

London Borough of Brent

Decision of the Alcohol and Entertainment Licensing Sub-Committee following a hearing on 29 March 2023 at Brent Civic Centre, Engineers Way, Wembley HA9 0FJ, in Person

NOTICE OF DECISION

PREMISES

The Arch
324 Harrow Road
Wembley
HA9 6LL

1. Members of the Sub-Committee

Councillors Ahmed (Chair), Bajwa and Long.

2. The Application

The application is for a variation to a premises licence to (1) extend the terminal hour for licensable activities on Fridays and Saturdays until 2.00am the following day; (2) extend the opening hours on Fridays and Saturdays until 02.30am the following day; (3) permit the sale of alcohol externally; (4) remove and amend certain conditions; and (5) add a new condition, under section 17 of the Licensing Act 2003.

The existing licence, number 202011, was granted in 2005.

Written representations were received and remained outstanding from the Metropolitan Police.

3. Representation

The Applicant attended and was represented by George Domleo of Flint Bishop LLP.

The Metropolitan Police was represented by Phil Graves and Paul Jennings

The Licensing Authority was represented by Linda Legister.

4. The Hearing

Cllr. Ahmed opened the meeting and all attendees introduced themselves. Ms. Linda Legister introduced the application.

Mr Phil Graves, Licensing Officer for the Police, confirmed which conditions remained in dispute. He described his main concern as being the number of breaches at the venue in the past few years and the real and potential effect of breaches on neighbours, particularly on event days. The majority of the warning letters concerned events on stadium days and noise, both of which were what this application was for. The most recent warning letter on 26th March 2022 related to an event at the stadium where the existing licence requires the premises to be closed one hour beforehand. When Mr Graves spoke to Mr Patel, he was not aware that the pub was meant to be closed on event days. As DPS for many years, he should have known. There was a further warning in January 2022. In May 2022 on two occasions the venue exceeded its permitted capacity. On 11th September 2018 a warning related to the download of CCTV for the police, which was not done. There was a previous application almost identical to the one being made.

As regards capacity and noise, figures were already in place for the external and internal areas. There were no changes to the layout or plans. They had allowed the increase in hours to help a pub recovering from Covid and considering the impact on the hospitality industry but he could not see how, with multiple previous warnings and increased hours, an increased capacity would be fair on local residents. The main reason the police do not want games shown on event days is ticketless fans. They are the ones that go drinking and then cause problems around the stadium and around Wembley. Mr Graves referred to the “national shame” at the Euro finals and the damage caused which he said all went back to ticketless fans. The police have to pick up the pieces of crime and disorder. When pubs stop the drinking an hour before and stop showing football, and when that is enforced by the police, crime figures plummet. With alcohol in the streets when people turn up to watch the games in the Wembley footprint, there is crime and disorder. He wanted to control this so that when our games are shown across the world, it does not look like a riot.

In response to questions from Cllr Long, Mr Graves stated that the problem with more smokers outside in the garden area was the noise created. Having a smoking area within the confines of the garden made sense but he was concerned to limit the number of people out there late at night. He would not object to the number of persons permitted being increased to ten plus staff and SIAs rather than ten inclusive. He did not know whether music from inside the premises would be audible inside local residents’ houses. He did not know of any complaints about music generated from inside the pub but, to the best of his knowledge, residents complained about music and noisy drinkers outside. There were no representations from the Council’s Noise Team.

Any new licence within the Wembley footprint will not be allowed to show the game. What Mr Graves was keen to avoid was individuals loitering around drunk: fans inside the stadium do not cause problems. It would take about 10 or 15 minutes to get into the stadium from the Arch on an event day. Mr Patel confirmed that there was one entrance to the premises from the street and three entrances to the garden area from inside.

There was discussion concerning the two plans within the papers and the extent of the licensed premises and area where licensable activities may take place.

In response to questions from Cllr Bajwa, PC Jennings stated that spaces in pubs taken up by those not attending the game displaced those who are into the streets, leading them

to go further afield, go to off-licences and then drink in the Wembley footprint. The goal was trying to keep licensed premises for those with match tickets. Showing the game attracts ticketless fans to the area, causing double problems for residents and supporters. General admission to Wembley is 2 hours before and at that point supporters can get inside to have a drink. The Metropolitan Police were also trying to move to a lighter touch, freeing up police officers for duties in other parts of London. They are trying to avoid a repeat of the events during the Euros but that has not been the only incident. There have been incidents of throwing cans, fighting and disorder on a number of other occasions and the police want to continue with their policy of lower tolerance of such behaviour as that is working well for other residents.

