

**Report for:                      Licensing Panel**

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<b>Date of Meeting:</b>	17 November 2020
<b>Subject:</b>	Application vary the premises licence for The Case Is Altered Public House, Old Redding, Harrow Weald, Harrow, Middlesex, HA3 6SE.
<b>Responsible Officer:</b>	Paul Walker, Corporate Director – Community Directorate
<b>Exempt:</b>	No
<b>Wards affected:</b>	Harrow Weald
<b>Enclosures:</b>	Appendix 1 - Variation application and plans  Appendix 2 - Premises licence and current plan  Appendix 3 - Location map  Appendix 4 - Representations  Appendix 5 - Agreed conditions with police  Appendix 6 - Proposed conditions – Responsible Authorities

**Section 1 – Summary**

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An application has been received to vary the premises licence for The Case is Altered Public House, Old Redding, Harrow, HA3 6SE. Representations have been received from 2 responsible authorities and 47 other persons (members of the public and ward councillors) who express concerns about the possible undermining of one or more of the licensing objectives should the licence be varied as sought.

## Representations received

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

## Representations from other persons

1. 47 representations have been received from other persons. 44 from members of the public and three from the local ward Councillors.

## Section 2 – Report

2. Mr Michael Vazanias has applied to vary the premises licence (appendix 1) for The Case is Altered Public House, Old Redding, Harrow, HA3 6SE. A location map and image of the premises is available in Appendix 3
3. The purpose of the variation is to extend the licensable area provided by the current premises licence into the rear decking area and beer garden. The application does not seek to extend times for hours open to public. The plans attached to the application have three main areas: a black lined area showing the perimeter of the premises, a green lined area showing where all licensable activities authorised by the licence can take place and a red lined area showing where the sale of alcohol can take place. The times stated on the application for hours open to public are:

	Hours open to public
Monday	10:00 – 23:30
Tuesday	10:00 – 23:30
Wednesday	10:00 – 23:30

Thursday	10:00 – 23:30
Friday	10:00 – 02:30*
Saturday	10:00 – 02:30*
Sunday	10:00 – 00:00

\*Continues into the following day

There are no seasonal variations applied for although seasonal variations are on the existing licence.

1. The Premises Licence currently authorises the sale of retail alcohol for consumption on and off the premises. As a result, Exhibition of films, live music, recorded music, performance of dances are only licensable between 23:00 and 08:00 each day and the existing premises licence includes permission for the provision of late night refreshment and the exhibition of film beyond 23:00 every day, and for the performance of live music, recorded music and dance beyond 23:00 on Friday – Sunday as set out in the Licence shown in Appendix 2. .

4. Section 11 of this report gives more information about the prevention of public nuisance.

5. Description of the premises

6. The Case is Altered is situated on Old Redding. Before it was a pub, it was once a cottage. The pub originally catered for the rural population of brick workers. After this, it served day trippers and local walkers but more recently, serves the general public who visit the area throughout the day. This area also has a strong rural past and still consists of peaceful open spaces between buildings. The pub is also in a conservation area.

7. Details of application

8. Received: 28 September 2020

9. Closing date for representations: 27 October 2020

10. The application has been advertised in accordance with the prescribed regulations

11. Licensing Officer's observations

12. The premises licence was originally granted in August 2005. Mr Vazanias applied to transfer the licence to himself in June 2010. At the same time, he also applied to vary the Designated Premises Supervisor (DPS), The DPS history is as follows:

10/6/2010 – 26/9/2011 – Mr Keval Patel  
26/9/2011 – 15/12/2015 – Mr Ashok Shah  
15/12/2015 – 30/11/2018 – Mr Michael Vazanias  
30/11/2018 – Present – Mr Chirag Chavda.

13. Forty seven representations have been received from other persons, which include the three local ward Councillors. Most representations indicate that if the application was granted as sought, then the public nuisance objective would be undermined. The majority of the representations are from local residents some of whom have already experienced a reduced level of the peaceful amenity of their premises which is alleged to have been caused by the actions of the pub.
14. Although the pub has no parking facilities, this is outside the control of the licensee. Parking on the highway should not be a licensing consideration.
15. 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

16. The Licensing Authority Representation indicates that a retrospective planning application has been submitted to the Planning department. The reference number for this application is P/3029/20. The hours applied for planning consent are different to the ones applied for the variation under Licensing Act 2003. The following paragraphs from the statutory guidance may apply:

- 14.64 - The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa. However, as set out in chapter 9, licensing committees and officers should consider discussions with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.
- 14.65 - There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.

17. Environmental Health's representation concerns the further undermining of the public nuisance objective if the application is granted. Their representation indicates that residents who live in the vicinity of the Premises are already being disturbed by noise and other nuisance emanating from the Premises. They have proposed conditions to help reduce nuisance. As well as appearing on their representation, these conditions have also been extracted to Appendix 6.

18. With reference to the plans, the panel's attention is drawn to the green lined and red lined areas which indicate where the different licensable activities will be taking place at the Premises.

19. The Premises Licence currently authorises the sale of retail alcohol for consumption on and off the premises. As a result, Exhibition of films, live music, recorded music, performance of dances are only licensable between 23:00 and 08:00 each day. The existing premises licence, a copy of which is shown in Appendix 2, includes permission for the provision of late night refreshment and the exhibition of film beyond 23:00 every day, and for the performance of live music, recorded music and dance beyond 23:00 on Friday – Sunday.

## 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) to modify the conditions of the licence;
  - (b) to reject the whole or part of the application;

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.

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: 4/11/2020**

**Baljeet Virdee**

Signed on behalf of the Monitoring Officer

**Date: 06/11/2020**

**Statutory Officer:**

Michael Butler

Director of Environmental Services, Community Directorate.

**Date: 5/11/2020**

### **Mandatory Checks**

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

### **Section 4 - Contact Details and Background Papers**

**Contact:** Contact: Richard Le-Brun, Head of Community and Public Protection, Ext. 6267 Richard.lebrun@harrow.gov.ukj

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