

Report for: Licensing Sub Committee – 6 September 2021

Title: Application for Review of a Premises licence at Gindungo, 2A Queens Parade, Bounds Green Road, London, N11.

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

An application has been submitted by Ms Sneha Raithatha / Pooja Raithatha for a review of the licence issued to Ms M Da Silva at Gindungo, 2A Queens Parade, Bounds Green Road, N11. The applicants state they have been impacted by the operation of the premises. The application is set out at Appendix 1.

1.2 The licence permits the following activity and hours:

Supply of Alcohol

Sunday to Thursday	1200 to 2230 hours
Friday to Saturday	1200 to 2330 hours

Late Night Refreshment

Friday to Saturday	2300 to 2330 hours
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Regulated Entertainment – Recorded music

Sunday to Thursday	1200 to 2230 hours
Friday to Saturday	1200 to 2330 hours

The opening hours of the premises:

Sunday to Thursday	1200 to 2300 hours
Friday to Saturday	1200 to 0000 hours

For the consumption **ON** the premises

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

2 Grounds for review

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

3 Relevant representations

- 3.1 Representations have been received from the Licensing Authority, set out at Appendix 3, and the Noise Team, set out at Appendix 4.

- 3.2 Representations from persons supporting Gindungo were received out of time or did not relate to any of the licensing objective so were not accepted.
- 3.3 As such, in accordance with the legislation the Licensing Authority must hold a hearing to consider the application and any relevant representations.

4 Background

- 4.1 The premises has operated as a wine bar under a Premises Licence for years but has received a number of complaints from nearby residents who were adversely affected by noise nuisance. It is also alleged that the venue has operated beyond its permitted hours thereby giving rise to further complaints of noise and disturbance.
- 4.2 The premises is located on the first floor of the terrace of shop units and residential properties. It is accessed from stairs at street level up to the first floor.
- 2.2. The records show that there has been 28 complaint during 2019. There was a warning letter served in 2019 and again on 21st may 2021.
- 2.3 The Planning permission was granted for change of use of upper round floor to A3 (food and drink) The application was permitted on 2 December 1991. There were a number of planning conditions attached to the permission but the hours permitted state that the operation shall not be before 0900 or after 2300 on any day.
- 2.3 Council officers are satisfied that the application has been made and advertised correctly.

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 condition 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 premises Licence

Appendix 3 – Representation from Licensing Authority and complaints history

Appendix 4 – Representation from the Noise Team

Background papers: Section 82 Guidance

Haringey Statement of Licensing policy