

## **Report for:                    Licensing Panel**

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<b>Date of Meeting:</b>	28 June 2021
<b>Subject:</b>	Application for a new premises licence for Dragons Lounge, 225 Kenton Lane, Harrow, Middlesex, HA3 8RP.
<b>Responsible Officer:</b>	Michael Butler, Interim Director, Environmental Services
<b>Exempt:</b>	No
<b>Wards affected:</b>	<b>Canons</b>
<b>Enclosures:</b>	Appendix 1 - Application and plans  Appendix 2 - Location map  Appendix 3 - Representations  Appendix 4 – Agreed conditions between Applicant, Police and Licensing

### **Section 1 – Summary**

An application for a new premises licence has been received for Dragons Lounge, 225 Kenton Lane, Harrow, Middlesex, HA3 8RP. Representations have been received from 1 member of the public living or working in the vicinity of the premises and one responsible authority. The representations express concerns about the possible undermining of one or more of the licensing objectives should the licence be granted.

### **Representations received**

From	Representations details
The Planning Authority	No representations received
Health & Safety	No representations received
Environmental Health	Representation received
Trading Standards	No representations received
Area Child Protection Service	No representations received
London Fire Brigade	No representations received
Metropolitan Police	No representations received
Licensing Authority	No representations received

## Representations from other persons

Representations received from 1 member of the public.

### Section 2 – Report

1. Mr Sathiaseelan Easwarakumar has applied for a new premises licence (appendix 1) for Dragons Lounge, 225 Kenton Lane, Harrow, Middlesex, HA3 8RP. A location map of the premises is available in Appendix 2
2. The following hours open to public and licensable activities have been applied for:

	Supply of alcohol (for consumption on and off the premises)	Late Night Refreshment	Hours open to public
Monday	07:00 – 01:30*	23:00 – 02:00*	07:00 – 02:00*
Tuesday	07:00 – 01:30*	23:00 – 02:00*	07:00 – 02:00*
Wednesday	07:00 – 01:30*	23:00 – 02:00*	07:00 – 02:00*
Thursday	07:00 – 01:30*	23:00 – 02:00*	07:00 – 02:00*
Friday	07:00 – 01:30*	23:00 – 02:00*	07:00 – 02:00*
Saturday	07:00 – 01:30*	23:00 – 02:00*	07:00 – 02:00*
Sunday	07:00 – 01:30*	23:00 – 02:00*	07:00 – 02:00*

“\*” indicates hours continue into the following morning.

Proposed seasonal variations/ non-standard timings:  
None.

The following times for hours open to the public and licensable activities have been agreed with the police:

	Supply of alcohol (for consumption on the premises)	Late Night Refreshment**	Hours open to public
Monday	07:00 – 23:30	23:00 – 02:00*	07:00 – 00:00
Tuesday	07:00 – 23:30	23:00 – 02:00*	07:00 – 00:00
Wednesday	07:00 – 23:30	23:00 – 02:00*	07:00 – 00:00
Thursday	07:00 – 23:30	23:00 – 02:00*	07:00 – 00:00
Friday	07:00 – 01:30*	23:00 – 02:00*	07:00 – 02:00*
Saturday	07:00 – 01:30*	23:00 – 02:00*	07:00 – 02:00*
Sunday	07:00 – 23:30	23:00 – 02:00*	07:00 – 00:00

“\*\*” indicates hours continue into the following morning.

Proposed seasonal variations/ non-standard timings:  
None.

\*\*no amendment to hours for late night refreshment has been agreed.

