

Meeting:	Licensing Panel
Date:	8 August 2005
Subject:	Application for variation of hours at Flying Eagle, Mollison Way, Edgware during Transitional period
Responsible Officer:	Chief Environmental Health Officer
Contact Officer:	P Sivashankar, Service Manager, ext 6413
Portfolio Holder:	Councillor Philip O'Dell
Key Decision:	No
Status:	Public

Section 1: Summary

Decision Required

Members are asked to determine the application in accordance with the guidance in Section 2.5.

Reason for report

The application for a conversion and simultaneous variation by Flying Eagle, Mollison Way, Edgware has received representations. As per the Council's Licensing Policy and Delegation of Licensing Functions, all applications with unresolved representations are to be determined by the Licensing Panel.

Benefits

The hearing provides the applicant, persons making the representations and the Licensing Authority an opportunity to engage in constructive dialogue to determine the application in an open public forum.

Cost of Proposals

None

Risks

If any party is aggrieved with the decision or is believes that a fair hearing is not provided, they can apply to the magistrates Court for a re-hearing.

Implications if recommendations rejected

As above

Section 2: Report

2.1 Brief History

2.1.1 Application has been made by Messer's Macneil Ltd, for a Premises Licence for Flying Eagle, Mollison Way, Edgware. A copy of the application is attached to this report.

2.1.2 The application seeks the following changes to the existing Justices Licence hours, which, if granted, will take effect from 24th November 2005:

The following tables show the hours for the Ground floor Bar

SALE BY RETAIL OF ALCOHOL ON & OFF		
DAY	START	FINISH
MON	1100	midnight
TUE	1100	midnight
WED	1100	midnight
THU	1100	midnight
FRI	1100	midnight
SAT	1100	midnight
SUN	1100	2330

LIVE MUSIC - INDOORS			RECORDED MUSIC			PERFORMANCE OF DANCE		
DAY	START	FINISH	DAY	START	FINISH	DAY	START	FINISH
MON			MON			MON		
TUE			TUE			TUE		
WED	1900	midnight	WED	1900	0030	WED	1900	midnight
THU	1900	midnight	THU	1900	0030	THU	1900	midnight
FRI	1900	midnight	FRI	1900	0030	FRI	1900	midnight
SAT	1900	midnight	SAT	1900	0030	SAT	1900	midnight
SUN	1900	2330	SUN	1900	0030	SUN	1900	midnight

ANY THING SIMILAR TO LIVE/RECORDED MUSIC OR DANCING			LATE NIGHT REFRESHMENT INDOORS AND OUTDOORS			HOURS OPEN TO THE PUBLIC		
DAY	START	FINISH	DAY	START	FINISH	DAY	START	FINISH
MON			MON	2300	0030	MON	1100	0030
TUE			TUE	2300	0030	TUE	1100	0030
WED	1900	midnight	WED	2300	0030	WED	1100	0030
THU	1900	midnight	THU	2300	0030	THU	1100	0030
FRI	1900	midnight	FRI	2300	0030	FRI	1100	0030
SAT	1900	midnight	SAT	2300	0030	SAT	1100	0030
SUN	1900	midnight	SUN	2300	0030	SUN	1100	midnight

The following tables show the hours for the First Floor Function Room

SALE BY RETAIL OF ALCOHOL ON & OFF		
DAY	START	FINISH
MON	1100	midnight
TUE	1100	midnight
WED	1100	midnight
THU	1100	0230
FRI	1100	0230
SAT	1100	0230
SUN	1100	midnight

LIVE MUSIC - INDOORS			RECORDED MUSIC			PERFORMANCE OF DANCE		
DAY	START	FINISH	DAY	START	FINISH	DAY	START	FINISH
MON			MON			MON		
TUE			TUE			TUE		
WED	1900	midnight	WED	1900	0030	WED	1900	midnight
THU	1900	midnight	THU	1900	0030	THU	1900	midnight
FRI	1900	midnight	FRI	1900	0030	FRI	1900	midnight
SAT	1900	midnight	SAT	1900	0030	SAT	1900	midnight
SUN	1900	2330	SUN	1900	0030	SUN	1900	midnight

ANY THING SIMILAR TO LIVE/RECORDED MUSIC OR DANCING			LATE NIGHT REFRESHMENT INDOORS			HOURS OPEN TO THE PUBLIC		
DAY	START	FINISH	DAY	START	FINISH	DAY	START	FINISH
MON			MON	2300	0030	MON	1100	0030
TUE			TUE	2300	0030	TUE	1100	0030
WED	1900	midnight	WED	2300	0030	WED	1100	0030
THU	1900	midnight	THU	2300	0300	THU	1100	0300
FRI	1900	midnight	FRI	2300	0300	FRI	1100	0300
SAT	1900	midnight	SAT	2300	0300	SAT	1100	0300
SUN	1900	midnight	SUN	2300	0300	SUN	1100	0030

There are inconsistencies in timings with this application and applicant has been notified of these and it is expected the applicant would amend these times at the hearing.

The current permitted hours are 11am to 11pm Monday to Saturday and Midday to 10:30pm on Sundays with 20 minutes drinking up time. The premises are also allowed to provide musical entertainment by up to 2 performers under the Licensing Act 1964, a right not transferred automatically under the Licensing Act 2003.

The function room times are 11am to midnight and alcohol can only be served ancillary to a table meal.

