

Report for: **Licensing Sub Committee 16th April 2019**

Item number:

Title: **Review of a Premises Licence under the Licensing Act 2003.**

Report

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

Ward(s) affected **FG**

Report for Key/

Non Key Decision: Not applicable

1. Describe the issue under consideration

- 1.1 An application for the review of the Premises Licence for Belmeis, 488 Muswell Hill Broadway London N10-held by Clarke and Parker Fishmongers Ltd (t/a) Belmeis was received by the Licensing Authority on 4th March 2019. A copy of the application form is attached to this report at **Appendix 1** and supporting documentation an acoustic report carried by another residents is attached at Appendix 1A.
- 1.2 The applicants of the review are residents ('other parties') and have cited their reason for the review due to the operation of the premises has failed to uphold the licensing conditions and licensing objective of:
- The prevention of public nuisance
 - Public Safety
- 1.3 The applicants speak to ongoing concerns relating to noise nuisance emanating from the venue .
- 1.4 There is also a representation from the Noise Responsible Authority outlining the number of complaints received and any formal action undertaken by the Service against the premises. Appendix 2
- 1.5 The licence holders have submitted their own response to the matters raised in the review. **Appendix 3.**
- 1.6 Other residents have submitted letters of support for the venue and these letters can be found at **Appendix 4.**

2 Licensing history of the premises

- 2.1 The premises previously operated as a fishmongers but held a licence that permitted the sale of alcohol. The owners altered the operation of the premises and applied for a new licence in May 2018 to operate a wine bar/tapas restaurant.
- The application received representations against it from the residents that have submitted the review application. The residents had raised their concerns about

the potential for noise nuisance being a problem from the venue.

- 2.2 The venue does not have regulated entertainment stipulated in its licence but Has been able to make use of the Live music exemption.
- 2.3 The Live Music Act took effect from 1st October 2012, and was further amended in April 2016 to include recorded music and covers larger audiences. The Act disapplies live music related conditions if the following criteria are satisfied:
- There is a premises licence or club premises certificate in place permitting 'on sales';
 - The premises are open for the sale or supply of alcohol for consumption on the premises;
 - Live or recorded music is taking place between 8am and 11pm;
 - If the live music is amplified or recorded, the audience consists of no more than 200 people

Live music also ceases to be classed as regulated entertainment under the Licensing Act 2003 if the above criteria are satisfied.

- 2.4 'The Act also creates a general exemption that live unamplified music provided anywhere shall not be regarded as the provision of regulated entertainment under the Licensing Act 2003, it is takes place between 8am and 11pm, regardless of the number of people in the audience.

There are a number of mechanisms for the protection of residents and these are:

- upon a review of the premises licence the Licensing Authority may determine to revoke the exemption. It may also
- Determine that conditions on that premises relating to live or recorded music will apply even between 8am and 11pm;
- It can also determine that live or recorded music at the premises is a licensable activity and live or recorded music can no longer be provided without permission on the Premises Licence or a Temporary Event Notice.
- Other noise legislation such as the Environmental protection act 1990 will continue to apply. The Act does not allow licensed premises to cause a noise nuisance.

3 Copy of current Premises Licence – Appendix 5

Licensable activities authorised by the Licence:

Late Night Refreshment

Supply of Alcohol

The times the Licence authorises the carrying out of licensable activities:

Late Night Refreshment

Friday to Saturday

2300 to 0000

Supply of Alcohol

Monday to Thursday	1200 to 2300
Friday to Saturday	1200 to 0000
Sunday	1200 to 2200

The opening hours of the premises:

Monday to Thursday	1200 to 2330
Friday to Saturday	1200 to 0030
Sunday	1200 to 2230

Where the Licence authorises supplies of alcohol whether these are on and/or off supplies:

Supply of alcohol for consumption ON and OFF the premises

4 Licensing Administration comments on process and guidance

4.1 Guidance issued under section 182 of the Licensing Act 2003 (para 11.2) states that at any stage following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.

4.2 In accordance with section 52(2) of the Act, the Licensing authority must hold a hearing to consider the application and any relevant representations.

4.3 Legislation

The following provisions of the Licensing Act 2003 and associated Regulations are of particular relevance to this application:

- Sections 51 and 52

These sections detail how a review application should be made and the process which should be followed in determining the application.

The Licensing Act 2003 (Hearings) Regulations 2005 (as amended) are also relevant and detail how hearings should be conducted to determine applications submitted under the Licensing Act.

