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## 1. THE APPLICATION

On 1<sup>st</sup> August 2024, the Licensing Authority received a valid application for a variation to the premises licence in respect of the premises known as Boha London, 562 King's Road, London, SW6 2DZ submitted by Keystone Law Limited on behalf of Phoenix Hospitality Group Ltd ('the applicant').

### 1.1 Current Hours of Operation

The premises currently benefit from a premises licence which permits the following:

#### Performance of Dance - Indoors Only

Monday	09:00 - 00:00
Tuesday	09:00 - 00:00
Wednesday	09:00 - 00:00
Thursday	09:00 - 00:00
Friday	09:00 - 01:30
Saturday	09:00 - 01:30
Sunday	09:00 - 00:00

#### Performance of Live Music - Indoors Only

Monday	09:00 - 00:00
Tuesday	09:00 - 00:00
Wednesday	09:00 - 00:00
Thursday	09:00 - 00:00
Friday	09:00 - 01:30
Saturday	09:00 - 01:30
Sunday	09:00 - 00:00

#### Playing of Recorded Music - Indoors Only

Monday	09:00 - 00:00
Tuesday	09:00 - 00:00
Wednesday	09:00 - 00:00
Thursday	09:00 - 00:00
Friday	09:00 - 01:30
Saturday	09:00 - 01:30
Sunday	09:00 - 00:00

#### Entertainment Similar to Music or Dance - Indoors Only

Monday	09:00 - 00:00
Tuesday	09:00 - 00:00
Wednesday	09:00 - 00:00
Thursday	09:00 - 00:00
Friday	09:00 - 01:30
Saturday	09:00 - 01:30
Sunday	09:00 - 00:00

#### Provision of Late-Night Refreshment - Indoors Only

Monday	23:00 - 00:00
Tuesday	23:00 - 00:00
Wednesday	23:00 - 00:00
Thursday	23:00 - 00:00

Sunday 23:00 - 00:00

Sale of Alcohol On and Off the Premises

Monday	12:00 - 00:00
Tuesday	12:00 - 00:00
Wednesday	12:00 - 00:00
Thursday	12:00 - 00:00
Friday	12:00 - 01:30
Saturday	12:00 - 01:30
Sunday	12:00 - 00:00

Opening Hours of the Premises

Monday	09:00 - 00:30
Tuesday	09:00 - 00:30
Wednesday	09:00 - 00:30
Thursday	09:00 - 00:30
Friday	09:00 - 02:00
Saturday	09:00 - 02:00
Sunday	09:00 - 00:30

A copy of the current premises licence and plan can be seen on pages **54-71** this report.

## **1.2 Application Requested**

The applicant has applied to add an additional condition to the licence as follows:

1. Conditions on this Premises Licence that relate to the ID scanner (Conditions 30, 31 and 32) shall only take effect when the Premises Licence Holder is given 10 days' written (including email) notice by the metropolitan police licensing officer. The premises will continually risk assess the use of the ID scanner.

There are no increases in hours or licensable activities being sought.

A copy of the application form can be seen on pages **72-91** of this report.

## **1.3 Applicants Operating Schedule**

The applicant has not proposed any additional steps in their operating schedule to promote the four licensing objectives if the application is granted. The applicant has stated that the premises licence is conditioned appropriately to promote the licensing objectives. A copy of the current licence conditions can be seen on pages **56-64** of this report.

## **2. BACKGROUND**

The main access to the premises is located on King's Road. There is a mixture of both residential and commercial premises within the area. A map showing the location of

the premises and neighbouring licensed premises can be seen on pages **92** of this report.

There are several options for transport away from the area including buses and taxis which run from in and around the King's Road area. Fulham Broadway tube station is a 7-minute walk away and Imperial Wharf overground station is a 14-minute walk away from the premises.

### **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 three representations objecting to the variation application.

Two representations were received on behalf of the Parsons Green and Sandford Ward Councillors, Councillor Jose Alfonso and Councillor Adrian Pascu-Talbure, objecting to the grant of the variation application. A copy of these representations can be seen on pages **93-94** of this report.

One representation was received on behalf of a local resident, objecting to the grant of the variation application. A copy of this representation can be seen on pages **95-102** of this report.

### **4. OTHER INFORMATION**

#### **4.1 Enforcement History**

On the 5<sup>th</sup> August 2022, a warning letter was issued in response to breach of condition 26 of the licence which requires CCTV footage to be provided to the Police within 24 hours of a request. Requests for CCTV footage were made by officers of the Metropolitan Police between the 17<sup>th</sup> December 2021 to the 11<sup>th</sup> February 2022, to investigate an incident that occurred at the premises on the 09 December 2021. The requested footage was not provided within 24 hours of request.