2.1.3 The Premises:

The premises are on situated in a part residential part commercial area. The premises are of solid construction with a benefit of a conservatory and not purpose built for entertainments. This Division has received 14 complaints regarding music/party noise from the premises since March

2004 (3 complaints were received within the past 3 months). A location map is attached to this report.

2.1.4 Policy Implications

According to the Statutory Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003, recommends that variation of this nature should be based on 5 main policy aims. These are that;

1. the main purpose of the licensing regime is to promote the licensing objectives;
2. applicants for premises licences or for major variations of such licences are expected to conduct a thorough risk assessment with regard to the licensing objectives when preparing their applications. This risk assessment will inform any necessary steps to be set out in an operating schedule to promote the four licensing objectives;
3. operating schedules, which form part of an application, should be considered by professional experts in the areas concerned, such as the police and environmental health officers, when applications for premises licences and club premises certificates are copied to them by applicants;
4. local residents and businesses are free to raise relevant representations, which relate to the promotion of the licensing objectives, about the proposals contained in an application; and
5. the role of a licensing authority is primarily to regulate the carrying on of the licensable activity when there are differing specific interests in those activities to ensure that the licensing objectives are promoted in the wider interests of the community.

When considering applications, it is expected that licensing authorities will seek to uphold these policy aims.

The Council's Licensing Policy in section 2.2 stipulates that a thorough risk assessment with regards to the Licensing Objectives must be carried out to reflect the individual nature of the venue.

It is this Division's view that such assessment has not been adequately carried out by the applicant.

2.2 Representations

- 2.2.1 The application has received representations from 2 Responsible Authorities and 6 local residents. Copies of these representations are attached to this Report.

2.3 Consultation

The application was advertised in accordance with the Regulations under the Licensing Act 2003.

2.4 Financial Implications

N/A

2.5 Legal Implications

2.5.1 Having considered the representations from all parties, the Panel has to determine the application for the variation of the converted premises licence. The legislation does not list the grounds on which the Panel can refuse and/or grant an application for a licence. The legislation does allow for the imposition of conditions, restrictions, etc. but again offers no guidance as to the type of condition that may be imposed. It is clear that any additional conditions would have to be practical, enforceable and meet the rules of natural justice and the promotion of the four Licensing Objectives.

2.5.2 Options available to the Panel:

- a. To grant the application as it stands. Any licence granted would be subject to conditions relating to the Operating Schedule attached to the Application.
- b. To grant the Licence in light of any evidence presented at the hearing, from both the interested party and the applicant, subject to:
 - i) The conditions mentioned in the operating schedule being modified to such extent as the authority considers necessary for the promotion of the licensing objectives and/or to limit the period of validity of the grant, and
 - ii) Any condition which, must under section 19, 20 or 21 (Mandatory Conditions) of the Licensing Act 2003 be included in the licence, and
 - iii) To exclude from the scope of the licence any of the licensable activities to which the application relates,
- c. To reject the application.

2.5.3 It should be noted with all options that;

- i). Clear reasons would have to be given to the applicant and to the persons/Responsible Authorities who made representations if the application were granted, refused or, if additional conditions were imposed; and
 - ii). The applicant and/or the interested party/Responsible Authorities would have the right of appeal to a Magistrates Court.
- 2.5.3. In addition to determining the application in accordance with the legislation, Members must also have regard to the provisions of the Human Rights Act 1998.

2.6 Equalities Impact

N/a

Section 3: Supporting Information/ Background Documents

Application

Representations

Mandatory Conditions that would be attached to the licence if granted.

Conditions drawn from the Operating Schedule provided by the Applicant-Annex
2

**Annex 2 – Conditions consistent with the operating
Schedule**

General

None offered

The prevention of crime and disorder

None offered

Public Safety

None offered

The prevention of public nuisance

All windows and doors will be kept closed during musical entertainment is provided.
(Ventilation details required)

No consumption of alcohol is allowed after 2230 in the external areas.

The protection of children from harm

None offered

MANDATORY CONDITIONS

19 Mandatory conditions where licence authorises supply of alcohol

(1) Where a premises licence authorises the supply of alcohol, the licence must include the following conditions.

(2) The first condition is that no supply of alcohol may be made under the premises licence-

(a) at a time when there is no designated premises supervisor in respect of the premises licence, or

(b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

(3) The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

20 Mandatory condition: exhibition of films

(1) Where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.

(2) Where the film classification body is specified in the licence, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation made by that body.

(3) Where-

(a) the film classification body is not specified in the licence, or

(b) the relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question,

admission of children must be restricted in accordance with any recommendation made by that licensing authority.

(4) In this section-

"children" means persons aged under 18; and

"film classification body" means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c.39) (authority to determine suitability of video works for classification).

21 Mandatory condition: door supervision

(1) Where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must be licensed by the Security Industry Authority.

(2) But nothing in subsection (1) requires such a condition to be imposed-

(a) in respect of premises within paragraph 8(3)(a) of Schedule 2 to the Private Security Industry Act 2001 (c.12) (premises with premises licences authorising plays or films), or

(b) in respect of premises in relation to-

(i) any occasion mentioned in paragraph 8(3)(b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence), or

(ii) any occasion within paragraph 8(3)(d) of that Schedule (occasions prescribed by regulations under that Act).

(3) For the purposes of this section-

(a) "security activity" means an activity to which paragraph 2(1)(a) of that Schedule applies, and

(b) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.