

LONDON BOROUGH OF BRENT COUNCIL

**IN THE MATTER OF THE HEARING FOR
ARCH, 324 HARROW ROAD, WEMBLEY, HA9 6LL
IN RESPECT OF A MAJOR VARIATION APPLICATION**

**SUBMISSIONS ON BEHALF
OF THE PREMISES**

I. INTRODUCTION

1. Arch is a long-established pub which plays a vital role within the local area of Wembley. The site has operated as a Public House for many years, and the current operator and Designated Premises Supervisor (DPS) has been in situ for nearly 10 years. The Premises Licence Holder (PLH) is Indes Bar Limited, and the Designated Premises Supervisor (DPS) is Savan Patel.
2. The PLH hopes that by way of a committee led discussion this application can be determined in a manner which promotes the licensing objectives, and which provides the Licensing Sub-Committee (LSC) with sufficient reassurance that the licensing objectives will be promoted.

II. APPLICATION

3. The application submitted is to extend the opening and licensable hours of the premises on Fridays and Saturdays only, as well as to incorporate the outside garden into the licensable area and to remove the condition in relation to capacity.
4. The reason for the variation application is to allow the customers to continue their night in a safe and comfortable environment and give the premises slightly more flexibility around trading, which is especially relevant given the tough times premises are facing with effects of the pandemic and the rise in energy prices.
5. With any application, communication and collaboration with authorities is of utmost importance, especially in ensuring that the proposal of the application upholds the licensing objectives. Therefore, prior to submission, consultation with the responsible authorities, police, licensing authority and environmental health, did take place to obtain their thoughts and feedback. As part of this, no initial issues to the application were identified.
6. Importantly, it is also relevant to note that no other responsible authorities have submitted objections to the application.

III. REPRESENTATION

7. The representation has been made by PC Phil Graves on behalf of the Police Licensing Authority. From the PLH's legal representative's discussions with PC Phil Graves, the objection submitted purely relates to four conditions that the parties have been unable to agree upon. Prior to the hearing the PLH has engaged extensively with PC Phil Graves to compromise on the conditions but were unable to come to an agreement.
8. The objection submitted by the police requested the addition of numerous conditions, many of which the PLH are happy to agree to following some amendments. Unfortunately, though, the PLH and PC Phil Graves have been unable to agree on the following four conditions, which are set out below for ease:
 - The playing of live or recorded music shall not be permitted in any garden or external area.
 - The premises will not show live domestic or international televised football matches on football event days.
 - External – The outside seating area / garden shall not exceed 50 persons on any day. This includes those using the area to smoke.
 - The outside drinking areas shall cease at 00.00 hours (midnight), except for customers using this area to smoke. This shall not exceed ten people including staff and SIA.
9. The LSC will note that each condition is addressed separately, and reference is given as to the PLH's reasoning behind the disagreement to the addition of these conditions on the licence. However, it is important to note that the PLH does not object in principle to the addition of the two conditions in relation to capacity, but are purely requesting that the capacity figure be altered to ensure that it is appropriate and proportionate.
10. The LSC will be aware that the objection submitted by the Police is not against extension of hours or increase in licensable area. Therefore the decision to be considered by the LSC is whether the four conditions proposed should be implemented on the licence.

IV. BACKGROUND

11. The LSC will have noted from the evidence submitted on behalf of the police, the premises have had some historic breaches, with these being in 2018 and 2022. The PLH apologises profusely for these and has since remedied their actions to ensure that the premises remains compliant, including submitting this variation application to bring their licence in line with neighbouring venues.
12. As the LSC will see from the previous breaches though, these do not relate directly to the conditions looking to be imposed by the police. Therefore, it is prudent to ensure that when considering the addition of these conditions, that this application is taking on its own merits.

