

Appendix 3 – Representations from Residents

From: [REDACTED]

Sent: 14 August 2021 11:51

To: Licensing <Licensing.Licensing@haringey.gov.uk>

Cc: Barrett Daliah <Daliah.Barrett@haringey.gov.uk>; [REDACTED]

[REDACTED] Cllr Morris Liz <Liz.Morris@haringey.gov.uk>

Subject: Re: FW: Application for a Premises Licence- Divina Kitchen Ltd, 256 Archway Road, London N6 5AX (WK/507295)

Hello,

Please find attached a representation regarding the license application for Divina Kitchen Ltd, 256 Archway Road, London N6 5AX.

Please find attached a pdf and word document, with our representation. We have also pasted the representation into the main body of email below, for your reference.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I would appreciate it if you could confirm receipt of this representation.

Thanks,

[REDACTED]

The Applicant, Divina Kitchen Limited, is seeking a new license to convert business premises at 256 Archway Road, Highgate N6 5AX, which was most recently an Italian restaurant, into a late night bar featuring recorded and live music seven days per week.

We as the owners and occupier of a residential property on the West side of Holmesdale Road, which is within close proximity to the premises, wish to make representations to the effect that the application should be rejected in its current form because the nature of the locality means that, per the Haringey Statement of Licensing Policy, these premises are not at all suitable for use as a late night bar with recorded and live music.

SUMMARY

- The floor plan provided by the Applicant is misleading. The area marked “Seating Area” to the rear of the Premises is in fact an open air back yard which has been covered with a fabric canopy and converted to a beer garden. In fact, the Applicant promotes this area in the front window as a “Garden”;
- Whilst the front of Divina’s premises face Archway Road which is a “main road well served by public transport”; the rear of the Premises is situated in a quiet residential area;
- Divina’s open air beer garden backs directly into the gardens of 31 and 33 Holmesdale Road and sound emanating from Divina impacts on many other adjacent properties, including number 29 Holmesdale Road;
- During the months since Divina has opened its beer garden, we and other residents of Holmesdale Rd and Archway Rd have endured constant noise nuisance from Divina’s beer garden (i.e. “Nuisance Outside of Premises”) and also noise nuisance escaping from the main restaurant via the open back door which provides access to the beer garden (i.e. “Nuisance from Within Premises”);

- There is a single rear door from the interior to the Beer Garden which must be kept constantly open to facilitate customers and employees passing between the Beer Garden to the Restaurant in order to reach the adjacent bar and bathrooms. Noise inevitably escapes;
- This is especially the case at weekends when the noise from Divina is constant through the afternoons and late into the night. It is a mix of raised voices, recorded music and live karaoke;
- Many Holmesdale Road residents, affected by noise nuisance from Divina and have filed complaints with Haringey – to little or no effect;
- We do not believe that the management of Divina has undertaken the recommended “risk assessment” taken any of the provisions of the Haringey Statement of Licensing Policy prior to making their application;
- Even the most basic analysis of the premises and the locality in the context of the provisions of the Haringey Statement of Licensing Policy would have established that open air beer gardens situated in quiet residential areas are not suitable for a late night bar with live and recorded music.
- Nor has the Applicant implemented any of the specific steps recommended in the Haringey Statement of Licensing Policy to ensure that local residents are not affected by noise caused by either Nuisance Outside of Premises or Nuisance from Within Premises.
- In an era of social distancing, we appreciate that some greater flexibility may be needed for restaurants to provide properly managed open air seating during the early part of the evening, but we do not think that this means we should have to endure a night club or a karaoke bar in our back garden.

DETAILED ANALYSIS

The Premises

At ground level, 256 Archway Road is one of a row of shops on the West side of Archway Road descending from the junction with Holmesdale Rd to the Archway Road Bridge.

In recent years, the shop at 256 Archway Road has been converted for use as a restaurant – as is also the case with a number of other shops in the row.

The Applicant has converted the back yard of the restaurant into a beer garden with a canopy above and some wooden boards to the side. The beer garden contains half a dozen tables and seating for about 40 persons. There is also a television set.

This application to change licensed use from that of a restaurant to a late night bar with recorded and live music is wholly new.

As described in the floor plan attached to the Application, the Premises comprise two distinct elements: (i) an indoor front area (which was originally the shop/restaurant); and (ii) an outdoor yard at the back, which the Applicant has converted into a beer garden.

In the Applicant's floor plan attached to Application, The indoor restaurant area (i) is described as "Restaurant Seating Area"; whilst the outdoor yard area or beer garden (ii) is described, somewhat misleadingly as "Seating Area".

The indoor area is separated from the outdoor area by means of a single door which must either be kept open – or opened and closed constantly – to facilitate access to the bar and bathrooms.

The Locality

It is true that the front part of the Premises face onto Archway Road – which is a "busy main road with public transport access. So at first sight, this zone might be considered a suitable location for a bar.

However, the character of the zone to the rear of the premises is quite different. As a result of the topography and camber of the hill, none of the traffic or other noises from Archway Road is audible. This is a very quiet area. The residents of nearby houses in Holmesdale Road and Archway Road have, until recently, been able to enjoy the peaceful use of their gardens and the rooms to the rear of their properties without any disturbance.

However, because the zone to the rear of the premises, in contrast to the front, is such a quiet residential neighbourhood, any form of noise pollution emanating from the Premises via the open air beer garden to the rear of the Premises – whether recorded music or live karaoke or raised voices – stands out a great deal and generates significant noise pollution which prevents the occupants from the quiet enjoyment of their homes and gardens to which they are entitled - and causes a public nuisance.

Nature of the Public Nuisance

In recent months, significant noise pollution has been emanating from the rear of the Premises. At different times, the noise takes the form of recorded music, karaoke, singing and raised voices. The noise pollution continues from mid-afternoon until after midnight – especially at weekends.

Granting such a license would fundamentally change the character of the area. We purchased our home in early January 2020 to start a family, given that it was a quiet residential area. We have been blessed with a baby boy, born on 14th November 2020. This disturbance has greatly affected our quality of life. We can no longer enjoy our family garden when loud music, shouting, cheering et al is emanating from 256 Archway road rear garden and have to stay inside our house, with all windows and doors closed.

Our son's nursery room is located at the back of our house (29 Holmesdale Road). During live/recorded music sessions, shouting and cheering et al from 256 Archway rear garden, we have had to move him to a room at the front of our house and, as the noise continues to wake and upset him. With regard protection of children, this is not sustainable and we need the nursery room to be a quiet, safe space for our son to sleep undisturbed.

On numerous occasions when this has occurred, local residents have filed many complaints with Haringey Council. We have lodged a number of ongoing complaints against the applicant. Haringey council provided the following case ID's for reference:

WK-502794

WK-497522

Some examples of complaints we have lodged with Haringey. We have also lengthy correspondence via telephone and email on this issue, over a period of months. Concerned residents have also issued a letter to Haringey Council, outlining their concerns over this ongoing issue.

Submitted: 04/07/2021, 20:16. Noise Problem Reference ID: HC-11519836 Problem description: Playing of loud, live music on Sunday 4/7/21 (approx 1400 - 1800). A lot of shouting, cheering, singing along etc and the guitar music appears to be played through a amplifier which is very loud.
Submitted: 07/06/2021, 10:47. Noise Problem Reference ID: HC-11495712 Problem description: Il Peperoncino, 256 Archway Rd, London N6 5AX was playing live music on Saturday (1300 - 2300) and Sunday (1300 - 2100). A lot of shouting, cheering, singing along etc and the music appears to be played through a amplifier which is very loud.
Submitted: 26/06/2021, 21:32. Noise Problem Reference ID: HC-11511865 Noise happening now: Yes Problem description: Loud music, shouting, cheering and singing. Occurring from early afternoon on Saturday

However, the owners and management of Divina have proved either unwilling or unable to do anything to prevent the noise emanating from the rear of the building and from the beer garden.

The Boogaloo/ Village Square Karaoke

There are two bars with late night licences and live music in the area. These are The Boogaloo at 312 Archway Road near to Highgate Tube Station; and Village Square Karaoke (formerly Caiparinha) at 177 Archway Road by the junction with Cromwell Avenue.

