses in the vicinity of licensed premises*. It is this sentiment which governs the policy, particularly in this SPA, although Havering is always keen to support business ventures wherever possible. The question which necessarily follows when considering the application is therefore: what steps has the applicant taken to protect the amenity of residents and businesses in the vicinity of the premises and are those steps sufficient to enable the application to be considered an *exception* to the principles of policy 12?

- Should we consider that extending the premises' operational hours to 02:30 in a partially residential area *protects* the residents' amenity?
- Should we consider that removing 15 existing conditions which govern activities at the premises elevates the application to an *exceptional* status?
- Should we consider that permitting anyone over the age of 18 to frequent the premises until 02:30 will *protect* residents' amenity when the rest of the SPA is restricted to over-21's?

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- Will the introduction of alcohol off-supplies enabling alcohol consumption to take place in the street outside the premises or in the car park to the rear of the premises *protect* residents' amenity?
- Does the removal of existing public safety conditions from the scope of the licence *benefit* the application or protect residents' amenity in any way?
- Will the removal of door supervisors on Thursday evenings *contribute* to residents' amenity?
- Does the removal of a noise-related condition, coupled with the absence of any voluntarily offered conditions to address potential noise nuisance issues until the extended terminal hours, help us to define this application as an *exception* to licensing policy 12?
- Will the removal of the requirement for the DPS to have a drugs awareness qualification help to *protect* residents' amenity?

We suggest that the answer to each of these questions is, *No*.

As licensing policy 12 states, applications will be considered *on their merits*. One dictionary definition of *merit* is that it is "*something that deserves or justifies a reward or commendation.*" It is difficult to determine the elements of this application which are commendable or justify the reward of being granted. The inconsistencies found throughout the operating schedule simply do not elevate the status of this application to one that may be deemed an exception to the general principles of policy 12.

Licensing policies in opposition to the application

The operating schedule appears to place the application in opposition to licensing policies other than policy 12. Havering's licensing policy 7 states:

Licensing Policy 007 Development planning

The council encourages applicants to ensure that they have planning consent for the intended use and hours of operation, or otherwise have lawful planning status, before making an application for a premises licence.

The current planning consent for this venue, P0770.09, is that the premises may currently operate Monday to Saturday from 12:00 to 23:00 and from 12:00 to 22:30 on Sunday. To our knowledge there is currently no planning application seeking to extend the planning permission in line with this operating schedule.

The Licensing Authority recognises that planning and licensing legislation are discrete and that policy 7 "*encourages*" the appropriate planning consents to be in place before an application is made. The s.182 guidance to the Act, however, makes direct reference to planning legislation. Paragraph 13.55 states in part that *licensing committees are not bound by decisions made by a planning committee, and vice versa*. Paragraph 13.56, however, states the following (emboldened portion mine):

*There are circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. **Where these hours are different to the licensing hours, the applicant must observe the earlier closing time.** Premises operating in breach of their planning permission would be **Public Protection** Bringing together Environmental Health & Trading Standards*

liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.

The s.182 guidance to the Licensing Act therefore indicates that where planning and licensing hours are in opposition *the earlier closing time must be observed*. Effectively, the premises should currently be operating until 23:00 only, based not solely upon its planning consent, but also upon the Licensing Act's own guidance.

As we are aware Havering has six values to which we, as a local authority, must aspire. The first of these values requires that we recognise that we are all part of *One Council*. This value goes on to state:

We must always act as one Council. In the eyes of our customers we are a unified organisation and our reputation is shaped by every department, team and individual across Havering... We must always present one face to our customers.

Given the requirement of this value the Licensing Authority suggests that to grant these extended licensing hours in opposition to the planning permission, when the licensing hours are already *two hours longer* than the planning consent, would only serve to create confusion and to suggest that we are not operating as a single authority with a unified approach.

Additionally, the application also appears to be in opposition to licensing policy 9 which states:

Licensing Policy 009 Operating schedule

The LLA seeks to encourage the highest standards of management in licensed premises and expects the operating schedule to describe how these standards will be achieved in relation to promoting the licensing objectives.

While we do not suggest that this premises is not currently managed to a high standard the operating schedule as provided fails to describe how high management standards will be achieved in relation to promoting the licensing objectives. It is difficult to reconcile that an *increase* in hours accompanied by a *reduction* of control measures will support the aims of high management standards.

Finally, the application appears to be in opposition to licensing policy 10. This states:

Licensing Policy 010 Safer clubbing and drugs

With regards to safer clubbing, the LLA is committed to ensuring that, where appropriate, the design and management of dance and other venues maximises the safety of customers, performers and staff. The LLA will normally expect the submission of a drug policy as part of the operating schedule for applications for new premises licences and for variations to existing licences for night clubs and similar premises. Where relevant representations are made with regards to public safety, the LLA may impose conditions to control environmental risk factors such as overcrowding, ambient temperatures, availability of drinking water, and any other factors known to increase the risks to the safety of those taking drugs.