V. CONDITION 1 – LIVE OR RECORDED MUSIC

13. When considering regulated entertainment, it is important to consider the deregulations. Currently, live and recorded music have been deregulated as to not be considered regulated entertainment under paragraph.12A of Schedule 1 of the Licensing Act 2003 where the requirements of section 177A are made out. These requirements are:
- (a.) “music takes place on premises which are authorised by a premises licence...to be used for the supply of alcohol for consumption on the premises.”;
 - (b.) at the time, premises are open for purpose of selling alcohol for consumption on the premises;
 - (c.) audience not more than 500 persons (if music amplified);
 - (d.) music takes place between 08:00 and 23:00.
14. Whilst the licence states, Live and recorded music is permitted on the premises licence indoors only, due to deregulation the premises is permitted to have live and recorded music in any garden or external area between 8am and 11pm as long as the above criterions are complied with. As such, placing this condition on the licence would be redundant and unenforceable. It would be possible at a licensing review hearing but not in this instance.
15. The LSC will already be aware that the Licensing Act 2003 is a permissive piece of legislation and the Premises Licence itself allows the operator to decide to utilise their permissions or not.

VI. CONDITION 2 – LIVE SHOWING OF EVENTS

16. Similarly, to the above condition, the PLH would submit under the above deregulation, the showing of a live broadcast is not an actual licensable activity and therefore cannot be conditioned. This deregulation can be noted under guidance issued under paragraph 16.5, as well as Schedule 1, Part 2, Paragraph 8 of the Licensing Act 2003 which clearly states this.
17. The PLH has added the relevant extracts below from each authority for reference:

Paragraph 16.5 of the Revised Guidance issued under section 182 of the Licensing Act 2003-

*‘Overview of circumstances in which entertainment activities are not licensable 16.5
There are several exemptions that mean that a licence (or other authorisation) under the 2003 Act is not required. This Guidance cannot give examples of every eventuality or possible entertainment activity that is not licensable. However, the following activities are examples of entertainment which are not licensable: -
Television or radio broadcasts – as long as the programme is live and simultaneous.’*

Schedule 1, Part 2, Paragraph 8 of the Licensing Act 2003-

'The provision of any entertainment is not to be regarded as the provision of regulated entertainment for the purposes of this Act to the extent that it consists of the simultaneous reception and playing of a programme included in a programme service within the meaning of the Broadcasting Act 1990 (c. 42).'

18. The PLH submits that based on the authority provided, placing this condition on the licence would again be redundant and unenforceable.
19. The PLH recognises the comments made by the police in respect of ticketless fans, however the PLH does also have the following condition imposed on their premises licence that requires the need for door staff on days when football matches are taking place at Wembley Stadium:
 - *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.*

VII. CONDITION 3 – EXTERNAL CAPACITY

20. When looking at the issue of capacity, this is normally something that would fall within the Fire Regulatory Authority remit, and the PLH submits that it is important to note that no relevant objection was made by them.
21. Under the current permitted licence, the condition currently reads as follows:

“Outside seating area at any time shall not exceed 50 at any time (in line with the plans submitted with the application [but no more than a maximum of 100 provided the overall combined occupancy of 300 on normal trade days and 380 on football event days is not exceeded”
22. The PLH submits that based on this wording the premises presently could have a maximum of 100 persons in the outside seating and garden area on any day provided the overall capacity is not exceeded.
23. The actual capacity of the outside seating and garden area is above 150+ persons. Therefore, the PLH is simply wanting to bring the outside capacity in line with what they can comfortably accommodate for within that area.
24. The PLH is not requesting an increase in capacity but rather the flexibility to allow customers to go between the internal and external areas of the premises.

25. The PLH proposed condition is as follows:

“The total capacity (not including staff) for both internal and external shall not exceed 350 on non-event days at Wembley stadium. On Wembley stadium event days, when internal seating for 80 persons is removed, the total capacity (not including staff) for both internal and external shall not exceed 430 persons. On any day, there shall be no more than 150 persons in the outside seating area / garden at any time”.

26. Within the objection that has been raised in relation to capacity, emphasis has been placed on the fact that increasing the external area would give rise to noise nuisance. However, noise disturbance is within the realm of Public Nuisance, which is normally within the remit of the Environmental Health Office (EHO), who are the experts within the field. The PLH submits that it is relevant to point out that the EHO have not submitted an objection to the application either and the premises licence already has conditions placed on it to ensure that any use of the external area is controlled and has the thoughts of residents at the forefront.