The Boogaloo offers late night bar with live and recorded music and has an open air beer garden. However, the beer garden to the rear is insulated from the bar area by two self closing fire doors and a passageway. No noise from live music or recorded music being played in the bar is audible in the beer garden.

Village Square Karaoke is well insulated - and does not have any open air space.

312 and 177 Archway Road are situated at a greater distance from the residential areas.

Haringey Statement of Licensing Policy

It is stated in Councilor White's preface that the Prevention of Public Nuisance is one of the four licensing objectives and this is repeated in Section 8.

In Paragraph 8.2, it is stated that "*protecting the public and local residents from... noise nuisance...*" is "*vitaly important and should be a principal aim of everyone involved in licensing work*"

In Paragraph 16.10 Location and Other Relevant Considerations, it is stated that when considering new applications for licenses, a number of matters should be taken into account including the following in particular:

- (i) The type and mix of premises in the local area;
- (ii) The location of the premises and their character;
- (iii) The proposed hours of operation;
- (iv) The physical suitability of the premises for the proposed licensable activities i.e. in terms of safety – access – noise control.

It seems to us that the premises are not at all physically suitable for the proposed licensed activities.

First – it seems totally impossible to implement noise control in an open-air space. Second, it seems impossible to isolate sounds emanating from an indoor space from adjacent open-air space without two separate self-closing doors.

In Paragraph 16.10 High Standards of Management, the Haringey Statement of Licensing Policy indicates that the Applicant should – amongst other things

- (i) have researched the local area and can demonstrate understanding of local community concerns;
- (ii) has carried out relevant risk assessments and devised an appropriate strategy to promote the licensing objectives.

We are concerned that the Applicant has not undertaken a risk assessment.

Prevention of Public Nuisance under the Haringey Statement of Licensing Policy

Section 20 of the Haringey Statement of Licensing Policy relates to Public Nuisance and to Noise Nuisance in particular.

Paragraph 20.1 notes that nuisance is best managed by careful consideration of the suitability of the selected site at an early stage. It also states categorically that the Authority expects applicants to have made relevant enquiries about the local area before submitting their application.

We represent that, whilst the Archway Road is a “main road well served by public transport” and suitable for “locating licensable activities”, the rear of the premises forms part of a very different zone. If the applicants had undertaken a risk assessment of potential sources of nuisance to the local community as recommended in Paragraph 20.2 – they would have appreciated the potential source of nuisance to the rear and taken this into account prior to deciding whether to make an application for a late night bar.

In this regard, paragraph 20.2 highlights as relevant considerations for such a risk assessment as

“Preventing noise and vibration escaping from the premises, including from music played on the premises, public address systems and customer noise” and

“controlling disturbance that may be caused by the use of external areas. This should include gardens and terraces as well as other open air areas...”

Preventing Nuisance Outside of Premises

This is highly relevant because the Applicant has converted the yard into a beer garden.

Section 20.8 Preventing Nuisance Outside of Premises “Nuisance caused by patrons outside of premises, whether by patrons queueing for entry or enjoying the facility of a beer garden or terrace...is of considerable concern to local residents. This forms the basis for many of the complaints received within the Authority especially through the summer months.

Section 20.9 “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”

As the Haringey Statement of Licensing Policy foresees, we and our neighbours have had to file many complaints during the summer. We are not aware of any management controls being implemented. If any management controls have been implemented, they have proved wholly ineffective.

Preventing Nuisance from Within Premises

This is also relevant as much of the noise nuisance appears to be caused by noise generated inside the Premises which escapes via the door to the external beer garden into the residential zone.

Paragraph 20.11 states “Nuisance may often be caused by sound escaping from the premises or transmitted through the structure of the building. While some simple management steps may be taken to reduce the problem, it should be understood that in some premises physical works may be necessary to prevent nuisance being caused to local residents.”

And it goes on to say: “The likelihood of this increases where regulated entertainments are to be provided; the later the intended hour of operation; where residents live adjacent to, above or close by the premises; or where there are other noise sensitive premises close by”

We would represent that in the case of this Application, almost all of these apply – (i) regulated entertainments; (ii) late hours; (iii) residents living adjacent to, above and close by.

Paragraph 20.12 lists a number of measures that the Authority expects to be considered and applied appropriate to the risk of nuisance. These include:

- (i) ...management and control of entrance/exit lobbies so as to ensure the integrity of the premises is maintained and internal sound contained;
- (ii) the provision of acoustic double door lobbies of an adequate residence time;
- (iii) the provision of acoustic seals and self closers on all doors;
- (iv) installation of sound resistant double glazing;
- (v) keeping doors and windows closed where performances of regulated entertainment take place.

So far as we are aware, none of these measures have been considered or applied.

We also believe, taking into account the nature of these premises, that it may not be either possible or practicable to implement these measures, since patrons and staff must constantly be moving to and from between the interior bar area and the exterior beer garden. Even if the doorway is properly managed, it will inevitably be opened and closed constantly – allowing the sound to escape.

From: [REDACTED]

Sent: 14 August 2021 15:22

To: Licensing <Licensing.Licensing@haringey.gov.uk>

Cc: Barrett Daliah <Daliah.Barrett@haringey.gov.uk>; [REDACTED]

[REDACTED] Cllr Morris Liz
<Liz.Morris@haringey.gov.uk>; [REDACTED]

Subject: Re: FW: Application for a Premises Licence- Divina Kitchen Ltd, 256 Archway Road, London N6 5AX (WK/507295)

Dear Licensing,

Please find attached a representation regarding the license application for Divina Kitchen Ltd, 256 Archway Road, London N6 5AX.

[REDACTED]
[REDACTED]
[REDACTED]

There are two attached PDF files:

1. *Divina_Opposition_West_Engelmore.pdf*. This contains the text of our representation.
2. *Evidence.pdf*. This contains some photos and images referred to in the text.

The text of document 1 is also pasted below.

Please confirm receipt of this representation.

Kind regards,

Full text of representation contained in *Divina_Opposition_West_Engelmore.pdf*

Representation regarding premises licence application from Divina Kitchen Ltd, 256 Archway Road

This representation is from

The Applicant, Divina Kitchen Limited, is seeking a new licence to convert business premises at 256 Archway Road, Highgate N6 5AX, which was most recently an Italian restaurant, into a late night bar featuring recorded and live music seven days per week.

We as the owners and occupier of a residential property on the West side of Holmesdale Road, which is adjacent to the Premises wish to make representations to the effect that the Application should be rejected in its current form because the nature of the locality means that, per the Haringey Statement of Licensing Policy, these Premises are not at all suitable for use as a late night bar with recorded and live music.

Our garden directly abuts the Applicant's outdoor beer garden – described further below – and we have been severely impacted by the noise emanating from it. We have submitted 10 noise complaints to Haringey, starting on April 25¹ (please note that some of the complaints use the Applicant's previous name: Il Peperoncino). There have in addition been many other occurrences of noise nuisance that we have not complained about, since it is not always convenient to do so. In fact, the noise occurs most weekends.

In the application, Divina states "WE WILL ALWAYS BE CONSIDERED TO OUR NEIGHBOURS AND LOCAL RESIDENTS KEEPING THE NOISE TO A MINIMUM AND RESPECT THE TIME ALLOWANCE GIVEN TO THE PREMISES BY THE LOCAL

AUTHORITY." This assurance has already been demonstrated to be false by the Applicant's behaviour in 2021.

In section 16.11 ('High standards of management') in the Haringey Statement of Licensing Policy 2021-2026, the following requirement appears: "Is able to demonstrate a track record of compliance with legal requirements". We would like to draw your attention the fact that the Applicant has been advertising and serving alcoholic beverages and hosting live music as an unlicensed operator for months, contrary to legal requirements. We have compiled our evidence for this into a single document for your convenience (attached to the email).

The rest of this representation was composed in collaboration with our neighbours on Holmesdale Road, and goes into further detail on noise issues and public nuisance.