4.4 Policy considerations

Council's Statement of Licensing Policy

The following paragraphs of the licensing authority's statement of licensing policy are of particular relevance to this application:

4.5 Paragraph 90 - Consideration should not solely focus on the activities taking place within the area of the licensed premises. Appropriate measures to address issues outside the licensable area include:

- Putting in place plans that will assist to minimise disruption to the day-to-day lives of local residents, businesses and existing operations for the period of the event

4.6 Paragraph 149 Licence conditions

Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. This authority will aim to ensure that conditions attached to licences will:

- Be appropriate for the promotion of the licensing objectives.
- Be precise and enforceable.
- Be unambiguous and clear in what they intend to achieve.
- Not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation.
- Be tailored to the individual type, location and characteristics of the premises and events concerned.
- Not be standardised.
- Not replicate offences set out in the 2003 Act or other legislation
Be proportionate, justifiable and be capable of being met.
- Not seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff.
- Be written in a prescriptive manner.

Conditions attached to the various authorisations will be focused on matters which are within the control of individual licence holders and others with relevant authorisations, i.e. the premises and its vicinity. This will include the direct impacts of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.

4.7 Paragraph 170 - Review Procedures

Reviews represent a key protection for the community where premises present problems associated with the licensing objectives, allowing other persons, local councillors or representatives and responsible authorities to apply in writing to the Licensing Authority for a review of a premises licence or club premises certificate.

4.8 Paragraph 172 - The Licensing Sub-Committee must, having regard to an application and any relevant representations, take such steps as it considers appropriate for the promotion of the licensing objectives.

4.9 The following information is intended to advise Members of the relevant aspects of the guidance issued by the Secretary of State, and good practice. Members should not depart from the Councils Policy and / or Section 182 Guidance unless they consider there is good reason to do so and must provide clear reasons for so doing.

5. **Section 182 Guidance – relevant sections.**

The most recent statutory guidance was Issued in April 2018 and applies to this application.

The following provisions of the Secretary of State's guidance (2018) apply to this application:

- Chapter 11-this chapter gives guidance around the review process and determining an application for a review.

5.1 Paragraph (here and below) – section 11.9 Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent hard copy, unless the licensing authority waives this requirement.

5.2 Paragraph 11.10 - Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by

the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

5.3 Paragraph 14.12 - Licensing is about regulating the provision of licensable activities on licensed Premises 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 Licensing officer's observations

- 6.1 It is the Licensing Authority's aim to facilitate well run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents.
In considering licence applications, where relevant representations are made, the 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.
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.
- 6.2 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.

6.3 In cases Members should make evaluative judgments. Where necessary to make

findings of fact, the civil burden of proof applies, that is the balance of probability.

- 6.4 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.
- 6.5 In summary, having conducted the hearing of this application, the Committee must decide which of the licensing objectives have been engaged (if any); seek to establish the cause or causes of any concerns which the representations identify; resolve any issues of fact (as necessary); decide whether the licensing objectives have been undermined and whether or not it is appropriate to exercise any powers under the review to promote those licensing objectives; take a proportionate approach to the exercise of any powers, addressing why lesser steps are not appropriate.

7 Options

- 7.1 The Committee 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 options are:

- To modify the conditions of the licence
- To exclude a licensable activity from the scope of the licence
- To remove the designated premises supervisor
- To suspend the licence for a period not exceeding three months
- To revoke the licence
- To take no action.

- 7.2 The Sub-Committee must ensure that all licensing decisions have:

- a direct relationship to the promotion of one or more of the 4 licensing objectives;
- regard to the Council's statement of Licensing Policy;
- regard to the Secretary of State's National Guidance.

Where the authority modifies the conditions or excludes a licensable activity from the scope of the licence it may determine that the modification or exclusion is to have effect permanently or for a period not exceeding 3 months.

- 7.3 The Licensing Authority's determination of this application does not have effect until the 21 days appeal period has expired or if the decision is appealed, the date the appeal is determined and or disposed of.

- 7.4 The Sub-Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the Borough.

- 7.5 The Sub-Committee is reminded that the Human Rights Act 1998 guarantees the

right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of private and family life. Article 1 of the First Protocol provides for the protection of property, which may include premises licences.

Background papers: Licensing Act 2003
Section 182 Guidance
Haringey Statement of Licensing policy
Report Pack