

Application to vary a Premises Licence: Dhamaka, 37 Swakeleys Road, Ickenham, UB10 8DG

Committee	Licensing Sub-Committee
Officer Contact	David Reed, Licensing Officer - 01895 277433
Papers with report	Appendix 1 - Application to vary a Premises Licence Appendix 2 - Current Premises Licence Appendix 3 - Representation from Interested Parties Appendix 4 - Email from Metropolitan Police confirming no objection Appendix 5 - Map of the area Appendix 6 - Photo of the premises
Ward name	Ickenham & South Harefield

1.0 SUMMARY

To consider an application, as seen in **Appendix 1**, to vary the current Premises Licence, as seen in **Appendix 2**, under Licensing Act 2003, in respect of Dhamaka, 37 Swakeleys Road, Ickenham, UB10 8DG, which has attracted representations from interested parties.

The premises is authorised for Sale of Alcohol currently between 11:00hrs to 23:00hrs every day. The application seeks to extend this to until 00:00hrs Sunday to Wednesday and until 00:30hrs Thursday to Saturday.

The application also seeks to add authorisation for Late Night Refreshment and Regulated Entertainment (Recorded Music, Live Music and Dancing) between 23:00hrs and 00:00hrs on Sunday to Wednesday, as well as between 23:00hrs and 00:30hrs Thursday to Saturday.

2.0 RECOMMENDATION

To consider the application for variation of the Premises Licence on its individual merits, giving due consideration to the Licensing Objectives and related legislation to determine the outcome.

3.0 APPLICATION

3.1 Description of the premises

The premises is an Indian restaurant on the ground floor of a building located in a parade of shops, which consists of restaurants, coffee shops, mixed retail and cafes.

3.2 Licensable Activities

<u>Activity</u>	
Sale by retail of alcohol	

3.3 Current Licensable Hours and Opening Hours

	Sale by retail of alcohol		Opening Hours of The Premises	
Monday	11:00	–	11:00	–
	23:00		23:00	
Tuesday	11:00	–	11:00	–
	23:00		23:00	
Wednesday	11:00	–	11:00	–
	23:00		23:00	
Thursday	11:00	–	11:00	–
	23:00		23:00	
Friday	11:00	–	11:00	–
	23:00		23:00	
Saturday	11:00	–	11:00	–
	23:00		23:00	
Sunday	11:00	–	11:00	–
	23:00		23:00	

3.4 Proposed Licensable Hours and Opening Hours

	Late Night Refreshment		Opening Hours of The Premises	
Monday	23:00	–	11:00	–
	00:00		00:30	
Tuesday	23:00	–	11:00	–
	00:00		00:30	
Wednesday	23:00	–	11:00	–
	00:00		00:30	
Thursday	23:00	–	11:00	–
	00:30		01:00	
Friday	23:00	–	11:00	–
	00:30		01:00	
Saturday	23:00	–	11:00	–
	00:30		01:00	
Sunday	23:00	–	11:00	–
	00:00		00:30	

	Sale of Alcohol	Opening Hours of The Premises
Monday	23:00 – 00:00	11:00 – 00:30
Tuesday	23:00 – 00:00	11:00 – 00:30
Wednesday	23:00 – 00:00	11:00 – 00:30
Thursday	23:00 – 00:30	11:00 – 01:00
Friday	23:00 – 00:30	11:00 – 01:00
Saturday	23:00 – 00:30	11:00 – 01:00
Sunday	23:00 – 00:00	11:00 – 00:30

	Provision of Recorded Music	Opening Hours of The Premises
Monday	23:00 – 00:00	11:00 – 00:30
Tuesday	23:00 – 00:00	11:00 – 00:30
Wednesday	23:00 – 00:00	11:00 – 00:30
Thursday	23:00 – 00:30	11:00 – 01:00
Friday	23:00 – 00:30	11:00 – 01:00
Saturday	23:00 – 00:30	11:00 – 01:00
Sunday	23:00 – 00:00	11:00 – 00:30

	Provision of Live Music	Opening Hours of The Premises
Monday	23:00 – 00:00	11:00 – 00:30
Tuesday	23:00 – 00:00	11:00 – 00:30
Wednesday	23:00 – 00:00	11:00 – 00:30
Thursday	23:00 – 00:30	11:00 – 01:00

Friday	23:00 00:30	–	11:00 01:00	–
Saturday	23:00 00:30	–	11:00 01:00	–
Sunday	23:00 00:00	–	11:00 00:30	–

