

From: [Matthew Phipps](#)
To: [Mckenna Lorna: H&F](#)
Subject: Hammersmith Road - Licence application
Date: 05 May 2023 14:45:53
Attachments: [image001.png](#)

Dear Sirs

In advance of the licence hearing listed for next week, and in addition to the papers already sent through to the committee, we thought it would be helpful to provide some commentary on the application, the objection and the licensing policy. We have sought to do this by using headings which seek to identify the primary issues of concern articulated in the representation and/or the primary issues for consideration by the committee. In essence it summarises the submissions that the applicant will make to the Licensing Sub Committee on Thursday 12 May 2022. The submission makes reference to certain documents which either form part of the Committee report or supplementary papers which have been provided to the Licensing Authority.

We have also identified some additional conditions for the committee to consider, which we believe fairly attend to any residual concerns.

The Applicant

This is an experienced premises licence holder with a proven track record of operating successfully in similar locations. They have considerable experience of delivering these activities successfully. The individuals in senior positions have been working in this field, extremely successfully, for a number of years. All of this is set out in the presenter document contained within the paperwork.

Representation

There is a single representation to this application the details of which are set out within the licensing committee papers. Absent this representation the application would have been granted under delegated authority.

Responsible Authorities

None of the responsible authorities have served a representation. At all. We say that is a powerful observation about this application and should not be lightly put aside. Their engagement or lack thereof in today's proceedings, may fairly be credited to the significant conditions contained within the licence, contained within the application, as supplemented by the officers following discussions.

Public House

We believe there may be some confusion, caused perhaps because of our client's Ltd Co name. The application and supporting pack makes clear this application is not for a pub. The conditions attend to issues such as food, seating, standards, as well as disclosing that the great majority of the premises is laid out to tables and chairs. That said my client's existing operations are fairly described as public houses and both operate to an exemplary standard. Neither are nor have they been the subject of any concerns, let alone enforcement activity from the council (nor residents) in their location.

Engagement

We undertook dialogue and discussion with the officers from LBHF and the Metropolitan Police prior to the submission of the application. Feedback indicated that there were no residents in immediate proximity to the venue.

We did not attempt to engage the school at that stage, as we did not appreciate that they were likely to be adversely effected by the operation. (Nor do we believe they will be if the application is granted).

Since receipt of the representation we have endeavoured to engage. We emailed on a number of occasions, we have provided further information and attempted to alleviate the school's concerns. We have offered to meet, we have proposed conditions, we have provided our introductory brochure. Whilst the school has, through their representatives sent us a substantive email, at the time of writing that has not concluded in an agreement. We are continuing to endeavour to find agreement.

Food.

Food will be a fundamental part of the proposition. However it is not commercially viable, nor necessary / appropriate for the promotion of the licensing objectives, to limit the licence in a manner that makes alcohol ancillary to a substantial table meal. Our client's hope, as an example, to serve oysters with a glass, even a bottle of wine. It is not our view that a dozen oysters could fairly be described as a substantial table meal.

Previous operations

Our understanding is that the school had an amicable relationship with previous operators and the landlord of the building. The landlord himself has been in situ since 1994 and as a respected local business owner was afforded the opportunity for his daughters to attend the school. We have been told staff regularly used the venue for staff events throughout his tenure and as far as we are aware, no issue was raised by the school in this time.

Proximity (Image attached)

It is also important to note that the school's statement about proximity is, we believe, a little overstated. Although the School premises neighbours the property, the students / main entrance to the school is on Bute Gardens Road some distance from the venue and not in direct conflict with the flow of students (please note the pavement width at the entrance gate to barrier is 1400mm) The nearest entrance is the staff and out of hours entrance. On 30th March between 8am – 9am my client witnessed 8 students in uniform walk past the venue. The premises would not be open for licensable activities at this time.

Planning permission

The planning permission granted the building also restricts the noise in the venue to background amplified sound only and our client does not have any intention of exceeding this.

Planning conditions 3 & 4 deal with machinery and equipment used on the premises, there are restrictions on noise not to "exceed the hourly background sound level which exists in the absence of such machinery or equipment".

There is also a restriction against the operation of machinery and equipment at times when customers are not permitted to be on the premises.

Condition 7 also prohibits live music and condition 8 prohibits amplified music which is audible in any neighbouring residential property.

Passageway (Photographs attached)

The landlord has informed my client that the gates were installed prior to their ownership of the building (1994) and were we understand installed by the school not the venue. The gate exiting the A315 has a padlock installed with keys retained by both the school and 206-208 Hammersmith. The rear gate with passageway extending through the school to Bute Gardens is locked and maintained by Sacred Heart. On all visits this gate has been locked and observations by my client suggest the gate is rarely unlocked despite the comment about it being a fire exit. On all visits the venue has not obstructed the passageway but we note that there is an accumulation of rubbish from building works being conducted by the school, blocking the fire exit.

