

**Report for:** Licensing Sub Committee 14th November 2019

**Title:** Application for a Variation of a Premises licence at Gindunga 2A  
Queens Parade, Bounds Green Road London N11 2DN.

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

**Ward(s) affected** Bounds Green

**Report for Key/  
Non Key Decision:** Not applicable

1. **Describe the issue under consideration**

1.1 An application has been submitted by Ms Faustino Da Silva for a licence to allow licensable activity namely , the sale of alcohol and regulated entertainment and late night refreshment.

1.2 The applicant is seeking the following hours:

**Regulated Entertainment: Recorded Music**

Friday & Saturday 1200 to 0500 hours

**Provision of Late Night Refreshment**

Friday & Saturday 2300 to 0500 hours

**Supply of Alcohol**

Friday & Saturday 1200 to 0500 hours

For the consumption **ON** the premises

**Hours Open to Public:**

Friday & Saturday 1200 to 0530 hours

1.2 Representations have been received against this application by ‘other persons’ and Responsible Authorities.

1.4 As such, in accordance with the legislation the Licensing Authority must hold a hearing to consider the application and any relevant representations.

1.5 **Representations**

The Licensing Authority representation can be found at Appendix 2.  
The EHO Noise – responsible Authority representation can be found at App 3  
Residents representations can be found at Appendix 4

2 **Background**

2.1 The premises has operated as a wine bar under a Premises Licence but received a number of complaints from nearby residents who were adversely affected by

noise nuisance.

The current application is seeking a 5:30am closure across the week and this has been objected to. The application has received representations against it and there has been complaints submitted to the out of hours service relating to noise nuisance coming from the venue prior to and during the consultation process.

- 2.2. During the consultation process for the variation of the licence representation from the Licensing Authority and EHO Noise Team advised the applicant of the likely impact of noise nuisance being caused by the hours being sought. The Licensing Authority recommend that the hours remain as is and there be no increase due to the location and existing concerns. The Noise EHO has offered the possibility of an increase in hours to 3am on Fridays and Saturdays, Bank Holiday Sundays, Christmas Eve and New Years Eve, with other conditions attached.
- 2.3 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. When rejected the person or body sending the representation must be written and an explanation for rejection given in writing.
- 3.2 A responsible authority or other person can make a representation. There are two tests for other persons and only one for a responsible authority. The two tests are contained in Section 18 of the Act.
- 3.3 All representations must be "about the likely effect of the grant of the premises licence on the promotion of the licensing objectives" Likely means something that will probably happen, i.e on balance more likely than not.
- 3.4 Representations from responsible authorities do not have to meet the second test of not being vexatious and frivolous. Other persons have to meet this test.
- 3.5 The representations from Residents (Appendix 5) cite the potential for noise and anti social behaviour remaining into late in the morning from patrons attending the venue.
- 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.
5. The applicant has offered measures in the operating schedule of the application that they say address the promotion of the Licensing Objectives. These can be found at Sec 18 of Appendix 1.

### **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 Council's 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 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.
- 6.5 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.
- 6.6 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.
- 6.7 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.
- 6.8 In cases Members should make their decisions on the civil burden of proof, that is the balance of probability.
- 6.9 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.
- 6.10 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 functions 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 2 – Representations from Licensing Authority**

**Appendix 3 – Representation from Noise EHO**

**Appendix 4 – Other parties representations.**

**Background papers: Section 82 Guidance**  
**Haringey Statement of Licensing policy**