Mr Graves confirmed that he would not object to 100 persons in the outside area provided that did not conflict with the overall capacity conditions.

Mr Domleo stated on behalf of the Applicant that there were four conditions that could not be agreed upon. The application is not for a review but for a variation. His client and the police had agreed 17 new conditions, the re-wording of some, and four conditions only were outstanding. He maintained the points in his written submissions on the live/recorded music. On the TV broadcasting point, acknowledging the police view that it only applied to Wembley matches, he again maintained the points in his written submissions. There are a substantial number of door supervisors on duty on match days.

On the question of capacity, the current wording is unclear and he took the view that it meant 100. They sought an increase to a maximum of 150 persons in the outside seating area. The actual capacity is more than 150 persons so his client was actually looking only to increase it to what would be reasonable. There was also no change in the overall capacity so the increase was sought for greater flexibility and flow between the interior and exterior. A capacity of 430 for the whole of the premises would be appropriate, given the previous confusion on the point, and simpler to enforce. Alternatively, he would seek the increase to 150 persons.

The final condition disputed was the number of persons smoking outside. The restriction on use after midnight was accepted but the restriction on smoking capacity would be disproportionate and his client would struggle to comply. At any one time, the number of smokers could be limited to as few as three people depending on the number of staff and that would be completely impractical given the overall capacity of the venue. At present, drinking is permitted outside until 11.30pm. The increase sought and not objected to is until 12.00am. Currently, smoking outside is permitted until 1.30am daily. Any limit on the number of smokers should be limited to the 1.30-2.30am period. There had been no complaints about smokers. Environmental Health had not objected, nor had any local residents.

The licence holder agreed with the need to update the conditions but the restriction on external capacity and on smokers after midnight would be a step too far. Licensing is a balancing exercise between the legitimate business interests of licence holders and the needs of the community. His client had cooperated with licensing authorities and with police in agreeing conditions. If problems arise, a review can be sought.

In response to questions from Cllr Long, Mr Domleo confirmed that the moveable bar will not be moved outside the covered area surrounded on the plan by the red line. Markers could be added on the floor if it assisted and an updated plan could be submitted to form part of the premises licence if that would assist. He confirmed, however, that there is no requirement to mark the location of the bar within the licensable area.

Mr Patel confirmed that around 80% of his customers smoke. If the Councillors were minded to impose a limit, notwithstanding that there is no current limit on the number of smokers, Mr Domleo suggested 25 customers as a compromise from 1.30am until 2.30am. At present, up to 30 or 40 people might be smoking or getting fresh air in the beer garden after 11.30pm. The number of security guards will vary from night to night: the licence holder will hire more for high-risk or very busy nights. Before an event the pub might be almost full to capacity depending on the nature of the match, then roughly half the numbers will come back to the pub after the match. The numbers do vary depending on who won or lost the match. Returning customers might stay for another two or three hours afterwards. More people will go home if the match is a Sunday and more will stay if it is a Saturday. It depends a lot on the nature of the event.

The licence holder has never had any issues with SIAs and gets security guards through an external firm. If one of them has to leave, the company will send another. They will work flexibly or the company will. It has never been a problem for him.

There are five screens outside and others inside. The Sky and BT Sports bills come to £3,000/month and that bill has to be paid. The number of people who will come to watch a local Wembley match varies depending on the day and the match. Not every match will be shown but he sought the flexibility to show matches if there were still fans in the pub who wanted to see it.

To control noise nuisance, Mr Patel said that staff in the external area and door staff would tell people to keep quiet. Noise is monitored consistently by door staff and staff on duty in the outside area. Mr Domleo stated that victorious fans currently return to the Arch and other pubs in the area yet there have been no complaints. On non-match days, the pub can be busy if it has a booking but might be quiet otherwise. The business is still trying to come out of Covid. The hotel is run by a housekeeper and receptionist only. There might be 20 total staff on a busy day but not on a quiet day.

In response to questions from Cllr Bajan, Mr Patel said that his previous lack of knowledge of the licence conditions was a mistake on his part as to the wording. Some licences say stop serving and others say close so he believed he could stop serving but still have individuals on the premises. Mr Domleo confirmed that his client has a good relationship with residents in the immediate area and reminded the sub-Committee that there have been no representations or objections from local residents or Environmental Health. There were mechanisms such as review to deal with any issues that might arise in future with the extended hours and potential increased outdoor capacity. Mr Patel accepted that he had gone into the hour when he was meant to be closed but there had been no crimes, no fights etc. on the premises for 7 years. He said he held his hands up and accepted that he should have known he had to close but this is his livelihood.

