

Report for: Licensing Sub Committee – 20 July 2021

Title: Application for a Review of Premises Licence – Kiss The Sky, 18-20 Park Road, London, N8.

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

Ward(s) affected Crouch End

Report for Key/Non Key Decision: Not applicable

1 Application

1.1 The application for a review of premises licence has been submitted by a group of residents, Bysshe & Pat Wallace, Phil Emamally, Gabriela Nedelcia, and Buca Laurentiu, who state they have been impacted by the operation of the premises. The review documents cite the disturbance from the premises on 21 and 23 June as being intolerable. **Appendix 1** Review Application form. The licence is held by Ray Assets Ltd. Mr Kashka Ray is the director. The premises operates as Kiss The Sky, 18-20 Park Road, London, N4 and the Designated Premises Supervisor (DPS) is Ramgolam Yogendra.

1.2 The Premises has a licence that permits the following:

Supply of Alcohol

Regulated Entertainment

- Recorded Music
- Provision of Facilities for Dancing

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

Supply of Alcohol

Monday to Thursday	1700 to 0000
Friday	1700 to 0100
Saturday	1200 to 0100
Sunday	1200 to 0000

Regulated Entertainment

Monday to Thursday	1700 to 0000
Friday	1700 to 0100
Saturday	1200 to 0100
Sunday	1200 to 0000

The opening hours of the premises:

Monday to Thursday	1700 to 0030
Friday	1700 to 0130
Saturday	1200 to 0130
Sunday	1200 to 0030

Supply of alcohol for consumption **ON** the premises only.

A copy of the current premises licence is attached as **Appendix 2**.

2 Grounds for review

- 2.1 The grounds for review are Prevention of Crime & Disorder, Public Safety, the Prevention of Public Nuisance, and the Protection of children from harm.

3 Relevant representations

- 3.1 Representations have been received from the Licensing Authority, as set out in **Appendix 3**, the Noise Environmental Health Officer, as set out in **Appendix 4**, and local residents, as set out in **Appendix 5**.
- 3.2 A representation from a business in support of Kiss the Sky is also included. There are a number of emails showing footage of various noise issues taking place. This footage is not included in the publicly available information due to possible data protection implications.

4 Background

- 4.1 The Licensing Service received an email from Mr Ray on 17 May 2021. An email with advice on how to transfer was provide on 18 May. Mr Ray submitted an incomplete application on 21 May which was rejected by the Licensing Service. He was advised that he was unable to carryout any licesable activity until the process was correctly followed.
- 4.2 The Noise Team was subsequently called to the premises over the course of the weekend from Friday 21 – Sunday 23 May following reports of loud music noise emanating from the premises. Noise nuisance was established and a warning letter was hand delivered on Sunday 23 May.
- 4.3 Ray submitted a completed application on Monday 24. This was then subject to the 14 days consultation with the Met Police. Mr Ray did not apply to vary the DPS at the time. The prior DPS confirmed to the Noise Team that he was no longer involved at the business.
- 4.4 Mr Ray was contacted by the Licensing Service following the complaints received. He was advised by email and over the phone that he was still unable to offer any licensable activity until such time the licence was transferred into his ownership. The Licensing Service did not receive an application for the variation of the DPS until 3 June 2021. Residents had contact the Licensing Service following the noise nuisance they had experienced over the weekend of 21-23 June. Residents subsequently submitted an application for a review of the

licence on 1 June.

- 4.5 LBH Officers visited the premises on 28 May and saw a DJ onsite playing loud music, people dancing onsite, patrons consuming alcohol at a time when there was no DPS assigned to the licence. The officer engaged with the 'manager' onsite who refused to give the name of the DPS when asked to do so.
- 4.6 Residents have continued to submit reports of noise nuisance emanating from within the venue and from its patrons outside the venue over the intervening period.

5. Licensing Officer comments

5.1 RELEVANT LAW, GUIDANCE & POLICIES:

- 5.2 The paragraphs below are extracted from either:
the Licensing Act 2003 ('Act'); or
the Guidance issued by the Secretary of State to the Home Office of April 2018
or the London Borough of Haringey Licensing Policy Statement.

5.3 General Principles:

- 5.4 The Licensing Sub-Committee must carry out its functions with a view to promoting the licensing objectives [Act s.4(1)].

The licensing objectives are:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance; &
- the protection of children from harm [Act s.4(2)].

- 5.5 In carrying out its functions, the Sub-Committee must also have regard to:
the Council's licensing policy statement; &
guidance issued by the Secretary of State [Act s.4(3)].

6 Decision:

- 6.1 As a matter of practice, the Sub-Committee should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas [Guid 9.37].

- 6.2 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the Sub-Committee must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- the guidance; and
- its own statement of licensing policy [Guid 9.38].

- 6.3 Having heard all of the representations (from all parties) the Sub-Committee must take such steps as it considers appropriate for the promotion of the licensing objectives. It may be decided that no changes are required. However, if

further steps are required, the available options are:

- (a) to modify the conditions of the premises licence;
- (b) to exclude an activity from the scope of the premises licence;
- (c) to suspend the premises licence for a period not exceeding three months;
- (d) to revoke the premises licence. [Act s.88].

6.4 Recorded Music

- 6.5 Certain types of regulated entertainment have been deregulated since April 2015 [Guid Section 16] , meaning existing conditions relating to those activities will not always be enforceable. Premises who are licensed to sell alcohol for consumption 'on' the premises are now automatically allowed to provide recorded music between 08:00 – 23:00 without the need for it to be named on the premises licence. The conditions relating to recorded music are therefore not enforceable during those times.

6.6 The Live Music Act 2012

- 6.7 The Live Music Act 2012 permits certain premises in certain circumstances to provide live music between 08:00 – 23:00 without the need for it to be named on a premises licence. Similarly, existing conditions relating to live music provided during those times are not enforceable.

7 Reviews - Section 11 of the Guidance:

11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and

proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

8 Licence reviews: Live and recorded music

16.55 On a review of a premises licence or club premises certificate, section 177A(3) of the 2003 Act permits a licensing authority to lift the suspension⁷⁴ and give renewed effect to an existing condition relating to music. Similarly, under section 177A(4), a licensing authority may add a condition relating to music as if music were regulated entertainment, and as if that premises licence or club premises certificate licensed the music. In both instances the conditions should include a statement that Section 177A does not apply to the condition.

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 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.
- 8.5 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.
- 8.6 Licensees have a responsibility for the conduct of their customers while they are in and Around their premises. If provision is made for customers to congregate or

smoke outside of premises, then sufficient management controls must be put into place to ensure that no nuisance or disturbance is caused to local residents. Failure to control customers outside of premises can result in licence reviews being submitted endangering the continuation of the premises licence.

- 8.7 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.

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 – Review application document.

Appendix 2 – Copy of the premises licence.

Appendix 3 – Representations from Licensing Authority and complaints history.

Appendix 4 – Representation from Noise Team.

Appendix 5 – Representations in support of the review.

Appendix 6 – Correspondence from Mr Ray’s Legal representative.

Appendix 7 – Correspondence from Mr Ray.

Background papers: Section 82 Guidance

Haringey Statement of Licensing policy