SUMMARY

- The floor plan provided by the Applicant is misleading. The area marked "Seating Area" to the rear of the Premises is in fact an open air back yard which has been covered with a fabric canopy and converted to a beer garden. In fact, the Applicant promotes this area in the front window as a "Garden";
- Whilst the front of Divina's premises face Archway Road which is a "main road well served by public transport"; the rear of the Premises is situated in a quiet residential area;
- Divina's open air beer garden backs directly into the gardens of 31 and 33 Holmesdale Road and sound emanating from Divina impacts on many other adjacent properties;
- During the months since Divina has opened its beer garden, we and other residents of Holmesdale Rd and Archway Rd have endured constant noise nuisance from Divina's beer garden (i.e. "Nuisance Outside of Premises") and also noise nuisance escaping from the main restaurant via the open back door which provides access to the beer garden (i.e. "Nuisance from Within Premises");
- There is a single rear door from the interior to the Beer Garden which must be kept constantly open to facilitate customers and employees passing between the Beer Garden to the Restaurant in order to reach the adjacent bar and bathrooms. Noise inevitably escapes;
- This is especially the case at weekends when the noise from Divina is constant through the afternoons and late into the night. It is a mix of raised voices, recorded music and live karaoke;
- Many Holmesdale Road residents, affected by noise nuisance from Divina and have filed complaints with Haringey – to little or no effect;
- We do not believe that the management of Divina has undertaken the recommended "risk assessment" taken any of the provisions of the Haringey Statement of Licensing Policy prior to making their application;

- Even the most basic analysis of the premises and the locality in the context of the provisions of the Haringey Statement of Licensing Policy would have established that open air beer gardens situated in quiet residential areas are not suitable for a late night bar with live and recorded music.
- Nor has the Applicant implemented any of the specific steps recommended in the Haringey Statement of Licensing Policy to ensure that local residents are not affected by noise caused by either Nuisance Outside of Premises or Nuisance from Within Premises.
- In an era of social distancing, we appreciate that some greater flexibility may be needed for restaurants to provide properly managed open air seating during the early part of the evening, but we do not think that this means we should have to endure a night club or a karaoke bar in our back garden.
- Granting such a licence would fundamentally change the character of the area.

DETAILED ANALYSIS

The Premises

At ground level, 256 Archway Road is one of a row of shops on the West side of Archway Road descending from the junction with Holmesdale Rd to the Archway Road Bridge.

In recent years, the shop at 256 Archway Road has been converted for use as a restaurant – as is also the case with a number of other shops in the row.

The Applicant has converted the back yard of the restaurant into a beer garden with a canopy above and some wooden boards to the side. The beer garden contains half a dozen tables and seating for about 40 persons. There is also a television set.

This application to change licensed use from that of a restaurant to a late night bar with recorded and live music is wholly new.

As described in the floor plan attached to the Application, the Premises comprise two distinct elements: (i) an indoor front area (which was originally the shop/restaurant); and (ii) an outdoor yard at the back, which the Applicant has converted into a beer garden.

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The indoor area is separated from the outdoor area by means of a single door which must either be kept open – or opened and closed constantly – to facilitate access to the bar and bathrooms.

The Locality

It is true that the front part of the Premises face onto Archway Road – which is a "busy main road with public transport access.. So at first sight, this zone might be considered a suitable location for a bar.

However, the character of the zone to the rear of the premises is quite different. As a result of the topography and camber of the hill, none of the traffic or other noises from Archway Road is audible. This is a very quiet area. The residents of nearby houses in Holmesdale Road and Archway Road have, until recently, been able to enjoy the peaceful use of their gardens and the rooms to the rear of their properties without any disturbance.

However, because the zone to the rear of the premises, in contrast to the front, is such a quiet residential neighbourhood, any form of noise pollution emanating from the Premises via the open air beer garden to the rear of the Premises – whether recorded music or live karaoke or raised voices – stands out a great deal and generates significant noise pollution which prevents the occupants from the quiet enjoyment of their homes and gardens to which they are entitled - and causes a public nuisance.

Nature of the Public Nuisance

In recent months, significant noise pollution has been emanating from the rear of the Premises. At different times, the noise takes the form of recorded music, karaoke, singing and raised voices. The noise pollution continues from mid afternoon until after midnight – especially at week ends. We cannot use our gardens or open the windows.

It cannot be emphasized enough how badly this has affected our quality of life and mental health. We rely on our garden as a sanctuary in which to relax and refresh ourselves in the evenings and at weekends. We also use it as a quiet space in which to work, which is especially important now that we are both working at home due to the Covid pandemic.

All of these benefits are now often unavailable to us, thanks to Divina's noise pollution. We cannot even let in fresh air from the back windows and doors of the house when the noise is ongoing.

On numerous occasions when this has occurred, local residents have filed many complaints with Haringey Council.

However, the owners and management of Divina have proved either unwilling or unable to do anything to prevent the noise emanating from the rear of the building and from the beer garden.

The Boogaloo/ Village Square Karaoke

There are two bars with late night licences and live music in the area. These are The Boogaloo at 312 Archway Road near to Highgate Tube Station; and Village Square Karaoke (formerly Caiparinha) at 177 Archway Road by the junction with Cromwell Avenue.

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- i. The type and mix of premises in the local area;
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It seems to us that the premises are not at all physically suitable for the proposed licenced activities.

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potential source of nuisance to the rear and taken this into account prior to deciding whether to make an application for a late night bar.

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And it goes on to say: “The likelihood of this increases where regulated entertainments are to be provided; the later the intended hour of operation; where residents live adjacent to, above or close by the premises; or where there are other noise sensitive premises close by”

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Paragraph 20.12 lists a number of measures that the Authority expects to be considered and applied appropriate to the risk of nuisance. These include:

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- v. keeping doors and windows closed where performances of regulated entertainment take place.

So far as we are aware, none of these measures have been considered or applied.

We also believe, taking into account the nature of these Premises, that it may not be either possible or practicable to implement these measures, since patrons and staff must constantly be moving to and from between the interior bar area and the exterior beer garden. Even if the doorway is properly managed, it will inevitably be opened and closed constantly – allowing the sound to escape.

1Complaint references: HC-11448233, HC-11482902, HC-11483730, HC-11496087, HC-11499705, HC-11505492, HC-11511858, HC-11512089, HC-11519679, HC-11556997.



Figure 1: Corona beer consumption on the premises.



Figure 2: Brahma beer consumption (and probably cocktails) on the premises, with advertising of garden and beer/wine/cocktails in the window.

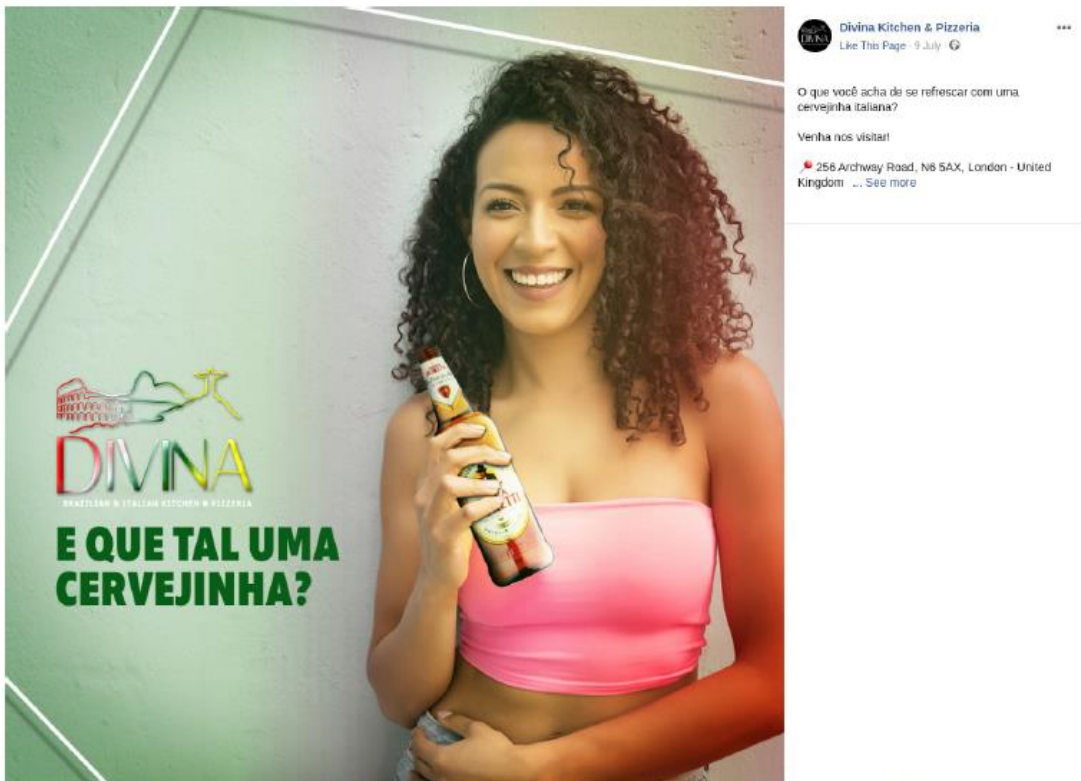


Figure 3: Beer advert on Facebook, 9 July. "How about refreshing yourself with an Italian beer?"



