

Application for a Review of a Premises Licence: The Prince of Wales

Committee	Licensing Sub-Committee
Officer Contact	Jhini Mukherjee, Licensing Service
Papers with report	Appendix 1 - Review Application Appendix 2 - Photos of the premises Appendix 3 - Food Health & Safety's Representation Appendix 4 - Ward Councillor Richard Mills' Representation Appendix 5 - Interested party - Deborah Craig's Representation including further submission Appendix 6 - Interested party - Ian Diamant's Representation Appendix 7 - Interested party - Sarah Acutt's Representation Appendix 8 - Photographs of the non-display of blue notice and very late display of it on a door not visible to passers-by.
Ward name	Brunel

1.0 SUMMARY

To determine an application for a review of a Premises Licence, in respect of The Prince of Wales PH T/A Sahara City on 1 Harlington Road, Hillingdon, UB8 3HX. The application to review the licence has been submitted by Licensing Authority acting as responsible authority under the Act.

2.0 RECOMMENDATION

Under Paragraph 11.19 of the Revised Guidance under Section 182 of the Licensing Act 2003, the options available to the Licensing Sub-Committee in a Review Application are the following.

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)¹⁰;
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

As the case officer, my recommendation for this review echoes the one submitted by the Licensing Authority in their Review Application under Recommendations as per pages 23 – 25.

3.0 APPLICATION

3.1 Name of the premises licence holder

A.M Property & Development Ltd., 23A Kenilworth Gardens, Hayes, UB4 0AY

3.2 Type of application applied for

An application for a review of a premises licence of The Prince of Wales PH T/A Sahara City on 1 Harlington Road, Hillingdon, UB8 3HX, submitted by Licensing Authority acting as responsible authority under the Act

3.3 Description of premises taken from the application form

The premises is located at the intersection of Uxbridge Road and Harlington Road. It was around the beginning of 2016 that the premises changed from a traditional public house to a restaurant, also offering shisha, to its customers. This meant that the premises now has an outside seating area which can accommodate up to 40 additional covers where patrons can enjoy their food, drink and shisha. There is also provision of regulated entertainment in the premises.

3.4 A copy of the Review application is attached as **Appendix 1**

3.5 Photos of the premises are attached as **Appendix 2**.

3.6 Licensable Activities currently authorised

<u>Activity</u>		<u>Permitted</u>
Sale of Alcohol:	Consumption <u>on and off</u> the premises	✓
Live Music and the performance of dance	Indoors only	✓
Late Night Refreshment	Indoors only	✓

3.7 Licensable Activity and opening hours currently authorised

	Licensable Activities	Opening Hours
Monday	10:00 - 00:00	10:00 - 00:30
Tuesday	10:00 - 00:00	10:00 - 00:30
Wednesday	10:00 - 00:00	10:00 - 00:30
Thursday	10:00 - 02:00	10:00 - 02:30
Friday	10:00 - 02:00	10:00 - 02:30
Saturday	10:00 - 02:00	10:00 - 02:30
Sunday	10:00- 00:00	10:00 - 00:30

4.0 **CONSULTATION**

4.1 Closing date for representations

14 November 2019.

4.2 The application was published on the Council's website on 17 October 2019. Responsible Authorities and Ward Members were also notified of the application on 17 October 2019.

5.0 **REPRESENTATIONS**

5.1 **RESPONSIBLE AUTHORITIES - Appendix**

Responsible Authority	Grounds for Representation
Food Health & Safety	Prevention of Crime and Disorder, Prevention of Public Nuisance, Public Safety (Appendix 3)

5.2 INTERESTED PARTIES - Appendix

Interested Party	Grounds for Representation
Councillor Richard Mills -	Prevention of Crime and Disorder, Prevention of Public Nuisance (Appendix 4)
Deborah Craig	Prevention of Crime and Disorder, Prevention of Public Nuisance, Public Safety (Appendix 5)
Ian Louis Diamant	Prevention of Crime and Disorder, Prevention of Public Nuisance (Appendix 6)
Sarah Acutt	Prevention of Crime and Disorder, Prevention of Public Nuisance, Public Safety, Protection of Children from Harm (Appendix 7)

6.0 BACKGROUND INFORMATION

6.1 Current Licences held

The premises licence was transferred to the current licence holders, A.M. Property Management Ltd, in the beginning of 2016.

The Director of this company is Mr Ahmed Abouzeid, who is also the current Designated Premises Supervisor (DPS) at the premises.

