

# APPLICATION FOR VARIATION OF A PREMISES LICENCE: Home Bar and Restaurant

<b>Committee</b>	Licensing Sub-Committee
<b>Officer Contact</b>	Ian Meens Licensing Officer Ex 01895 277067 (7067)
<b>Papers with report</b>	<b>Appendix 1</b> - Officer's Recommendation <b>Appendix 2</b> - Application to vary a premises licence <b>Appendix 3</b> - Representations from Responsible Authorities <b>Appendix 3a</b> - Supporting Document (Noise) <b>Appendix 4</b> - Representations from Interested parties <b>Appendix 5</b> - Representations from local residents <b>Appendix 6</b> - Map of the area <b>Appendix 7</b> - Photographs with index <b>Appendix 8</b> - Plan of the premises <b>Appendix 9</b> - Current Premises Licence
<b>Ward name</b>	Ickenham

## 1.0 SUMMARY

To consider an application for a variation of a Premises Licence in respect of **Home Bar and Restaurant** situated at 16 High Road, Ickenham, UB10 8LJ with representations received from two interested parties, three responsible authorities and nine local residents.

## 2.0 RECOMMENDATION

2.1 That the Committee agree the officer's recommendation, as set out in Appendix 1.

## 3.0 APPLICATION

The premises licence variation application has been made by Santi and Santi Uxbridge Ltd represented by Philip Somarakis of Gordon Dadds LLP.

The application has been submitted to add one extra hour for the sale of alcohol and the provision of regulated entertainment to the current opening times on Friday and Saturday nights into the morning following. It also seeks to add a one hour extension to the last entry time to bring it to midnight on Fridays and Saturdays.

### 3.1 Type of application applied for

Variation of Premises Licence

### 3.2 Description of the premises

The premise is a newly refurbished pub bar restaurant. It is situated on the junction of the High Road Ickenham and Austin's Lane. The licensed area of the premises is the ground floor with toilets and ancillary offices located on the first floor. There is a large patio area at the front of the building adjoining the High Road and a smaller patio at the side/rear of the building. Both patios have seating with external heating and music available through a speaker system. The premise has an open restaurant and bar area with internal air

conditioning and music. The music is capable of being adjusted in the restaurant area, the main bar and the two outside areas independently.

A plan of the premises can be seen at **Appendix 8**

The current premises licence can be found at **Appendix 9**

3.3 A copy of the application form is attached as **Appendix 2**

3.4 Licensable Activities

<u>Activity</u>		<u>Proposed Variation to existing licence</u>
Sale of alcohol	Consumption on and off the premises	none
Supply of Late Night Refreshment	indoors	none
Provision of live music	indoors	none
Provision of recorded music	indoors	none
Anything of a similar description	indoors	none

3.5 Licensable Activity Hours

	<u>Current</u> hours for Alcohol and Regulated Entertainment	<u>Proposed</u> terminal hours for Alcohol & Regulated Entertainment
<b>Monday</b>	23:00	No change
<b>Tuesday</b>	23:00	No change
<b>Wednesday</b>	23:00	No change
<b>Thursday</b>	23:00	No change
<b>Friday</b>	00:30	01:30
<b>Saturday</b>	00:30	01:30
<b>Sunday</b>	23:00	No change

3.6 Opening Hours

	<u>Current</u> hours	<u>Proposed</u> terminal hours for premises licence
<b>Monday</b>	00:00	No change

<b>Tuesday</b>	00:00	No change
<b>Wednesday</b>	00:00	No change
<b>Thursday</b>	00:00	No change
<b>Friday</b>	01:30	02.30
<b>Saturday</b>	01:30	02.30
<b>Sunday</b>	00:00	No change

### 3.7 Operating Schedule and Conditions

Section 3 of the application requests the applicant to identify the proposed variation. In section 3 there has been no reference to changes to the licensing conditions as per annex 2 of the current licence. The existing conditions are extensive in relation to noise control. These conditions are therefore not subject to any alteration in this application.

In addition to the times of operation adjustment the applicant seeks to adjust condition 5 of the current licence. This adjustment pushing back the no entry or re entry times by one hour on Friday and Saturday nights in line with the application.

## 4.0 **CONSULTATION**

4.1 Closing date for representations  
21<sup>st</sup> December 2017

4.2 Public Notice published in local newspaper  
29<sup>th</sup> November 2017 - Uxbridge Gazette

## 5.0 **REPRESENTATIONS**

5.1 There are three representations from the Responsible Authorities

PC Mitchell <b>Metropolitan Police</b>	Prevention of Crime and Disorder, Public nuisance, protection of Children from Harm and Public Safety	<b>Appendix 3</b>
Stephanie Waterford <b>Licensing Authority</b>	Prevention of Public Nuisance	<b>Appendix 3</b>
Nathan Welch <b>Enforcing Authority for Noise Nuisance</b>	Prevention of Public Nuisance	<b>Appendix 3 &amp; Appendix 3a</b>

There is additional information from the Enforcing Authority for Noise Nuisance following a visit by the out of hours team. This can be found at **Appendix 3a**.