Figure 4: Cocktail advert on Facebook, 28 July.



Figure 5: Beer advert on Facebook, 6 August.



Figure 6: Advert for live music on Facebook, 12 June.

DIVINA
BRAZILIAN & ITALIAN KITCHEN • PIZZERIA

@DIVINAKITCHENPIZZERIA

19 JUNHO | SAB 8PM

SABADÃO MIX
ANTÔNIO SOARES

19 JUNHO | SAB 8PM

07895077261 | 256 ARCHWAY ROAD - N6 5AX

BEBA COM MODERAÇÃO | CANTINA | Brahma | PATROCÍNIO | DIAMOND

Like Comment Share

Figure 7: Advert for live music on Facebook, 19 June.

-----Original Message-----

From: [REDACTED]

Sent: 15 August 2021 15:47

To: Licensing <Licensing.Licensing@haringey.gov.uk>

Cc: [REDACTED] Barrett Daliah <Daliah.Barrett@haringey.gov.uk>; [REDACTED]

[REDACTED] Cllr Morris Liz

Subject: Representation re Application for a Premises Licence- Divina Kitchen Ltd, 256 Archway Road, London N6 5AX (WK/507295)

This representation is from [REDACTED]

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We as the owners and occupier of a residential property on the West side of Holmesdale Road, which is adjacent to the Premises wish to make representations to the effect that the Application should be rejected in its current form because the nature of the locality means that, per the Haringey Statement of Licensing Policy, these Premises are not at all suitable for use as a late night bar with recorded and live music.

Our garden is close to the outdoor area of the restaurant Divina (previously Il Pepperoncino) and therefore we have been experiencing first-hand the regular noise disturbance emanating from the premises.

From this experience, and despite the Applicant's good assurances in this application (see below History of non-compliance with Legal requirements), we have absolutely no trust in the Applicant's ability to comply with the restrictions of this license. We have in fact logged noise complaints several times without any results today and this, despite the fact that Haringey council had visited several times the premises to inform the owners of the noise nuisance. We are also aware that despite current restrictions on their temporary license, they have served alcoholic beverages and played live/recorded music in complete violation of the law.

The following is largely based on the representation prepared collectively with other neighbours of Holmesdale Road, with the exception of the Other considerations.

SUMMARY

- The floor plan provided by the Applicant is misleading. The area marked "Seating Area"
- to the rear of the Premises is in fact an open air back yard which has been covered with
- a fabric canopy and converted to a beer garden. In fact, the Applicant promotes this area
- in the front window as a "Garden";
- Whilst the front of Divina's premises face Archway Road which is a "main road well served
- by public transport"; the rear of the Premises is situated in a quiet residential area;
- Divina's open air beer garden backs directly into the gardens of 31 and 33 Holmesdale
- Road and sound emanating from Divina impacts on many other adjacent properties;
- During the months since Divina has opened its beer garden, we and other residents of
- Holmesdale Rd and Archway Rd have endured constant noise nuisance from Divina's
- beer garden (i.e. "Nuisance Outside of Premises") and also noise nuisance escaping from
- the main restaurant via the open back door which provides access to the beer garden (i.e.
- "Nuisance from Within Premises");
- There is a single rear door from the interior to the Beer Garden which must be kept
- constantly open to facilitate customers and employees passing between the Beer Garden
- to the Restaurant in order to reach the adjacent bar and bathrooms. Noise inevitably
- escapes;
- This is especially the case at weekends when the noise from Divina is constant through
- the afternoons and late into the night. It is a mix of raised voices, recorded music and live
- karaoke;
- Many Holmesdale Road residents, affected by noise nuisance from Divina and have filed
- complaints with Haringey – to little or no effect;
- We do not believe that the management of Divina has undertaken the recommended "risk
- assessment" taken any of the provisions of the Haringey Statement of Licensing Policy
- prior to making their application;
- Even the most basic analysis of the premises and the locality in the context of the
- provisions of the Haringey Statement of Licensing Policy would have established that open
- air beer gardens situated in quiet residential areas are not suitable for a late night bar with
- live and recorded music.
- Nor has the Applicant implemented any of the specific steps recommended in the

- Haringey Statement of Licensing Policy to ensure that local residents are not affected by
- noise caused by either Nuisance Outside of Premises or Nuisance from Within Premises.
- In an era of social distancing, we appreciate that some greater flexibility may be needed
- for restaurants to provide properly managed open air seating during the early part of the
- evening, but we do not think that this means we should have to endure a night club or a
- karaoke bar in our back garden.
- Granting such a licence would fundamentally change the character of the area.

DETAILED ANALYSIS

The Premises

At ground level, 256 Archway Road is one of a row of shops on the West side of Archway Road descending from the junction with Holmesdale Rd to the Archway Road Bridge.

In recent years, the shop at 256 Archway Road has been converted for use as a restaurant – as is also the case with a number of other shops in the row.

The Applicant has converted the back yard of the restaurant into a beer garden with a canopy above and some wooden boards to the side. The beer garden contains half a dozen tables and seating for about 40 persons. There is also a television set.

This application to change licensed use from that of a restaurant to a late night bar with recorded and live music is wholly new.

As described in the floor plan attached to the Application, the Premises comprise two distinct elements: (i) an indoor front area (which was originally the shop/restaurant); and (ii) an outdoor yard at the back, which the Applicant has converted into a beer garden.

In the Applicant's floor plan attached to Application, The indoor restaurant area (i) is described as "Restaurant Seating Area"; whilst the outdoor yard area or beer garden (ii) is described, somewhat misleadingly as "Seating Area".

The indoor area is separated from the outdoor area by means of a single door which must either be kept open – or opened and closed constantly – to facilitate access to the bar and bathrooms.

The Locality

It is true that the front part of the Premises face onto Archway Road – which is a "busy main road with public transport access. Consequently, at first sight, this zone might be considered a suitable location for a bar.

However, the character of the zone to the rear of the premises is quite different. As a result of the topography and camber of the hill, none of the traffic or other noises from Archway Road is audible. This is a very quiet area. The residents of nearby houses in Holmesdale Road and Archway Road have, until recently, been able to enjoy the peaceful use of their gardens and the rooms to the rear of their properties without any disturbance.

However, because the zone to the rear of the premises, in contrast to the front, is such a quiet residential neighbourhood, any form of noise pollution emanating from the Premises via the open air beer garden to the rear of the Premises – whether recorded music or live karaoke or raised voices – stands out a great deal and generates significant noise pollution which prevents the occupants from the quiet enjoyment of their homes and gardens to which they are entitled - and causes a public nuisance.

Nature of the Public Nuisance

In recent months, significant noise pollution has been emanating from the rear of the Premises

At different times, the noise takes the form of recorded music, karaoke, singing and raised voices. The noise pollution continues from mid-afternoon until after midnight – especially at week-ends. We cannot use our gardens or open the windows. Children in rear facing bedrooms are unable to sleep.

On numerous occasions when this has occurred, local residents have filed many complaints with Haringey Council.

However, the owners and management of Divina have proved either unwilling or unable to do anything to prevent the noise emanating from the rear of the building and from the beer garden.

The Boogaloo/ Village Square Karaoke

There are two bars with late night licences and live music in the area. These are The Boogaloo at 312 Archway Road near to Highgate Tube Station; and Village Square Karaoke (formerly Caiparinha) at 177 Archway Road by the junction with Cromwell Avenue.

The Boogaloo offers late night bar with live and recorded music and has an open-air beer garden. However, the beer garden to the rear is insulated from the bar area by two self-closing fire doors and a passageway. No noise from live music or recorded music being played in the bar is audible in the beer garden.

Village Square Karaoke is well insulated - and does not have any open-air space.

