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## 1. THE APPLICATION

On 19<sup>th</sup> August 2022, Ciro Guerra (“the applicant”) submitted an application to vary the premise licence in respect of the premises known as Mari Deli 1A Eyot Gardens London W6 9TN.

### 1.1 Current Hours of Operation

The premises currently benefit from a premises licence. The current premises licence permits the following:

#### **Sale of Alcohol on and off the Premises**

Monday to Sunday 10:00- 23:00

#### **Exhibition of a film- indoors only**

Monday to Sunday 07:00 - 23:00

#### **The opening hours of the premises**

Monday to Sunday 07:00 - 23:00

A copy of the current premises licence and plan can be seen on pages 11-22 of this report.

### 1.2 Application Requested

The applicant has applied to vary their premise licence to change the below conditions to state 22:00 rather than 21:30 as outlined below:

**34. All tables and chairs shall be removed from the front outside area by 22:00 hours each day.**

**35. The outside area shall be separated from the public highway by a screen, rope barrier or other means of demarcation from the public highway which shall be removed by 22:00 hours each day.**

**37. Alcohol shall not be consumed in the outside area of the Premises after 22:00 each day**

**38. There shall be no open glass vessels taken into the outside area of the Premises after 22:00 hours.**

All other activities and timings to remain the same as the current licence.

A copy of the application form can be seen on pages **23-34** of this report.

### 1.3 Applicants Operating Schedule

The applicant has not proposed any additional steps to promote the four licensing objectives if the application is granted.

## **2. BACKGROUND**

The main access to the premise's unit is located on Eyot Gardens. A map showing the location of the premises can be seen on page **35** of this report, there are primarily residential premises within the area and there are no neighbouring licensed premises within 75 metres.

There are limited options for transport away from the area including buses which are at least an 11-minute walk away and taxis which run from on and around Eyot Gardens. Stamford Brook tube station is a 12-minute walk away. Ravenscourt Park tube station is a 13-minute walk away.

## **3. CONSULTATION**

A public notice was displayed at the premises for 28 days. The application was advertised in a local circular and all statutory consultees were notified as required by the Regulations. The Council has served written notice of hearing upon the applicant and all those parties that have made representations in respect of the application.

### **3.1. Relevant Representations**

The licensing section received one representation from Cllr Patrick Walsh objecting to the licence application. A copy of the representation can be seen on **page 36** of this report.

The licensing section received one representation from a local resident objecting to the licence application. A copy of the representation can be seen on **pages 37-98** of this report.

## **4. OTHER INFORMATION**

### **4.1 Enforcement History**

- On the 13 September 2022, an inspection sheet was left at the premises as a warning letter in response to licensing breaches observed during a full licensing inspection.
- On the 03 November 2022, licensing enforcement officer visited the premises. During this visit, the officer noted that the contraventions observed during the inspection on the 13 September 2022 had been rectified.
- On the 08 November 2022, a warning letter was issued following a breach of condition ascertained by the Noise and Nuisance team during their visit to a residential property on the 03 November 2022.

### **4.2 Event Notices ("TENs")**

No TENs have been submitted in respect of this premises in the past twelve months.

### **4.3 Fire Authority Comments**

The licensing section did not receive a representation from the Fire Authority, however on 06 October 2022, the licensing section received a copy of a Notification of Fire Safety Deficiencies letter placed on premises which can be seen on pages **99-119** of this report.

### **4.4 Further Documents Submitted**

Prior to the first hearing scheduled, further documents were submitted to the licensing section by both the applicant and local resident objecting to the licence application. The documents received were as follows:

The applicant submitted further documents which included; a list of names in support of the extension of Mari Deli gazebo awning and extension of hours in the gazebo to 22:00, written submissions in support of the application, a photograph of an award, a menu and wine list, fire and safety documents and proof of direct debit for the Information Commissioners Office. These documents can be seen on **pages 120-197** of this report.

The representor and the representors representative submitted further support for their representation which included a letter to the Licensing Sub-Committee and written submissions by her solicitor which can be seen on **pages 198-204** of this report.