	Provision of Performance of Dance		Opening Hours of The Premises	
Monday	23:00 00:00	–	11:00 00:30	–
Tuesday	23:00 00:00	–	11:00 00:30	–
Wednesday	23:00 00:00	–	11:00 00:30	–
Thursday	23:00 00:30	–	11:00 01:00	–
Friday	23:00 00:30	–	11:00 01:00	–
Saturday	23:00 00:30	–	11:00 01:00	–
Sunday	23:00 00:00	–	11:00 00:30	–

3.5 Other licensed premises nearby

There are three licensed premises within the immediate vicinity, Co-Op Welcome, The Tichenham Inn and The Coach & Horses.

Premises	Activities Authorised	Times Authorised
Co-Op Welcome	Sale of alcohol (off sales only) Opening Hours	From 06:00hrs – 23:00hrs everyday From 06:00hrs – 23:00hrs everyday
The Tichenham Inn	Sale of alcohol (on and off) Late Night Refreshment (indoors only) (From 23:00hrs) Provision of recorded music (indoors only) Opening Hours	On Sunday, Monday, Tuesday, Wednesday and Thursday, except Christmas Eve, New Year's Eve and

		<p>Boxing Day, between 09:00 and 00:30 hours.</p> <p>On Friday and Saturday, except Christmas Eve, New Year's Eve and Boxing Day, between 09:00 and 01:00 hours.</p> <p>On Christmas Eve and Boxing Day between 09:00 and 02:00 hours. On New Year's Eve from 09:00 hours until 09:00 hours on New Year's Day.</p> <p>On the days stated below, an additional hour following the times detailed above:</p> <p>Burns Night – 25 January Australia Day – 26 January St. David's Day – 1 March St. Patrick's Day – 17 March St George's Day – 23 April St. Andrew's Day - 30 November</p> <p>On the days stated below, an additional 30 minutes following the times detailed first above:</p> <p>Thursdays preceding Easter Sundays preceding a Bank Holiday.</p> <p>(d) Between the hours of 06:00 and 03:00 the following day, on no more than 15 occasions per calendar year, subject to providing the Licensing Authority and the Metropolitan Police Service 10 working days' notice, and on receiving a subsequent 'CONSENT' from the Police in respect of this agreement to the specified day and/or times applied for.</p> <p>Sunday to Thursday, between 07:00 and 01:30 hours</p> <p>Friday and Saturday, between 07:00 and 02:00 hours</p> <p>On Christmas Eve and Boxing Day, between 07:00 and 03:00 hours</p>
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		<p>On New Year's Eve from 07:00 until 07:00 hours the following day (New Year's Day)</p> <p>On the 15 occasions specified in item (d) above, subject to a 'CONSENT' from the Metropolitan Police Service.</p>
The Coach & Horses	<p>Sale of alcohol (on and off)</p> <p>Provision of films</p> <p>Late night refreshment</p> <p>Opening hours</p>	<p>Between 09:00 hours and 00:00 hours, Sunday to Thursday and between 09:00 hours and 01:00 hours, Friday and Saturday and from 09:00 hours New Year's Eve until 09:00 hours New Year's Day.</p> <p>An additional hour to the terminal hour on the commencement of British Summer Time.</p> <p>Between 07.00 hours and 00.00 hours Sunday to Thursday</p> <p>Between 07.00 hours and 01.00 hours Friday and Saturday</p> <p>From 07.00 hours New Year's Eve until 07.00 hours New Year's Day</p> <p>An additional hour to the terminal hours on the commencement of British Summer Time.</p> <p>Between 23.00 hours and 00.00 hours, Sunday to Thursday and between 23.00 hours and 01.00 hours, Friday and Saturday and from 23.00 hours New Year's Eve until 05.00 hours New Year's Day</p>