Mr Domleo pointed out that the application in 2019 was for longer hours and more days and said that he could understand why his client abandoned it. His client had since worked in consultation with the police and other bodies and the present application was more limited and more up-to-date.

No more toilets will be required because there is no proposed overall increase in capacity – only of the outside area – and there will be at least one personal licence holder on the premises at all times. Mr Patel has two authorised deputies but they are not personal licence holders.

By way of summary, Mr Graves confirmed that the police and Applicant were agreed on most points. He agreed that the capacity condition was confusing and needed to be rewritten but he did not think it should go over 100 otherwise that would have an impact on neighbours. He did not want to put the premises in a situation where problems might occur and require a review. He was content with 25 customers plus staff in the outdoor smoking area as a compromise. He had made his views on ticketless fans clear and they go into these premises. The police sought standard terms across all venues in the Wembley footprint to avoid the scenes that had happened before. They needed conditions in place to stop the problems escalating. The licence is very old. He accepted that showing TV is not a licensable activity but said that that did not mean it could not go on a licence, as many other conditions on licences are not.

By way of summary, Mr Domleo stated that the premises could have music outside up to 11pm in any event. The sticking point appeared to be the capacity request. The actual capacity is more than 150 persons but this is a compromise position and Mr Graves' concern was about potential noise. The evidence is that 100 people up to 11.30pm had not generated any noise complaints or objection from Environmental Health. They are the experts in noise nuisance and that is their remit. The 25-customer limit should be from 1.30am until 2.30am only, as presently there is no limit until the premises close at 1.30am. He was pleased that the police and licence holder had been able to work together to reach as many agreements as they had. Any breaches of the new conditions could engage the review mechanism or the Environmental Health noise abatement notice mechanism. Staff training can be looked at and Mr Patel will have to update staff in an event if there are any changes to the licence terms. He asked that his client be allowed the 150 customers outside until midnight.

5. Determination of the Application

Pursuant to section 18(3) of Licensing Act 2003, the sub-committee had regard to the representations and considered which of the steps listed in section 18(4) (if any) it considered appropriate for the promotion of the licencing objectives namely:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

In making its decision the sub-committee also had regard to the Home Office Summary Review Guidance and Brent's licensing policy. In addition, the sub-committee took account of its obligations under section 17 of the Crime and Disorder Act 1998.

6. Decision

The sub-committee listened carefully to the representations made by the parties at the hearing and took into account the written representations.

The sub-committee decided that it was appropriate to grant the variations sought in part, for the following reasons:

- 1) They felt that the licensing objectives would be achieved by the conditions to be imposed.
- 2) There was some concern stemming from the previous breaches of the licence and the licence holder's failure to be fully conversant with the terms of that licence but the sub-Committee noted, as pointed out by the agent, the existence and purpose of the review mechanism.
- 3) The sub-committee discussed the concerns raised by the Metropolitan Police about the playing of live/recorded music but noted that that is not a licensable activity provided it is played only between the hours of 8am and 11pm.

In order to promote the licensing objectives, the following conditions already agreed will be imposed:

- 1) CCTV shall be installed to Home Office Guidance standards and maintained in a good working condition and recordings shall be kept for 31 days and shall be made available to police and authorised Officers from Brent Council upon request.
- 2) CCTV cameras shall be installed to cover the main entrance and exits, as well as the outside seating area, the entrance gates and the interior bars.
- 3) A member of staff trained in the use of the CCTV system shall be available at the premises at all times that the premises are open for trading.
- 4) The CCTV system shall display on any recordings the correct date and time of the recording.
- 5) The CCTV system shall be capable of obtaining clear facial recognition images and a clear head and shoulder image of every person entering or leaving the premises.
- 6) A 'Challenge 25' policy shall be adopted and adhered to at all times.
- 7) A sign stating "No proof of age - No sale" shall be displayed at the point of sale.
- 8) An incident log shall be kept at the premises, and made available for inspection on request to an authorised officer of Brent Council or the Police, which will record the following:
 - (a) any complaints received;
 - (b) any incidents of disorder;
 - (c) any faults in the CCTV system; and
 - (d) any visit by a relevant authority or emergency service.

