

LICENSING PANEL MINUTES

2 AUGUST 2017

Chair: * Councillor Ramji Chauhan

Councillors: * Phillip O'Dell * Primesh Patel

* Denotes Member present

129. Appointment of Chair

RESOLVED: That Councillor Ramji Chauhan be appointed Chair of the Licensing Panel Hearing.

130. Declarations of Interest

RESOLVED: To note that there were no declarations of interests made by Members.

131. Minutes

(See Note at conclusion of these minutes).

132. Licensing Procedures

The Chairman asked the Panel Members, officer/s, Responsible Authority/ies and other attendees at the meeting to introduce themselves and then outlined the procedure for the conduct of an oral hearing, which was set out in the agenda.

RESOLVED ITEMS

133. Application to vary a premises licence for Kohinur Restaurant and Bar, 14A Broadwalk, Pinner Road, Harrow, Middlesex HA2 6ED

In attendance:

Legal Adviser:	Andrew Lucas
Licensing Officer:	Ash Waghela
Applicant:	Mrs Ramila Vekaria
Applicant's Representative:	S Panchal
Environmental Health Officer:	Lois Smith

RESOLVED: That, having taken into account the following,

- Written and any oral representations by all the parties
- The Licensing Act 2003
- The Guidance issued under Section 182 of the Licensing Act 2003
- Harrow Council's Licensing Policy
- Human Rights Act 1998
- The considerations in Section 17 of the Crime and Disorder Act 1998

To vary the premises licence subject to the following timings and conditions:

Hours Open to the Public and for Licensable Activities

Hours open to the Public and Sale of Alcohol

Monday – Tuesday	10:00 – 00:00
Wednesday – Saturday	10:00 – 01:00 next day
Sunday	10:00 – 23:00

Late Night Refreshment

Monday – Tuesday	23:00 – 00:00
Wednesday – Saturday	23:00 – 01:00 next day

Live and Recorded Music and Performance of Dance
Not licensed after 23:00 on any day

Conditions: (which will form Annex 3 of the Licence)

1. A door supervisor shall be employed at the Premises on Fridays and Saturdays and any other day when the Premises is hosting a pre-booked event.
2. No opened alcoholic beverages to be taken outside of the Premises.

REASONS:

The Panel carefully considered all the relevant information including:

- Written and oral representations by all the parties
- The Licensing Act 2003
- The Guidance issued under section 182 of the Licensing Act 2003
- Harrow Council's Licensing Policy
- Human Rights Act 1998
- The considerations in s.17 of the Crime and Disorder Act 1998

Neither of the residents that had objected to the Application attended the hearing before the Panel. The Panel would have welcomed the opportunity to ask the residents who had objected further questions about their objections, particularly Ms Black.

The Panel heard from the Applicant who accepted that there had been noise emanating from the Premises in the past. The Panel were informed by the Applicant that £45,000 had been spent improving the noise insulation at the Premises since the Licence had been transferred to the Applicant. In total, 6 layers of soundproofing boards had been fitted to the ceiling, together with 500mm of acoustic insulation. Mastic had been used instead of nails to eliminate vibration. Following the visit on 15/06/17 of Mrs Lois Smith, an Environmental Health Officer employed by the Council, a layer of soundproofing board had also been applied to all the walls of the Premises. Soundproofing works were completed on approximately 30/06/17, after Mrs Smith had visited the Premises.

The Panel heard that the Premises had not yet re-opened since the Applicant had arranged for works to be carried out to the Premises. There is a grand opening planned for 11/08/17. The Panel were told both that works to the Premises had been completed and that they remained ongoing.

The Applicant also submitted that the Premises would not be a nightclub or bar type of premises but a local restaurant serving the needs of the area's diverse community with events and traditional music. No evidence was provided by the Applicant in this regard.

The Applicant referred to the Council's licensing policy, highlighting paragraph 2.1 which states the Council would be more business-like and business friendly. The Panel noted this, but also noted that the Applicant already had a licence and could already be trading from the Premises without having made this Application. There did not appear to be any question of the Council not being business friendly.

The Applicant also referred to paragraph 7.7 of the Council's licensing policy, particularly quoting:

In its role of implementing local authority cultural strategies, the licensing authority recognises the need to encourage and promote live

music, dance and theatre for the wider cultural benefit of the community.

The Panel agreed that the policy said this, but did not feel there was any evidence provided by the Applicant that the Premises would be serving the community in any way beyond that which any other restaurant would in the normal course of business. No evidence was adduced as to, for example, bookings that had been made, events that would be held (save that some Wednesdays would be charity days with no explanation given as to what that would involve) or what cultural benefits the Premises would contribute to.

The Panel heard from Mrs Smith in respect of her representations. She submitted that when she had visited on 15/06/17, the soundproofing works, although largely complete, had not been finished and the Premises were not furnished or ready for business. Mrs Smith explained that, as a test, a live singer together with music had been playing in the Premises and that this had been very loud. Mrs Smith said that in Ms Black's bedroom she had not been able to hear the music but that she had been able to clearly hear the male singer and had made a contemporaneous note of this in her notebook. The Applicant's builder said he had not been able to hear the singer at all.

