

Mr Everton Lee,
150 Kings Court
Hamlet Gardens
London
W6 0RP

CC: Other parties and responsible authorities who had made a relevant representation, Designated Premises Supervisor c/o the premises.

12 February 2013

Dear Mr Lee,

**Re: Application for a Premises Licence in respect of premises at
NOMAD CAFE, 25 THORPEBANK ROAD, LONDON W12 0PQ**

Introduction

On the 15 October 2012, Mr Everton Lee ("the Applicant") made an application for a new premises licence ("the Application") for the above property ("the Premises"), under the provisions of the Licensing Act 2003.

The Application

Sale of alcohol:

Monday to Saturday 12.00 until 23.00
Sunday 12.00 until 22.00

Premises open to the public:

Monday to Saturday 07.00 until 00:00
Sunday 07:00 until 22:00

Two relevant representations were received in connection with the Application from Responsible Authorities, those being the Police and the Environmental Enforcement and Protection Division of the London Borough of Hammersmith and Fulham. A further four relevant representations were received in connection with the Application from interested parties.

In view of the representations received, the Council convened a licensing Sub-Committee under the Licensing Act 2003 to consider the Application. The Sub-Committee held a hearing on the 25 January 2013.

The Applicant attended the hearing and was also represented by Robert Mulholland. The Environmental Enforcement and Protection Division was represented by Dom Stagg

A summary of the main points of evidence are contained in the minutes of the hearing enclosed with this letter

The Decision

The sub-committee considered the Application.

From the basis of what was reported to it and having regard to the representations made, the sub-committee decided the matter as it considered necessary for the promotion of the four licensing objectives. In doing so it had regard to all other material considerations including the guidance issued by the Secretary of State under s.182 of the Licensing Act 2003 and the Council's statement of licensing policy.

The sub-committee granted the Application in part subject to additional conditions.

The sub-committee considered that the Application and conditions proposed by the Police and the Environmental Protection team (set out in the attached schedule) and accepted by the Applicant outweighed the concerns of the interested parties and were sufficient in order to promote the licensing objectives.

Rights of appeal

The Applicant and each party that has made relevant representations have the right to appeal against this decision to the Magistrates Court. Details are enclosed.

Yours faithfully



Owen Rees
For Chairman, Licensing Sub-Committee

SCHEDULE OF CONDITIONS

Annex 1 – Mandatory conditions

1. No supply of alcohol may be made under the premises licence –
 - (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
 - (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
2. Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
3. (1) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
 - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading to or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children –
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to:
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol); or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;

- (d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on –
 - (i) the outcome of a race, competition or other event or process, or
 - (ii) the likelihood of anything occurring or not occurring;
 - (e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.
4. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (another than where that person is unable to drink without assistance by reason of a disability).
5. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.
6. (1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
(2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.
7. The responsible person shall ensure that –
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures –
 - (i) beer or cider : ½ pint;
 - (ii) gin, rum, vodka or whisky : 25ml or 35ml; and
 - (iii) still wine in a glass : 125ml; and
 - (b) customers are made aware of the availability of these measures.

Annex 2 – Conditions attached after a hearing by the licensing authority

1. Noise from the premises and/or any external area shall not be audible at the boundary of the nearest noise sensitive properties.
2. The outside garden area shall not be used after 21:00 hours on any day of the week.

3. Signs shall be prominently displayed at the exits from the premises reminding patrons there are residents living nearby and instructing them to respect the neighbours and to leave the premises promptly and quietly.
4. Delivers and collections (including refuse collections) associated with the premises shall be arranged between the hours of 08:00 to 18:00 only.
5. Waste bottles or other glass shall not be disposed of or transported in bulk through any external area between the hours of 21:00 and 08:00 the following day.
6. Empty bottles and non-degradable refuse shall remain the premises at the end of trading hours and taken out to the refuse point at the start of the next working day rather than at the end of trading when neighbours might be unduly disturbed.
7. All plant and equipment shall be correctly installed, operated, maintained and regularly serviced, all in accordance with the manufacture's instructions to ensure that it is operating correctly and efficiently so as not to cause a nuisance to neighbours arising from noise.
8. All ventilation and extraction systems and ducting shall be correctly installed, operated, maintained and regularly serviced, all in accordance with the manufacture's instructions, to ensure that they are operating correctly and efficiently so as not to cause a nuisance to neighbours arising from noise or odour.
9. Signs shall be prominently displayed at the exists from the premises asking patrons to dispose of their cigarettes in the cigarette bins provided.
10. A responsible member of staff shall ensure the area immediately outside the premises is free from cigarette butts/packets etc periodically throughout the premises' opening hours and specifically at the end of trading hours.
11. Appropriate signage will be displayed, in a prominent position, informing customers they are being recorded on CCTV.
12. CCTV covering areas inside and outside of the premises should be installed and maintained to police recommendations with properly maintained log arrangements. All images will be stored for a minimum of 31 days.