### **4.5 Adjournment Requests**

The initial hearing was due to be held on the 11<sup>th</sup> January 2023, which was adjourned as requested by the applicant for the following reasons:

(i) The Applicant found out on 9 January that Ms Thompson, the local resident objecting the Application, was being represented by a solicitor and they had submitted new documents relating to the case. The Applicant requested some time to consider the new documents and if necessary, instruct a solicitor to challenge some of the points raised;

(ii) The Applicant needed to substantially update their statement which was out of date and had not received the final version from their previous solicitor. The Applicant stated they have new documents which would address the relevant matters;

(iii) The Applicant's representative Mr Aiello stated that he had been unwell with a contagious cough and chest pain which has hampered his ability to deal with this matter.

The Committee decided that it would be in the public interest to postpone the hearing, due the exceptional circumstances of the Applicant's representative Mr Aiello being unwell, as well as giving the Applicant sufficient time to review the papers and if necessary, instruct a solicitor. The hearing was rescheduled for the 14<sup>th</sup> March 2023.

On the 17<sup>th</sup> February 2023, a second adjournment request was received by the licensing section, due to the persons appointed to assist are not going to be able to participate, as they are out of London until 30 of March. The second adjournment request was rejected on the 24<sup>th</sup> February 2023.

The Committee decided that that it would not be in the public's interest to further adjourn this hearing for the second time as it was previously adjourned on 11 January 2023. It was the Committee's considered opinion that the Applicant has sufficient time to arrange for someone else to attend the hearing on 14 March 2023 and assist him with any administrative queries he may have. Alternatively, the Applicant can withdraw the Application and reapply with a view for a new hearing date to be allocated.

The formal adjournment decision letter rejecting the request was circulated to all interested parties on the 28<sup>th</sup> February 2023.

## **5. POLICY CONSIDERATIONS**

**5.1** Section 5 pages 12 and 13 of the Statement of Licensing Policy ("SLP") states that in order to ensure the promotion of the four Licensing Objectives the Licensing Authority will require applicants to detail in their operating schedule:

- the steps proposed to promote the licensing objective of the prevention of crime and disorder on, and in the vicinity of, the premises, having regard to their location, character, condition, the nature and extent of the proposed use and the persons likely to use the premises;
- the steps proposed to ensure the physical safety of people using the relevant premises or place;
- how they intend to prevent nuisance arising, prevent disturbance and protect amenity so far as is appropriate to ensure that the Licensing Objectives are met. Where there is a relevant representation regarding extended hours, the Licensing Authority will not permit an extension unless it is satisfied that the Licensing Objectives would be met;
- the measures and management controls in place to protect children from harm. Where appropriate a written childcare policy should be available and be incorporated in the induction of staff.

**5.2** Policy 3 page 21 of the SLP in relation to licensing hours states that where there is a relevant representation, the Licensing Authority will consider each particular case on its merits having regard in particular to the following matters:

- a) Whether the licensed activities are likely to have an adverse impact especially on local residents and, if there is potential to have an adverse impact, what, if any, appropriate measures will be put in place to prevent it;
- b) Whether there will be a substantial increase in the cumulative adverse impact from these or similar activities, on an adjacent residential area;
- c) Whether there is a suitable level of public transport accessibility to and from the premises at the appropriate times;
- d) Whether the activity will be likely to lead to a harmful and unmanageable increase in car parking demand in surrounding residential streets suffering high levels of parking stress or on roads forming part of the Strategic London Road Network or the London Bus Priority Network leading to a negative impact on the Licensing Objectives relating to the prevention of crime, disorder, anti-social behaviour (ASB), nuisance and vehicle emissions;
- e) Whether there have been any representations made by Responsible Authorities, or other relevant agency or representative.

In determining representations to an application which incorporates an external area to the premises, the licensing committee might decide that the circumstances are such that a restriction on hours in that area is the only appropriate means to achieve the promotion of the Licensing Objectives.