Behaviours

Our client's are well versed and experienced at managing premises where alcohol is a component of the proposition. Alcohol, does not lead inexorably to poor behaviours about which the school are concerned. Indeed well run professional venues can be a deterrent for this behaviour, as has been the case with the Somerstown premises, under their management. It would also mean increased CCTV and observation in the direct area.

To suggest the venue will be filled with poorly behaved intoxicated individuals is grossly incorrect.

Conditions.

In our view there is already a significant operating schedule proposed which provides comprehensive protection as conditions suggested by and agreed with officers, prior to submission. A point made by the police in their email exchange, within the agenda papers. It is a perfectly legitimate and

proportionate operating schedule to attend to the activities that are being proposed. We do not repeat the operating schedule in full here but the conditions include:

- *All staff who have direct dealings with customers shall be trained in the following: The premises licence and its conditions Licensing Law; in particular, relating to the sale of alcohol.*
- *A record shall be kept of this training which will be refreshed no less than every 6 months and this record shall be available for inspection by the Licensing Authority or Police upon request.*
- *A minimum of 70% of the available customer floor space of the premises shall be laid out to tables and chairs at any one time.*
- *Food in the form of substantial table meals will be available until at least 22:00 hours or 90 minutes prior to closing.*
- *A digital hard drive CCTV system shall be in operation to cover the premises.*
- *An incident and refusals log (the Log) will be kept and maintained at the premises and all incidents and refusals of sales of alcohol shall be recorded in it. As a minimum, the log will record the date and time of the incident/refusal, the name of the person making the entry, the nature of the incident/ refusal and any actions taken. The Log will be made available to officers from the responsible Authorities on request.*
- *The premises licence holder or designated manager will risk assess whether door supervisors will be employed at the premises. The risk assessment will be in writing. The risk assessment will be re-visited and updated in light of intelligence provided by the Metropolitan Police of following a serious incident of crime or disorder. The risk assessment will be made available to officers from the metropolitan Police on request.*
- *The DPS/Manager will undertake a weekly inspection of the public areas of the premises to identify anything might present an identifiable risk to public safety. Any risks identified that are deemed to be unreasonable must be rectified at the earliest opportunity.*
- *A sign will be displayed at each exit from the premises asking customers to respect the rights of nearby residents not to be disturbed.*
- *Bottles bins shall not be emptied into external bins after 22.00 hours or before 08.00.*
- *Deliveries of alcohol to the premises will not take place between 22.00 hours and 08.00 hours.*
- *The premises licence holder will ensure that any waste management company contracted to remove waste from the premises is required to do so between the hours of 08.00 and 22.00*
- *No deliveries or collections relating to licensable activities at the premises will take place between the hours of 22.00 hours and 10.00 hours.*
- *Delivery of alcohol will only be as part of a substantial food offer.*
- *Delivery drivers/riders will be given clear, written instructions to use their vehicles in a responsible manner so as to not cause nuisance to any residents or generally outside the licensed premises; not to leave engines running when the vehicle is parked; and not to obstruct the highway. The licence holder will positively encourage delivery drivers/riders to use quieter vehicles that are less likely to cause a nuisance such as bicycles.*
- *Challenge 25 age protocol*

Additional conditions

Our clients have proposed and are content to add the following conditions to the licence, if granted.

- *Alcohol shall only be served by waiter/waitress service.*
- *The licensee shall ensure that no music played in the licensed premises which is intrusive over background levels at the boundary of any residential premises in the vicinity.*
- *The premises will not screen any live sporting events whilst the premises is open for licensable activities.*
- *No live sport shall be shown within the premises.*

Police

We have agreed a additional condition with the Metropolitan police, who do not object, this set out in the agenda papers, namely:

- *Management shall undertake the relevant training in relation to responding and ensuring the welfare and safeguarding of vulnerable patrons. Management shall risk assess the need for all other relevant staff to undertake such training. Written records of the training completed shall be recorded and available to the Police and Authorised Officers from the Local Authority upon request.*

Guidance

The committee are respectfully reminded of paragraph 9:12 of the national Guidance. This states that... *“each responsible authority will be an expert in their respective field, and in some cases, it is likely that particular responsible authority will be the licensing authorities main source of advice in relation to particular licensing objective.....the police should usually therefore will be the licensing authorities main source of advice on matters relating to the promotion of the crime and disorder licensing objective”.*

Risk

Licensing considerations are we suggest, about proportionality. We are not able to eradicate every last possible risk. The representation raises concerns, risks, but these cannot fairly be said to act as veto on the application. These risks are all fairly attended to by the proposed application.