312 and 177 Archway Road are situated at a greater distance from the residential areas.

Haringey Statement of Licensing Policy

It is stated in Councillor White's preface that the Prevention of Public Nuisance is one of the four licensing objectives and this is repeated in Section 8.

In Paragraph 8.2, it is stated that "protecting the public and local residents from... noise nuisance..." is "vitaly important and should be a principal aim of everyone involved in licensing work"

In Paragraph 16.10 Location and Other Relevant Considerations, it is stated that when considering new applications for licenses, a number of matters should be taken into account including the following in particular:

- (i) The type and mix of premises in the local area;
- (ii) The location of the premises and their character;
- (iii) The proposed hours of operation;
- (iv) The physical suitability of the premises for the proposed licensable activities i.e. in terms of safety – access – noise control.

It seems to us that the premises are not at all physically suitable for the proposed licenced activities.

First – it seems totally impossible to implement noise control in an open-air space. Second, it seems impossible to isolate sounds emanating from an indoor space from adjacent open-air space without two separate self-closing doors.

In Paragraph 16.10 High Standards of Management, the Haringey Statement of Licensing Policy indicates that the Applicant should – amongst other things

- (i) have researched the local area and can demonstrate understanding of local community concerns;

- (ii) has carried out relevant risk assessments and devised an appropriate strategy to promote the licensing objectives.

We are concerned that the Applicant has not undertaken a risk assessment.

Prevention of Public Nuisance under the Haringey Statement of Licensing Policy

Section 20 of the Haringey Statement of Licensing Policy relates to Public Nuisance and to Noise Nuisance in particular.

Paragraph 20.1 notes that nuisance is best managed by careful consideration of the suitability of the selected site at an early stage. It also states categorically that the Authority expects applicants to have made relevant enquiries about the local area before submitting their application.

We represent that, whilst the Archway Road is a “main road well served by public transport” and suitable for “locating licensable activities, the rear of the premises forms part of a very different zone. If the applicants had undertaken a risk assessment of potential sources of nuisance to the local community as recommended in Paragraph 20.2 – they would have appreciated the potential source of nuisance to the rear and taken this into account prior to deciding whether to make an application for a late night bar.

In this regard, paragraph 20.2 highlights as relevant considerations for such a risk assessment as

“Preventing noise and vibration escaping from the premises, including from music played on the premises, public address systems and customer noise” and

“controlling disturbance that may be caused by the use of external areas. This should include gardens and terraces as well as other open-air areas...”

Preventing Nuisance Outside of Premises

This is highly relevant because the Applicant has converted the yard into a beer garden.

Section 20.8 Preventing Nuisance Outside of Premises “Nuisance caused by patrons outside of premises, whether by patrons queuing for entry or enjoying the facility of a beer garden or terrace...is of considerable concern to local residents. This forms the basis for many of the complaints received within the Authority especially through the summer months.

Section 20.9 “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”

As the Haringey Statement of Licensing Policy foresees, we and our neighbours have had to file many complaints during the summer. We are not aware of any management controls being implemented. If any management controls have been implemented, they have proved wholly ineffective.

Preventing Nuisance From Within Premises

This is also relevant as much of the noise nuisance appears to be caused by noise generated inside the Premises which escapes via the door to the external beer garden into the residential zone.

Paragraph 20.11 states “Nuisance may often be caused by sound escaping from the premises or transmitted through the structure of the building. While some simple management steps may be taken to reduce the problem, it should be understood that in some premises physical works may be necessary to prevent nuisance being caused to local residents.”

And it goes on to say: “The likelihood of this increases where regulated entertainments are to be provided; the later the intended hour of operation; where residents live adjacent to, above or close by the premises; or where there are other noise sensitive premises close by”

We would represent that in the case of this Application, almost all of these apply – (i) regulated entertainments; (ii) late hours; (iii) residents living adjacent to, above and close by.

Paragraph 20.12 lists a number of measures that the Authority expects to be considered and applied appropriate to the risk of nuisance. These include:

- (i) ...management and control of entrance/exit lobbies so as to ensure the integrity of the premises is maintained and internal sound contained;
- (ii) the provision of acoustic double door lobbies of an adequate residence time;
- (iii) the provision of acoustic seals and self closers on all doors;
- (iv) installation of sound resistant double glazing;
- (v) keeping doors and windows closed where performances of regulated entertainment take place.

So far as we are aware, none of these measures have been considered or applied.

We also believe, taking into account the nature of these Premises, that it may not be either possible or practicable to implement these measures, since patrons and staff must constantly be moving to and from between the interior bar area and the exterior beer garden. Even if the doorway is properly managed, it will inevitably be opened and closed constantly – allowing the sound to escape.

History of non-compliance with Legal requirements

In the License application that Divina have made it states, “We will always be considered to our neighbours and local residents keeping the noise to a minimum and respect the time allowance given to the premises by the local authority”. This assurance has already been demonstrated to be false by the Applicant’s behaviour in 2021.

In Section 16.11 (‘High standards of management’) in the Haringey Statement of Licensing Policy 2021-2026, the following requirement appears; “Is able to demonstrate a track record of compliance with legal requirements”. We would like to draw your attention to the fact that the Applicant has been advertising and servicing alcoholic beverages and hosting live music as an unlicensed operation for months, contract to legal requirements, We have compiled our evidence for this into a single document for your convenience (attached to the email).

Other considerations

Mental Health

People’s mental health has been impacted by the Covid Pandemic, in particular those who have lost loved ones, those who have lost their jobs and even those who have had to adapt to remote working and home-schooling. Noise disturbance can accentuate mental health issues in the domestic setting. Communities who are coming together to provide mutual support during Covid would like to ensure that everything is done to protect the mental health of their local residents,

and this should also be the aim of our local businesses in Highgate to support their local communities in a positive and constructive fashion.

Protecting and respecting local families & children

As previously mentioned, many properties along Holmesdale Road adjacent to the premises of Divina and to the back of Archway Road, are largely occupied by families. The strain on families during lockdown with remote working and home-schooling has been tough. As a community we should try to enable our children to have uninterrupted sleep in order to perform and achieve the milestones required by the National Curriculum. Sleep is fundamental for children's development and learning, and for our students. Again, as a local community, it is crucial that we do everything we can to protect children's rights as their education is paramount as we come out of the Covid Pandemic and lockdown period. Where they may have fallen behind, due to less face-to-face teaching, we owe it to them to allow them to have uninterrupted sleep patterns.

From: [REDACTED]

Sent: 15 August 2021 20:10

To: Licensing <Licensing.Licensing@haringey.gov.uk>

Subject: Representation concerning application for new licence for Divina Kitchen Limited, 256 Archway Road from owners and residents of 27 Holmesdale Road

Dear Haringey Licensing Team,

The Applicant, Divina Kitchen Limited, is seeking a new licence to convert business premises at 256 Archway Road, Highgate N6 5AX, which was most recently an Italian restaurant, into a late night bar featuring recorded and live music seven days per week.

We as the owners and occupier of a residential property on the West side of Holmesdale Road, which is closely located to the Premises wish to make representations to the effect that the Application should be rejected in its current form because the nature of the locality means that, per the Haringey Statement of Licensing Policy, these Premises are not at all suitable for use as a late night bar with recorded and live music.