13. CCTV is to comply with Data Protection Act 1998 and is to be working and recording correctly when the premises are open to the public.
14. A staff member from the premises that is conversant with the operation of the CCTV system will be on the premises at all times that the premises are open to the public. This staff member will be able to show police recent data footage with the minimum of delay when requested. This data or footage reproduction should be almost instantaneous.
15. A refusals book shall be kept at the premises to record details of all refusals to sell alcohol. This book shall contain the date and time of the incident, a description of the customer, the name of the staff member who refused the sale, and the reason the sale was refused. The book shall be made available to Police and authorised Council officers on request.
16. The Designated Premises Supervisor shall regularly check the refusals book to ensure it is being consistently used by all staff.
17. A Proof of Age scheme shall operate at the premises (challenge 25) and all staff shall be trained in its implementation. Only photographic ID such as a British driving licence or a passport shall be treated as acceptable forms of identification.
18. The only sale of alcohol at the premises shall be to persons seated taking a table meal there and for consumption by such a person as ancillary to their meal.
19. The supply of alcohol shall be by waiter or waitress service only.
20. All staff responsible for selling alcohol shall receive regular training in the Licensing Act 2003. Written records of this training shall be retained and made available to Police and Council officers on request.

LICENSING ACT 2003

PREMISES LICENCES

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COUNCIL TO GRANT PREMISES LICENCE

Please note that under Section 181 and Schedule 5 of the Licensing Act 2003 the applicant, holder of a licence or persons who have made a relevant representation may appeal against the decision of the Council.

An appeal must be lodged within **21 days** of notification of the decision.

The address of the local magistrates' court is:

**West London Magistrates' Court
181 Talgarth Road
London W6 8DN**

Tel: 020 8700 9371

Relevant extracts from Part I of Schedule 5 of the Licensing Act 2003 are reproduced below.

APPEALS PART 1 PREMISES LICENCES

Rejection of applications relating to premises licences

1. Where a licensing authority.....
 - (a) rejects an application for a premises licence under section 18.....

the applicant may appeal against the decision.

Decision to grant premises licence or impose conditions etc

- 2 (1) This paragraph applies where a licensing authority grants a premises licence under section 18.
 - (2) The holder of the licence may appeal against any decision-
 - (a) to impose conditions on the licence under subsection (2)(a) or

(3)(b) of that section, or

(b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor).

(3) Where a person who made relevant representations in relation to the application desires to contend-

(a) that the licence ought not to have been granted, or

(b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section,

he may appeal against the decision.

(4) In sub-paragraph (3) "relevant representations" has the meaning given in section 18(6).

General provision about appeals under this Part

9. (1) An appeal under this Part must be made to [a magistrates' Court]
- (2) An appeal under this Part must be commenced by notice of appeal given by the appellant to the [designated officer] within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.
- (3) On an appeal under paragraph 2(3),, the holder of the premises licence is to be the respondent in addition to the licensing authority.....



London Borough of Hammersmith & Fulham

Licensing Sub-Committee

Minutes

Friday 25 January 2013

PRESENT

Committee members: Councillors Matt Thorley (Chairman), Michael Cartwright and Tom Crofts

Premises/Applicant:

Item 4

Stephen Kidd, area manager, Reuben Van Der Sluys, manager and Designated Premises Supervisor, Mike Gore, representative of the Premises Licence Holder

Item 5

Everton Lee, applicant and Robert Mulholland, applicant

Item 6

Bob Messham, agent for applicant, and Bekim Tahiri, applicant

Responsible Authorities

PC Michael Payne, Metropolitan Police (Item 4), Dom Stagg, Environmental Protection, Catherine Thornton and Carolyn Goddard, Planning Enforcement (Item 6)

Officers: Adesuwa Omoregie (Items 5 and 6) and Alex Russell (Item 4), Legal Advisor, Lisa White (Items 5 and 6) and Adrian Overton (Item 4), Licensing Officer, and Owen Rees, Committee Coordinator.

1. MINUTES

RESOLVED THAT:

The minutes of the meeting held on 28 and 30 November and 11 and 13 December 2012 be confirmed and signed as an accurate record of the proceedings.

2. APOLOGIES FOR ABSENCE

There were none.

3. DECLARATIONS OF INTEREST

There were no declarations of interest.

4. **LARRIK INN, 425 NEW KING'S ROAD, LONDON, SW6 4RN (APPLICATION NUMBER:2012/02036/LAPRR)**

The Sub-Committee received and considered an application for a review of the licence at the Larrik Inn, 425 New King's Road, London, SW6 4RN.