- 9) A refusal book detailing date and time of the refused sale (of alcohol), the name of the person refusing the sale and a description of the person attempting to purchase alcohol, shall be kept and maintained and made available for inspection by authorised officers from Brent Council or the police.
- 10) A copy of the premises licence summary including the hours during which licensable activities are permitted shall be visible from the outside of each entrance to the premises.
- 11) Any staff directly involved in selling alcohol for retail to consumers and staff who provide training including managers shall undergo regular training of the Licensing Act 2003 legislation (at least every 12 months). The training shall be documented and signed off by the DPS and the member of staff receiving the training. This training log shall be kept centrally and made available for inspection by police and relevant authorities upon request.
- 12) Off-sales of alcohol in sealed containers only. This does not include the garden or any other area as defined in the plan submitted to Brent Council.
- 13) Customers shall not be permitted to take glassware or any other open drink container, save for recognisable soft drink containers, outside the premises as defined on the plan submitted to and approved by the Licensing Authority.
- 14) When SIA Security are deployed, they shall wear clothing that can be clearly and easily identified on CCTV.
- 15) A register.log containing the names, badge number, dates and times of duty security staff and any incidents that occur shall be kept and made available to the Police and Licensing Authority.
- 16) No noise or vibration shall be detectable at any neighbouring noise sensitive premises.
- 17) Notices asking customers to leave quietly shall be displayed conspicuously at all exits/entrances.
- 18) Any locks or flush latches on exit doors shall be unlocked and kept free from fastenings other than push bars whilst the public are on the premises.
- 19) Exits shall not be obstructed (including by curtains, hangings or temporary decorations), and accessible via non slippery and even surfaces, free of trip hazards and shall be clearly identified.
- 20) Any socket outlets (or other power supplies used for DJ equipment, band equipment and other portable equipment) that are accessible to performers, staff or the public shall be suitable protected by a residual current device (RCD having a rates residual operating current not exceeding 30 milliamps).
- 21) The Premises Licence Holder shall produce proof of full compliance with the Home Office “AN EMPLOYERS GUIDE TO RIGHT TO WORK CHECKS” – April 2022 or any subsequent issue. This proof must be available to be produced on demand to an Authorised Officer of Brent Council, a Police Officer or Home Office Immigration Officer.
- 22) No entry or re-entry shall be permitted after 00.00 hours (midnight).
- 23) A noise limiter set at a level agreed by Brent Council’s Licensing Unit shall be used at all times during regulated entertainment
- 24) The sale of alcohol in the front outside area shall be permitted from 10.00hrs until 22.00hrs daily.
- 25) Nudity, striptease and other entertainment of an adult nature shall not be permitted on the premises.

26) All external doors and windows must remain closed at all times when amplified live or recorded music, karaoke or disc jockey is provided at the premises.

Match Day Restrictions

27) The DPS or deputy shall work in partnership with the Police and if necessary comply with any direction given by a senior Police Officer, or Licensing Authority, on duty at the event. These directions may include:

- (a) Ceasing the sale of alcohol for a period of time. This will be monitored and the supply of alcohol reinstated as soon as is possible.
- (b) Closing the entire premises for a period of time. This will be monitored and the premises reopened as soon as possible.

28) Customers shall not be allowed to congregate outside the premises / garden area.

29) No drinks shall be served in glass containers, but decanted into plastic, polycarbonate or toughened plastic drinking vessels.

30) Alcoholic beverages shall not be sold or supplied one (1) hour before the designated kick off or start time of the event and will not resume until fifteen (15) minutes after the game, match or event has started. This only applies to Football matches

31) The premises shall only take one set of football supporters on match days. (Details of the team splits will be communicated by the police / council on a game to game basis).

32) No children shall be admitted unless accompanied by a responsible adult.

33) The number and timings of SIA registered door staff required shall be risk assessed, but a minimum of two (2) SIA registered security shall be put in place at least 4 hours before the designated kick-off time. They will remain on site until at least 2 hours after the game has finished.

The committee have decided to impose the following conditions:

34) Subject to any updated and future risk assessment, the maximum number of customers allowed on the premises will be:-

- (a) 300 on normal trade days;
- (b) 380 on football event days;
- (c) Provided the overall capacity in (a) or (b) above is not exceeded, the number of customers in the outdoor area of the premises shall not exceed 100 at any time.

35) No alcohol shall be served or consumed in the outdoor area of the premises past 12.00am (midnight) on any day of the week. After midnight, the following conditions apply:

- (a) From midnight until 1.30am on any day no more than 100 customers, excluding staff, may be present in the outdoor area, e.g. whilst smoking; and
- (b) On the nights/early hours of Fri-Sat and Sat-Sun, no more than 25 customers, excluding staff, may be present in the outdoor area from 1.30am until 2.30am.

36) The premises will not show live domestic or international televised football matches on football event days.

7. Right of Appeal

The applicant and any person who made relevant representations has the right to appeal against this decision pursuant to section 181 and schedule 5 of the Licensing Act 2003.

If you wish to appeal you must notify Brent Magistrates' Court within a period of **21 days** starting with the day on which the Council notified you of this decision.

Dated 4 April 2023