5.2 There are 2 representations from Interested Parties (Ward Councillors):

Councillor Ray Puddifoot MBE (Ickenham Ward Councillor)	Prevention of Public Nuisance	<b>Appendix 4</b>
Councillor John Hensley (Ickenham Ward Councillor)	Prevention of Public Nuisance, Prevention of Crime and Disorder	<b>Appendix 4</b>

5.3 There are 9 representations from Interested Parties (local residents):

Gail Parkin and Bob Flinn	Prevention of Public Nuisance, Prevention of Crime and Disorder	<b>Appendix 5</b>
Janice Spyer	Prevention of Public Nuisance, and Prevention of Crime and Disorder	<b>Appendix 5</b>
Alan & Jeanette Freeman	Prevention of Public Nuisance	<b>Appendix 5</b>
Nicholas Bullock	Prevention of Public Nuisance, and Prevention of Crime and Disorder	<b>Appendix 5</b>
Barbara Lemmon	Prevention of Public Nuisance, and Prevention of Crime and Disorder	<b>Appendix 5</b>
Yasmin Afshur (BSc, FCCA)	Prevention of Public Nuisance, and Prevention of Crime and Disorder	<b>Appendix 5</b>
Dr and Mr Butt	Prevention of Public Nuisance	<b>Appendix 5</b>
<i>Name redacted 19/9/23</i>	Prevention of Public Nuisance, and Prevention of Crime and Disorder	<b>Appendix 5</b>
<i>Name redacted 19/9/23</i>	Prevention of Public Nuisance, and Prevention of Crime and Disorder	<b>Appendix 5</b>

A letter of no representation was received from the London Fire service.

## 6.0 BACKGROUND INFORMATION

6.1 Other licensed premises nearby.

There are three licensed Public Houses located in the immediate proximity. The operating times for these for Friday and Saturdays nights are as follows:

<b>Premises</b>	<b>Activity terminal time*</b>	<b>Closing Time*</b>
Coach and Horses	01.00am	01.30am
Soldiers Return	02.00am	02.30am
Titchenham Inn	01.00am	02.00am

\*Additional hours permitted for 'special event days' i.e. New Years Eve, Valentines Day, etc.

6.2 Map of the area and photos of the premises and the surrounding area are attached as **Appendices 6 and 7.**

6.3 There has been no recorded Members Enquires for this site.

## 7.0 OFFICER'S OBSERVATIONS

### 7.1 Observations

This is an application to vary the existing licence of an established Public House by one hour on Fridays and Saturday nights. The application is to extend operating hours and the hours for licensable activities.

The premises underwent major changes and refurbishment works in December 2016 following a change of ownership and a period of closure. The new owners chose to obtain a new licence and replace the existing licence when the work had been completed. The current licence was thus granted in March 2017. In the process the application saw representations from the Local Authority Environmental Protection Unit (EPU) who put forward a very full and extensive list of conditions for the prevention of noise. The list of proposed conditions from the EPU was accepted by the applicant and thus was applied to the licence on grant.

At the time of the new application it was fully advertised to all Responsible Authorities and interested parties and no further representations were received. Since the premises have been operating, the Licensing Service has not been made aware of any complaints.

The new premises operators have established the premises as a popular bar and restaurant. The drink prices are generally higher than the three other local Public Houses.

The premise has a main door and a secondary front door both of which are fitted with an inner porch. The distance between the external doors and internal doors is small and it may be the case that both become open at the same time when persons are entering and exiting the building thus allowing internal noise to escape.

The premise has two outside patio areas which have seating. One patio is at the front of the premises where ambient noise is at a greater level. The second (garden patio and outside eating area) is at the side/back of the venue. Music is played in both and regulated to stop at 21.30 in the garden and 22.00 at the front. The external dining garden area (patio) has a condition controlling usage whilst the front patio is not subject to any condition.

The kitchen area of the venue is situated between the bar and some of the nearby dwellings to the rear offering an internal barrier from noise escape.

