

Application for a Review of a Premises Licence : Captain Morgans

Committee	Licensing Sub-Committee
Officer Contact	Steven Dormer, Licensing Officer 01895 827409
Papers with report	Appendix 1 - Review Application Appendix 2 - Officers Recommendation Appendix 3 - LA Representation Appendix 4 - Current Licence Appendix 5 - Map & Photos
Ward name	Eastcote & East Ruislip

1.0 SUMMARY

Hillingdon Council's Anti Social Behaviour & Environment Team (ASBET) submitted an application to review the premises license in respect of Captain Morgan's, 210 Field End Road, Eastcote, HA5 1RD. Numerous complaints of noise emanating from the premises were received by ASBET over several months. This resulted in noise abatement notices being served on the premises user. The review application and supporting information is attached as **Appendix 1**

2.0 RECOMMENDATION

2.1 **That the Committee agree the recommendations as set out in Appendix 2.**

3.0 INFORMATION

3.1 On nine occasions since November 2017, ASBET officers have had reason to visit Captain Morgan's following receipt of complaints from local residents. On four occasions statutory noise nuisances were witnessed by officers. Below is a table showing the recording and the response to complaints made.

Date and time of complaint	Type of disturbance /Incident	ASBET Officer Visit	Action Taken
26/11/2017 00.48am	Loud Music		No action taken music turned down at 01.05am
14/01/2018 00.07am	Loud Music	✓	Officer visited. Noise deemed a statutory nuisance . Music was not turned down. Noise abatement notice served on 17/01/2018
04/02/2018	Loud Music Complainant called the out of hours service	✓	Noise abatement notice served on 20/02/2018
26/02/2018	Loud music noise		No visit or nuisance witnessed.

17/03/2018 00.53	Loud Music noise	✓	Visit made officers did not enter premises for safety reasons. No nuisance witnessed
22/03/2018	Loud music noise	✓	Statutory noise nuisance witnessed. Noise abatement notice served
24/03/2018	Loud music noise	✓	Statutory nuisance witnessed
04/04/2018 01.30am	Loud music noise		No visit by officers
14/04/2018 02.06am	Loud music noise	✓	Officer visited requested that the music be turned down.
21/04/2018 00.25am	Excessive music noise	✓	Statutory noise nuisance witnessed
05/05/2018 01.15am	Excessive noise and Aggressive customer behaviour	✓	No further action taken
07/05/2018	Loud Music		No visit to the premises was made. Music stopped at 01:15
11/05/2018	Loud music /noisy customers	✓	No visit no action taken

4.0 CONSULTATION

4.1 As required by legislation, a legal notice of the review was displayed at the premises. A copy of the legal notice was also displayed at the Civic Centre and was placed on Hillingdon Council's website.

4.2 Closing date for representations

6th July 2018

5.0 REPRESENTATIONS

5.1	Responsible Authority	Grounds for Representation	Appendix
	Licensing Authority Ian Meens	Prevention of Public Nuisance	3

5.2 No further representations have been made to this application.

6.0 BACKGROUND INFORMATION

6.1 Current Licence held

The current licence has been held by Darren Farrell since March 2016. **Appendix 4**

6.2 Current Designated Premises Supervisor

Mr Darren Farrell has been the Designated Premises Supervisor since June 2016

6.3 Description of the Premises

Captain Morgan's operates as a bar situated in the main retail area of Eastcote. Patrons experience a selection of entertainment including live and recorded music nights. The premises has a raised mezzanine area which has a pool table, television screens and a gaming machine.

6.4 Other licensed premises nearby

Name of premises	Alcohol	Reg Ent	Late night Refreshment	Opening Hours
Sainsbury Supermarkets Ltd 216 Field End Road	✓			Monday to Sunday 00.00 to 24.00
Village Pizza 214 Field End Road			✓	Sunday to Thursday 11.30 to 00.30
Polski Sklep 213-215 Field End Road	✓			Friday and Saturday 11.30 to 02.00
Eastcote News 239 Field End Road	✓			Monday to Saturday 08.00 to 23.00 Sunday 10.00 to 22.30
Remos Village Italian Restaurant 267 Field End Road Eastcote	✓	✓	✓	Sunday to Wednesday 11.00 - 00.30 Thursday to Saturday 11.00 - 02.30
Eastcote Food & Wine 265 Field End Road	✓			Monday to Saturday 0800 to 2300 Sunday 1000 to 2230

