

**IN THE MATTER OF AN APPLICATION TO REVIEW A PREMISES LICENSE
UNDER SECTION 167 OF THE LICENSING ACT 2003**

SKELETON ARGUMENT OF THE RESPONDENT

Introduction

1. This is a second application for review of the premises license originally granted on 16 January 2008 to a premises known as Vybz Bar at 1 Craven Park Road, London Brent NW10 8SE (“the **Second Review**”; “the **License**”, “the **Premises**” or “**Vybz Bar**”). The “trigger” for the Second Review is the closure order imposed by the Willesden Magistrates’ Court on 9 August 2022 (“the **Closure Order**”) by DDJ Hannah, see section 167 of the Licensing Act 2003 (“the **2003 Act**”). It appears that the Licensing Enforcement Team seek revocation of the License (“the **LET**”). This is resisted. The LSC should take no action.

2. The key point is that Brent Licensing Sub-Committee decided on 4 August 2022, not even a month ago, that it would not be appropriate to revoke the license (“the **First Review**”; “the **LSC**”). They reached that decision aware of the closure order proceedings, and aware of the alleged issues with the premises, including those on 16 July 2022. They, instead, decided to (principally) **suspend** the license for three months, remove the designated premises supervisor, and impose substantial restrictions on the Licence conditions.

3. The position of the Respondent is simple. Vybz Bar has been shut since the First Review was decided on 4 August 2022. The LSC has already determined what is “*appropriate*” in the First Review. That is suspension of the license. The LET rely on no instances since the First Review that would justify the LSC adopting a different approach in the Second Review. Vybz Bar will not appeal against the First Review.¹ The effect is that the License will be suspended for three months, the DPS will be replaced, and the substantial variations to the licensing conditions will take effect.

4. There is, respectfully, simply no reason for the LSC taking further steps in this Second Review, and the Respondent invites the LSC to take **no action**.

¹ I can confirm – in open, written correspondence – that I am the barrister instructed by Vybz Bar in relation to a number of matters, and that my instructions are to **not** appeal against the First Review.

Background

5. The Premises is in Craven Park Road, London, Brent. There is no dispute that there is a general backdrop of anti-social behaviour in the area. It cannot seriously be contended that this is solely the responsibility of – let alone associated with – the Premises.
6. The First Review commenced by application dated 16 June 2022, signed by Mr McGann on behalf of the Brent LET. The Brent LET asked for “*the ultimate sanction of revocation*” in its Representations of 14 July 2022 (First Review, Doc 3.4). They adduced further evidence on 21 July 2022 (Doc 3.8), which included two police statements in relation to alleged incidents on 16 July 2022 [Appdx 36 and 37], and CCTV footage [Appdx 38-40]. They said this letter “*adds further weight of evidence to show that this premises licence should be revoked*”.
7. The police representation said that although there were missed opportunities to work with the police, they would “*still be willing to do so and would encourage the owners and staff to make contact in order to **work together in the future***” First Review, Doc [3.5] (14/07/22, statement of PC ██████████) (emphasis added). It said, further, that “*From the information I have found it appears that the venue is operating outside of its licensable hours and **needs to be managed in a more responsible manner***” (emphasis added) The inference is that the police did not seek revocation of the License; they sought to work with the license-holder. No real explanation for why the LET appears to take a different approach is offered. For reference, an extract of this statement is provided in Annex [R1]
8. The LSC heard evidence from Mr McGann, who explained that there were closure order proceedings on foot. It heard from a representative for Vybz Bar. It considered the alleged incidents on 16 July 2022 in detail, including CCTV footage.
9. The LSC determined that “*the premises has been operating in breach of the conditions of its license*” and that it had evidence of the premises operating outside of its permitted hours. It also considered the CCTV footage of the alleged incident on 16 July 2022, and found that it was of “*considerable concern*”.

10. However, the LSC decided to not revoke the license [R3]. **The Committee is requested to read the decision in full.**

The committee has however decided not to revoke the licence. Instead, the committee has determined to take the following steps:

The licence will be suspended for three months from the 24 August 2022.

The designated premises supervisor is to be removed and replaced with a new designated supervisor to be appointed by the end of the period of suspension.