27. The premises have also implemented an external management plan, which outlines the additional measures that the premises would implement to limit the impact of any noise nuisance and disturbance that could be caused. These measures include for external patrols to be carried out on regular intervals; notices to be placed outside reminding patrons to respect the needs of local neighbours; and for any complaints made by residents to be recorded and contact made and for reasonable issues to be dealt with swiftly.

28. The PLH welcomes the proposal of appropriate and proportionate conditions to the licence, and submits that this can be achieved with the amendment of the condition proposed and with the external management plan that has been drafted.

VIII. CONDITION 4 – CAPACITY OF SMOKERS AFTER MIDNIGHT

29. The PLH accept and welcome the condition in relation to restricting the use of the external area until midnight and this is not something that is disagreed with. However, the capacity limit for smokers proposed by the Police Licensing Authority is completely disproportionate and would be something that the PLH would struggle to comply with.

30. By limiting the external area to 10 smokers after midnight including SIA and staff, this means that at any one time, especially when staff are clearing the area, the number of smokers within the external area could be limited to as few as 3 people. Considering the capacity of the internal area of the premises, this is completely impractical and could lead to further issues with disgruntled patrons.

31. The PLH would of course ensure that the outside area is monitored and kept under observation to ensure that, with a risk assessed approached being taken if the outside area were needing to be limited.
32. The PLH refers to the Revised Guidance issued under section 182 of the Licensing Act 2003 and in particular to paragraph 1.16 which stated that any conditions imposed on the licence need to be proportionate and capable of being met.

Licence conditions – general principles

1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- **should be proportionate, justifiable and be capable of being met;**
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

IX. London Borough of Brent Statement of Licensing Policy (LBB SLP)

33. The LSC must come to a decision which is proportionate and appropriate. It must interfere with the rights of the PLH and of those who use the premises to the least extent necessary. The LSC must of course also have regard to the LBB SLP in this regard.
34. The Mayor of London launched a vision for London to become a 24-hour City to encourage the development of London as a vibrant and diverse city with a Night Time Economy that is of global significance.
35. The SLP shows the support for the Mayor’s vision and the need in focussing support in two main areas, with Wembley being one of them.

Page 4. The Council support the Mayor's vision for these areas and will support applications which facilitate an enhancement of leisure and entertainment functions and the night time economy, with appropriate safeguards.'

36. Of course, a business cannot be allowed to operate in a manner which is inconsistent with the licensing objectives, however, the PLH has taken every recourse to ensure that disturbances from their premises are limited. The external management plan and conditions agreed and amended, in the PLH's opinion, providing sufficient measures.

X. PROPOSED CONDITIONS

37. To this end the premises propose that the following conditions be added to the licence in addition to those already agreed with the police:

- 1. The total capacity (not including staff) for both internal and external areas shall not exceed 350 on non-event days at Wembley stadium . On Wembley stadium event days, when internal seating for 80 persons is removed, the total capacity (not including staff) for both internal and external shall not exceed 430 persons. On any day there shall be no more than 150 persons in the outside seating area / garden at any time**
- 2. No customer shall be permitted to use the outside seating areas / garden after midnight, except for customers permitted to temporarily leave the premises to smoke.**

XI. CONCLUSION

38. The PLH submits that in addition to the external management plan implemented, several proportionate & appropriate conditions have already been agreed with the Metropolitan Police Licensing Team which will form part of the Premises Licence. Additionally, no other relevant responsible authority has objected to the application which is a very important consideration for the LSC when arising at the decision.
39. The Fire Authority are the experts in Public Safety, and the Environmental Health authority are the experts in noise nuisance. Both authorities are happy to give the premises the opportunity to prove themselves, and the PLH suggests that it is reasonable for the LSC to do the same, with the safeguard that the matter can be reviewed should issues arise in the future.
40. The PLH would draw the LSC's attention to paragraph 6.3 of the statutory section 182 guidance. This paragraph reads that the authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.
41. The presumption of grant is possible as there is provision within the legislation for the authorities and local residents to issue a Review of the licence should concerns arise

in the future, not that the PLH is saying they will, at which we expect we will be given short shrift.

42. The PLH looks forward to working with the LSC to ensure that the Licensing Objectives are promoted in the future.

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27.03.22