3. The application proposes Mr Sathiaseelan Easwarakumar to be the designated Premises Supervisor.
4. Description of the premises
5. This will be a restaurant with a bar with facilities for shisha in the rear yard.
6. Details of application
7. Received: 30 April 2021
8. Closing date for representations: 28 May 2021
9. Licensing Officer’s observations
10. In summary, the issues that are raised in the representations are:
11. The protection of children from harm – There is a school about 1-minute walking distance or approximately 200 yards away from the premises.
12. The grant of the licence will increase public nuisance and risk to public safety. There is a potential of noise and odour nuisance when the back yard is being used. The public representation also mentions possible increase in littering. At the time of the visit from the Environmental Health Officer, the fire exit for the flats above had been blocked by the building contractors working at the premises

13. Section 20 of this report contains more information about the public nuisance objective.
14. The public representation indicates that there may be a compounded effect on littering as there are already other premises in the area that are contributing to this problem. Each application must be treated on its own merits and it would be unreasonable to hold the licensee responsible for arising issues that are beyond his jurisdiction or control. Harrow does not have a cumulative impact policy and therefore competition or saturation should not be a consideration for this application.
15. Conditions must be precise and enforceable. Further details regarding general principals about setting conditions is available in the guidance under section 1.16
16. The area to be used for shisha is also to be used for licensable activities. This area is highlighted on the plans. Premises used for Shisha must comply with the Health Act 2006 and its associated smoke free regulations. Section.1.16 of the guidance issued under the Licensing Act 2003 says (in part) that licence conditions should not replicate offences set out in the 2003 Act or other legislation.
17. The police have worked with the applicant and agreed conditions that appear under appendix 4 of this report.
18. Although the applicant has agreed conditions that the age verification policy should be applied to persons who look under the age of 25 (please see appendix 4 for more information), The panels attention is drawn towards the statutory guidance regarding the protection of children from harm which states in part:
  - 2.25 Applicants must be clear in their operating schedules about the activities and times at which the events would take place to help determine when it is not appropriate for children to enter the premises. Consideration should also be given to the proximity of premises to schools and youth clubs so that applicants take appropriate steps to ensure that advertising relating to their premises, or relating to events at their premises, is not displayed at a time when children are likely to be near the premises.
  - 2.26 Licensing authorities and responsible authorities should expect applicants, when preparing an operating schedule or club operating schedule, to set out the steps to be taken to protect children from harm when on the premises.
  - 2.27 Conditions, where they are appropriate, should reflect the licensable activities taking place on the premises. In addition to the mandatory condition regarding age verification, other conditions relating to the protection of children from harm can include:
    - restrictions on the hours when children may be present;

- restrictions or exclusions on the presence of children under certain ages when particular specified activities are taking place;
- restrictions on the parts of the premises to which children may have access;
- age restrictions (below 18);
- restrictions or exclusions when certain activities are taking place;
- requirements for an accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and
- full exclusion of people under 18 from the premises when any licensable activities are taking place.

19. The panels attention is drawn towards the statutory guidance regarding public nuisance:

- 2.15 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- 2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.
- 2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable

activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.

- 2.18 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.
- 2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.
- 2.20 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.
- 2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night

## 20. Operating schedule and conditions

21. Members will be aware that an operating schedule forms part of the licensing process. This document outlines what activities are

proposed, the opening hours, and how the activities will be managed particularly in respect of the licensing objectives.

22. The Panel's attention is directed towards paragraphs 8.41 – 8.49 of the statutory guidance issued under the Act that sets out matters that ought to be considered by an applicant when drafting their operating schedule.
23. The most critical part of the operating schedule are the steps taken by the applicant to promote the licensing objectives. Applicants are always reminded to take careful consideration as to what is entered in this section as whatever is proposed will be transferred into conditions on the licence. The Panel's discretion is engaged in the light of relevant representations to impose conditions that are appropriate to promote the licensing objectives. Conditions should be tailored to the size, type, location, characteristics and activities at the premises, and the Panel should be aware of any indirect costs that may arise from the imposition of conditions.
24. When imposing conditions relating to CCTV the Panel should bear in mind the Information Commissioner's guidance that such conditions should only be imposed where it is justified to do so and in order to meet the licensing objectives.
25. The Panel has the discretion to add to or modify these conditions in light of the representations where it is appropriate to do so to promote the licensing objectives.