11. **The** license conditions were amended so that (1) the premises opening hours cease at 2:00, not 3:00, (2) all licensable activities to cease at 01:30, not 3:00, (3) the premises is required to adopt a queuing and dispersal policy. This is a substantial curtailment of the licensing conditions.
12. Since the First Review, the Premises have not been open. As a result of the Closure Order on 9 August 2022, it would effectively have been unlawful for the Premises to operate.² Vybz Bar has not been able to operate **at all** since then. Still less has it been given the opportunity to operate under the substantially reduced conditions that the SLC considered appropriate in the First Review.
13. In short, the LSC in the First Review was aware of the matters that are now relied on in the Second Review. It decided that the appropriate step on review was to suspend – not revoke the license. The Respondent will not appeal against that decision. The appropriate – and proportionate – step to take in these review proceedings is to **take no action**.

² The effect of the Closure Order is, in essence, that it is a criminal offence to be on the Premises, unless a person falls within a relevant exception (such as emergency worker, owner or landlord).

Legal Context

Application for Second Review: the statutory question

14. It is important to note that the Second Review has been triggered automatically. When a closure order is imposed on a license premises, the 2003 Act requires a further review to take place within 28 days (see s. 167(2) and (3)).
15. Critically, the **mere fact** that a closure order has been made does not mean the License should be revoked. The 2003 Act could have easily provided for automatic termination; but it does not. The question in the Second Review proceedings is identical to the First Review: what steps are “*appropriate*” (compare s. 167(6) and s. 52(4) of the 2003 Act).
16. It is clear from the 2003 Act that the LSC can choose to take no steps on review, where that would be appropriate: (see s. 167(5)(b)). There are exceptional circumstances here (a First Review conducted fewer than three week’s ago, on essentially the same evidence, for the same Premises) which justify that approach.

Consistency

17. The LSC is a public body. It is fundamental principle of public law – and indeed good administration – that decisions should be rational. They should not be arbitrary. Part and parcel of that requirement is that like cases should be treated alike. None of this is new; it is simply the “*well established principle of administrative law that persons should be treated uniformly unless there is some valid reason to treat them differently*”.³
18. In addition, consistency is important for the trust and integrity reposed in the licensing system. That trust and confidence would be undermined if the same body’s views as to what was ‘appropriate’ for situation A changed substantially within one month, without good reason. As stated in the planning context, “*Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system.*”⁴ The same general principle applies to licensing.

³ *SSHD v BK (Afghanistan)* [2019] EWCA Civ 1358, §39 (Rose LJ)

⁴ *Bloor Homes East Midlands Ltd. v SSCLG* [2014] EWHC 754 (Admin), §19(7) (Lindblom J).

19. If further authority illustrating that general principle were required, the Legislative and Regulatory Reform Act 2006, section 21(2)(b) states that regulatory activities “*should be carried out in a way which is transparent, accountable, **proportionate and consistent***” (emphasis mine).⁵

Submissions

20. The appropriate step in this case, given the determination in the First Review, is to take no action. The Respondent will not appeal against the First Review. The License will be suspended for three months; the DPS will be changed; and the Premises will operate under the substantially reduced hours that the LSC – not even a month ago – considered appropriate.
21. What would be inappropriate (with respect) is for the LSC to now turn back on its decision and revoke the Licence. This is, in particular, given that (1) the Premises **has not been operating since the First Review** and (2) has not yet had a chance to operate on the substantially reduced conditions that the First Review found appropriate. Revocation would not be consistent, not be proportionate, and not be appropriate.
22. The LET suggests in its Representation of 12/08/22 that “*at the Closure Order hearing it was established that Police had also identified a number of unreported incidents*” (emphasis added). With respect, that suggestion is unsupported by the evidence before the LSC:
- a. The LSC has no transcript of DDJ Hannah’s decision. We do not know what facts she found.
 - b. The only record the LSC has of the Closure Order is the order itself. That makes no record of the facts that were found. It does not even record which ‘limb’ of the closure order test the Closure Order was imposed on (the relevant letters from (a) to (c) have not been circled).

⁵ This applies to the exercise of licensing powers under the 2003 Act. See Legislative and Regulatory Reform Act 2006, section 24, read with The Legislative and Regulatory Reform (Regulatory Functions) Order 2007, Reg 2 and Schedule, Part III.