If an 'hours' restriction is imposed, the Licensing Authority will normally require that customers should be allowed a minimum of thirty minutes to consume alcohol.

To act as a guide for new or existing operators we have set out the suggested closing times for licensed premises below:

<b>Type of premises</b>	<b>Town centres</b>	<b>Mixed use areas</b>	<b>Residential areas</b>
Restaurants and cafes	Fri – Sat 01:30 Mon - Thurs 01:00 Sun – 00:00	Fri – Sat 01:00 Mon - Thurs 00:00 Sun – 23:00	Fri – Sat 23:00 Sun – 22:00

**5.3** Policy 11 page 29-30 of the SLP states that Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour caused by people once they are away from the licensed premises and, therefore, beyond the direct control of the licensee. However, licensing is a key aspect of such control and licensing law is part of a holistic approach to the management of the night time economy.

As a matter of policy the council expects every holder of a licence, certificate or permission, to accept and be responsible for minimising the impact of their activities and anti-social behaviour by their patrons within the vicinity of their premises by taking appropriate measures and action consistent with that responsibility.

Licensees and certificate holders should take reasonable steps to prevent the occurrence of crime and disorder and public nuisance immediately outside their premises, for example on the pavement, in a beer garden or in a smoking area, to the extent that these matters are within their control.

Population densities in this borough are high, with many residential premises located above or in close proximity to licensed premises. This means that the public nuisance and crime and disorder objectives will be of paramount concern when evaluating Operating Schedules. Licensing Committees will place high regard on the control measures put in place by the applicant to ensure that our residents are protected from the potential detrimental effects of any licensed premises.

**5.4** Annex 1 pages 35 and 36 of the SLP in relation to the prevention of crime and disorder states licence applicants will be expected to demonstrate the following in their operating schedules:

- a) Measures to control excessive consumption and intoxication.
- b) Consideration of any additional measures or restrictions that may be placed on alcohol sales to prevent binge drinking and promote 'sensible drinking'.
- g) Conditions will, so far as possible, reflect local crime prevention strategies, and the Licensing Authority will also have regard to the views of the local Crime and Disorder Reduction Partnership.

h) **Crime and disorder in the vicinity of the premises:** this may include the crime and disorder risks arising from persons queuing to enter the premises; persons exiting the premises and customers smoking eating or drinking in outdoor areas and on the highway outside the premises. This can also include crime arising from pickpockets and bag snatchers, particularly in open spaces or crowded areas where alcohol is being consumed.

l) **dealing with and reporting crime and disorder** - training for staff and door security aimed at reducing crime and disorder in the premises and its vicinity and dealing with and reporting incidents if they occur.

m) **door staff** - considering whether the premises employs a sufficient number of SIA registered door staff, whether Door Premises Supervisors check the legitimacy of the badges and whether SIA staff display their badges prominently. (Note: All door supervisors must be Security Industry Authority (SIA) registered).

n) **drugs and weapons** - ensuring compliance with relevant guidance regarding illegal drugs and weapons. Attention should be paid to search procedures, procedures for the safe storage and surrender of seized

o) **excessive drinking** - training for staff to recognise when customers are becoming drunk and adopting appropriate 'cut off' procedures for drunken customers, so as to reduce the likelihood of fights or aggressive behaviour.

p) **local schemes** – joining and attending local Pubwatch meetings and participating in the Behave or Be Banned Scheme (BOBB) and/or signing up and using the Council's Safety Net Radio scheme.

q) **prevention of theft** - using bag hooks and signage to warn customers of pickpockets and bag snatchers.