#### **4.2 Temporary Event Notices (“TENS”)**

There have been ten TENS which have been submitted in respect of this premises in the past twelve months. A copy of the full list of TENS can be seen on pages **103-110** of this report.

### **5. POLICY CONSIDERATIONS**

**5.1** Section 2 pages 7 and 8 of the Statement of Licensing Policy (“SLP”) states the Licensing Authority is keen to support the licensed sector and leisure offer within the borough, with a particular focus on business resilience and growing a robust and thriving cultural and leisure sector.

To achieve this the Licensing Authority has identified three key themes of the Licensing Policy and the Licensing Authority's approach to implementing it. These are:

- A sustainable, well-run licensed sector;
- Hammersmith & Fulham as a good place to live, work and enjoy leisure; and,
- A safe licensing environment and night-time economy.

**5.2** Section 5 pages 12 and 13 of the SLP states that 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.

**5.3** Policy 1 page 18 of the SLP states that applicants are expected to undertake a local area risk assessment as part of any licensing application. The Secretary of State's Guidance states that applicants are expected to obtain sufficient information to enable them to demonstrate, the steps they propose to take to promote the licensing objectives; and that they understand the layout of the local area and physical environment including:

- a) crime and disorder hotspots;
- b) proximity to residential premises;
- c) proximity to areas where children may congregate;
- d) any risk posed to the local area by the applicants' proposed licensable activities; and
- e) participation in any local initiatives (for example, local crime reduction initiatives or voluntary schemes, such as 'Ask for Angela', local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.

Applicants are expected to include positive proposals in their application on how they will manage any potential risks.

The Guidance goes on to state that 'Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.'

The Licensing Authority notes the contents of these paragraphs from the Secretary of State's Guidance and, in particular, the use of the word 'expected'. Licence applications that do not in any way address the contents of these paragraphs in their operating schedules may be returned to the applicant as 'incomplete'.

**5.4** Policy 4 pages 22 and 23 of the SLP states the Licensing Authority will have regard to cumulative impact generally during the duration of this policy. In determining an application where there has been a relevant representation the Licensing Authority will, where appropriate, take into account the cumulative effect of the number, type and density of licensed premises already existing in the area. Consideration will be given to the proximity to any drug and alcohol treatment site, A&E department or homeless hostel in a local area type remit ie applicants need to make the case for how they would not increase further problems for residents/clients nearby.

In coming to any decision regarding cumulative impact the Licensing Authority will consider other mechanisms outside of the licensing regime which may also be available to address this issue, these include but are not limited to:

- Planning controls (where development or change of use is involved, or where trading hours are limited by planning conditions) Police and other enforcement of the normal law concerning disorder and anti-social behaviour. Police and other enforcement of the normal law concerning disorder and anti-social behaviour.
- Police and other enforcement of the normal law concerning disorder and anti-social behaviour.
- Prosecution or other enforcement of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk
- Prosecution or other enforcement of any personal licence holder or member of staff at such premises who is selling to underage persons or selling illegal alcohol or tobacco
- Police powers to close down instantly any licensed premises or temporary events on grounds of disorder, the likelihood of disorder or excessive noise emanating from the premises, for up to 24 hours.
- The power of the police, other responsible authorities, a local resident, business or Councillor to seek a review of the licence or certificate in question.
- Police and Local Authority power to issue a Closure Notice for up to 48 hours where serious antisocial behaviour is taking place at licensed premises under the Anti-social Behaviour, Crime and Policing Act 2014.
- To ensure that residents are protected from the negative impact of late-night local licensing activities the Licensing Authority may decide to adopt an Area Specific Cumulative Impact Policy in relation to a specific area; where the number, type and density of premises providing licensable activities is having a serious negative impact on the local community and local amenities.

**5.5** Policy 7 pages 25 and 26 of the SLP states the the Licensing Act 2003 provides for certain occasions when small scale events (no more than 499 people at a time and lasting for no more than 168 hours) do not need a licence providing a minimum of 10 working days' notice is given to the police and the Licensing Authority. The annual allowance covered by a Temporary Event Notice in relation to a single premises is 21 days. The Police and Environmental Health can object to Temporary Event Notices if the event is likely to 26 undermine the licensing objectives. Where Police or Environmental Health

submit an objection to the Notice the Licensing Authority will hold a hearing to consider the objection and conditions may be applied to the Temporary Event Notice.

The Licensing Act 2003 allows event organisers to submit up to 50 notices per year if they hold a personal licence and 5 notices if they do not hold a personal licence.