23. The LET also relies on a number of statements that were not part of the review hearing on 3 August 2022. They are (with dates added)
- a. Impact Statement from Dawn Butler MP [Doc 3.10], dated 9 June 2022;
 - b. Statement from ██████████ who is Head Chair of the Harleden SNT Ward Panel [Doc 3.6], dated 15 July 2022
 - c. Statement from ██████████ LB Brent ASB Officer [Doc 3.8], dated 23 May 2022
 - d. Anonymous statement from Harlesden resident [Doc3.9], dated 20 July 2022
 - e. 2 x statements from PC ██████████ [Docs 3.3 and 3.4], dated 21 July and 9 August 2022
 - f. Statement from Insp ██████████ [Doc 3.7] dated 8 July 2022
24. With respect, these take the LSC no further than the material in the First Review. They would not justify the radical departure from the First Review that the LET invites the LSC to take. Nor could they, for at least four reasons:
- a. Not one of the materials (bar the second statement of PC ██████████) relied on post-date 3 August 2022. The second statement of PC ██████████, in any event, does not rely upon any incident occurring after the 3 August 2022;
 - b. None of the materials actually argue for revocation of the Licence;
 - c. None of the material grapple with PC ██████████ signed witness statement prepared for the First Review dated 14 July 2022 that he would be willing to work with the license-holders and that the premises simply needed to be managed better, i.e. that revocation was not necessary (see above, paragraph 7);
 - d. Most importantly, the principal incident relied on in the statements is that on the 16 July, **but this was already before the First Review**, which considered it **in detail** and decided to not revoke the License.

25. The evidence will be explored before the LSC, but the Respondent makes the following observations. The overarching point is that there is no new information before the LSC that the First Review did not consider; there is no reason for departing from the First Review by revoking the license:
- a. *Impact Statement from Dawn Butler MP* [Doc 3.10]. This refers to general ASB within Harlesden which cannot be attributed to the Premises alone. In any event, the letter identifies the centre of ASB to be in Odeon Court/St Alban's Road, which are some five minutes away from the Premises itself [see **R2**];
 - b. *Statement from [REDACTED] who is Head Chair of the Harlesden SNT Ward Panel* does not request revocation of the Licence, and provides no further information than what was before the First Review;
 - c. *Statement from [REDACTED] LB Brent ASB Officer* mostly details instances in 2020, over two years ago. It then refers generally to “*during the last 18 months between Summer 2020 to May 2022*”. There is no material that was not before the First Review;
 - d. *Anonymous statement from Harlesden resident*. This refers to general anti-social behaviour, and breach of licensing conditions at Vybz Bar. The First Review was aware of both.
 - e. *2 x statements from PC [REDACTED]* [presumed to be Docs 3.3 and 3.4]
 - i. The three points made in that statement are Vybz Bar remaining open after hours; lack of door staff; and ASB. The First Review was aware of all of them; and
 - ii. Although the second statement is dated 9 August 2022, it relates to the incident on 16 July 2022 which the First Review already considered.
 - f. *Statement from Insp [REDACTED]*. This statement refers to general ASB in the area (for which the Premises cannot seriously be held responsible), and to various ASB and licensing breaches alleged at the Premises, of which the First Review was aware.

26. The LSC is in an exceptional position. It is faced with a Second Review, mandated by statute, barely three weeks after the First Review determined what was “appropriate”. The First Review cannot – with respect – be ignored. There is no new material brought before the LSC in the Second Review application. The steps found to be appropriate some three weeks ago, in respect of the same Premises and on essentially the same facts remain appropriate today.

Conclusion

27. In a nutshell, the LSC has spoken, not even three weeks ago. The appropriate steps are to suspend the license for three months; remove the DPS; and substantially reduce the operating hours. Vybz Bar has not been open since the First Review. It has not had the chance to operate under the conditions that the LSC found “appropriate” in the First Review. There is, in the Respondent’s submission, no reason – let alone a *rational* reason – to take a different decision now on the 22 August 2022.
28. The Second Review provides no further material than what was before the First Review. The LSC will be aware of the importance of consistency in decision-making. Respectfully, it would undermine the integrity of the licencing system as a whole for the LSC to depart from the steps it itself considered appropriate on the 4 August 2022, when considering the same Premises and effectively the same evidence, some three weeks later.
29. What is “appropriate” is for the LSC to take no steps. The steps proposed in the First Review will take effect. The licence will be suspended for three months, and the Premises will operate under much more stringent conditions. There is no reason for departing from that carefully considered First Review.