**5.5** Annex 1 pages 37 to 38 of the SLP in relation to Public Safety states that the Licensing Authority will require the applicant to demonstrate the steps proposed to ensure the physical safety of people using the relevant premises or place. This does not cover the separate need for applicants to provide relevant public safety requirements dealt with by Environmental Health. This is expected to include:

c) The Licensing Authority will, where appropriate, attach conditions to a licence to ensure public safety, dealing with, but not limited to. the following:

i. Checks on equipment at specified intervals, e.g. gas safety checks; 38

ii. Standards to be maintained, e.g. temporary electrical installations to comply with British Standards;

iii. The number of people on the premises to ensure it is appropriate having regard to the activities taking place and reliable ways of counting the number;

iv. The steps taken to manage the risk from glass, the use of bottle bins, glass collectors and door supervisors to prevent glass being taken off the premises;

v. The use of door supervisors to manage the entrance and exit from the premises and to protect public safety as customers leave the premises;

vi. The provision of air conditioning and ventilation;

vii. Measures to protect against overcrowding; and

viii. Implement access/support needs for disabled people.

**5.6** Annex 1 pages 38 to 40 of the SLP in relation to the prevention of public nuisance states that the Licensing Authority will particularly consider the following matters where they are material to the individual application:

ii. The proximity of residential accommodation;

- iii. The type of use proposed, including the likely numbers of customers, proposed hours of operation and the frequency of activity;
- iv. The steps taken or proposed to be taken by the applicant to prevent noise and vibration escaping from the premises, including music, noise from ventilation equipment, and human voices. Such measures may include the installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices;
- v. The steps taken or proposed to be taken by the applicant to prevent disturbance by customers arriving at or leaving the premises.
- vi. Limiting the number of people permitted to use a garden or other open-air areas, including those for the use of smoking, at any one time.
- vii. Restricting the use of a garden or other open-air areas, including those for the use of smoking, after a particular time e.g. 11:00pm (or such earlier time as may be considered appropriate)
- viii. The steps taken or proposed to be taken by the applicant to prevent queuing (either by pedestrian or vehicular traffic). If some queuing is inevitable then queues should be diverted away from neighbouring premises or be otherwise managed to prevent disturbance or obstruction;
- ix. The steps taken or proposed to be taken by the applicant to ensure staff leave the premises quietly;
- x. The arrangements made or proposed for parking by patrons, and the effect of parking by patrons on local residents;
- xi. The provision for public transport in the locality (including taxis and private hire vehicles) for patrons;
- xii. The level of likely disturbance from associated vehicular and pedestrian movement to and from the premises;
- xiii. The delivery and collection areas and delivery/collection times;
- xv. The arrangements for refuse disposal, storage and the prevention/tidying of litter (including fly posters and illegal placards);
- xviii. The generation of odour, e.g. from the preparation of food;
- xix. Any other relevant activity likely to give rise to nuisance;
- xx. Any representations made by the Police, or other relevant agency or representative;

The following provides a non-exhaustive list of risks associated with the public nuisance objective that applicants may want to consider when preparing their Operating Schedule:

- n) **External Areas** – External areas such as gardens can be the source of noise disturbance to surrounding premises. Consider limiting the use of the garden to a reasonable time and number of people.
- r) **Waste** – consider how and where waste will be stored/disposed of at the end of trading hours, particularly if trading until late at night. This is important because the disposal of glass and/or cans to outside bin areas can be very noisy and give rise to complaints, so it may be necessary to store such items and other non-degradable refuse inside the premises until the next trading day. Consideration should also be given to the time of deliveries to minimize disruption to local residents

## 6. DETERMINATION

**6.1** In determining this application, the Committee must have regard to the representations and take such of the following steps as it considers necessary for the promotion of the licensing objectives. The steps are:

- (a) Grant the application in full
- (b) Grant the application in part – modifying the proposed hours, activities or conditions.
- (c) Reject the application

It is the Council's duty under the Licensing Act 2003 ("The Act") to determine applications with a view to promoting the four licensing objectives; Prevention of Crime and Disorder, Public Safety, Prevention of Public Nuisance and the Protection of Children from Harm.

In reaching a decision the Council shall consider the details of any relevant representations received; the applicant's Operating Schedule; the Council's adopted Statement of Licensing Policy and the guidance issued by the Secretary of State under section 182 of the Act.

If the Committee is minded to grant the application conditions may be attached to the licence to alleviate the concerns raised through the representations.