

Report for: Licensing Sub Committee 15th January 2024

Item number: 6

Title: Application for a Variation of a Premises Licence at Moon Lounge, 34 High Street London N8

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

Ward(s) affected: Hornsey

Report for Key/
Non Key Decision: Not applicable

1. **Describe the issue under consideration**

1.1 This report relates to an application to vary an existing premises licence by Mr Fation Gjana.

1.2 The application seeks to extend the hours as follows:

Regulated Entertainment: Live Music and Recorded

Friday to Saturday 1000 to 0130 hours

Late Night Refreshment

Friday to Saturday 2300 to 0130 hours

Sale of Alcohol

Friday to Saturday 1000 to 0130 hours

Supply of alcohol **ON** the premises.

Hours open to Public

Friday to Saturday 0800 to 0200 hours

- **The addition of an extended structure in the rear garden space**

1.3 The application can be found at - **Appendix A.**

1.4 **Representations have been received from:**

Residents and Responsible Authorities - App B, B1 & B2.

1.5 **Recommendation**

In considering the representations received and what is appropriate for the promotion of the licensing objectives, the steps the Sub-Committee can take are:

- Grant the application as requested
- Grant the application whilst imposing additional conditions and/or altering in any way the proposed operating schedule.
- Exclude any licensable activities to which the application relates
- Reject the whole or part of the application

Members of the licensing sub committee are asked to note that they may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must be appropriate in order to promote the licensing objectives.

2 Background

2.1 The premises is situated along the parade of commercial business in the High Street with residential above and directly across the road to it.
The premises has operated as a restaurant in the past and held a licence to allow alcohol and regulated entertainment. **Existing Licence App C**

2.2 The existing Planning Permission states the following:

Planning permission HGY/2004/1593 was granted for the change of use of property from social club to restaurant (A3).

Condition 6 restricted the hours as follows:

6. The use hereby permitted shall not be operated before 0800 or after 2300 hours on any day.

Reason: This permission is given to facilitate the beneficial use of the premises whilst Ensuring that the amenities of adjacent residential properties are not diminished.

If the applicant wants to amend the hours outside of the above, then formal planning permission is required. Mr Gajana has made various changes to the property without Planning permission, these are summarised as follows:

- to demolish the rear canopy extension in its entirety and
- remove the current unauthorised shopfront and reinstate the original.
- The use of the structure built in the rear garden was unauthorised and the use of the premises as a shisha lounge is also without authorisation.

3 Licensing Policy

3.1 The 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.

3.2 The objective of the licensing process is to allow for the carrying on of retail sales of alcohol and the prevention of public nuisance, prevention of crime and disorder, public safety and protection of children from harm. It is the Licensing Authority's wish to facilitate well run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents.

3.3 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.

3.4 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.

- 3.5 This Licensing Authority in determining what action to take will seek to establish the cause of concern and any action taken will be directed at these causes. Any action taken to promote the licensing objectives will be appropriate and proportionate.
- 3.6 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
- 3.7 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.
- 3.8 In cases Members should make their decisions on the civil burden of proof, that is the balance of probability.
- 3.9 Members should consider in all cases whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.
- 3.10 The Government has advised that conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. Conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff.
The Councils Licensing policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.

4 Licensing hours

- 4.2 Where relevant representations are made, the Council will consider the proposed hours on their individual merits. Notwithstanding this, the Council may require stricter conditions in areas that have denser residential accommodation to prevent public nuisance. The Council will endeavour to work with all parties concerned in such instances to ensure that adequate conditions are in place. The Council may restrict the hours that certain premises can offer alcohol for sale for consumption off the premises for preventing crime, disorder and nuisance.

5 Powers of a Licensing Authority

- 5.1 The decision should be made with regard to the Secretary of the State's guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the Policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal /

challenge is increased.

- 5.2 The licensing authority's determination of this application is subject to a 21 day appeal period or if the decision is appealed the date of the appeal is determined and /or disposed of.

6. 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".

6.1 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

7 Use of Appendices

Appendix A – Variation Application.

Appendix B – Residents Representations.

Appendix B1- Noise Team RA

Appendix B2 – Planning Team RA

Appendix C – Existing licence

Background papers: Section 82 Guidance

Haringey Statement of Licensing policy