

Application for the grant of a Premises Licence: Hey Bartender Ltd

Committee	Licensing Sub-Committee
Officer Contact	Jhini Mukherjee - Licensing Officer
Papers with report	Appendix 1 - Application for the grant of a new Premises Licence with Plan Appendix 2 - Representation from Licensing Authority Appendix 3 - Representation from Ward Councillors Appendix 4A - 4I - Representations from Interested Parties Appendix 5 - Email from the Metropolitan Police Appendix 6 - Map of the area Appendix 7 - Photo of the premises
Ward	Manor

1.0 SUMMARY

To consider an Application for a Premises Licence for an online alcohol delivery service from a private residence situated in the Manor ward.

The address of the house is 71 Pembroke Road, Ruislip, HA4 8NQ. It is a three-bedroom bungalow with a garage situated on the corner of Pembroke Road and Green Walk. The Applicant has fitted the garage with an alarm and CCTV as he is planning to use this space to store all the products for sale, including alcohol. The Applicant has stated in his application form that he will be using reputable delivery partners to ensure a smooth operation from placement of online order to delivery of the items. The Application Form is appended as **Appendix 1**.

The application has attracted the following representations:

- a) One representation from Licensing Authority acting as the Responsible Authority under the Act (**Appendix 2**);
- b) One representation from all the Manor Ward Councillors (**Appendix 3**); and
- c) Nine representations from Interested Parties, all of whom are residents residing in Green Walk (**Appendices 4A to 4I**).

There is an email from the Metropolitan Police confirming that they have no objection to this Application (**Appendix 5**).

2.0 RECOMMENDATION

To grant the Premises Licence, with additional conditions as proposed in the Licensing Authority's representation in **Appendix 2**. The operating schedule set out in the application is too brief and not robust enough to uphold the Licensing Objectives.

3.0 APPLICATION

3.1 Licensable Activities

<u>Activity</u>		<u>Proposed for new premises licence</u>
Sale of alcohol	Consumption off the premises	x

3.2 Proposed Hours for Licensable Activity

	Sale By Retail of Alcohol
Monday	12.00 – 00.00
Tuesday	12.00 – 00.00
Wednesday	12.00 – 00.00
Thursday	12.00 – 00.00
Friday	12.00 – 02.00
Saturday	12.00 – 02.00
Sunday	12.00 – 00.00

3.3 Type of Application

New Premises Licence application under the Licensing Act, 2003.

3.4 Description of the Premises

The premises is a private residence situated on a corner plot at the intersection of Pembroke Road which is a busy main road and Green Walk, which is a narrow residential road in a conservation area.

3.5 Other Licensed Premises Nearby

The nearest licensed premises are on Victoria Road, which runs perpendicular to Pembroke Road and the various shops and restaurants further down on Ruislip High Street. However, none of these premises are comparable in the nature of their businesses to the one at 71 Pembroke Road, HA4 8NQ.

The only other premises which resembles this one and is the closest in distance is another private residence on Field End Road, which was granted a Premises Licence as recently as in December 2020. The terms of the licence is a 24-hour online sales of alcohol only on the

condition that the goods are despatched or delivered to the buyer between the hours of 09:00 and 18:00 Monday to Sunday.

3.6 Operating Schedule and Conditions

Section 18 of the Operating Schedule of the application demonstrates the steps the Applicant proposes to take in order to promote the Licensing Objectives.

The Prevention of Crime and Disorder

The alcohol will be collected via trusted delivery partners only.
No consumption of alcohol in or around the premises will be permitted.

Public Safety

The public will not have access to the site.
The alcohol will be stored in a secure, alarmed outhouse covered with CCTV. It will then be packaged discreetly with an age verification check for delivery.

The Prevention of Public Nuisance

The Delivery Partners will only act during hours set, with the intention not to cause nuisance to the local community latest night or during unsociable hours.

The Protection of Children from Harm

There will be a two-stage age verification in place. All patrons are required to be over 18 on point of order (online, delivery partner) delivery and collection stage.

4.0 **CONSULTATION**

4.1 Closing date for representations

16 February 2021

4.2 Public Notice published in local newspaper

27 January 2021 – The Gazette

5.0 **REPRESENTATIONS**

5.1 We have received one representation from the Licensing Authority acting as the Responsible Authority under the Act.

Responsible Authorities	Ground for Representation	Appendix
Licensing Authority	Prevention of Crime and Disorder, Prevention of Public Nuisance, and Protection of Children from Harm	Appendix 2