Main Points Of Evidence

Licensing Officer

Lisa White, Licensing Officer, said that the premises had agreed the alterations to conditions requested by the Police and by the Environmental Protection service.

Police Constable Michael Payne, Borough Licensing Team, said that he had agreed one amendment to the conditions applied for. This was in relation to condition 10, with the condition amended to state that a personal licence holder should be "on duty", and that this condition should only come into effect after 3 months.

Councillor Cartwright asked what the definition of "on duty" was. PC Payne said that it meant that a personal licence holder was working at the premises during the time it was open, but could be away for a short time: fifteen minutes was given as an example. Mike Gore, representing the Premises Licence Holder, said that the current position was that only the DPS held a personal licence, though two other staff members were undergoing training and had applied. He said that the premises understood "on duty" to mean working at the premises on the day in question, not on call in case of emergency. However, given the time it could take for a licence to be awarded, the premises had requested a period of grace before bringing this requirement into action.

Dom Stagg, Environmental Protection, said that there was one slight amendment agreed to the conditions proposed in the agenda pack. He said that he had agreed to add "after 21:00 hours or during regulated entertainment" to the condition, reflecting that the premises may want the door open during quiet periods on hot days.

The Chairman and Councillor Crofts asked about football matches and whether these would be shown in the garden. Mr Stagg said that there were no complaints about football at the premises and that the conditions proposed were largely pragmatic. Reuben Van Der Sluys, Manager and DPS, said that the outdoor television speakers did not have their own speaker system.

The Chairman said that, in light of the agreement between the parties, the Sub-Committee did not intend to retire.

RESOLVED THAT

The application for review be agreed, with 6 conditions removed, and the conditions proposed by the Police and Environmental Protection, subject to the amendments discussed, imposed.

5. **NOMAD CAFÉ, 2B THORPEBANK ROAD, LONDON, W12 0PQ (APPLICATION NUMBER: 2012/01701/LAPR)**

The Sub-Committee received and considered an application for a new premises licence at Nomad Café, 2B Thorpebank Road, London, W12 0PQ.

Main Points Of Evidence

Licensing Officer

Adrian Overton, Licensing Officer, introduced the application. He said that the Police and Environmental Protection had made representations to the application, but that the applicant had accepted the conditions proposed by both parties. As a result, the Police and Environmental Protection had withdrawn their representations. Four other parties had objected to the application, with one of the parties now withdrawing their representation, though stating that the level of noise was still a concern..

The Chairman asked if the premises had previously held a licence. Mr Overton said that it had not.

The Chairman asked about the way in which the premises had been advertised. Mr Overton said that there were concerns regarding the advertising of the application and as a result, the 28 day consultation period was extended. He is satisfied that the amended site adverts were displayed correctly, during the extended consultation period.

The Chairman asked about the garden space. Mr Overton said that the space was at the front of the premises surrounded by a wall and adjacent to the pavement, and the café was entered through it.

The Chairman noted the premises' relative proximity to the Queens Park Rangers Football Stadium Loftus Road, and the lack of standard match day conditions in the operating schedule. Mr Overton said that no match day conditions had been suggested or agreed.

Councillor Cartwright said that the operating schedule seemed thin, and expressed concern that the premises might attract away football fans. He noted the requirement for alcohol to be served with food, but recalled that this had been the subject of abuse at other licensed premises

Robert Mulholland, applicant, said that the premises interpreted food as a main meal, with each customer expected to purchase one.

Dom Stagg, Environmental Protection, was asked whether the premises had any history of complaints. Mr Stagg said that none had been received, though the premises had been the subject of two previously refused planning applications. He said that he was happy that the applicant has agreed to the proposed conditions and that the fact that some of the representations made in respect of the premises

licence had not been withdrawn was not a significant concern to Environmental Health.

Applicant

Mr Mulholland, applicant, said that the premises planned to serve only wine and beer, and would insist that a main meal was purchased and consumed with any alcohol purchase on match days. He said that the premises intended to run as a local family café/restaurant, serving bistro style food: he said that current meals included meat and pasta main dishes priced from £5.50-£7.50. He said the premises would use the outside space as a seated area for people eating at the premises, which would be closed from 9pm and would only hold 12 people.

In response to a question from the Chairman, he said that plants would further dampen the noise, and reiterated that the building was the first on the street.

The Chairman asked Mr Mulholland about his experience of working in licensed premises. He said that he had worked as an assistant manager at a wine bar in Exeter and had managed Jackson's Wine Bar in Ealing for one year. During this time he had introduced firm policies on issues such as under age drinking, training of staff and customers leaving.

The Chairman asked what his involvement would be in the premises. He said that he would be at the premises 6 days a week (the premises are closed on Monday), as presently, and clear policies would be established.

Summing Up

No further points were made.