MICHAEL RHIMES
FRANCIS TAYLOR BUILDING
19 AUGUST 2022

ANNEX R1

EXTRACT FROM WITNESS STATEMENT OF ██████████, DOCUMENT 3.5 OF FIRST REVIEW

3.5 Vybz Review - Police Statement.pdf
Page 1 of 2

RESTRICTED (when complete) MG11C

WITNESS STATEMENT

Criminal Procedure Rules, r 27. 2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

URN

Statement of: ██████████

Age if under 18: over 18 (if over 18 insert 'over 18') Occupation: Police Officer

This statement (consisting of 2 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Witness Signature: ██████████.....Date: 14/07/2022

This statement is written about the Vybz club at 1 Craven Park in Kilburn and the issues the Licensing police have found with this venue over the last few years.

I am a Police Sergeant and have been in the Metropolitan Police for 19 years. Since January 2021 I have been posted to the Licensing team in the North West Basic Command Unit. My role is to supervise the three licensing teams of which is one of them.

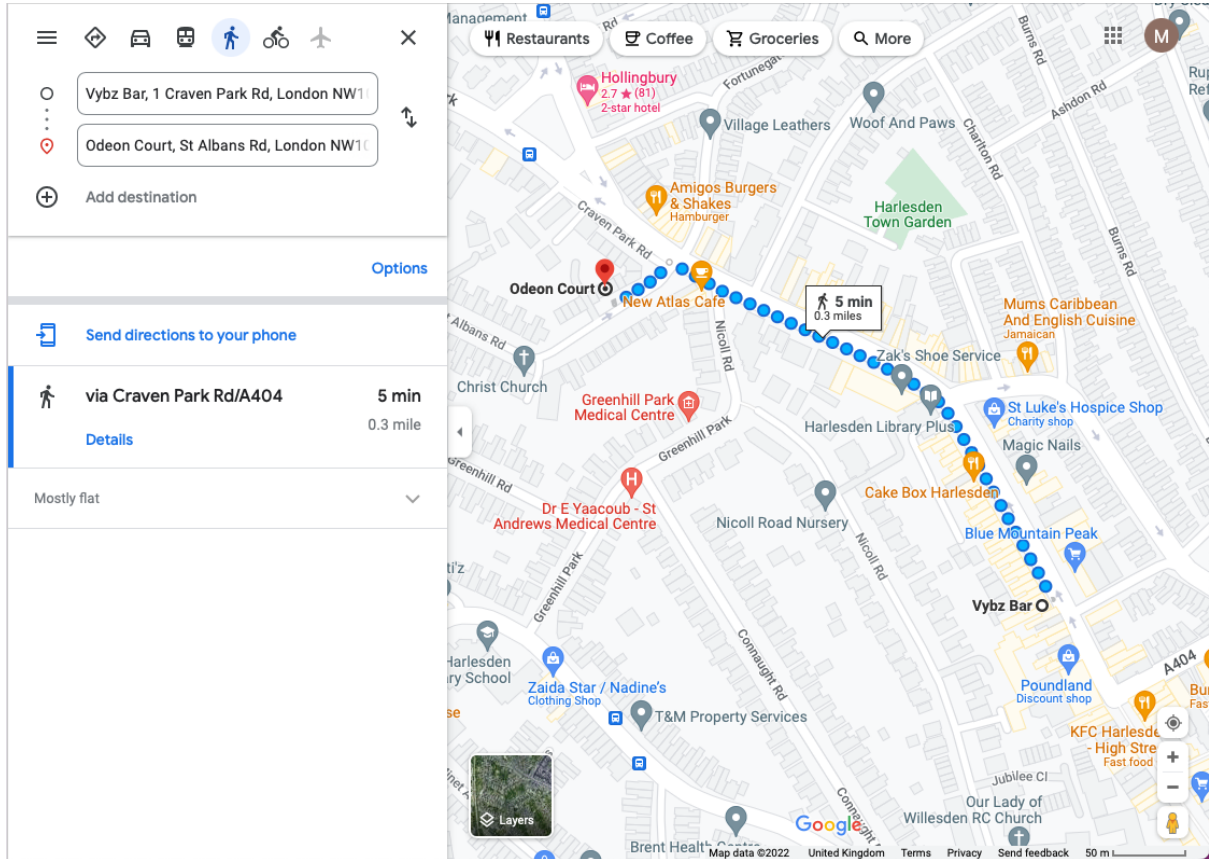
[...]