6.2 Current Designated Premises Supervisor

Mr Ahmed Abouzeid, personal Licence holder of LB of Hammersmith under no. 03831

6.4 Other licensed pubs and restaurants nearby

Name of premises	Alcohol	Regulated Entertainment	Late night Refreshment	Opening Hours
The Red Lion Hotel	✓	✓	✓	Sun-Mon - 08.00 to 01.30
The Vine Inn	✓	✓	✓	Sun - Wed - 10.00 - 00.00 Thu - Sat - 10.00 - 01.00

There are 2 off licences located on the nearby Manor parade of shops, one closing at 21.00 hours and the other at 23.00 hours every day.

7.0 OFFICER'S OBSERVATIONS

7.1 Observations

Since the change in ownership of the premises and the transformation of the business model, the Licensing department has been in receipt of complaints from local residents, Councillors, the Council's Planning team and the Food Health & Safety team about the general non-compliance on the part of the licence holder in running the business.

The Review Application clearly details the stepped up enforcement approach which was undertaken by the Licensing department from the start in order to secure compliance and bring about a change of behaviour in the licence holder towards upholding the licensing objectives. However, repeated failures in complying with the advice given and the continuing problems associated with the non-observance of the licensing objectives by the licence holder has triggered this review.

The relevant representations received, all unequivocally raise the concern that one and/or all of the licensing objectives are being seriously undermined at the premises. All of them highlight a lack of control and effective management at the premises.

There is a pattern of overall disobedience on the part of the licence holder so much so that he did not even comply with the minimum requirement of displaying the blue notice for review of the premises which was served on him on Thursday, 17 October 2019. Photographs evidencing the lack of a blue notice at the premises. the e-mail I sent to the licence holder's agent advising him to look into the matter and photo of the blue notice when it was finally put up two days before the expiry of the consultation on a different door which is hardly visible to the passers-by, is all appended here as **Appendix 8** .

Representation from the Food Health & Safety team (**Appendix 3**) explains in detail how Mr Ahmed has never engaged with the authorities in correcting the structure and complying with the Smoke Free Regulations under the Health Act 2006. It has also been reported to me that Mr Ahmed is known to display a degree of aggression towards council officers carrying out compliance visits in his licensed premises.

The representation from ward Councillor, Richard Mills, (**Appendix 4**) clearly states the present mismanagement at the premises and the plight of the residents who are bearing the brunt of it. Deborah Craig's representation (**Appendix 5**), Ian Louis Diamant's representation (**Appendix 6**), Sarah Acutt's representation (**Appendix 7**) all speak of the regular anti-social behaviour problems occurring at the premises and patrons being verbally abusive towards residents and parking illegally and generally causing public nuisance in the area. Under the Licensing Act 2003, the prevention of 'public nuisance' is one of the four licensing objectives that have to be achieved by all licensed premises. Public nuisance matters include noise, odour, general disturbance, litter, antisocial behaviour, light pollution and the kind of issues which can affect occupiers near a licensed premises. Therefore careful and thorough consideration on the part of the licence holder and DPS towards the impact a venue can have on neighbours is of utmost importance and a good practice measure for any licensed premises.

Three of the representations refer to the incident which happened this summer at the premises, which is also mentioned in the Review Application. From Annexure F on the Review Application, it is known that one person was seriously hurt while an underage person was found to be drinking and there were no CCTVs working at the time. The incident could have resulted in staying unreported to Metropolitan Police had it not been

for London Ambulance, who contacted the Metropolitan Police after they were called to the venue. This indicates an utter incognisance on Mr Abouzeid Ahmed's part to understand the importance of upholding the licensing objectives thus seriously undermining the statutory requirements of prevention of crime and disorder, ensuring public safety and protection of children from harm.

Deborah Craig has submitted further evidence of public nuisance recorded by her during the consultation period which further indicates the apathetic management by the licence holder and the DPS even after being served with a review notice by the Licensing Authority. These too are appended with her original representation in **Appendix 5**. It also contains records from August and September, which too have been provided to show the ongoing issues at the premises.

The level of public nuisance and anti-social behaviour that continues at this premises is unacceptable and the premises have been given more than enough opportunity to rectify the problems at hand. Mr Abouzeid Ahmed's management ability does cast some considerable concern that the licensing objectives will not be upheld in the future. It is therefore requested that new management be installed and the premises be run to a satisfactory standard and that Mr Abouzeid Ahmed is not given any control of the running of the premises in the future.

The layout of the premises has changed considerably and the present plan does not reflect that. A revised plan detailing the new additions like the one in Annex X, attached with the Review Application, is a better representation of the design of the floor area of the premises.