SUMMARY

- The floor plan provided by the Applicant is misleading. The area marked "Seating Area" to the rear of the Premises is in fact an open air back yard which has been covered with a fabric canopy and converted to a beer garden. In fact, the Applicant promotes this area in the front window as a "Garden";
- Whilst the front of Divina's premises face Archway Road which is a "main road well served by public transport"; the rear of the Premises is situated in a quiet residential area;
- Divina's open air beer garden backs directly into the gardens of 31 and 33 Holmesdale Road and sound emanating from Divina impacts on many other adjacent properties including our property on 27 Holmesdale Road;
- During the months since Divina has opened its beer garden, we and other residents of Holmesdale Rd and Archway Rd have endured constant noise nuisance from Divina's beer garden (i.e. "Nuisance Outside of Premises") and also noise nuisance escaping from the main restaurant via the open back door which provides access to the beer garden (i.e. "Nuisance from Within

Premises”);

- There is a single rear door from the interior to the Beer Garden which must be kept constantly open to facilitate customers and employees passing between the Beer Garden to the Restaurant in order to reach the adjacent bar and bathrooms. Noise inevitably escapes;
- This is especially the case at weekends when the noise from Divina is constant through the afternoons and late into the night. It is a mix of raised voices, recorded music and live karaoke;
- Many Holmesdale Road residents, affected by noise nuisance from Divina and have filed complaints with Haringey – to little or no effect;
- We do not believe that the management of Divina has undertaken the recommended “risk assessment” taken any of the provisions of the Haringey Statement of Licensing Policy prior to making their application;
- Even the most basic analysis of the premises and the locality in the context of the provisions of the Haringey Statement of Licensing Policy would have established that open air beer gardens situated in quiet residential areas are not suitable for a late night bar with live and recorded music.
- Nor has the Applicant implemented any of the specific steps recommended in the Haringey Statement of Licensing Policy to ensure that local residents are not affected by noise caused by either Nuisance Outside of Premises or Nuisance from Within Premises.
- In an era of social distancing, we appreciate that some greater flexibility may be needed for restaurants to provide properly managed open air seating during the early part of the evening, but we do not think that this means we should have to endure a night club or a karaoke bar in our back garden.
- Granting such a license would fundamentally change the character of the area.

DETAILED ANALYSIS

The Premises

At ground level, 256 Archway Road is one of a row of shops on the West side of Archway Road descending from the junction with Holmesdale Rd to the Archway Road Bridge.

In recent years, the shop at 256 Archway Road has been converted for use as a restaurant – as is also the case with a number of other shops in the row.

The Applicant has converted the back yard of the restaurant into a beer garden with a canopy above and some wooden boards to the side. The beer garden contains half a dozen tables and seating for about 40 persons. There is also a television set.

This application to change licensed use from that of a restaurant to a late night bar with recorded and live music is wholly new.

As described in the floor plan attached to the Application, the Premises comprise two distinct elements: (i) an indoor front area (which was originally the shop/restaurant); and (ii) an outdoor yard at the back, which the Applicant has converted into a beer garden.

In the Applicant's floor plan attached to Application, The indoor restaurant area (i) is described as "Restaurant Seating Area"; whilst the outdoor yard area or beer garden (ii) is described, somewhat misleadingly as "Seating Area".

The indoor area is separated from the outdoor area by means of a single door which must either be kept open – or opened and closed constantly – to facilitate access to the bar and bathrooms.

The Locality

It is true that the front part of the Premises face onto Archway Road – which is a "busy main road with public transport access. So at first sight, this zone might be considered a suitable location for a bar.

However, the character of the zone to the rear of the premises is quite different. As a result of the topography and camber of the hill, none of the traffic or other noises from Archway Road is audible. This is a very quiet area. The residents of nearby houses in Holmesdale Road and Archway Road have, until recently, been able to enjoy the peaceful use of their gardens and the rooms to the rear of their properties without any disturbance.

However, because the zone to the rear of the premises, in contrast to the front, is such a quiet residential neighbourhood, any form of noise pollution emanating from the Premises via the open air beer garden to the rear of the Premises – whether recorded music or live karaoke or raised voices – stands out a great deal and generates significant noise pollution which prevents the occupants from the quiet enjoyment of their homes and gardens to which they are entitled - and causes a public nuisance.

Nature of the Public Nuisance

In recent months, significant noise pollution has been emanating from the rear of the Premises. At different times, the noise takes the form of recorded music, karaoke, singing and raised voices. The noise pollution continues from mid afternoon until after midnight – especially at weekends. We cannot use our gardens or open the windows. Children in rear facing bedrooms are unable to sleep.

On numerous occasions when this has occurred, local residents have filed many complaints with Haringey Council. [List Numbers and Dates]

However, the owners and management of Divina have proved either unwilling or unable to do anything to prevent the noise emanating from the rear of the building and from the beer garden.

The Boogaloo/ Village Square Karaoke

There are two bars with late night licences and live music in the area. These are The Boogaloo at 312 Archway Road near to Highgate Tube Station; and Village Square Karaoke (formerly Caiparinha) at 177 Archway Road by the junction with Cromwell Avenue.

The Boogaloo offers late night bar with live and recorded music and has an open air beer garden. However, the beer garden to the rear is insulated from the bar area by two self closing fire doors and a passageway. No noise from live music or recorded music being played in the bar is audible in the beer garden.

Village Square Karaoke is well insulated - and does not have any open air space.

312 and 177 Archway Road are situated at a greater distance from the residential areas.

Haringey Statement of Licensing Policy

It is stated in Councilor White's preface that the Prevention of Public Nuisance is one of the four licensing objectives and this is repeated in Section 8.

In Paragraph 8.2, it is stated that "*protecting the public and local residents from... noise nuisance...*" is "*vitaly important and should be a principal aim of everyone involved in licensing work*"

In Paragraph 16.10 Location and Other Relevant Considerations, it is stated that when considering new applications for licenses, a number of matters should be taken into account including the following in particular:

1. The type and mix of premises in the local area;
2. The location of the premises and their character;
3. The proposed hours of operation;
4. The physical suitability of the premises for the proposed licenseable activities i.e. in terms of safety – access – noise control.

It seems to us that the premises are not at all physically suitable for the proposed licenced activities.

First – it seems totally impossible to implement noise control in an open air space. Second, it seems impossible to isolate sounds emanating from an indoor space from adjacent open air space without two separate self-closing doors.

In Paragraph 16.10 High Standards of Management, the Haringey Statement of Licensing Policy indicates that the Applicant should – amongst other things

1. have researched the local area and can demonstrate understanding of local community concerns;
2. has carried out relevant risk assessments and devised an appropriate strategy to promote the licensing objectives.

We are concerned that the Applicant has not undertaken a risk assessment.

Prevention of Public Nuisance under the Haringey Statement of Licensing Policy

Section 20 of the Haringey Statement of Licensing Policy relates to Public Nuisance and to Noise Nuisance in particular.

Paragraph 20.1 notes that nuisance is best managed by careful consideration of the suitability of the selected site at an early stage. It also states categorically that the Authority expects applicants to have made relevant enquiries about the local area before submitting their application.

We represent that, whilst the Archway Road is a "main road well served by public transport" and suitable for "locating licenseable activities", the rear of the premises forms part of a very different zone. If the applicants had undertaken a risk assessment of potential sources of nuisance to the local community as recommended in Paragraph 20.2 – they would have appreciated the potential source of nuisance to the rear and taken this into account prior to deciding whether to make an application for a late night bar.

In this regard, paragraph 20.2 highlights as relevant considerations for such a risk assessment as

"Preventing noise and vibration escaping from the premises, including from music played on the premises, public address systems and customer noise" and

“controlling disturbance that may be caused by the use of external areas. This should include gardens and terraces as well as other open air areas...”

Preventing Nuisance Outside of Premises

This is highly relevant because the Applicant has converted the yard into a beer garden.

Section 20.8 Preventing Nuisance Outside of Premises “Nuisance caused by patrons outside of premises, whether by patrons queueing for entry or enjoying the facility of a beer garden or terrace...is of considerable concern to local residents. This forms the basis for many of the complaints received within the Authority especially through the summer months.

Section 20.9 “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”

As the Haringey Statement of Licensing Policy foresees, we and our neighbours have had to file many complaints during the summer. We are not aware of any management controls being implemented. If any management controls have been implemented, they have proved wholly ineffective.

Preventing Nuisance From Within Premises

This is also relevant as much of the noise nuisance appears to be caused by noise generated inside the Premises which escapes via the door to the external beer garden into the residential zone.

Paragraph 20.11 states “Nuisance may often be caused by sound escaping from the premises or transmitted through the structure of the building. While some simple management steps may be taken to reduce the problem, it should be understood that in some premises physical works may be necessary to prevent nuisance being caused to local residents.”

And it goes on to say: “The likelihood of this increases where regulated entertainments are to be provided; the later the intended hour of operation; where residents live adjacent to, above or close by the premises; or where there are other noise sensitive premises close by”

We would represent that in the case of this Application, almost all of these apply – (i) regulated entertainments; (ii) late hours; (iii) residents living adjacent to, above and close by.