5.2 We have received one representation from the Manor ward Councillors and nine from residents residing in Green Walk.

Interested Parties	Ground for Representation	Appendix
Manor Ward Councillors	Prevention of Public Nuisance	Appendix 3
Ms Charmaine Levien	Prevention of Public Nuisance	Appendix 4A
Ms Elizabeth Kielty	Prevention of Crime and Disorder Prevention of Public Nuisance	Appendix 4B
Mrs Mason	Prevention of Public Nuisance	Appendix 4C
Mr Peter Edmonds and Mrs Pamela Edmonds	Prevention of Public Nuisance	Appendix 4D
Mr J. Forsyth	Prevention of Public Nuisance	Appendix 4E
Ms Jacqueline Maher	Prevention of Crime and Disorder Prevention of Public Nuisance	Appendix 4F
Mr Ronald J Pearson	Prevention of Crime and Disorder Prevention of Public Nuisance Public Safety	Appendix 4G
Mrs Jennifer Mahon	Prevention of Crime and Disorder Prevention of Public Nuisance	Appendix 4H
Ms Sue Daniels on behalf of Ruislip Manor Cottage Society	Prevention of Crime and Disorder Prevention of Public Nuisance Protection of Children from Harm	Appendix 4I

5.3 Email from Metropolitan Police confirming that they do not have any objections to this new Premises Licence application is appended as **Appendix 5**.

5.4 We have received two Member Enquiries from Manor ward Councillors about this premises between January and February 2021.

6.0 BACKGROUND INFORMATION

6.1 Designated Premises Supervisor

The proposed Designated Premises Supervisor is Harpreet Dhand who holds a Personal Licence with the London Borough of Ealing.

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

7.0 OFFICER'S OBSERVATIONS

7.1 We have seen in the last few years a significant increase in the use of third party delivery services providing a portal for both ordering of food and/or drink and a delivery service. There are also operators who seek to primarily sell and deliver alcohol. Delivery of alcohol is not new and supermarkets and specialist alcohol suppliers have been operating delivery services for years.

However, a retail trade where alcohol provision seems to be growing is from dedicated delivery services that have been established around the country which do not offer public

access to their premises and operate only as a phone and internet delivery service. This Application is for one such premises which is operating from a private residence and where the Applicant proposes to trade as a storing and dispatch premises where orders for alcohol will be made on-line.

7.2 The representations received raise the following issues:

The Prevention of Crime and Disorder, The Prevention of Public Nuisance - These are the two main grounds of representations. The Operating Schedule provided by the Applicant is not extensive enough to uphold the objectives in their entirety. The additional conditions as suggested in Appendix 2 by the Licensing Authority are appropriate and sufficient for the promotion of these and the concerns raised by the Interested Parties too could be overcome by these recommended conditions.

Complaints concerning the noise from delivery riders/drivers are some of the main points that residents have raised in their representations. The noise from riders/drivers cannot be classified as a statutory nuisance due to the limited time in which the noise or emissions occurs. However, the noises when they occur at unsociable hours of the day when the ambient noise is reduced can cause sleep disruptions and impair the peaceful enjoyment of one's property thereby causing considerable impacts on local residents. Taking this into consideration, the Licensing Authority has recommended restrictions in the hours of delivery to and from the premises as 09.00 hours to 18.00 hours, Monday to Sunday.

In relation to the concerns around traffic and public safety it should be noted that the application has been reviewed by the Planning team who are consultees in any new premises licence applications and no representations were made by them.

Possibility of obstruction caused by scooters and mopeds parking on the highway has also been raised by residents. However, there are exemptions and specific allowances for certain vehicles which permit these vehicles to be parked there for a time before parking enforcement notices can be issued. The understanding of the laws and requirements surrounding parking can be complicated and, as a result, residents may believe that the vehicles are parked in contravention when in reality they are parked in accordance with these exemptions. This is anyway outside the scope of Licensing Act 2003.

The environmental impact from these delivery vehicles is something that cannot be controlled via licensing. The licensing of premises is strictly limited to promoting the four licensing objectives, which at the present time does not include health or protecting the environment.

With regards to criminality due to alcohol being stored in the building it should be noted that the Application has been reviewed by the Metropolitan Police who have confirmed in their email that they have no objections to this Application. The Police should be considered the primary source of information regarding the crime and disorder licensing objective and they have not made representation in relation to this application. Furthermore, additional conditions have been recommended by the Licensing Authority in their representation which will help to uphold and promote the prevention of crime and disorder at the premises.

Public Safety – In relation to the concern raised around the fire hazard surrounding the storage of alcohol it should be noted that the plan of the premises in Appendix 1 also reflects the location of the fire extinguisher inside the garage, a fire-proof door has also been installed for additional safety. Furthermore, the London Fire Brigade were also consulted with on this application and no representations were made.

The Protection of Children from Harm – The Licensing Authority has proposed important conditions in their representation which are robust and sufficient enough for a premises in that location and of that size to promote and uphold this licensing objective.

8.0 RELEVANT SECTIONS OF S.182 GUIDANCE

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

At paragraph 9.42 it states that "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 it states that "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 it states that "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, the Revised Guidance issued under section 182 of the Licensing Act 2003 informs that 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".