The present operating schedule too is inadequate in addressing the new business model and therefore tightening the existing operating schedule with more robust and effective conditions will help in promoting the four licensing objectives.

7.2 S182 guidance

The licensing objectives

Paragraph 2.3 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10).

For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

Paragraph 2.5 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be

justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.

Paragraph 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.

Paragraph 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 10 | Revised Guidance issued under section 182 of the Licensing Act 2003 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.

Paragraph 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 antisocial 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.

Advertising applications

Paragraph 8.80 The requirements governing the advertisement of applications for the grant, variation or review of premises licences and club premises certificates are contained in Regulations 25 and 26 of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 which are published on the Government's legislation website.

Applicants are required to:

- publish a notice in a local newspaper or, if there is none, in a local newsletter, circular or similar document circulating in the area in which the premises are situated; and
- display a brief summary of the application on an A4 (or larger) size notice, on pale blue paper in a prominent position immediately on or outside the premises for at least 28 consecutive days (starting on the day after the day on which the application was given to the relevant licensing authority). The notice must be printed legibly in black ink or typed in black in size 16 font or larger.

- ensure that the above notices contain the name of the applicant, postal addresses of the premises (or if there is no postal address a description of the premises sufficient to enable the location to be identified), relevant licensing authority and the date by which any representations in relation to the application need to be made to the licensing authority. They should also contain a statement of the relevant licensable activities or relevant qualifying club activities that it is proposed will be carried on at the premises, or in the case of an application to vary a premises licence or a club premises certificate the notices shall briefly describe the proposed variation.

Reviews

Paragraph 11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.

Paragraph 11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.

Powers of a licensing authority on the determination of a review

Paragraph 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps: 92 | Revised Guidance issued under section 182 of the Licensing Act 2003 • modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times; • exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)¹⁰; • remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management; • suspend the licence for a period not exceeding three months; • revoke the licence.

Paragraph 11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

Paragraph 11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

Paragraph 11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

Giving reasons for decisions

Paragraph 13.10 It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act.

7.3 Relevant Sections of the Hillingdon Licensing Policy

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

Licensing Objectives - The Prevention of Public Nuisance

Paragraph 9.4 In relation to smoking outside licensed premises, it is expected that:

- Suitable receptacles for customers will be provided and maintained to dispose of cigarette litter in areas used, or likely to be used, for smoking
- Licensees will take all reasonable steps to discourage smoking on the public highway close to residential premises, particularly after 10pm. This could include measures such as a ban on customers taking drinks outside on to the public highway, the use of door supervisors, or imposing a time after which re-admissions to the premises will not be permitted
- Garden areas to be cleared at a reasonable time where not doing so could cause nuisance to neighbouring residents.

Paragraph 9.7 Applications referred to the Licensing Sub-Committee will be determined on the individual merit of each case. The Licensing Sub-Committee have the power to impose specific conditions when considered necessary

The Role of the Ward Councillor

Paragraph 15.1 Ward Councillors play an important role in the local community. They can make representations in writing and speak at the hearing on behalf of an interested party such as a local resident or local business if specifically requested to do so. They can also make representations as an interested party in their own right

Licence Conditions

Paragraph 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.

Paragraph 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.

8.0 LEGAL COMMENTS

8.1 When considering an application for review of a Premises Licence, the Sub-Committee shall carry out its functions with a view to taking steps it considers appropriate for promoting the licensing objectives. The licensing objectives are:

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

Members should note that each objective is of equal importance.

8.2 An application for review of a premises licence may be made pursuant to s.51 of the Licensing Act 2003.

8.3 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.

8.4 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.

8.5 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.

8.6 Relevant representations are those that relate to the effect of the granting of the application on the promotion of the licensing objectives made by an interested party or responsible authority that have not been withdrawn and are not, in the opinion of the relevant licensing authority, frivolous, vexatious or repetitive s.51(4)(b)(i) and (ii).

8.7 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.

- 8.8 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.
- 8.9 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.
- 8.10 Where the Sub-Committee determines an application for review it must provide written notice and reasons for its decision.
- 8.11 The Council in its capacity as Licensing Authority has a duty to have regard to its public sector equality duty under section 149 of the Equality Act 2010. In summary, section 149 provides that a Public Authority must, in the exercise of its functions have due regard to the need to:
- i. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - ii. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - iii. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Section 149(7) of the Equality Act 2010 defines the relevant protected characteristics as race, age, disability and gender reassignment.

- 8.12 The licence holder, applicant for review 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 in writing by the Licensing Authority of its decision.