From the information I have found it appears that the venue is operating outside of its licensable hours and needs to be managed in a more responsible manner. The venues staff do not appear to respond to emails or phone calls recently and there appears to be no effort made to have a good relationship with police. After all the calls and emails, these appear to be missed opportunities to work with us. If so we could offer advice and even training that would help them be a safer place for customers and staff. I would still be willing to do so and would encourage the owners and staff to make contact in order to work together in future. I would also like to give notice that I may submit further supplementary information before the date of the hearing.

The full witness statement can be reviewed here:
<https://democracy.brent.gov.uk/mgAi.aspx?ID=61797#mgDocuments>

ANNEX R2

GOOGLE MAPS SCREENSHOT SHOWING DISTANCE BETWEEN VYBZ BAR AND SAINT ALBANS ROAD, REFERRED TO IN STATEMENT OF DAWN BUTLER MP



R3

DECISION OF BRENT LICENSING SUB-COMMITTEE OF 4 AUGUST 2022

London Borough of Brent

Decision of the Alcohol and Entertainment Licensing Sub-Committee following a hearing on 3 August 2022 by remote hearing

NOTICE OF DECISION

Premises

Vybz Bar
1 Craven Park Road
NW10 8SE

1. Members of the Sub-Committee

Councillors Ahmed (Chair), Long (Vice-Chair) & Collymore
(Legal clerk to the committee: Archie Maddan, Barrister)

2. The Application

The Application was for the review of a premises licence by John McGann
(Licensing Enforcement Officer)

3. Representation

The Reviewer was John McGann (LBB)

The Police were not represented

The Licence holder Kamika Samuel was present and was represented by
Mathew Lewin of counsel

██████████ gave evidence for the Licence holder.

4. The Hearing

Linda Legister of Brent Licensing introduced the application. The application was for review of the premises licence on the basis that there was breach of licence conditions in that the premises had been open beyond its permitted opening hours and had thereby failed to meet the licensing objectives of preventing crime and disorder and public nuisance.

The Chair opening the hearing by explaining that the committee had read all of the papers and did not wish for the attendees to repeat any of the matters covered in the agenda papers and it should be assumed that the committee was aware of all of those matters.

The Applicant, Licensing Enforcement Officer John McGann addressed the hearing.

Mr McGann informed the hearing that there was now a closure notice in place on the premises issued by the Met Police and that the full hearing of this matter was due for 9 August at the magistrates' Court. This showed the seriousness of the situation at the premises. Mr McGann stated that he intended to show CCTV footage that would show habitual breaches of the conditions on the premises licence. The CCTV was a snapshot of longer-term problems. Mr McGann noted the objections made to the licence holder's previous application to extend the opening hours of the premises.

Mr McGann requested the exclusion of the press and public from the showing of the video footage because it allowed the potential identification of individuals. This request was granted by the committee and the committee went into private session.

Mr McGann showed the following video footage:

Appendix 40

16 July 2022 video footage of Mr McGann visiting the premises with police and talking with the door staff at around 03.00 hours, music could be heard playing and the door staff were unclear about the correct closing time of the premises. Mr McGann had visited earlier that evening and told the licence holder's husband that it was expected that the bar would be shut by 03.00 hours.

Appendix 39

04.37 - 04.42 hours showing customers leaving the premises.

Appendix 38

16 July 2022 footage showing a fight taking place at the premises whilst customers were leaving.

Clip 1 - 04.47 - 04.48 hours

Clip 2 - 04.49 hours

Clip 3 - 04.55 hours

No one at the premises called the police following the incident

Appendix 43

Clip of footage provided by licence holder allegedly showing the inside of the premises with a cleaner after closure, time stamped as 04.42 hours on 28 May 2022.

However, CCTV footage in Appendix 44 showed the public CCTV covering the outside street at the same time showed customers leaving the premises. Mr McGann believed that the footage provided by the licence holder was false and did not show the inside of the premises on the date and time claimed.

Mr McGann answered questions about the footage from members of the committee and the licence holder's representatives.

Following these questions, the hearing reverted to being held in public.

There were further questions to Mr McGann.

Mr Lewin asked if he was aware of a serious noise nuisance issue on the road. Mr McGann replied that he was aware of some issues with noise in the area.

In answer to a question from Councillor Long Mr McGann replied that the only noise he had heard personally in the area between 3am and 5am was from the premises.

