

Application for New Premises Licence: Myst West Lounge, Novotel, Bath Road, Heathrow Villages

Committee	Licensing Sub-Committee
Officer Contact	Steven Dormer - Licensing Officer - 01895 277409
Papers with report	Appendix 1 - Application for a Premises Licence Appendix 2 - Map of the area Appendix 3 - Local Authority Representation Appendix 4 - Fixed Penalty Notice
Ward name	Heathrow Villages

1.0 SUMMARY

To determine an application for a new premises licence in respect of Myst West, Bath Road, Heathrow Villages, UB3 5AP (see **Appendix 1**).

2.0 RECOMMENDATION

That the Licensing Sub-Committee refuses to grant the application on the grounds that the operating schedule does not support the licensing objectives.

3.0 APPLICATION

Application for a Premises Licence for Late Night Refreshment and Recorded Music.

3.1 Type of Application

New premises licence under the Licensing Act 2003.

3.2 Description of The Premises

Restaurant with a Shisha lounge located in an annexe building from the main Novotel. Late venue that offers the smoking of Shisha, alongside table meals. Guests can consume alcohol at Myst Lounge but not purchase it. Recorded Music plays at the premises to stimulate the patrons.

3.3 Proposed Opening Hours

	Late Night Refreshment	Opening hours of the premises
Monday	23:00 - 01:00	13:00 - 01:00
Tuesday	23:00 - 01:00	13:00 - 01:00
Wednesday	23:00 - 01:00	13:00 - 01:00
Thursday	23:00 - 01:00	13:00 – 01:00

Friday	23:00 - 02:00	13:00 - 02:00
Saturday	23:00 - 02:00	13:00 – 02:00
Sunday	23:00 - 01:00	13:00 – 01:00

3.5 Other relevant premises licensed premises nearby - **Appendix 2**

Premises	Activities Authorised	Times Authorised
Radisson Bath Road Heathrow Villages UB7 0DU	The Sale by Retail of Alcohol Provision of Regulated Entertainment being: Live Music Recorded Music Performances of Dance Anything of a similar description Exhibition of Films Provision of late-night refreshment	Monday to Sunday 00:00 – 00:00
London Heathrow Marriott Hotel Bath Road Heathrow Villages UB7 0DU	The Sale by Retail of Alcohol Provision of Regulated Entertainment being: Live Music Recorded Music	Monday to Sunday 00:00 – 00:00

	Performances of Dance Anything of a similar description Exhibition of Films Provision of late-night refreshment	
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4.1 Closing Date for Representations

12th January 2021

4.2 Public Notice Published in Local Newspaper

6th January 2021

5.0 REPRESENTATIONS

5.1 We have received one objection from Responsible Authorities:

Daniel Ferrer Responsible Authority Licensing, Hillingdon Council	Prevention of a Public Nuisance; Prevention of Children from harm Public Safety; Prevention of Crime and Disorder	Appendix 3
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6.0 BACKGROUND INFORMATION

6.1 The premises previously were operating without an independent licence from the Novotel. Myst Lounge wish to purchase a separate licence from the existing licence of the Novotel.

7.0 OFFICER'S OBSERVATIONS

7.1 On the 3rd October 2020 officers visited the premises alongside Anti-Social Behaviour Officers. The premises were very busy with customers smoking Shisha and consuming food. The Shisha Lounge did not comply with smoke free legislation.

On the 11th November 2020 officers visited the premises during lockdown and discovered customers sitting in cars consuming Shisha. The Shisha was being supplied by staff at Myst Lounge. This was despite there being a UK lockdown. A fixed penalty notice was issued. The fixed penalty notice was paid on the 15^h January 2021.

A meeting was arranged between Licensing Officers of Hillingdon Council and staff from Myst and Novotel on the 20th November 2020. Myst Lounge appointed consultants to change the Shisha lounge to comply with smoke free legislation. They agreed not to open the Shisha lounge during lockdown and restrictions. Owners of Myst Lounge announced during the meeting they were separate companies operating on the same site.

7.2 REPRESENTATIONS

Only one representation has been received. Daniel Ferrer acting as Responsible Authority for licensing has submitted a valid representation. Daniel Ferrer believes that the four licensing objectives are not being met with the application.

Prevention of Crime and Disorder.

Mr Ferrer has highlighted that the CCTV must record and store images for 31 days. A suitably trained operative of the CCTV should be on site whilst the premises is open.

An incident book should be kept on site. The incident book should be available for authorised officers to inspect.

Mr Ferrer states in the representation that staff need to have measures in place to regulate the consumption of alcohol on the premises.

Prevention of Public Nuisance

A dispersal policy is something that Mr Ferrer is keen on the applicant addressing in the operating schedule.

Suitable measures need to be put in place to combat any potential nuisance arising from recorded music being played.

Public Safety

Mr Ferrer would like to see the premises do work to ensure suitable fire escape measures are maintained and kept clear of obstruction.

Protection of Children from Harm

Mr Ferrer would like to see conditions and measures put in place to protect children on site. Mr Ferrer would like to see a policy relating to children and if there are to be restrictions on entry to Myst Lounge.

8.0 Relevant sections of S.182 Guidance

The purpose of the Guidance

At paragraph 1.7, "This Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality."

Crime and disorder

At paragraph 2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).

