

# Application for Variation of a Premises Licence: Trimex Food & Wine

|                           |   |
|---------------------------|---|
| <b>Committee</b>          | Licensing Sub-Committee   |
| <b>Officer Contact</b>    | Lois King - Principal Licensing Officer   |
| <b>Papers with report</b> | <b>Appendix 1</b> - Application to Vary a Premises Licence<br><b>Appendix 2</b> - Current Premises Licence<br><b>Appendix 3</b> - Representation from Interested Party<br><b>Appendix 4</b> - Map of the area<br><b>Appendix 5</b> - Photos |
| <b>Ward name</b>          | Heathrow Villages   |

## 1.0 SUMMARY

To consider an application for a variation of a premises licence in respect of Trimex Food & Wine, 296, High Street, Harlington, UB3 5DU, with one representation received from an Interested Party.

## 2.0 RECOMMENDATION

The Licensing Sub Committee grant the application as applied for, and to attach appropriate conditions.

The Operating Schedule (Section 16) of the application (see **Appendix 1**) demonstrates the steps the applicant proposes to take in order to promote the Licensing Objectives.

## 3.0 APPLICATION

The application to vary the existing premises licence has been submitted by Personal Licence Courses UK, on behalf of the premises licence Holder – Mr Harpreet Singh Bhatia. A copy of the Application is attached as **Appendix 1**.

The application seeks to increase the times for the sale of alcohol by three hours, until 02:00 hours Monday to Sunday. The current licence permits the sale of alcohol until 23:00 hours.

### 3.1 Type of application applied for

Variation of Premises Licence.

### 3.2 Description of the premises

The premises is a convenience store and off licence situated in a small parade of shops. There are residential properties opposite the shop and flats above it. There is a pub, a betting shop, a cafe and a takeaway food premises in the same parade. There is an additional convenience store, takeaway food premises and a restaurant in an adjacent parade of shops. The shop sells groceries and confectionery products.

The current premises licence is attached as **Appendix 2**.

### 3.3 Licensable Activities Hours

|                  | Current hours for the Sale of Alcohol | Proposed hours for the Sale of Alcohol |
|------------------|---------------------------------------|--|
| <b>Monday</b>    | 06:00 – 23:00                         | 06:00 - 02:00                          |
| <b>Tuesday</b>   | 06:00 - 23:00                         | 06:00 - 02:00                          |
| <b>Wednesday</b> | 06:00 - 23:00                         | 06:00 - 02:00                          |
| <b>Thursday</b>  | 06:00 - 23:00                         | 06:00 - 02:00                          |
| <b>Friday</b>    | 06:00 - 23:00                         | 06:00 - 02:00                          |
| <b>Saturday</b>  | 06:00 - 23:00                         | 06:00 - 02:00                          |
| <b>Sunday</b>    | 06:00 - 23:00                         | 06:00 - 02:00                          |

## 4.0 CONSULTATION

### 4.1 Closing date for representations

23 August 2021

### 4.2 Public Notice published in local newspaper

04 August 2021 – Uxbridge Gazette

## 5.0 REPRESENTATIONS

### 5.1 One representation has been received.

| <b>Name and Address</b>  | <b>Grounds for Representation</b>                                 | <b>Appendix</b>   |
|--|---|-------------------|
| Cllr Peter Money submitted on behalf of Sue Whitaker (Chair of Harlington Residents Association) | Prevention of Public Nuisance<br>Prevention of Crime and Disorder | <b>Appendix 3</b> |

## 6.0 BACKGROUND INFORMATION

### 6.1 Premises Licence Holder

The Premises Licence Holder is Mr Harpreet Singh Bhatia.

## 6.2 Designated Premises Supervisor

The Designated Premises Supervisor is Mr Harpreet Singh Bhatia. Mr Harpreet Singh Bhatia holds Personal Licence H03067 with the London Borough of Hounslow.

## 6.3 Members Enquiries

In September 2019, a Members Enquiry was received by the Licensing Department in relation to Trimex Food & Wine raising concerns that it was “*a congregating area for noisy people late at night drinking and behaving in an anti-social manner.*”

Officers from the Licensing Team visited the premises on the evening of Friday 04 October 2019. At the time of the visit no anti-social behaviour was witnessed around the premises. A compliance check revealed that all conditions were being complied with and the Licensing Objectives were being upheld.