		<p>An additional hour to the terminal hour on the commencement of British Summer Time.</p> <p>An additional hour following those detailed above on the following days/dates:</p> <p>1st January 14th February (Valentine's Night) 25th January (Burns Night) 1st March (St David's Day) 17th March (St Patrick's Day) Good Friday Easter Saturday Easter Sunday Easter Monday Friday, Saturday & Sunday prior to May Bank Holiday May Bank Holiday Monday Friday, Saturday & Sunday prior to Spring Bank Holiday Spring Bank Holiday Monday Friday Saturday & Sunday prior to August Bank Holiday August Bank Holiday Monday 31st October (Halloween) 26th December (Boxing Day) 27th December 28th December 30th December</p> <p>An additional two hours following those detailed above on 24th December</p> <p>Additional hours to those detailed above, on 15 occasions per calendar year, subject to providing the Licensing Service, the Councils Environmental Protection Unit and the Metropolitan Police Service 10 working days' notice, and then only on receiving a subsequent 'CONSENT' from the Councils Licensing Service, in respect of this agreement to the specified day and/or times applied for.</p> <p>The provision of recorded music is not subject to any time restrictions From 07:00 to 00:30 hours, Sunday to Thursday</p>
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		<p>From 0:00 to 01:30 hours, Friday and Saturday</p> <p>From 07:00 hours New Year's Eve until 07:00 hours New Year's Day</p> <p>An additional 30 minutes to the times for special days as stated in the seasonal variations.</p> <p>An additional hour to the terminal hours on the commencement of British Summer Time.</p>
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4.0 CONSULTATION

4.1 Closing date for representations
28 October 2022.

4.2 Public Notice published in local newspaper
12 October 2022 – West London Gazette.

5.0 REPRESENTATIONS

5.1 We have received representations from the following Interested Parties:

Interested Parties	Ground for Representation	Appendix
Licensing Authority (as Responsible Authority)	Prevention of Crime and Disorder, Prevention of Public Nuisance	Appendix 3A
Mr & Mrs Fenney	Prevention of Public Nuisance	Appendix 3B
Mr Punj	Prevention of Crime and Disorder, Prevention of Public Nuisance	Appendix 3C
Mr Packman	Prevention of Public Nuisance	Appendix 3D
Mr Coyne	Prevention of Public Nuisance	Appendix 3E
Mr & Mrs Booth	Prevention of Public Nuisance	Appendix 3F
Ms Bennett	Prevention of Public Nuisance	Appendix 3G
Mr & Mrs Rohan	Prevention of Public Nuisance	Appendix 3H

5.2 An email from the Metropolitan Police confirming that they do **not** have any objection to this variation

is appended as **Appendix 4**.

6.0 BACKGROUND INFORMATION

6.1 Proposed Operating Schedule conditions

General

1. Strict implementation of challenge 25 policy
2. CCTV to be installed and 31 days recoding system
3. All staff to be trained in responsible alcohol retailing

The Prevention of Crime and Disorder

4. The premise license holder shall ensure that CCTV camera and recorders are installed at the premises and are of a standard acceptable to and approved by the police.
5. The system shall be maintained in good working order and, at all times the premise is open to the public, be fully operational covering both internal and external areas of the premises to which the public have access. All images should be stored for a minimum of 31 days.
6. The CCTV views are not to be obstructed; at least one CCTV camera is to be placed near to the exit in order to capture clear facial images of all patrons leaving the premises.
7. A suitably trained staff member will be able to show and provide police or council licensing officers recent data footage with the minimum delay when requested.
8. All goods, including those subject to duty payments i.e. alcohol, will be brought from cash and carries only and invoices will be available upon request. All alcohol will be purchased from AWRS registered cash & carry or wholesalers.
9. All staff employed at the premises will have UK right to work status checked; once passed that stage they shall be offered employment.
10. The premises must operate as a typical restaurant where alcohol is mainly sold to customers consuming a substantial table meal.
11. All off sales must be ancillary to a takeaway meal.
12. No open vessels to be taken outside the curtilage of the premises at any time.

Public Safety

13. Installation of appropriate safety equipment
14. Fire exit signs displayed
15. CCTV working at all times
16. At least 1 member of staff shall have a Level 2 Food Safety qualification.

The Prevention of Public Nuisance

17. Notice displayed asking customers to leave quietly from premises. Also customers will be told in person to leave quietly and not to disturb the local neighbourhood.
18. Strict policy in place to tell all staff not to serve alcohol to drunks at all.
19. Appropriate signage will be displayed, in prominent position informing customers they are being recorded on CCTV.

The Protection of Children from Harm

20. A challenge 25 policy will be in force, where any person looking under the age of 25 shall be asked to prove their age when attempting to purchase alcohol and signs to this effect will be displayed at the premises. Challenge 25 posters displayed where alcohol is sold.
21. The only acceptable ID will be those with photographic identification documents, including passport, photo-card, driving licence or proof of age card bearing the PASS hologram.
22. A refusal book shall be kept at the premises and updated as and when required, and made available for inspection on request to a Licensing Officer, Police or other responsible authority.
23. All staff authorised to sell alcohol will be trained in the Challenge 25 scheme and this training will be documented to include the date the training was given, the name of the person who gave the training, the person who received the training and signatures by both trainer and trainee.
24. A sign stating "No proof of age - No sale" shall be displayed at the point of sale.