Mrs Smith confirmed to the Panel that she was not aware that soundproofing boards had been applied to the walls of the Premises after she had visited. Mrs Smith also confirmed she had not been invited back to the Premises to assess noise levels since 15/06/17. Mrs Smith said she wanted to see the completed works and assess again how noise travelled from the Premises with the restaurant set up and/or open. Mrs Smith explained that some noise would be absorbed by the furnishings in the restaurant, but no furnishings had been present when she visited.

The Applicant said that her builder had spoken to Ms Black at least three times about noise caused by building works and that as recently as two days before the Panel met, Ms Black had said that she had not been disturbed by building works. Mrs Smith replied that this was a different kind of noise and that the Applicant's contractors ought to be operating within the Council's considerate contractor scheme anyway.

In response to concerns raised by the Panel about the extended hours applied for, particularly on Sunday, the Applicant offered to close at 23.00 on Sundays.

The Applicant also said they would try and make sure customers visiting the Premises do not take their glasses outside.

The Applicant confirmed to the Panel that they consented to the installation of a noise limiter, with the level to set by a Council Officer.

When deliberating over the Application, the Panel were particularly concerned about the licensing objective in respect of the prevention of public nuisance being undermined. The Panel noted that the Applicant had made a concerted effort to improve the soundproofing of the Premises from what was there before (which seemed to be nothing). However, the Panel were concerned

that Ms Black would likely still experience nuisance from the Premises given what Mrs Smith had heard on her visit. Although the Panel noted the Applicant's submission that there were three flats above the Premises and only one of them had objected, the fact remained that nuisance had been caused and the Panel did not have sufficient evidence before them to conclude that the licensing objectives would not be further undermined when the Premises re-opened on 11/08/17.

The Panel were also very concerned that Mrs Smith had not been invited back to carry out a further assessment of the nuisance being caused once work had been completed and were of the view that a prudent Licensee would have taken this step in order to show that the licensing objectives would not be further undermined, particularly given the history of the Premises; a Statutory Notice under the Environmental Protection Act 1990 had been served on the previous licence holder. The Panel were also concerned that no consideration had been given to the noise that would be generated when the Premises were busy and although it was correct that fixtures and fittings would absorb some of the noise that may not necessarily account for all the noise caused by a restaurant full of customers enjoying an evening out.

The Panel put weight on the fact that Mrs Smith had made a contemporaneous note on 15/06/17 of the nuisance that she had observed. The Panel noted that Mrs Smith was willing to re-consider her position, subject to the Applicant demonstrating that a public nuisance was not being caused by the Premises and the licensing objectives were not being undermined.

The Panel therefore resolved **not** to vary the Licence to allow the performance of music, or any other entertainment, after 11.00 pm. The Panel felt that there was insufficient evidence to show that the licensing objective of the prevention of public nuisance would not be undermined. The Panel were of the view that if the Premises could trade for a period of time without further complaints being made about noise emanating from the Premises that the Applicant may wish to apply again to vary the licence.

In respect of the opening hours, the Panel resolved to grant the hours sought, save for on Sunday, which the Panel considered excessive and likely to lead to the licensing objectives being undermined. The Applicant had already offered to close the Premises at 23:00 on a Sunday and the Panel therefore accepted that offer.

It was not clear to the Panel what 'event days' meant in the Applicant's operating schedule. The Applicant had submitted that these were likely to mostly be Fridays or Saturdays. The Panel therefore considered it appropriate to amend the condition to specify these two days as well as any other day where a pre-booked event was taking place. The Panel were of the view that this would prevent the licensing objectives from being undermined when the Premises were likely to be at their busiest.

The Panel were concerned that customers exiting the premises to smoke and so on might cause the licensing objectives to be undermined. The Applicant had said that they would not be allowing customers to leave the Premises with

glasses. The Panel considered it appropriate to make this a condition of the Licence in order to prevent customers from loitering around outside causing nuisance to the Premises' neighbours.

The Panel felt that the Application to vary the Premises Licence was premature and that the Applicant should have considered trading under the existing premises licence without incident or complaint for a period before applying to vary the licence in the way that she had.

The Panel wishes to remind the Objectors that there is a mechanism for the review of a premises licence (of any licensed premises) which can be invoked by any person, or a responsible authority, at any time because of any matter arising at the premises in connection with any of the four licensing objectives.

(Note: The meeting, having commenced at 7.30 pm, closed at 8.15 pm).

(Signed) COUNCILLOR RAMJI CHAUHAN
Chair

[Note: Licensing Panel minutes are:-

- (1) approved following each meeting by the Members serving on that particular occasion and signed as a correct record by the Chair for that meeting;
- (2) not submitted to the next panel meeting for approval.

Reasons: The Licensing Panel is constituted from a pooled membership. Consequently, a subsequent Panel meeting is likely to comprise a different Chair and Members who took no part in the previous meeting's proceedings. The process referred to at (1) above provides appropriate approval scrutiny].