6.5 Map and Photos of the area

Appendix 5

Photo 1 - Photo of the mezzanine area

Photo 2 - Steps down to the bar area

Photo 3 - Main bar area

Photo 4 - Exterior picture

6.6 Licensable Activities currently authorised

<u>Activity</u>		<u>Permitted</u>
Sale of Alcohol:	Consumption <u>off</u> the premises	✓
Regulated Entertainment (indoors only):	Live Music Recorded Music Exhibition of films Indoor sporting events	✓
Provision of late night refreshment (indoors only)		✓

6.7 Licensable Activity and opening hours currently authorised

	Licensable Activity	Opening Hours
Monday	11:00 - 00:00	11:00 - 01:00
Tuesday	11:00 - 00:00	11:00 - 01:00
Wednesday	11:00 - 00:00	11:00 - 01:00
Thursday	11:00 - 00:00	11:00 - 01:00
Friday	11:00 - 01:30	11:00 - 02:30
Saturday	11:00 - 01:30	11:00 - 02:30
Sunday	11:00 - 00:00	11:00 - 01:00

6.8 Visits made by Council Licensing Officers

7th June 2018

Premises open. At the time of the visit the premises was undergoing some maintenance work. The application to review the licence was served on the premises. Mr Bates was present at the time of the visit. No obvious breaches of licence conditions.

10th July 2018

Captain Morgan's was closed at the time of the visit. Photos of the premises were taken. The air condition unit was still heard at the time of the visit. No breaches of the premises licence were witnessed at the time of my visit.

7.0 OFFICER'S OBSERVATIONS

Since November 2017 and May 2018 three noise abatement notices have been served on Mr Farrell as the licence holder. On two occasions the premises have been operating outside the permitted hours. This has been witnessed by officers of the council and presented in the review application.

During the visit on the 7th June 2018 the review process was explained to Kevin Bates who was managing the premises. Recommendations were made to Mr Bates to ensure compliance with conditions and to adhere to the licensing objectives.

The information in the witness statements suggests that the premises have been providing licensable activities and allowing customers to stay on the premises, long after the permitted licence hours.

8.0 RELEVANT SECTIONS of the S182 GUIDANCE and LICENSING POLICY

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.

2.16-2.12 These paragraphs confirm that nuisance is:

- To be given a broad common law meaning;
- It may include in appropriate circumstances the reduction of living and working amenity and environment of other persons living and working in the area;
- Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises;
- Conditions should normally focus on the sensitive periods for the generation of noise nuisance;

16.6 As a result of deregulatory changes that have amended the 2003 Act, no licence is required for the following activities:

- Plays: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500.
- Dance: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed .
- Films: no licence is required for 'not-for-profit' film exhibition held in community premises between 08.00 and 23.00 on any day provided that the audience does not exceed 500 and the organiser gets consent to the screening from a person who is responsible for the premises; and (b) ensures that each such screening abides by age classification ratings.

- Indoor sporting events: no licence is required for an event between 08.00 and 23.00 on any day, provided that those present do not exceed 1000.
- Boxing or wrestling entertainment: no licence is required for a contest, exhibition or display of Greco-Roman wrestling, or freestyle wrestling between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000.
- Live music: no licence permission is required for: – a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises.

A performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.

A performance of amplified live music between 08.00 and 23.00 on any day, in a workplace that does not have a licence, provided that the audience does not exceed 500.

16.36 Any existing licence conditions (or conditions added on a determination of an application for a premises licence or club premises certificate) which relate to live music or recorded music remain in place, but are suspended between the hours of 08.00 and 23.00 on the same day where the following conditions are met:

- at the time of the music entertainment, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption on the premises;
- if the music is amplified, it takes place before an audience of no more than 500 people; and
- the music takes place between 08.00 and 23.00 on the same day

16.55 On a review of a premises licence or club premises certificate, section 177A(3) of the 2003 Act permits a licensing authority to lift the suspension and give renewed effect to an existing condition relating to music. Similarly, under section 177A(4), a licensing authority may add a condition relating to music as if music were regulated entertainment, and as if that premises licence or club premises certificate licensed the music. In both instances the condition should include a statement that Section 177A does not apply to the condition.

