

**MUNICIPAL YEAR 2019/20 REPORT
NO262**

COMMITTEE:
Licensing Sub-Committee
17 June 2020

REPORT OF :
Principal Licensing Officer

LEGISLATION :
Licensing Act 2003

Agenda – Part1	Item
<p>SUBJECT: Application for a Review of premises licence</p> <p>PREMISES: Broomfield Coffee Bar, 64 Aldermans Hill, LONDON, N13 4PP</p> <p>WARD: Southgate Green</p>	

1. LICENSING HISTORY:

- 1.1 On 22 January 2016, a new premises licence (LN/201500949) was granted for 64 Aldermans Hill, N13 4PP.
- 1.2 On 20 September 2017, a transfer application was made to name Mr Arjan Borufi as the premises licence holder (PLH), to replace Ms Drilona Zeqiri. No objections were received, and the application was granted on 3 October 2017.
- 1.3 On 10 November 2017, Mr Borufi applied to vary the Designated Premises Supervisor (DPS) into his name, again to replace Ms Drilona Zeqiri. No objections were received, and the application was granted on 13 November 2017.
- 1.4 Part A of the premises licence (LN/201500949) is produced in Annex 1.
- 1.5 In summary, the premises licence (LN/201500949) permits the following:

Licensable Activity	Times (daily)
Opening	08:00 to midnight
Alcohol (On sales only)	11:00 to midnight
Live music (indoors)	20:00 to midnight
Recorded music (indoors)	10:00 to midnight

- 1.6 With regards to other licensing matters for background information: On 26 February 2019, Mr Borufi applied for an annual tables and chairs street trading licence, and the licence was subsequently granted on 3 April 2019. The tables and chairs licence (LN/201800896) permits two tables and four chairs outside Broomfield Coffee Bar. This licence is produced in Annex 2.
- 1.7 The renewal for the tables and chairs was due by 2 April 2020, however, due to the current crisis period, there was a delay in the Licensing Team sending the renewal reminder being sent to Mr Borufi and was later sent on 28 April 2020. Mr

Borufi submitted the renewal application and payment on 4 May 2020, and the six-week consultation period for this application closes on 15 June 2020.

- 1.8 The use of tables and chair licences is currently restricted during the emergency period.

2 THIS APPLICATION:

- 2.1 On 23 April 2020 an application was made by the Licensing Authority for a review of the premises licence (LN/201500949) for Broomfield Coffee Bar.
- 2.2 The review application seeks to remove live and recorded music from the premises licence on the grounds that the prevention of crime and disorder and prevention of public nuisance licensing objectives are not being met.
- 2.3 Each of the Responsible Authorities were consulted in respect of the application.
- 2.4 A copy of the review application and additional information is attached as Annex 3. Further information is expected from the Licensing Authority, which will be produced in the Supplementary Report.

3 RELEVANT REPRESENTATIONS:

- 3.1 **Responsible Authorities:** No representations have been made in response to this review application.
- 3.2 **Other Persons:** 18 representations were received in relation to this review. 16 representations were received from members of the public who support the review and oppose the licence. These residents live in Grovelands Road, Lakeside Road, Aldermans Hill, Derwent Road and Kingsley Road. These residents are referenced as IP1 to IP16 respectively. The representations are based on all four of the licensing objectives not being met. Some representations seek revocation of the premises licence in its entirety.
- 3.3 A further two representations from Other Persons were received, who oppose the review and support the premises licence holder. These Other Persons are referred to as IP17 and IP18.
- 3.4 The representations and additional information received from Other Persons are attached in Annex 4. This includes a video clip. Reference is made to an audio clip, but the decision has been made not to present this as evidence for this review.
- 3.5 At the time of writing this report, Mr Borufi has not provided a written response to this review application or representations. Mr John Palmer from Akin Palmer Solicitors is representing Mr Borufi and has indicated a response will be sent by 9 June 2020. This will be included in a Supplementary Report.

4 PROPOSED CONDITIONS

- 4.1 Conditions proposed by the Licensing Authority in relation to this review application are presented in Annex 5. The Licensing Authority state in the review that if the Licensing Sub-Committee is not minded to remove live and recorded music from the premises licence, then the Licensing Authority requests that the conditions be amended as detailed in Annex 5 and that the licence be suspended until full compliance with the conditions have been demonstrated. Mr Borufi has not indicated any agreement to the conditions.

5 RELEVANT LAW, GUIDANCE & POLICIES:

- 5.1 The paragraphs below are extracted from either:
5.1.1 the Licensing Act 2003 ('Act'); or
5.1.2 the Guidance issued by the Secretary of State to the Home Office of April 2018 ('Guid'); or
5.1.3 the London Borough of Enfield's Licensing Policy Statement of January 2020 ('Pol').

General Principles:

- 5.2 The Licensing Sub-Committee must carry out its functions with a view to promoting the licensing objectives [Act s.4(1)].
- 5.3 The licensing objectives are:
5.3.1 the prevention of crime and disorder;
5.3.2 public safety;
5.3.3 the prevention of public nuisance; &
5.3.4 the protection of children from harm [Act s.4(2)].
- 5.4 In carrying out its functions, the Sub-Committee must also have regard to:
5.4.1 the Council's licensing policy statement; &
5.4.2 guidance issued by the Secretary of State [Act s.4(3)].