The Sub-Committee retired at 10.41am and returned at 10.52am

RESOLVED THAT

The panel unanimously agreed to grant the application in part; with all conditions proposed by Environmental Health and the Police to apply.

Full reasons for decision are contained in the decision letter which accompanies these minutes.

6. PUNTO, 112 ASKEW ROAD, LONDON, W12 9BL (APPLICATION NUMBER: 2012/01683/LAPR)

The Sub-Committee received and considered an application for a new premises licence for Punto, 112 Askew Road, London, W12 9BL.

Main Points Of Evidence

Licensing Officer

Adrian Overton, Licensing Officer, introduced the application. He said that the Police and Environmental Protection had made representations to the application during the consultation period. The applicant has accepted the conditions proposed by the Police and Environmental Protection. The Police has subsequently withdrawn their representation.

One local resident and the Planning Enforcement team also made representations..He confirmed that the premises were located in the Shepherds Bush Cumulative Impact Zone.

Councillor Cartwright asked whether the Sub-Committee could grant a licence to a premises which did not have planning permission to carry out the activities licensed. Adesuwa Omoregie, Legal Adviser to the Sub-Committee, said that the planning and licensing regimes were separate, and that it should rely upon the licensing considerations to determine the application

Responsible Authorities

Environmental Protection

Dom Stagg, Environmental Protection, said that even though the applicant had accepted the proposed conditions that his representation had not been withdrawn. He said that the premises had been refused planning permission on the advice of Environmental Protection, so he wished to remain a party to the hearing.

He also outlined the complaint history of the premises, which had been operating with the aid of Temporary Event Notices. He said that there had been a substantiated complaint on 20th/21st December, but that the music had been turned down at midnight. He understood this to have been a staff party.

Planning Enforcement

Catherine Thornton, Planning Enforcement Team leader, said that the applicant had made a planning application at the Planning Department's request, when the change of use came to light. The application was subsequently refused, due to the ventilation arrangements at the back of the building.

Ms Thornton said that the rear extension of the premises was in residential use, which meant ducting travelled up the building to the roofline. At present, the ducting passed too close to the windows of residential properties above, and the noise from its use would substantially affect the amenity of those properties. She said that the Planning department also have concerns about refuge storage.

She concluded that the premises was, as things stood, an unlawful development, She confirmed that the planning department would normally expect that applications for licensing matter are postponed until planning issues are resolved.

Applicant

Bob Messham, Licensing Consultant to the applicant, said that the licensing and planning regimes are two different regimes which should be kept separate, and

that he, and Bekim Tahiri, who attended the hearing with him, were not involved in the planning application (which was being dealt with by the applicant's partner, Mr De Rossi)

With regards to the application before the Sub-Committee, Mr Messham said that all proposed conditions had been accepted, and that the Sub-Committee should deal with it in those terms. He said that Mr Tahiri ran an identical premises in Old Windsor, and was a responsible operator who worked closely with the Police and Environmental Protection. He said that the premises had agreed a trade waste contract with the Council, who had placed a bin in the outside area and therefore there was no issue with refuse storage. He said that the premises would be a credit to the area.

The Chairman asked what the premises had been before the change of use. Mr Messham said that the premises had been a flower shop.

The Chairman asked why the applicant was confident that they would avoid the problems common to the CIZ. Mr Messham said that the premises was on the border of the cumulative impact zone, was an Italian restaurant with no plans for music and dancing.

He confirmed that the intention was that background music would be provided. Recorded Music had been applied for, as this was preferred by some licensing authorities however the applicant would be happy to withdraw that element of the application if the licensing authority considered it unnecessary.

Councillor Cartwright asked what steps were being taken with regards to the planning application. Mr Tahiri said that the initial advice given by the Planning Authority had been short of detail, and the applicant was working to address their concerns by moving the ducting.

Summing Up

Mr Overton noted that the application for recorded music had been withdrawn.

Mr Stagg said that the Sub-Committee could consider imposing a condition tying the legal operation of plant to the grant of a licence and that the current extract system was likely to cause a nuisance. He said that it had been audible on his inspection of the premises.

Ms Thornton said that she withdrew her comments on refuse, given the information submitted by Mr Messham.

Mr Messham said only the licensing issues should be considered and that there had been no complaints about the premises or the operation of its equipment. He said that the conditions added to the application would ensure the premises would operate safely.

The Sub-Committee retired at 11.20am, returning at 11.33am

RESOLVED THAT

The Sub-Committee unanimously agree to refuse the application on the grounds of public protection and safety, public nuisance and the impact on the Cumulative Impact Zone

Full reasons for decision are contained in the decision letter which accompanies these minutes.

Meeting started: 10.00 am
Meeting ended: 11.34 am

Chairman

Contact officer: Owen Rees
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Governance and Scrutiny
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