The application did not include an accompanying drugs policy as expected by policy 10; however, the premises' existing drugs policy, governed by condition 31, aims to ensure

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that *all employees* obtain a drugs awareness qualification. This application seeks to remove the DPS from this requirement. This is in opposition to licensing policy 10 and the premises' own drugs policy.

In light of these issues this Licensing Authority is unfortunately unable to support this application. Given that the premises already has terminal hours in excess of those guideline hours defined by licensing policy 12 and those of its current planning consent we are of the view that, regrettably, the application should not be granted.

I hope that explains Havering's position.

Yours faithfully

Paul Jones
Licensing Officer

KC's Bar Drugs Policy

Introduction

KC's Bar are responsible employers and we take our obligations to our employees and customers very seriously. This is why we have set out this policy to help us to ensure the health, safety and welfare of our employees and customers in order to comply with our legal duties. The use of non prescribed drugs is not only dangerous but also illegal under criminal law.

- Section 2(2)(e) of the Health and Safety at Work Act 1974 places a duty on employers to provide a safe and healthy working environment.
- It is an offence to supply, produce, offer to supply or produce controlled drugs.
- The Misuse of Drugs Act 1971 makes it an offence for the occupier of premises to permit knowingly the production or supply of any controlled drugs or allow the smoking of cannabis or opium on those premises.
- It is also an offence to aid or abet any of these offences.

Any reference in this Policy to a non-prescription drug refers only to controlled or illegal substance and does not refer to medicines, supplements and similar substances that are legally and commercially available in the United Kingdom.

Aims of the policy

This policy aims to:

- Comply with the Company's legal obligations to provide a safe and healthy environment for all.
- Comply with all of the requirements imposed by law.
- Raise awareness of the dangers and penalties associated with the use of controlled drugs on the premises.
- Guarantee the right of all staff and customers an environment unaffected by controlled drugs.
- Provide support to staff whose lives are or who have been affected by the misuse of controlled drugs.

Health and Safety

Controlled substances often possess side effects that could not only adversely affect employees and customers. Employees should be aware that anyone under the influence of controlled drugs is a risk to everyone around them and should be alert to possible signs of drugs abuse. Such indicators commonly include:

- Sudden changes in behaviour;
- Confusion;
- Irritability;
- Fluctuations in mood and energy;
- Glazed eyes

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Employees should report any concerns they may have about a colleague or a customer displaying any or all of these symptoms to the DPS who will inform the Police and log the event, but should not under any circumstances approach the person displaying the symptoms.

Prohibition

- No non – prescription drugs are allowed to be consumed in or brought onto company premises, at any time by any person irrespective of their status in, or business with, the Company.
- The prohibition of non – prescription drugs extends to all activities carried out by staff and customers whilst they are on the premises. These activities include but are not restricted to driving on company business, when on call or standby duties or when on trips for company business, training or social events.

Disciplinary Action for employees and customers

A breach of these rules will be defined as gross misconduct and it is likely that the employee in question will face summary dismissal and reported to the Police.

Customers in breach of these rules, will face a life ban from the premises, and will be reported to the Police.

Principles

- If an employee is diagnosed as having a drug related problem the Company will treat it as a health matter. This does not however excuse the employee from any of the disciplinary matters that may fall within the scope of the Company disciplinary policy.
- All drug related issues will be dealt with in a constructive and sympathetic manner, and the person responsible for all such issues in the Company is the Manager, who will also provide any interested employees with the details of where to seek further information and help.
- All requests for help will be treated in the strictest confidence and all information gathered as a result will be held in accordance with the Data Protection Act 1998.
- The Company will provide support to any affected employees [and where necessary provide suitable treatment to be paid for by the Company.] Where an employee agrees to follow a suitable course of action or treatment any disciplinary action may be suspended.
- The Company reserves the right to give affected employees lighter duties at the same rate of pay, or require them to take paid leave if it is deemed appropriate.
- Following effective treatment and in the absence of any disciplinary action the Company will endeavour to return an affected employee to the same role previously fulfilled by the employee [and where this is not possible to a suitable alternative].

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- In the event that an employee following successful treatment for a drug related problem suffers a relapse the Company [will not make] [is under no obligation to make] provision for any further treatment and the employee in question [will] [may] face summary dismissal.
- If it is considered that the working environment or culture is the cause or a contributor to a drug related problem, the Company will take all reasonably practical steps to ensure a reduction of such problems.

Training for Drugs Awareness

- When an employee starts with the company the DPS will do the initial drugs awareness for the premises detailing what to look for and observe.
- It is the aim of the company that all employees will obtain a Drugs Awareness qualification by BII or a similar accredited body, no matter what position they hold within the company.
- A log will be kept detailing all employees training and qualifications, and to sign the log that they have seen and understand the drugs policy.

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