26. Licensing policy

27. Paragraph 6.3 of the licensing authority's statement of licensing policy sets out the matters that the Panel may take into account when considering representations (although the Panel is not limited to these matters):
  - degree of confidence in the management of the premises
  - location of premises
  - gang-related activity in the area
  - management of waste particularly preventing fly-tipping
  - commitment to reporting all crimes and anti-social behaviour associated with premises
  - crime prevention audit conducted by police/professional security organisation
  - staff training
  - anti-theft provisions (eg time-locked safes, magnetic door locks, regular removal of cash from tills)
  - suitable and sufficient security plan
  - effective wind-down and dispersal policies
  - use of CCTV
  - noise mitigation measures associated with licensable activities, particularly near to residential properties
  - provision of litter bins and litter patrols
  - use of low-impact litter materials

- noise from people arriving at or leaving from the premises and which is related to licensable activities
- control of other nuisances relating to licensable activities such as light or odours
- measures to protect children from being exploited or coming to harm

## 28. Legal implications

29. The Licensing Panel is required to hold a hearing to consider any relevant representations made in relation to the premises licence application unless all parties agree that a hearing is unnecessary. The hearing must be held in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

30. The Licensing Panel is required to give appropriate weight to the representations (including supporting information) presented by all the parties, the Guidance issued pursuant to section 182 of the Licensing Act 2003, the Council's statement of licensing policy and the steps that are appropriate to promote the four licensing objectives.

31. Having considered those relevant matters, the Licensing Panel is required to take such of the following steps (if any) as it considers appropriate for the promotion of the licensing objectives –

The steps are—

- (a) Grant the licence subject to –
  - (i) Conditions that are consistent with the operating schedule accompanying the application modified to such an extent as the authority considers appropriate for the promotion of the licensing objectives, and
  - (ii) any condition which must under section 19,20 or 21 of the Licensing Act 2003 be included in the licence
- (b) to exclude from the scope of the licence any of the licensable activities to which the application relates
- (c) to refuse to specify a person in the licence as the premises supervisor
- (d) to reject the application.

For the purposes of 31 (a) (i) above, the conditions of the licence are modified if any of them are altered, omitted or any new condition added.

32. It should be noted with all options that –

- clear reasons should be given for the decision.



- any additional or modified conditions should be practical and enforceable
- the applicant and any person who made relevant representations would have the right of appeal to a magistrates' court on one of the grounds provided in Schedule 5 to the Licensing Act 2003.

33. In addition to determining the application in accordance with the legislation, Members must have regard to the –

- common law rules of natural justice
- provisions of the Human Rights Act 1998
- considerations in section 17 of the Crime and Disorder Act 1998

34. By section 6 of the Human Rights Act 1998, the Panel is required to act in a way that is compatible with rights under the European Convention for the Protection of Human Rights. The following provisions of the European convention seem relevant: Article 6 (right to a fair trial) Article 14 (prohibition of discrimination) and Article 1 of the First Protocol (protection of property)

35. In relation to section 17 of the Crime and Disorder Act 1998, this 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 functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.'

### 36. Financial Implications

37. There are no financial implications, other than a small fee income if the new licence is granted.

### 38. Appeals

39. If any party is aggrieved with the decision of the licensing panel on one of the grounds set out in Schedule 5 to the Licensing Act 2003, they can appeal to a magistrates' court within 21 days from notification of the decision.

## **Section 3 - Statutory Officer Clearance**

**Jessie Man**

Signed on \*behalf of the Chief Financial Officer

**Date: 23 June 2021**

**Statutory Officer:**

Andrew Lucas

Signed on \*behalf of the Monitoring Officer

**Date: 22 June 2021**

**Statutory Officer:**

Michael Butler

Interim Director of Environmental Services

**Date: 21 June 2021**

**Mandatory Checks**

**Ward Councillors notified: YES as it impacts on all Wards**

**Section 4 - Contact Details and**

**Background Papers**

**Contact:** David Gilmour. Commercial Safety Manager of Environmental Services, David.Gilmour@harrow.gov.uk

**Background Papers:** Licensing Act 2003 & Revised Guidance issued under section 182 of the Licensing Act 2003.