The Licensing Act 2003 allows event organisers to submit up to 10 “late notices” per year if they hold a personal licence and 2 “late notices” if they do not hold a personal licence. These “late notices” can be submitted to the Licensing Authority, Police and Environmental Health between 5 and 9 days before the event. It should be noted that if either the Police or the Council’s Environmental Health Officers submit an objection to a late notice the Council will issue a counter notice prohibiting licensable activities for the duration of the TEN.

**5.6** Policy 9 pages 27 and 28 of the SLP states the Licensing Authority operates a reactive and proactive inspection regime that is based on risk and specific incidents. The Enforcement Policy explains how officers will take a graduated response to a premises breaking the law, as we apply the principles of: Engage, Explain, Encourage and Enforce.

Premises that produce disorder, threaten public safety, generate public nuisance or threaten the well being of our children, women or vulnerable people will be targeted for enforcement action.

The Licensing Authority will take enforcement action in accordance with our Enforcement Policy and relevant statutory powers.

The Licensing Authority will use a range of sanctions such as letters of warning, simple cautions, Fixed Penalty Notices (FPNs), closure notices and legal proceedings.

The Licensing Authority will seek to work with the police and other responsible authorities in enforcing licensing legislation and will strive to have a joint enforcement protocol with all the relevant agencies. Where the law allows, the Licensing Authority will agree secure mechanisms to share information with other regulators about licensed premises, to help target resources and activities and minimise duplication.

Enforcement will be focused on premises or persons found to be failing to promote the four Licensing Objectives. Additionally, Trading Standards officers may, at times and based on intelligence received, carry out underage test purchasing in areas where the intelligence has highlighted potential hotspots in the borough for underage sales.

**5.7** Policy 11 pages 29 and 30 of the SLP states that the Licensing Authority expects that any licence applicant will give due consideration to the needs of Hammersmith & Fulham residents and any negative impacts from licensable activities and business operations. with reference to taking place in their premises and how these may impact in the direct locality and further afield.

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 nighttime 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.

Residents are advised to report noise and nuisance on 020 8753 1081 during office hours and 020 8748 8588 at all other times that any noise nuisance is occurring.

Any review of a licence would need to be evidence based and as such is best supported by evidence from responsible authorities such as the Police or Environmental Health to be successful. For this reason, it is vital to call our 'out of hours' team on 020 8748 8588 at the time nuisance is occurring.

**5.8** Policy 13 pages 31 and 32 of the SLP despite Licensing and Planning being under different legislation, the Licensing Authority will ensure that the licensing regime is in line with the planning regime in Hammersmith & Fulham as far as is possible.

The local planning authority has powers to control opening times of all new establishments seeking planning permission, where harm might occur.

Licensing applications will not be a re-run of the planning application. If the licensing committee grants any variation of a licence which involves a material alteration to a building, the applicant still needs to apply for planning permission, or building regulation control, where appropriate.

Where an applicant is granted a premises licence with operating hours that are different to the hours permitted by the premises planning permission, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. We would suggest that the applicant contacts Planning apply to vary their conditions.

The Licensing Authority may refuse to grant a licence if a representation from the Planning Department has been received and one or more of the licensing objectives would not be promoted.

**5.9** Policy 16 of pages 33 and 34 of the SLP states that the Licensing Authority expects licence applications to specifically include measures to ensure the safety of women and girls in licensed premises.



Licensing Authority will use its powers to regulate the night-time economy, both with specific regard to spiking incidents and more generally in relation to violence against women and girls. This may include:

- a) Using the Licensing Authority's powers to impose conditions or revoke premises licenses, where venues do not take sufficient measures to protect and provide support to customers in spiking incidents;
- b) Considering the prevalence, prevention and reporting of sexual harassment and misconduct and gender-based violence in licensed premises.
- c) Requiring the presence of suitably trained and accredited door staff,
- d) Require presence of CCTV, or to introduce entry searches for example.

Licence applicants and existing licence holders are encouraged to include in their operating schedules clear policies relating to potential abuse or violence against women and girls.

This would include but is not limited to the 'Ask for Angela' programme, Welfare and Vulnerability Engagement' training package (WAVE) for staff to identify and assist women and girls being at risk or being subjected to violence, and the implementation of clear policies in the premises on preventing and addressing violence against women and girls. The Licensing Authority would also encourage off licensed premises to take part in the Ask for Angela scheme in an effort to increase the visible promotion of the scheme in all licensed premises across the borough.

Implementing these measures, particularly for on-licence premises, providing training for staff to increase awareness and provide skills and tools for identifying and assisting when it is at risk of happening or is happening, and having clear policies against violence against women and girls provide a solid basis for addressing the issue when it occurs in licensed premises. Furthermore, having policies on staff reporting incidents to Police and Council officers will help to ensure that these incidents are addressed.