Mobile, remote, internet and other delivery sales

At paragraph 3.8 The sale by retail of alcohol is a licensable activity and may only be carried out in accordance with an authorisation under the 2003 Act. Therefore, a person cannot sell alcohol from a vehicle or moveable structure at a series of different locations (e.g. house to house), unless there is a premises licence in respect of the vehicle or moveable structure at each location at which a sale of alcohol is made in, on or from it.

At paragraph 3.9 The place where the order for alcohol, or payment for it, takes place may not be the same as the place where the alcohol is appropriated to the contract (i.e. the place where it is identified and specifically set apart for delivery to the purchaser). This position can arise when sales are made online, by telephone, or mail order.

Section 190 of the 2003 Act provides that the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract. It will be the premises at this location which

need to be licensed; for example, a call centre receiving orders for alcohol would not need a licence but the warehouse where the alcohol is stored and specifically selected for, and despatched to, the purchaser would need to be licensed. These licensed premises will, as such, be subject to conditions including the times of day during which alcohol may be sold. The premises licence will also be subject to the mandatory licence conditions.

At paragraph 3.10 Persons who run premises providing ‘alcohol delivery services’ should notify the relevant licensing authority that they are operating such a service in their operating schedule. This ensures that the licensing authority can properly consider what conditions are appropriate. Premises with an existing premises licence, which choose to operate such a service in addition to their existing licensable activities, should contact their licensing authority for its view on whether this form of alcohol sale is already permitted or whether an application to vary the licence will be required.

Proportionality

At paragraph 10.2 it states, “Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions that the holder of the premises licence or the club premises certificate will be required to take or refrain from taking in relation to the carrying on of licensable activities at the premises in question.

Failure to comply with any condition attached to a licence or certificate is a criminal offence, which on conviction is punishable by an unlimited fine or up to six months’ imprisonment. The courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided.”

At paragraph 10.8 it states, “The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.

In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises. This provision also applies to minor variations.”

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".

Hours of Trading

At paragraph 10.13 it states "The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement.

Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application"

Licensing Hours

At paragraph 14.51 With regard to licensing hours, the Government acknowledges that different licensing approaches may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make such decisions based on their local knowledge and in consultation with other responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

At paragraph 14.52 Statements of licensing policy should set out the licensing authority's approach regarding licensed opening hours and the strategy it considers appropriate for the promotion of the licensing objectives in its area. The statement of licensing policy should emphasise the consideration which will be given to the individual merits of an application. The Government recognises that licensed premises make an important contribution to our local communities and has given councils a range of tools to effectively manage the different pressures that licensed premises can bring. In determining appropriate strategies around licensed opening hours, licensing authorities cannot seek to restrict the activities of licensed premises where it is not appropriate for the promotion of the licensing objectives to do so.

The Need for Licensed Premises

At paragraph 14.19 There can be confusion about the difference between the "need" for premises and the "cumulative impact" of premises on the licensing objectives, for example, on crime and disorder. "Need" concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of

9.0 RELEVANT SECTIONS OF THE LICENSING POLICY

Mobile, Remote and Internet Sales

At paragraph 24.1 The Licensing Authority may receive applications for the sale of alcohol where payment is not necessary taken at the same place where alcohol is appropriated to the contract. This situation occurs when sales are made online, by telephone, or mail order. The sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract. It will be the premises at this location which need to be licensed.

At paragraph 24.2 In these cases, the Licensing Authority will ensure that the subsequent premises licence will be subject to appropriate conditions including the times of day during which

alcohol may be sold and also the mandatory licence conditions such as age verification measures.

At paragraph 24.3 Operators who run premises providing ‘alcohol delivery services’ should advise the licensing authority that they are operating such a service in their operating schedule. This ensures that the licensing authority can properly consider what conditions are appropriate to attach to the applicant’s premises licence.

Licensing Hours

At paragraph 25.1 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 25.2 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 paragraph 25.3 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 paragraph 25.4 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 25.5 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 paragraph 20.1 Conditions on premises licences and club certificates are determined by:

- The measures put forward on the Operating Schedule
- Mandatory conditions within the Act
- Measures decided at a hearing by the Licensing Sub Committee

At paragraph 20.2 Conditions attached to licences by the Licensing Authority that have been proposed by the applicant in their operating schedule should be consistent with the steps set out in the operating schedule. This means that the effect of these conditions should be substantially the same as that intended by the terms of the operating schedule.

At paragraph 20.3 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. Conditions imposed by the Licensing Authority shall be appropriate, reasonable, and proportionate and should be determined on a case-by-case basis.

At paragraph 20.4 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

The Licensing hearing is governed by the Licensing Act 2003, as amended and Licensing (Hearings) Regulations 2005. These provide that hearings should be held in public unless the Licensing Authority considers that the public interest in excluding the public outweighs the public interest in the hearing taking place in public.

If a Member of the Sub-Committee has a conflict of interest on the Application being determined, they should not have any involvement in the decision making on the Application.

When considering an application for a grant of a new 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. There are no other licensing objectives and the four objectives are paramount considerations at all times.

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. 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 to:-

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

- eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- 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.