9.2 Relevant Sections of the Hillingdon Licensing Policy

The Committee's attention is drawn to the following, particularly relevant sections of the Hillingdon Licensing Policy:

7.8 Following the grant of a premises licence, the Metropolitan Police Service, Elected Members and/or interested parties such as local residents and Ward Councillors can apply to the Licensing Authority for a review of the licence if they consider that the Prevention of Crime and Disorder objective has not been met and are relevant.

19.1 At any stage following the grant of a premises licence or a club premises certificate, an application for a review application can be submitted to the Licensing

Authority by a Responsible Authority, any Elected Member or an Interested Party in connection with any of the four licensing objectives.

10.0 LEGAL COMMENTS

- 10.1 The Licensing Authority must review the premises licence where it is alleged, in an application for review by a Responsible Authority or other persons, that any of the licensing objectives are being undermined.
- 10.2 Following receipt of a review application the Licensing Authority must hold a hearing to consider it and any relevant representations. At the hearing, the Sub-committee must, having regard to the application and any relevant representations, take such of the steps following steps (if any) as it considers appropriate for the promotion of the licensing objectives:
- modify the conditions of the licence;
 - exclude a licensable activity from the scope of the licence;
 - remove the designated premises supervisor;
 - suspend the licence for a period not exceeding three months; and/or
 - revoke the licence

and for this purpose the conditions of the licence are modified if any of them are altered or omitted or any new condition is added.

- 10.3 The Sub-Committee must also have regard to the London Borough of Hillingdon's Statement of Licensing and the Secretary of State's Guidance issued under the Licensing Act 2003 when deciding what action, if any, to instigate. The terms of the Statement of Licensing Policy and Guidance are highly persuasive, but are not binding on the Licensing Sub-Committee. The Sub-Committee may depart from the guidance contained in the Statement of Licensing Policy and or Guidance if it considers there are clear and justifiable reasons to do so. Full reasons must be given if this is the case.
- 10.4 The Sub-Committee can only consider matters within the application or that have been raised through relevant representations from and each application will be decided on a case to case basis.
- 10.5 The Sub-Committee may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. In deciding what remedial action, if any, it should take the Sub-Committee must direct its mind to the causes or concerns which the application and representations identify. The remedial action should generally be directed at these causes or concerns and should always ensure that any response is necessary and proportionate.
- 10.6 Members are referred to the Secretary of State's Guidance on conditions, specifically paragraph 1.16 and chapter 10 which state that licensing conditions should be practical and enforceable, tailored to the size, type, location and characteristics and activities taking place at the premises. Conditions should be determined on a case by case basis and standardised conditions which ignore these individual aspects should be avoided. Conditions will not be necessary if they duplicate a current statutory requirement. Licensing Authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

- 10.7 Under the Human Rights Act 1998 the Sub-Committee needs to consider the balance between the rights of the applicant, licence holder and those making representations to the application when making their decision. The Sub-Committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the Borough.
- 10.8 Where the Licensing Authority determines an application for review it must provide written notice and reasons for its decision.
- 10.9 The licence holder, applicant or any party that made relevant representations have the right to appeal the decision of the Licensing Sub-Committee to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified by the Licensing Authority of the decision to be appealed against.

Caselaw

- 10.10 The Sub-Committee is referred to the case of *Bamboodle Bar and Grill Ltd –v-Stratford Upon Avon District Council (unreported)*.
- 10.11 On 02 March 2017 the Stratford-Upon-Avon Licensing Sub-Committee revoked the premises licence for Bamboodle Bar and Grill Ltd. The reasons given for the revocation were:
- a) The continuing failure by management to promote the licensing objectives of public safety, prevention of public nuisance and prevention of crime and disorder;
 - b) No real likelihood that the premises could or would be operated to promote the licensing objectives;
 - c) The owner, manager and their advisers had not grasped or had deliberately failed to grasp the importance of compliance with licence conditions and in maintaining an honest and open relationship with the licensing service;
 - d) The owner and manager of the premises had little or at best a casual regard for the safety of patrons and staff with little concern shown for the welfare of residents nearest to the venue.
- 10.12 The decision was subsequently appealed by the Premises Licence Holder. During the three-day appeal hearing the Magistrates heard evidence related to repeated overcrowding of the premises, noise nuisance and public nuisance on the street which could be attributed to the premises.
- 10.13 The Court concluded that there was little prospect of the premises licence holder running the premises in a manner which upheld the licensing objectives. Consequently, it upheld the decision of the licensing authority. The appellant's company was also ordered to pay all the district council's costs of just over £25,000.