At paragraph 2.2 In the exercise of their functions, licensing authorities should seek to co-operate with the Security Industry Authority (“SIA”) as far as possible and consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed.

At 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.

Public nuisance

At 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.

At paragraph 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.

At paragraph 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.

At paragraph 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.

At 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 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.

At paragraph 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.

At 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 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.

Determining actions that are appropriate for the promotion of the licensing objectives

At paragraph 9.42, "Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be."

At paragraph 9.43, "The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve."

At paragraph 9.44 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be

suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives.

However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10.

The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

Proportionality

At paragraph 10.10 it states that "The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned.

Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises.

Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions.

These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives".

9.0 Relevant sections of the Licensing Policy

Prevention of a public nuisance

At paragraph 9.1 "Licensing Sub Committees will be mindful that licensed premises, especially those operating late at night and in the early hours of the morning, can cause a range of nuisances impacting on people living, working or sleeping in the vicinity of the premises. When addressing public nuisance the applicant should identify any particular issues that are likely to affect adversely the promotion of the licensing objective to prevent public nuisance.

They should then include in the operating schedule how they will deal with those matters. The concerns mainly relate to noise nuisance from within the premises or from the use of any outside areas, light pollution, smoke and noxious smells. Due regard will be given to the

impact these may have and the Licensing Authority will expect operating schedules to satisfactorily address these issues."

At paragraph 9.3 "Applicants should give particular consideration to measures to reduce the occurrence of public nuisance associated with accommodating smokers outside the premises, following the introduction of smoke free areas in enclosed or substantially enclosed places."

At 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 in respect of the Prevention of Public Nuisance objective."

At paragraph 7.6, "Applications referred to the Licensing Sub-Committee where relevant objections have been received will be determined on the individual merit of each case. The Licensing Sub-Committee has the power to impose specific conditions when considered necessary in respect of the Crime and Disorder objective."

Representations

At paragraph 14.1, "This policy will not seek to exclude any rights enshrined in the Act or any other legislation for applicants or those making representations against applications. Each application and representation will be treated on its merits taking into account the legislation, the Guidance issued under section 182 of the Licensing Act 2003 and this policy."

At paragraph 14.2, "Representations can be made to the Council, as Licensing Authority, by a 'Responsible Authority' or by 'Interested Parties' which include bodies or individuals who live in the vicinity of such a premises, and residents association, trade associations and other businesses operating in the vicinity. Representations can be made concerning:-

- Applications for new premises licences or club premises certificates
- Applications to vary premises licences or club premises certificates
- Personal licence applications on criminal grounds (only by the Police)"

At paragraph 14.3, "Responsible Authorities are the public authorities specifically designated under the Licensing Act 2003 to be consulted on all licence applications and are also entitled to make representations."

At paragraph 14.10, "All valid representations will form part of a committee report that will become a public document. It will be given to the applicant, their agent, responsible authorities, other persons making representations and any other party requesting a copy as well as the Licensing Sub-committee 10 working days prior to the hearing. Anonymous representations will not be accepted."

Licence Conditions

At paragraph 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 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".

At 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".

Licensing Hours

At Paragraph 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 Paragraph 21.2 it states that "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 Paragraph 21.3 it states that "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 Paragraph 21.4 it states that "In accordance with guidance there is no fixed restriction on terminal hours for any particular areas of the borough. Such a restriction could cause the migration of patrons from one area to another and create the circumstances that the legislation is attempting to avoid. Each application will be dealt with on its merits. It is for the applicants to detail in their Operating Schedule exactly what times they intend to open and close the premises and what measures they will take to ensure that they do not cause nuisance or disturbance to their neighbours in the vicinity. The later the terminal hour applied for, the greater will be the need to address the issues of disturbance and nuisance".

At Paragraph 21.5 it states that "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".

10.0 LEGAL CONSIDERATIONS

When considering Licence applications, 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

The Sub-Committee must ensure that all licensing decisions:

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

- Have regard to the Council's statement of licensing policy;
- Have regard to the Secretary of State guidance;
- Must not be subject to a blanket policy to the extent that it is applied so rigidly that an exercise of discretion in each individual case is precluded.

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 or vexatious s.18(7) Licensing Act 2003.

The Sub-Committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities within the consultation period. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.

Following a hearing, the Sub-Committee must consider all relevant representations, and having taken into account the promotion of the licensing objectives, under s.18(3)(b) and (4) Licensing Act 2003, a decision can be taken:-

- i. To grant the licence, subject to the mandatory conditions and conditions consistent with the operating schedule;
- ii. To impose additional relevant conditions to such an extent as is considered necessary for the promotion of the licensing objectives;
- iii. To exclude any of the licensable activities to which the application relates;
- iv. To amend the times for all or some of the licensable activities;
- v. To refuse to specify a person in the licence as the Premises Supervisor
- vi. To reject the application

Conditions will not be necessary if they duplicate a current statutory requirement. The Licensing Authority may therefore only impose such conditions that are necessary to promote the licensing objectives arising out of the consideration of the representations.

If the Sub-Committee determines that it is necessary to modify the conditions, or to refuse the application for a Premises Licence application, it must give reasons for its decision.

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 characteristics and persons who do not share it.

Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, race, religion or belief, sex sexual orientation, marriage and civil partnership and pregnancy and maternity.

Interested Parties, Responsible Authorities and the applicant have the right to appeal the decision of the 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.