Paragraph 20.12 lists a number of measures that the Authority expects to be considered and applied appropriate to the risk of nuisance. These include:

1. ...management and control of entrance/exit lobbies so as to ensure the integrity of the premises is maintained and internal sound contained;
2. the provision of acoustic double door lobbies of an adequate residence time;
3. the provision of acoustic seals and self closers on all doors;
4. installation of sound resistant double glazing;
5. keeping doors and windows closed where performances of regulated entertainment take place.

So far as we are aware, none of these measures have been considered or applied.

We also believe, taking into account the nature of these Premises, that it may not be either possible or practicable to implement these measures, since patrons and staff must constantly be moving to and from between the interior bar area and the exterior beer garden. Even if the

doorway is properly managed, it will inevitably be opened and closed constantly – allowing the sound to escape.

[REDACTED]

[REDACTED]

[REDACTED]



LICENSING ACT 2003 - REPRESENTATION FORM

To make a representation in respect of an application for a Premises Licence or Club Premises Certificate please complete the following form. For representations to be considered relevant they must relate to one or more of the four "Licensing Objectives" (listed below).

Please note all representations will be made available for applicants to view. If you make a representation objecting to the application it is likely that you will be called upon to attend a hearing and present your objection before a Licensing Committee.

Personal Details	
Name.....	[REDACTED]
Address.....	[REDACTED]
.....	
.....	
Postcode.....	[REDACTED]

Licence application you wish to make a representation on	
<i>You do not need to answer all of the questions in this section, but please give as much information as you can:</i>	
Application Number.....	WK/507295
Name of Licensee.....	DRITAN HUSHI (APPLICANT)
Name of Premises (if applicable).....	DIVINA
Premises Address (where the Licence will take effect).....	256
.....	ARCHWAY ROAD LONDON
.....	
Postcode.....	N6 5AX

Reason/s for representation
<i>Under the Licensing Act 2003, for a representation to be relevant it must be one that is about the likely effect of the application on the promotion of the four licensing objectives. Any representations that are considered to be vexatious or frivolous will not be considered (please see Haringey Council's leaflet Variations, Representations and Appeals for Premises Licences and Club Premises Certificates).</i>
<i>Fill in reason/s for your representation in the space provided under each Licensing Objective it relates to.</i>

The Prevention of Crime and Disorder


Public Safety

The Prevention of Public Nuisance

NOISE POLLUTION FROM
THE BEER GARDEN AND
ESCAPING FROM THE RESTAURANT
VIA REAR DOOR TO GARDEN

The Protection of Children from Harm

PER ATTACHED

I,  hereby declare that all information I have submitted is true and correct.

Signed:



Date:

16/08/21

Please email the completed form to licensing@haringey.gov.uk.

APPLICATION FOR A PREMISES LICENCE FOR DAVINA KITCHEN LTD. – 256 ARCHWAY ROAD LONDON N6 5AX (WK/507295)

Address: [REDACTED]

The Applicant, Divina Kitchen Limited, is seeking a new licence to convert business premises at 256 Archway Road, Highgate N6 5AX, which was most recently an Italian restaurant, into a late night bar featuring recorded and live music seven days per week.

We as the owners and occupier of a residential property on the West side of Holmesdale Road is directly adjacent to the beer garden at the rear of the Premises wish to make representations on the grounds of PUBLIC NUISANCE to the effect that the Application should be rejected in its current form because the nature of the locality means that, per the Haringey Statement of Licensing Policy, these Premises are not at all suitable for use as a late night bar with recorded and live music.

The yard at the back of the premises which the Applicant has repurposed as a semi-covered beer garden, backs on to my own back garden. As a general comment, my view is that, if the back door of the main restaurant were to be kept locked, and the rear of the premises properly sound-proofed so that there is no escape of noise pollution, I would have no objection to the applications to convert the restaurant into a bar with a late licence for live and recorded music. But at whatever time of day the Beer Garden is open – there is an unacceptable level of noise pollution both from the Beer Garden and escaping from the main restaurant.

SUMMARY

- The floor plan provided by the Applicant is misleading. The area marked "Seating Area" to the rear of the Premises is in fact an open air back yard which has been covered with a fabric canopy and converted to a beer garden. In fact, the Applicant promotes this area in the front window as a "Garden";
- Whilst the front of Divina's premises face Archway Road which is a "main road well served by public transport"; the rear of the Premises is situated in a quiet residential area;
- Divina's open air beer garden backs directly into the gardens of 31 and 33 Holmesdale Road and sound emanating from Divina impacts on many other adjacent properties;
- During the months since Divina has opened its beer garden, we and other residents of Holmesdale Rd and Archway Rd have endured constant noise nuisance from Divina's beer garden (i.e. "Nuisance Outside of Premises"); and also noise nuisance escaping from the main restaurant via the open back door which provides access to the beer garden (i.e. "Nuisance from Within Premises");
- There is a single rear door from the interior to the Beer Garden which must be kept constantly open to facilitate customers and employees passing between the Beer Garden to the Restaurant in order to reach the adjacent bar and bathrooms. Noise inevitably escapes;

- This is especially the case at weekends when the noise from Divina is constant through the afternoons and late into the night. It is a mix of raised voices, recorded music and live karaoke;
- Many Holmesdale Road residents, affected by noise nuisance from Divina and have filed complaints with Haringey – to little or no effect;
- We do not believe that the management of Divina has undertaken the recommended “risk assessment” taken any of the provisions of the Haringey Statement of Licensing Policy prior to making their application;
- Even the most basic analysis of the premises and the locality in the context of the provisions of the Haringey Statement of Licensing Policy would have established that open air beer gardens situated in quiet residential areas are not suitable for a late night bar with live and recorded music.
- Nor has the Applicant implemented any of the specific steps recommended in the Haringey Statement of Licensing Policy to ensure that local residents are not affected by noise caused by either Nuisance Outside of Premises or Nuisance from Within Premises.
- In an era of social distancing, we appreciate that some greater flexibility may be needed for restaurants to provide properly managed open air seating during the early part of the evening, but we do not think that this means we should have to endure a night club or a karaoke bar in our back garden.
- Granting such a licence would fundamentally change the character of the area.

DETAILED ANALYSIS

The Premises

At ground level, 256 Archway Road is one of a row of shops on the West side of Archway Road descending from the junction with Holmesdale Rd to the Archway Road Bridge.

In recent years, the shop at 256 Archway Road has been converted for use as a restaurant – as is also the case with a number of other shops in the row.

The Applicant has converted the back yard of the restaurant into a beer garden with a canopy above and some wooden boards to the side. The beer garden contains half a dozen tables and seating for about 40 persons. There is also a television set.

This application to change licensed use from that of a restaurant to a late night bar with recorded and live music is wholly new.

As described in the floor plan attached to the Application, the Premises comprise two distinct elements: (i) an indoor front area (which was originally the shop/restaurant); and (ii) an outdoor yard at the back, which the Applicant has converted into a beer garden.

In the Applicant's floor plan attached to Application, The indoor restaurant area (i) is described as "Restaurant Seating Area"; whilst the outdoor yard area or beer garden (ii) is described, somewhat misleadingly, as a "Seating Area".

The indoor Restaurant area is separated from the outdoor Beer Garden area by means of a single door which must either be kept open – or opened and closed constantly – to facilitate access to the bar and bathrooms.

The Locality

It is true that the front part of the Premises face onto Archway Road – which is a "busy main road with public transport access". So at first sight, this zone might be considered a suitable location for a bar.

However, the character of the zone to the rear of the premises is quite different. As a result of the topography and camber of the hill, none of the traffic or other noises from Archway Road is audible. This is a very quiet area. The residents of nearby houses in Holmesdale Road and Archway Road have, until recently, been able to enjoy the peaceful use of their gardens and the rooms to the rear of their properties without any disturbance.

However, because the zone to the rear of the premises, in contrast to the front, is such a quiet residential neighbourhood, any form of noise pollution emanating from the Premises via the open air beer garden to the rear of the Premises – whether recorded music or live karaoke or raised voices – stands out a great deal. It generates significant noise pollution which prevents the occupants from the quiet enjoyment of their homes and gardens to which they are entitled - and causes a public nuisance. Such noise if licensed by Haringey and continued over a lengthy time could fundamentally change the character of the neighbourhood and impact on property values. In this case, it could also potentially be actionable separately as a private tort of nuisance.