Decision:

- 5.3 As a matter of practice, the Sub-Committee should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas [Guid 9.37].
- 5.4 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the Sub-Committee must give appropriate weight to:

- 5.4.1 the steps that are appropriate to promote the licensing objectives;
 - 5.4.2 the representations (including supporting information) presented by all the parties;
 - 5.4.3 the guidance; and
 - 5.4.4 its own statement of licensing policy [Guid 9.38].
- 5.5 Having heard all of the representations (from all parties) the Sub-Committee must take such steps as it considers appropriate for the promotion of the licensing objectives. It may be decided that no changes are required. However, if further steps are required, the available options are:
- (a) to modify the conditions of the premises licence;
 - (b) to exclude an activity from the scope of the premises licence;
 - (c) to suspend the premises licence for a period not exceeding three months;
 - (d) to revoke the premises licence. [Act s.88].

Recorded Music

- 5.6 Certain types of regulated entertainment have been deregulated since April 2015 [Guid Section 16] , meaning existing conditions relating to those activities will not always be enforceable. Premises who are licensed to sell alcohol for consumption 'on' the premises are now automatically allowed to provide recorded music between 08:00 – 23:00 without the need for it to be named on the premises licence. The conditions relating to recorded music are therefore not enforceable during those times.

The Live Music Act 2012

- 5.7 The Live Music Act 2012 permits certain premises in certain circumstances to provide live music between 08:00 – 23:00 without the need for it to be named on a premises licence. Similarly, existing conditions relating to live music provided during those times are not enforceable.

5.8 Reviews - Section 11 of the Guidance:

11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare

merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

5.9 Licence reviews: Live and recorded music

16.55 On a review of a premises licence or club premises certificate, section 177A(3) of the 2003 Act permits a licensing authority to lift the suspension⁷⁴ and give renewed effect to an existing condition relating to music. Similarly, under section 177A(4), a licensing authority may add a condition relating to music as if music were regulated entertainment, and as if that premises licence or club premises certificate licensed the music. In both instances the condition should include a statement that Section 177A does not apply to the condition.

5.10 Planning and Parking Enforcement

Reference has been made to alleged planning and parking breaches within some of the representations. Information relating to these issues cannot be taken into consideration for licence reviews.

5.11 Covid-19 Guidance

5.12 Reference has also been made to the social distancing measures being non-compliant within some of the representations, which cannot be taken into consideration for the purposes of licence reviews.

5.13 For background purposes, relevant extracts relating to the most up to date gov.uk guidance for businesses similar to Broomfield Coffee Bar, published 5 June 2020, are produced below. For the full guidance, click [here](#).

1. Businesses and venues that must remain closed to members of the public

To reduce social contact, the government has required by law the businesses and venues in the left-hand column to close to members of the public. Legal exceptions, and guidance on their scope, are set out in the right-hand column.

When using or operating any exemptions to closures listed below, you should follow relevant social distancing guidance.

Food and drink	Exceptions
Restaurants and public houses, wine bars or other food and drink establishments including within hotels and members' clubs, such as dining rooms	Food delivery and takeaway can remain operational. This can be a new activity supported by the new permitted development rights in England. This covers the provision of hot or cold food that has been prepared for consumers for collection or delivery to be consumed, reheated or cooked by consumers off the premises.

3. Takeaway food and food delivery facilities may remain open and operational

This means people can continue to enter premises to access takeaway services, including delivery drivers.

Businesses are encouraged to take orders online or by telephone, and businesses must not provide seating areas, indoors and outdoors, for customers to consume food and drink on. Ordering in advance is strongly encouraged to avoid waiting, as per Public Health England guidelines.

Planning regulations have been changed to enable restaurants, cafés and pubs which do not currently offer delivery and hot or cold food takeaway to do so. The [legislation can be accessed online](#).

People must not consume food or drinks on site at restaurants, cafés or pubs whilst waiting for takeaway food. Those venues offering takeaway or delivery services must not include alcoholic beverages in this list if their licence does not already permit.

5. Compliance

As of [26 March 2020](#) these restrictions became enforceable by law in England. These Regulations were then amended on [22 April 2020](#), [13 May 2020](#) and [1 June 2020](#). Everyone is required to comply with these Regulations issued by the government in relation to coronavirus, in order to protect both themselves and others.

An owner, proprietor or manager carrying out a business (or a person responsible for other premises) who contravenes the Regulations, without reasonable excuse, commits an offence.

In England, Environmental Health and Trading Standards officers will monitor compliance with these regulations, with police support provided if appropriate. Businesses and venues that breach them will be subject to prohibition notices, and a person, who is 18 or over, carrying on a business in contravention of the Regulations may be issued with a fixed penalty. The government has introduced higher fines for those who do not comply, to reflect the increased risk to others of breaking the rules.

With the support of the police, prohibition notices can be used to require compliance with the Regulations including requiring that an activity ceases. It is also an offence, without reasonable excuse, to fail to comply with a prohibition notice.

If prohibition notices are not complied with, or fixed penalty notice not paid, you may also be taken to court with magistrates able to impose potentially unlimited fines.

<p>Background Papers: None other than any identified within the report.</p> <p>Contact Officer : Ellie Green on 020 8379 8543</p>