Each application on its individual merits.

We do not accept the mere existence of the activities in and of themselves undermine the licensing objectives. That, respectfully, could be a conclusion one would draw from the representation. The committee will we suggest want to consider the applicant, the nature, type, style of the offer, the standards that these client’s bring, the conditions they propose, We say unashamedly that is critical to the issue.

Balance

The exercise in which the committee are asked to engage when considering how best to proceed, is to balance the various competing factors. We say that there is no evidenced case that could possibly allow for the conclusion that this application should be refused.

Legal considerations

The Licensing Sub-Committee will make any decision based on admissible material submitted to it. What the authority cannot be asked to do is speculate, as the High Court make clear in R (Daniel Thwaites) v Wirral Borough Magistrates Court [2008] EWHC 838 (Admin). It can, however, draw fair inferences from the material it does have in front of it.

Licensing policy

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Forward: We believe local government has a role in supporting growth. We believe that a diverse, vibrant and safe night time economy (6pm to 6am) has a key role to play in supporting this growth. That’s why we’ve created a new modern business-friendly licensing policy for Hammersmith & Fulham.

We believe the policy strikes a balance between providing an environment within which responsible business operators can succeed and contribute towards a vibrant business and thriving night-time economy in a sustainable way - promoting economic growth whilst protecting residential amenity.

Aims of the Licensing Authority - The Licensing Authority is keen to promote the cultural life of our borough and licensing will be approached with a view to encouraging all forms of licensable activity that are carried out in ways consistent with the four Licensing Objectives

POLICY 12: SUPPORT FOR LOCAL BUSINESSES The Licensing Authority is committed to supporting well-run licensed premises and will ensure that there are not unreasonably limited in running their businesses by the requirements of the licensing regime.

Primary question

Will this premises likely undermine the licensing objectives? If this operation is likely to undermine the licensing objectives then no doubt the application will be refused. But if this application is unlikely to undermine the licensing objectives, if this applicant, this operator, this operation is sufficiently robust, that you can be satisfied, as we say you can be, that there will be no likely undermining of the licensing objectives, then candidly we submit the application should be granted..

Your sincerely

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The draft Terrorism (Protection of Premises) Bill has been published. A link to the bill can be found [here](#)

Those responsible for certain public premises, which will include hospitality premises, will be required to consider the threat from terrorism and implement reasonably practicable mitigating measures

Updates will be provided as the Bill makes its journey through Parliament

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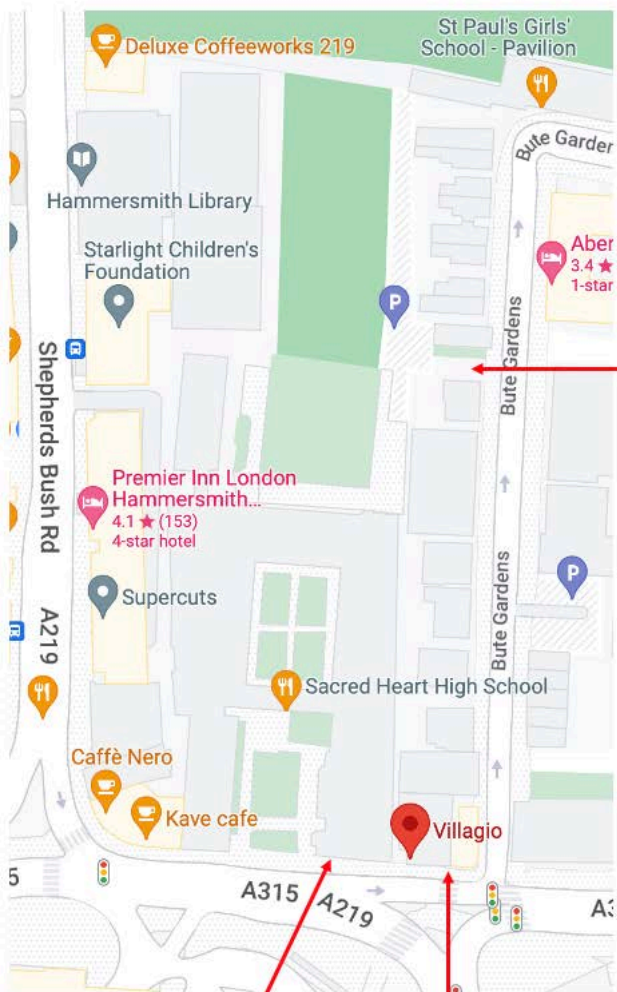
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