Nature of the Public Nuisance

In recent months, significant noise pollution has been emanating from the rear of the Premises. At different times, the noise takes the form of recorded music, karaoke, singing and raised voices. The noise pollution continues from mid afternoon until after midnight – especially at week ends. We cannot use our gardens or open the windows. Children in rear facing bedrooms are unable to sleep.

On numerous occasions when this has occurred, local residents have filed many complaints with Haringey Council. [List Numbers and Dates]

However, the owners and management of Divina have proved either unwilling or unable to do anything to prevent the noise emanating from the rear of the building and from the beer garden.

The Boogaloo/ Village Square Karaoke

There are two bars with late night licences and live music in the area. These are The Boogaloo at 312 Archway Road near to Highgate Tube Station; and Village Square Karaoke (formerly Caiparinha) at 177 Archway Road by the junction with Cromwell Avenue.

The Boogaloo offers late night bar with live and recorded music and has an open air beer garden. However, the beer garden to the rear is insulated from the bar area by two self closing fire doors

and a passageway. No noise from live music or recorded music being played in the bar is audible in the beer garden.

Village Square Karaoke is well insulated - and does not have any open air space.

312 and 177 Archway Road are situated at a greater distance from the residential areas.

Haringey Statement of Licensing Policy

It is stated in Councilor White's preface that the Prevention of Public Nuisance is one of the four licensing objectives and this is repeated in Section 8.

In Paragraph 8.2, it is stated that "*protecting the public and local residents from... noise nuisance...*" is "*vitaly important and should be a principal aim of everyone involved in licensing work*"

In Paragraph 16.10 Location and Other Relevant Considerations, it is stated that when considering new applications for licenses, a number of matters should be taken into account including the following in particular:

- (i) The type and mix of premises in the local area;
- (ii) The location of the premises and their character;
- (iii) The proposed hours of operation;
- (iv) The physical suitability of the premises for the proposed licenseable activities i.e. in terms of safety – access – noise control.

It seems to us that the premises are not at all physically suitable for the proposed licenced activities.

First – it seems totally impossible to implement noise control in an open air space. Second, it seems impossible to isolate sounds emanating from an indoor space from adjacent open air space without two separate self-closing doors.

In Paragraph 16.10 High Standards of Management, the Haringey Statement of Licensing Policy indicates that the Applicant should – amongst other things

- (i) have researched the local area and can demonstrate understanding of local community concerns;
- (ii) has carried out relevant risk assessments and devised an appropriate strategy to promote the licensing objectives.

We are concerned that the Applicant has not undertaken a risk assessment.

Prevention of Public Nuisance under the Haringey Statement of Licensing Policy

Section 20 of the Haringey Statement of Licensing Policy relates to Public Nuisance and to Noise Nuisance in particular.

Paragraph 20.1 notes that nuisance is best managed by careful consideration of the suitability of the selected site at an early stage. It also states categorically that the Authority expects applicants to have made relevant enquiries about the local area before submitting their application.

We represent that, whilst the Archway Road is a "main road well served by public transport" and suitable for "locating licenseable activities", the rear of the premises forms part of a very different

zone. if the applicants had undertaken a risk assessment of potential sources of nuisance to the local community as recommended in Paragraph 20.2 – they would have appreciated the potential source of nuisance to the rear and taken this into account prior to deciding whether to make an application for a late night bar.

In this regard, paragraph 20.2 highlights as relevant considerations for such a risk assessment as

“Preventing noise and vibration escaping from the premises, including from music played on the premises, public address systems and customer noise” and

“controlling disturbance that may be caused by the use of external areas. This should include gardens and terraces as well as other open air areas...”

Preventing Nuisance Outside of Premises

This is highly relevant because the Applicant has converted the yard into a beer garden.

Section 20.8 Preventing Nuisance Outside of Premises “Nuisance caused by patrons outside of premises, whether by patrons queuing for entry or enjoying the facility of a beer garden or terrace...is of considerable concern to local residents. This forms the basis for many of the complaints received within the Authority especially through the summer months.

Section 20.9 “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”

As the Haringey Statement of Licensing Policy foresees, we and our neighbours have had to file many complaints during the summer. We are not aware of any management controls being implemented. If any management controls have been implemented, they have proved wholly ineffective.

Preventing Nuisance From Within Premises

This is also relevant as much of the noise nuisance appears to be caused by noise generated inside the Premises which escapes via the door to the external beer garden into the residential zone.

Paragraph 20.11 states “Nuisance may often be caused by sound escaping from the premises or transmitted through the structure of the building. While some simple management steps may be taken to reduce the problem, it should be understood that in some premises physical works may be necessary to prevent nuisance being caused to local residents.”

And it goes on to say: “The likelihood of this increases where regulated entertainments are to be provided; the later the intended hour of operation; where residents live adjacent to, above or close by the premises; or where there are other noise sensitive premises close by”

We would represent that in the case of this Application, almost all of these apply – (i) regulated entertainments; (ii) late hours; (iii) residents living adjacent to, above and close by.

Paragraph 20.12 lists a number of measures that the Authority expects to be considered and applied appropriate to the risk of nuisance. These include:

- (i) ...management and control of entrance/exit lobbies so as to ensure the integrity of the premises is maintained and internal sound contained;
- (ii) the provision of acoustic double door lobbies of an adequate residence time;
- (iii) the provision of acoustic seals and self closers on all doors;
- (iv) installation of sound resistant double glazing;
- (v) keeping doors and windows closed where performances of regulated entertainment take place.

So far as we are aware, none of these measures have been considered or applied.

We also believe, taking into account the nature of these Premises, that it may not be either possible or practicable to implement these measures, since patrons and staff must constantly be moving to and from between the interior bar area and the exterior beer garden. Even if the doorway is properly managed, it will inevitably be opened and closed constantly – allowing the sound to escape.



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Photographs of Beer Garden to rear of Davina



Canopy ceiling in Beer Garden



The Canopy ceiling and the wooden panelling of the Beer garden





Rear Door of the Main Restaurant into the back yard is, of necessity, constantly open when the Beer Garden is being used



Wooden Fence which is boundary between the Beer Garden and the back gardens of 31 and 33 Holmedale Road

From: Cllr Morris Liz <Liz.Morris@haringey.gov.uk>
Sent: 13 August 2021 16:27
To: Barrett Daliah <Daliah.Barrett@haringey.gov.uk>
Cc: Cllr Morris Liz <Liz.Morris@haringey.gov.uk>
Subject: Divina - Archway Rd N6

I have serious concerns about this licensing application in relation to the licensing objective:

Prevention of public nuisance

As the local councillor I have been contacted by a number of Holmesdale residents, who live at the rear of the premises, complaining of loud and continued disturbance by Divina Kitchen Ltd. They have complained that Divina are holding noisy live music events and parties which can run into the early hours of the morning. This has been happening on several days over the weekend, on consecutive weekends and over a sustained period of time. Residents report that the noise is coming from the rear yard of the premises.

I have also seen similar complaints from other residents on the Holmesdale street WhatsApp group which I am part of. It is clear that a large number of Holmesdale residents have been disturbed over a long period of time and that the noise from Divina which has severely affected the enjoyment of residents' homes and gardens. There will no doubt be also be residents on Archway Rd who will have been affected.

It is very disappointing that the owners of Divina have not stopped their parties and music events, or done anything to reduce the noise, despite being contacted by the council's enforcement team. They have to date caused a great deal of public nuisance. So far this statement in their application is untrue **"WE WILL ALWAYS BE CONSIDERED (sic) TO OUR NEIGHBOURS AND LOCAL RESIDENTS KEEPING THE NOISE TO A MINIMUM AND RESPECT THE TIME ALLOWANCE GIVEN TO THE PREMISES BY THE LOCAL AUTHORITY."**

Given the noise problems that have been experienced I would urge the council to place a restriction that the garden cannot be used at any time for any purpose. I am also concerned about the applicant playing loud music inside the premises with windows and doors open which will cause great disturbance to neighbours. Please could any music license be conditioned that doors and windows need to be shut and that some form of noise insulation is installed.

Liz Morris

**Councillor Highgate Ward
Haringey Liberal Democrat Group
Mobile: 07818 094573**

Email: liz.morris@haringey.gov.uk

Twitter: [@lizmorris4](https://twitter.com/lizmorris4)