6.2 Existing Operating Schedule conditions (see current licence at **Appendix 2**)

The Prevention of Crime and Disorder

1. The premise licence holder shall ensure that CCTV camera and recorders are installed at the premises and are of a standard acceptable to and approved by the police.
2. The system shall be maintained in good working order and, at all times the premise is open to the public, be fully operational covering both internal and external areas of the premises to which the public have access. All images should be stored for a minimum of 31 days.
3. The CCTV views are not to be obstructed; at least one CCTV camera is to be placed near to the exit in order to capture clear facial images of all patrons leaving the premises.
4. A suitable trained staff member will be able to show and provide police or council licensing officers recent data footage with the minimum delay when requested.

5. All goods, including those subject to duty payments i.e. alcohol, will be brought from cash and carries only and invoices will be available upon request. All alcohol will be purchased from AWRS registered cash & carry or wholesalers.
6. All staff employed at the premises will have UK right to work status checked; once passed that stage they shall be offered employment.
7. The premises must operate as a typical restaurant where alcohol is mainly sold to customers consuming a substantial table meal.
8. All off sales must be ancillary to a takeaway meal.
9. No open vessels to be taken outside the curtilage of the premises at any time.

Public Safety

10. Appropriate safety equipment will be installed
11. Fire exit signs will be displayed
12. CCTV shall be working at all times
13. At least 1 member of staff shall have a Level 2 Food Safety qualification.

The prevention of public nuisance

14. A Notice shall be displayed asking customers to leave quietly from premises. Also customers will be told in person to leave quietly and not to disturb the local neighbourhood.
15. Appropriate signage will be displayed, in prominent position informing customers they are being recorded on CCTV.

Protection of Children from Harm

16. A challenge 25 policy will be in force, where any person looking under the age of 25 shall be asked to prove their age when attempting to purchase alcohol and signs to this effect will be displayed at the premises. Challenge 25 posters displayed where alcohol is sold.
17. The only acceptable ID will be those with photographic identification documents, including passport, photo-card, driving licence or proof of age card bearing the PASS hologram.
18. A refusal book shall be kept at the premises and updated as and when required, and made available for inspection on request to a Licensing Officer, Police or other responsible authority.
19. All staff authorised to sell alcohol will be trained in the Challenge 25 scheme and this training will be documented to include the date the training was given, the name of the person who gave the training, the person who received the training and signatures by both trainer and trainee.

20. A sign stating "No proof of age - No sale" shall be displayed at the point of sale.

6.3 Map of the area as **Appendix 5**

6.4 Photo of the Premises **Appendix 6**

7.0 OFFICER'S OBSERVATIONS

7.1 This application seeks to extend the terminal hour for the existing licensable activities authorised (sale of alcohol) and add additional authorisations for late night refreshment and regulated entertainment. The premises is situated on a shopping parade and there is residential accommodation above, so the potential for public nuisance is a consideration, and this has not been adequately addressed in the operating schedule. The nature of the business is also not certain – i.e., is the business a sit-down restaurant with table service or a 'dual-use' premises; namely that of a restaurant moving to a bar/venue in the evenings.

Consideration should be given to the imposition of enforceable, proportionate conditions to uphold the objectives and mitigate concerns.

The Police and ASBET have not objected to the variation.

7.2 The representations received raise the following issues:

a) The Prevention of Crime and Disorder

The Licensing Authority, as Responsible Authority, has raised concerns surrounding the nature of the premises and CCTV, proposing additional conditions.

Concerns have been raised by other Interested Parties about potential increases in drunkenness and antisocial behaviour.

b) The Prevention of Public Nuisance

Concerns have been raised about the potential for an increase in nuisance given the closeness of residential properties, increases in customers attending the premises in person and the impact of motorcycle deliveries during the proposed extended hours.

Concerns have been raised over the ambiguity of the nature of the premises, with concerns over 'dual-use' as a restaurant and club being raised.

Comments regarding the area being a 'conservation area' are more appropriate for planning applications. The application needs to be considered on an individual basis as appropriate for the promotion of the licensing objectives.