### 7.2 Temporary Event Notices Served

Over the past 3 months of operation the premises has applied for and received 8 Temporary Event Notices as follows:

Days of the week	Date/s	Terminal Times applied
Friday to Saturday	27 <sup>th</sup> to 28 <sup>th</sup> Oct	02:00
Friday to Saturday	10 <sup>th</sup> to 11 <sup>th</sup> Nov	02:00
Friday to Sunday	17 <sup>th</sup> to 19 <sup>th</sup> Nov	02:00
Friday to Sunday	24 <sup>th</sup> to 26 <sup>th</sup> Nov	02:00

Friday to Saturday	1 <sup>st</sup> to 2 <sup>nd</sup> Dec	01:30
Friday to Saturday	8 <sup>th</sup> to 9 <sup>th</sup> Dec	02:00
Friday to Saturday	15 <sup>th</sup> to 16 Dec	02:00
Friday to Saturday	22 <sup>nd</sup> to 23 <sup>rd</sup> Dec	02:00

### 7.3 Relevant Representations

The relevant representations received mainly raise the following issues:

The Prevention of Public Nuisance -

- Representations received from Local Councillors refer to the closeness of private dwellings to the establishment. The exact extent of this can be seen on the attached plan in **Appendix 8**
- Representations from local residents refer to the premises being a cause for concern with noise escape and noise from persons when the premise is operating and when patrons are leaving.
- Representations from responsible authorities have concerns over last entry times, the control of music and the likelihood of public nuisance.

The Prevention of Crime and Disorder -

- Representations received point out some problems with disorder and disturbance particularly when the premises are closing.

### 8.0 **Relevant sections of S.182 Guidance**

The Guidance issued by the Secretary of State under S182 of the Licensing Act 2003 states:

#### **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 the 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 11pm and 8am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance 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.

## **9.0 Relevant sections of the Licensing Policy**

### Annex A

Clarification added by full Council on 7 September 2017 with respect to ward councillors making representations:

"Where a Ward Councillor makes representations upon an application within their ward, in writing, to the Head of Administrative, Licensing, Technical and Business Services within the appropriate statutory period of consultation for the application, that application shall be submitted to the Licensing Sub-Committee for determination. The Ward Councillor must include in their representations the reasons why they wish the application to be determined by the Sub-Committee."

## Licensing Hours

- At 21.1 it states that "Prior to the introduction of the Licensing Act 2003, it was believed that fixed and artificially early closing times (established under the Licensing Act 1964) were one of the key causes of rapid binge drinking prior to closing times and one of the causes of disorder and disturbance when large number of customers were required to leave the premises simultaneously".
- At 21.2, "The aim through promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through flexible opening times".
- At 21.3, "Arbitrary restrictions that would undermine the principle of flexibility will therefore be avoided. The four licensing objectives will be paramount at all times and the Council will always consider the individual merits of each case".
- At 21.5, "Shops, stores and supermarkets licensed to sell alcohol will normally be allowed to do so for the full duration of their trading hours. Restrictions may be applied, for example where representations are made indicating the particular premises or patrons of the premises are linked to disorder and or disturbance".

## Licence Conditions

- At 17.1, " Conditions on premises licences and club certificates are determined by:
  - a) The measures put forward on the Operating Schedule
  - b) Mandatory conditions within the Act
  - c) Measures decided at a hearing by the Licensing Sub Committee"
- At 17.2, "Any conditions attached to licences following relevant representations will focus on matters within the control of the Premises Licence Holder or Club Management Committees. They will address matters which have a direct impact on those living, working or engaged in normal activities in the vicinity, as well as patrons of the licensed premises. They will not be used as a means of attempting to attach responsibility to Premises Licence Holders or Club Management Committees for matters outside their reasonable control, such as anti-social behaviour once away from the premises or licensable activity".
- At 17.3, "The Licensing Authority will not impose standard conditions upon every licence issued, however it may have regard to model conditions produced by the Government and/or the Institute of Licensing and it may choose to impose these in appropriate circumstances".

## **10.0 LEGAL CONSIDERATIONS**

When considering licence variation applications the Sub-Committee is required carry out its functions with a view to promoting the licensing objectives. The licensing objectives are:

- Prevention of crime and disorder
- Public Safety
- Prevention of public nuisance
- Protection of children from harm

The Sub-Committee must ensure that all licensing decisions have:

- A direct relationship to the promotion to the promotion of one or more of the four licensing objectives;



- regard to the Council's statement of licensing policy;
- regard to the Secretary of State guidance; and
- not be made as a result of a blanket policy which is applied so rigidly that an exercise of discretion in each individual case is precluded

Applications must be considered with regard to the principles of fair process and the Human Rights Act 1998.

When considering an application for the variation of an existing Premises Licence, only the variation is subject to determination. When determining applications to vary an existing Premises Licence, the Sub-Committee must consider all relevant representations that are made before taking such steps (if any) as it considers necessary for the promotion of the licensing objectives. The steps that may be taken are as follows:

- grant the variation as applied for;
- modify the conditions of the licence (conditions are deemed to be modified if they are altered/omitted or new conditions are added); and
- reject whole or part of the application to vary the licence.

Any modification of conditions should be confined to those considered appropriate in respect of the particular variation sought.