As part of the Government's and the Council's Violence Against Women and Girls Strategy, venues may also wish to consider boosting their security measures e.g. the recruitment and training of additional door security staff, particularly female staff.

The Council are proud supporters of the Women's Night Safety Charter and we would like to encourage all our licensed premises to consider how you and your business can contribute to making your workplace and H&F a borough where all women feel confident and welcome whenever and wherever they happen to be. The Women's Night Safety Charter is a voluntary pledge to show you take women's safety seriously. By signing the Charter, you show your acknowledgement of the issue and that you're ready to get proactive in improving women's safety.

**5.10** 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'.
- e) Measures to demonstrate compliance Home Office guidance 'Safer Clubbing' in relation to the control of illegal drugs on their premises. They should agree a protocol

with the Licensing Authority and the police on the handling of illegal drugs found on their premises.

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.

j) **CCTV** - using CCTV inside and/or outside the premises together with appropriate procedures and having staff properly trained to use CCTV equipment

k) **dispersal procedures** - establishing appropriate dispersal procedures to minimise the potential for crime and disorder when customers are leaving the premises.

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.

**5.11** Annex 1 page 37 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.

**5.12** Annex 1 pages 38 to 40 of the SLP in relation to the prevention of public nuisance states that the Licensing Authority will require the applicant to demonstrate within the operating plan 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. This is expected to include:

b) 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.

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;

xvi. The history of previous nuisance complaints proved against the premises, particularly where statutory notices have been served on the present licence holder;

xix. Any other relevant activity likely to give rise to nuisance;

ixx. 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:

m) **Noise and/or vibration breakout from the provision of regulated entertainment, particularly from (but not limited to) live music** – consider what type of entertainment is to be provided, in what room/area of the premises and the suitability of the construction of this room/area to contain sound. Windows are a particular weak-point for noise break-out so consider providing regulated entertainment in a room without windows or with as few windows as possible, particularly windows that face towards nearby 40 residential properties. Where suitable, install a lobby to prevent spillage of noise each time an entrance/exit door is opened.

p) **Queue management** - establishing appropriate procedures to avoid the need for customers to queue before entering the premises or, where queuing cannot be avoided, to manage queues so as to minimise the potential for crime and disorder or public nuisance by customers who are queuing.

**5.13** Annex 1 pages 38 to 40 of the SLP in relation to the protection of children from harm states that the Licensing Authority will require operating plans to specify 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. This is expected to include:

a) The legislation recognises the right of licence holders (serving alcohol) to allow accompanied children into their premises at any time. The Licensing Authority will not normally seek to limit their access (above that specified in the Act) to any premises unless it is necessary for the prevention of physical, moral or psychological harm, or where there are concerns about child sexual exploitation. Where this is considered likely, upon consideration of a relevant representation, conditions will be imposed that restrict children from entering all or part of licensed premises:

- i. At certain times of the day;
- ii. When certain licensable activities are taking place;
- iii. Under certain ages, e.g. 16 or 18;
- iv. Unless accompanied by an adult.

b) The Licensing Authority will particularly consider whether:

- ii. There have been convictions, Penalty Notices for Disorder (PND) or cautions for serving alcohol to minors or premises with a reputation for under-age drinking;
- iii. There is a known association with drug taking or dealing;
- vi. There are licensable activities that are likely to appeal to minors/children under 16 taking place during times when children under 16 may be expected to be attending compulsory full-time education;

c) The sale of alcohol to a minor is a criminal offence and Trading Standards officers will conduct appropriate covert test purchasing exercises and will take account of any complaints and intelligence. The Act permits the use of children under the age of 18 to undertake test purchases when they have been directed to do so by a duly authorised officer.

d) Where a sale of alcohol has been made on the same premises to a minor on two or more different occasions within a period of three months the premises licence could be suspended for a defined period.

g) The Licensing Authority will expect operating plans to specify the measures and management controls in place to prevent alcohol being served to children, other than in those limited circumstances permitted by the Act. The Council's Trading Standards officers have a role to play in the protection of children from harm, and proof of age schemes, and are able to provide advice in relation to measures that can be taken to help prevent the sale of alcohol to underage children. Potential licence holders should also be aware of the Proof of Age London (PAL) Scheme hosted by Southwark Council.

i) Where premises are subject to age-restrictions, the procedures in place to conduct age verification checks. The Council will expect premises only to accept current passports, driving licences or documents bearing the national PASS logo, such as CitizenCard. The Proof of Age Standards Scheme (PASS) is the UK's national guarantee scheme for proof-of-age cards as endorsed by the Home Office. More information can be found on The Proof of Age Standards Scheme (PASS) website

## **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.