No further Members Enquiries have been received in relation to this premises by the Licensing Team.

## 6.4 A map of the area is attached as **Appendix 4**.

## 6.5 Other relevant licensed premises nearby:

| <b>Premises</b>                                   | <b>Authorised Activities</b>  | <b>Authorised Timings</b>   |
|---|---|---|
| The Wheatsheaf,<br>286 High Street,<br>Harlington | Provision of Regulated Entertainment (indoors only) for live music, recorded music and anything of a similar description<br><br>Sale by retail of alcohol (on & off supplies) | <b>Live music:</b> 12:00 – 23:00 hours daily<br><br><b>Recorded music:</b> Monday to Saturday 10:00 – 00:00 hours except when the sale of alcohol is extended as in c) below, then to 01:00 hours the following day.<br><br>On Sunday from 12.00 until 00.00 hours, except when the sale of alcohol is extended as below, then to 01.00 hours the following day.<br><br><b>Sale of alcohol:</b><br>10.00 until 00.00 hours<br><br>New Year’s Eve from 10.00 until 00.30 hours on 2 <sup>nd</sup> January<br><br>In addition to the hours detailed above:<br><br>From 10.00 until 01.00 hours the following day on the following days/dates: - |

|   |   |  |
|---|---|--|
|   |   | <p>Friday, Saturday and Monday on Bank Holiday weekends</p> <p>25<sup>th</sup> January (Burns Night)<br/> 1<sup>st</sup> March (St David's Day)<br/> 17<sup>th</sup> March (St Patrick's Day)<br/> 23<sup>rd</sup> April (St George's Day)<br/> 30<sup>th</sup> November (St Andrew's Day)<br/> 24<sup>th</sup> December (Christmas Eve)<br/> 26<sup>th</sup> December (Boxing Day)</p> <p>On 12 occasions per calendar year, subject to providing the Licensing Service, the Council's Environmental Protection Unit and the Metropolitan Police Service 10 working days' notice, and then only on receiving a subsequent 'CONSENT' from the Council's Licensing Service, in respect of this agreement to the specified day and/or times applied for.</p> |
| <p>Harlington Tandoori, 316 – 318 High Street, Harlington</p> | <p>Sale by retail of alcohol (on &amp; off supplies)</p> <p>Provision of recorded music (indoors only)</p> <p>Provision of live music (indoors only)</p> <p>Provision of late-night refreshment</p> | <p><b>Sale of alcohol:</b></p> <p>Monday to Saturday 10:00 until 00:00 hours<br/> Sunday 12:00 until 00:00 hours</p> <p>Non-standard timings:<br/> Authorised activities shall be extended by 2 hours on<br/> Christmas Eve, New Year's Eve, New Year's Day, Diwali, Easter Sunday, Eid and St Patricks Day</p> <p><b>Provision or Recorded Music and Provision of Live Music</b><br/> Monday to Saturday 10:00 until 00:00 hours<br/> Sunday 12:00 until 00:00 hours</p> <p>Non-standard timings:<br/> Authorised activities shall be extended by 2 hours on<br/> Christmas Eve, New Year's Eve, New Year's Day, Diwali, Easter Sunday, Eid and St Patricks Day</p> <p><b>Late night refreshment</b></p> <p>From 23:00 until 00:00 hours</p>              |

## 7.0 OFFICER'S OBSERVATIONS

### 7.1 Officer Visit

On 13 August 2021 at 19:19 hours, Licensing Officers visited the premises in order to check compliance with conditions attached to the Premises Licence, the promotion of the Licensing Objectives and to make observations in relation to the variation application. They met with the manager. There were no breaches detected and there were no adverse issues found which required any further follow up.

7.2 Photos of the premises are attached as **Appendix 5**.

### 7.3 Mediation

The Applicant's agent advised verbally that they would be contacting the Harlington Residents Association in order to discuss their concerns and advise on the steps that would be taken by the premises. However, it is not known whether this took place.