Comments regarding parking and available spaces are not appropriate for consideration under the licensing objectives.

Comments regarding 'precedent setting' are not appropriate, as each application made under the Licensing Act 2003 must be assessed on its individual merits. The London Borough of Hillingdon also does not have a Cumulative Impact Policy in force, and matters pertaining to perceptions of 'need' are for the market and Planning to consider, not Licensing.

8.0 Relevant sections of s.182 Guidance

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

- 8.1 **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".
- 8.2 **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".
- 8.3 **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

- 8.4 **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."
- 8.5 **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. 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."

- 8.6 **At paragraph 10.9** It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.
- 8.7 **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

- 8.8 **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".
- 8.9 **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

- 8.10 **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".

8.11 **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

8.12 **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 Revised Guidance issued under section 182 of the Licensing Act 2003."

9.0 Relevant sections of London Borough of Hillingdon's Licensing Policy

Licensing Hours

9.1 **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".

9.2 **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".

9.3 **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".

9.4 **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".

Licence Conditions

9.5 **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"

9.6 **At Paragraph 20.2** it states that "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".

9.7 **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".

9.8 **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

10.1 When considering licence variation applications, 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

10.2 An application for variation of a premises licence may be made pursuant to s.34 of the Licensing Act 2003 and is essentially governed by Licensing Act 2003, reg.12 of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005/42), Licensing Act 2003 (Hearings) Regulations 2005/44) and s.182 Secretary Code of Guidance.

10.3 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;
- regard to the Council's statement of licensing policy;
- regard to the Secretary of State guidance; and
- not be made as a result of a blanket policy which is applied so rigidly that an exercise of discretion in each individual case is precluded.

10.4 Applications must be considered with regard to the principles of fair process and the Human Rights Act 1998 and must 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.
- 10.5 Section 149(7) of the Equality Act 2010 defines nine relevant protected characteristics; examples are: race, sex, age, disability and religious beliefs
- 10.6 When considering an application for the variation of an existing Premises Licence, only the variation is subject to determination. An application to vary the premises licence concerns variation of the conditions attaching to the licence or of the authorised licensable activities.
- 10.7 The application to vary must be accompanied by the Premises Licence (unless that is impracticable when a statement explaining why must be provided).
- 10.8 The authority must make the variation as applied for, subject to the mandatory conditions, unless relevant representations are made, in which case a hearing must be held.
- 10.9 Where relevant representations are made, the Licensing Authority must hold a hearing to consider them, unless it is agreed that a hearing is unnecessary (s.35(3)(a)).
- 10.10 The Licensing Authority must then take such of the following steps as it believes to be appropriate for the promotion of the licensing objectives:
 - a) modify the conditions of the licence or
 - b) reject the whole or part of the application (s.35(3)(b) and (4)).
- 10.11 When determining applications to vary an existing Premises Licence, the Sub-Committee must consider all relevant representations that are made before taking such steps (if any) as it considers necessary for the promotion of the licensing objectives. The steps that may be taken are as follows:
 - grant the variation as applied for;
 - modify the conditions of the licence (conditions are deemed to be modified if they are altered/omitted or new conditions are added); or
 - reject whole or part of the application to vary the licence.
- 10.12 Any modification of conditions should be confined to those considered appropriate in respect of the variation sought.
- 10.13 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; however, are not binding on the Licensing Sub-Committee.
- 10.14 Officers have provided the Sub-Committee with recommendations related to this application. Subject to the above-mentioned factors having been properly considered, the Sub-Committee may depart from the recommendations if there are good reasons for doing so.

The Sub-Committee is advised that such departures could give rise to an appeal or judicial review.

- 10.15 In order for representations to be 'relevant' they must have been made by an interested party or a responsible authority (see the definitions in section 13 Licencing Act 2003) and they must relate to the likely effect on the promotion of the licensing objectives if the application were to be granted.
- 10.16 If the representations are made by an interested party there is a further requirement that the licensing authority does not consider them to be frivolous or vexatious. If it thinks they are, it must explain its decision to the person who made the representations.
- 10.17 The need for a hearing can be dispensed with by agreement of the authority, the applicant for the variation and all of the parties who have made relevant representations.
- 10.18 The authority must notify its decision to the applicant, the interested party and any person who has made relevant representations and must give reasons for its decision.
- 10.19 A variation of a premises licence may impose different conditions on different parts of the premises or impose different conditions in relation to different licensable activities.
- 10.20 Conditions should also 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.