██████████ asked how many times he had visited the premises. Mr McGann replied once.

The licence holders' case was presented by Mr Lewin.

Mr Lewin told the hearing that the licence holder did not accept the majority of the allegations made against the premises, for the most part the premises did trade within its permitted hours and the premises was being blamed for well-known anti-social behaviour problems in the area caused by others. The licence holder invited the committee not to revoke but to amend the licence conditions to include a new policy on the dispersal of customers at closing time.

██████████ gave evidence on behalf of the licence holder.

██████████ told the committee that the incident that had taken place on 16 July 2022 was caused by two individuals who had decided to attack the premises whilst it was open. The premises was the victim in this instance and he defended his security staff and the way they had handled the situation. There had been no warning of the incident and the two individuals had previously been banned from the premises. The police had not arrested the individuals responsible when they had attended.

██████████ explained that the area around the premises was plagued by noise nuisance caused by unrelated individuals coming and playing music loudly, often from motor vehicles. He accepted that there was a need to have a dispersal policy in place.

██████████ answered questions from members of the committee.

He told the committee that he was the day-to-day manager of the premises. The licence holder oversaw ensuring compliance with the licence requirements.

He accepted that the video was accurate in showing people leaving at around 04.30 hours, however he said that these persons were members of staff. The loud music heard by Mr McGann on his visit was due to him being away due to a panic attack and the staff not acting correctly in his absence. The publicity material did not give closing time since the promoters didn't want to put off

customers. ██████ explained about the fire evacuation plan and the use of the rear garden of the premises. The incident on 16 July was the first such incident in 5 years of operation of the premises. He told the committee that there were 4 security staff on duty and around 15 members of staff in total. The security staff have their SIA badges visible and were employed by the bar but sourced from an agency. When the security staff had told Mr McGann that he didn't know the closing time he was being sarcastic he went inside to cross-check certain information with a colleague. There were 2 or 3 personal licence holders working at the premises who provided cover when the licence holder was not present.

Summing up:

Mr McGann told the committee that he had heard nothing to change his mind and the prevention of disorder and public nuisance required the revocation of the licence.

Mr Lewin told the committee that the licence holder opposed revocation and proposed a new condition for dispersal.

The committee went into private session to consider the application.

5. Determination of the Application.

The sub-committee determined the application in accordance with the Licensing Act 2003 and in accordance with the statutory licensing objectives. The committee had regard to section 182 of the Licensing Act 2003 and the authority's licensing policy. The authority had regard to section 17 of the Crime and Disorder Act 1998.

The committee had regard to the need to reach a decision that was necessary, proportionate and justified on the evidence presented to it.

6. Decision:

The committee's decision is as follows:

The committee has read the papers and listened carefully to the evidence and submissions presented at the hearing. The committee has noted the contents of the video evidence presented.

The committee is mindful of its duty under the Licensing Act 2003 section 52 (3) to take such steps as it considers appropriate to promote the licensing objectives.

The committee is satisfied that the premises has been operating in breach of the conditions of its licence. The committee is satisfied that the premises has been operating outside of its permitted hours. The committee has viewed video footage that shows the club operating after its permitted hours with music playing and customers entering and leaving the premises after permitted times.

The CCTV footage of the incident on 16 July 2022 was of considerable concern and especially the failure to contact the police, the committee does not accept the explanation given by [REDACTED] regarding the failure to call the police.

The failure to respect the condition relating to opening hours directly caused the gathering of customers and others outside the premises leading to disorder and nuisance, which has inevitably affected local residents.

The committee has however decided not to revoke the licence. Instead, the committee has determined to take the following steps:

The licence will be suspended for three months from the 24 August 2022.

The designated premises supervisor is to be removed and replaced with a new designated supervisor to be appointed by the end of the period of suspension.

The licence conditions are amended as following:

The premises opening hours are amended to be from 11.00 to 02.00 hours.

All licensable activities to cease at 01.30 hours.

The premises is required to adopt a queuing and dispersal policy to ensure the dispersal of its customers and staff from the premises' immediate vicinity by 03.00 hours, such policy is to be adopted by the end of the suspension period.

The names of personal licence holders working at the premises to be provided to the Licensing authority by the end of the suspension period. The names of any additional personal licence holders who commence work at the premises is to be provided to the Licensing authority within seven days of them commencing work.

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 August 2022