The agent advised verbally that the additional steps to be taken by the premises included:

- (a) Signage
- (b) Additional staff at the premises from 22:00 – 02:00 hours
- (c) Staff asking people congregating outside the premises to leave

### 7.3 Representations

The representation from the Harlington Residents Association, via Cllr Money, refers to concerns that the new hours will exacerbate an existing issue that the premises has with persons drinking and congregating outside, therefore undermining the Prevention of Crime and Disorder and the Prevention of Public Nuisance licensing objectives. The area is in close proximity to Heathrow Airport and as such residents feel that it has the potential to attract people outside of usual hours anyway without the addition of a premises selling alcohol until 02:00 hours. The residents feel that there would be a detrimental impact from the variation on those persons occupying the flats above the premises, the flats opposite the premises in Providence Court, in addition to those who reside in houses on Providence Lane and the High Street.

## 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, 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 10.2** 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 10.10** 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".

## **Imposed Conditions**

**At paragraph 10.8** 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.

## **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"

**At paragraph 10.14** it states "Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested".

**At paragraph 10.15** it states "Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours".

## **Licensing Hours**

**At paragraph 14.51** it states "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** it states "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** it states "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 licensing policy".

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

### **Licensing Objectives - The Prevention of Crime and Disorder**

**At paragraph 10.3** it states "Where a number of premises may be in close proximity it may be difficult to attribute the disorder to patrons of particular premises, however there is a duty on Premises Licence Holders or Club Management Committees to act responsibly to ensure their own customers do not contribute to crime and disorder whilst in their premises and in the vicinity of their premises".

**At paragraph 10.4** it states "When addressing crime and disorder, the applicant should identify any particular issues that are likely to affect adversely the promotion of the crime and disorder objective. They should then include in the operating schedule how they will deal with those matters".

**At paragraph 10.6** it states "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".

### **Licensing Objectives - The Prevention of Public Nuisance**

**At paragraph 12.1** it states "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. This may also include patrons outside a premises and the dispersal of customers. 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 12.6** it states, "If relevant representations are received from a Responsible Authority, Elected Members or interested parties, the application will be determined by a Licensing Sub-Committee".

**At paragraph 12.7** it states “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”.

### **Licensing Objectives – The Protection of Children from Harm**

**At paragraph 13.5** it states “It is recognised that the Mandatory Conditions attached to premises licences where alcohol is sold/supplied must have in place an age verification scheme. The Licensing Authority would normally expect this scheme to include a challenge for photo identification to all persons who appear to be under the age of 25 years i.e. Challenge 25”.

**At paragraph 13.7** it states “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 Protection of Children from Harm objective”.

**At paragraph 13.11** it states “The Licensing Authority will expect that each operator dealing in the sale and supply of alcohol implements a proof of age policy in line with the Mandatory Licence conditions. The Authority expects premises licence holders to ensure that their staff are adequately trained and in every case where there is any doubt as to whether the customer is aged eighteen or over: ‘No ID-No sale’”.

### **Licensing Hours**

**At Paragraph 25.1** 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 25.2** 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 25.3** 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 25.4** 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 25.5** 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".

### **Licence Conditions**

**At Paragraph 20.1** it states that "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 20.3** it states that "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 20.4** it states that "*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 (Hearings) Regulations. 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 to vary a premise licence, the Sub-Committee is required carry out its functions with a view to promoting the Licensing Objectives. The Licensing Objectives are:

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

Members should note that each objective is of equal importance.

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.

The Sub-Committee can only consider matters within the application that have been raised through representations from interested parties and Responsible Authorities. 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, a decision can be taken to:-

- To grant the variation to the Premise Licence;
- To modify the Conditions of the Premises Licence – this includes altering or omitting any existing Conditions or adding any new Conditions;
- Rejection of the whole or part of the Application for Variation.

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 whole/part of the Application for the Variation of the Premises License 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-

- 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, sexual orientation, marriage and civil partnership, pregnancy and maternity, religion belief.

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

The Applicant, Interested Parties, and any Responsible Authorities and 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.