

Report for: Licensing Sub Committee 15th April 2019, 10am – Civic Centre, High Road , Wood Green N22.

Item number:

Title: Application for a Variation of a Premises Licence – MRH WELLINGTON – 513 ARCHWAY ROAD LONDON N6 4HX

Report authorised by : Daliah Barrett-Licensing Team Leader – Regulatory Services.

Ward(s) affected Highgate

Report for Key/ Non Key Decision: Not applicable

1. Describe the issue under consideration

1.1 Variation of a Premises Licence to add the ability to sell alcohol between the hours of 8am-midnight each day. The hours have been modified from the original application submitted.

Supply of Alcohol

Monday to Sunday 0800 to 0000 hours

Supply of alcohol **OFF** the premises

Hours open to the public

Monday to Sunday 0000 to 0000 hours

To vary the layout of the premises in accordance with the plans submitted by the applicant.

To remove all conditions under Annex 2 of the premises licence.

To add new Annex 2 conditions in boxes b to e of Section 16 of the application.

1.2 The current licence issued to the premises permits the following:

Late night refreshment

Provision of Late Night Refreshment

Monday to Sunday 2300 to 0500

The opening hours of the premises:

No restrictions in regards to opening hours.

1.3 Representations have been received against this application by residents.

1.4 As such, in accordance with the legislation the Licensing Authority must hold a hearing to consider the application and any relevant representations. Representations were submitted by Responsible Authorities but these are now mediated save for the Public Health matter

1.5 Representations

Residents representations - Appendix 2- residents are not in support of the premises being granted the ability to offer alcohol sales the letters of representation give their reasons for this concern and also include minutes from the previous Licensing Sub Committee where the ability to sell alcohol was refused.

Metropolitan Police – Appendix 3 – Withdrawn

2 Background

- 2.1 The premises has held licence that allows for Late night refreshment since May 2015. The current operators took over the premises in October 2015.
- 2.2. Council officers are satisfied that the application has been made and advertised correctly.

3 Relevant Representations

- 3.1 All representations have to meet a basic legal and administrative requirements. If they fail to do so they cannot be accepted.
- 4 All the responsible authorities have been consulted about this application. They are as follows:
- The Licensing Authority
 - The Metropolitan Police
 - The London Fire and Emergency Planning Authority
 - Planning
 - Health and Safety (includes Building Control)
 - Noise Environmental Health
 - Food Environmental Health
 - Trading Standards
 - Child protection
 - Public Health

6 Licensing Officer comments

- 6.1 The following information is intended to advise Members of the relevant aspects of the Statement of Licensing Policy, guidance issued by the Secretary of State, legislation and good practice. Members may depart from the Councils Policy and or Section 182 Guidance provided they consider it appropriate to do so and provide clear reasons for their decision.
- 6.2 Committee will also wish to be aware of the guidance issued under section 182 of the Licensing Act 2003. Licensing is about regulating the provision of licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the Licensing Act 2003. The terms and conditions attached to various permissions are focused on matters which are within the control of 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.
- 6.3 The objective of the licensing process is to allow for the carrying on of retail sales of alcohol and the prevention of public nuisance, prevention of crime and disorder, public safety and protection of children from harm. It is the Licensing Authority's wish to facilitate well run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents.
- 6.4 The Section 182 Guidance advises the following:
- Garages and motorway service areas**
- 5.22 Section 176 of the 2003 Act prohibits the sale or supply of alcohol at motorway service areas (MSAs) and from premises which are used primarily as a garage, or are part of premises used primarily as a garage. Premises are used primarily as a garage if they are used for one or more of the following:
- the retailing of petrol;
 - the retailing of derv (diesel);
 - the sale of motor vehicles; and
 - the maintenance of motor vehicles.

5.23 It is for the licensing authority to decide, based on the licensing objectives, whether it is appropriate for that premises to be granted a licence, taking into account the documents and information listed in section 17(3) and (4) which must accompany the application.

5.24 If a licence is granted in respect of a premises and the primary use of that premises subsequently changes (for example, the primary use becomes that of a garage rather than a shop) it would no longer be legal to sell alcohol on that premises. If a relevant representation is made, the licensing authority must decide whether or not the premises are used primarily as a garage. The licensing authority may ask the licence holder to provide further information to help establish what the primary use of the premises is.

6.5 There is further Guidance from the Home Office clarifying that Licensing Authorities are able to consider the primary activity after a licence is granted to ensure that the premises does not become primarily used as an off licence.

6.6 In considering licence applications, where relevant representations are made, this Licensing Authority will consider the adequacy of measures proposed to deal with the potential for public nuisance and/or public disorder having regard to all the circumstances of the case.

6.7 Where relevant representations are made, this authority will demand stricter conditions with regard to noise control in areas that have denser residential accommodation, but this will not limit opening hours without regard for the individual merits of any application. This authority will consider each application and work with the parties concerned to ensure that adequate noise control measures are in place. Any action taken to promote the licensing objectives will be appropriate and proportionate.

6.8 Also The Licensing Authority may not impose conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of the hearing that it is appropriate to impose conditions to promote one or more of the four licensing objectives. Therefore conditions may not be imposed for the purpose other than promoting the licensing objectives and in some cases no additional conditions will be required.

6.9 The Licensing Act 2003 permits children of any ages to be on the premises which primarily sells alcohol provided they are accompanied by an adult. It is not necessary to make this a condition.

6.10 In cases Members should make their decisions on the civil burden of proof, that is the balance of probability.

6.11 Members should consider in all cases whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.

6.12 The Government has advised that conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. Conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff.

The Councils Licensing policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.

7 Options:

7.1 The Authority must, having regard to the application and the representations, take such steps (if any), as it considers appropriate for the promotion of the licensing objectives. The steps are:

In determining this application the Sub-Committee may take any of the following steps as it considers appropriate for the promotion of the licensing objectives, namely:

- To grant the licence subject to such conditions as are consistent with the operating schedule accompanying the application, modified to such extent as the authority considers appropriate for the promotion of the licensing objectives.
- To exclude from the scope of the licence any of the licensable activities to which the application relates.
- To refuse to specify a person in the licence as the premises supervisor.
- To reject the application.

For the purposes of the Licensing Act 2003 the conditions of the licence are modified if any of them are altered or omitted or a new condition added.

- 8 The licensing authority's determination of this application is subject to a 21 day appeal period or if the decision is appealed the date of the appeal is determined and /or disposed of.

9. Other considerations

Section 17 of the Crime and Disorder Act 1998 states:

"Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those function on, and the need to do all that it reasonably can to prevent crime and disorder in its area".

9.1 Human Rights

While all Convention Rights must be considered, those which are of particular relevance to the application are:

- Article 8 – Right to respect for private and family life.
- Article 1 of the First Protocol – Protection of Property
- Article 6(1) – Right to a fair hearing.
- Article 10 – Freedom of Expression

10 Use of Appendices

Appendix 1 – Application document

Appendix 1A – Amendments to original application agreed with RA's

Appendix 2 – Representation from Residents

Appendix 3 – Representation from Met Police

Appendix 4 – Representation from Public Health

Appendix 5 – Home Office letter to clarify primary use consideration.

Background papers: Section 182 Guidance

Haringey Statement of Licensing policy