

HARROW COUNCIL

LICENSING ACT 2003

Sections 17-18

Notification of decision following a licensing panel hearing to determine an application for a premises licence

PREMISES: Moka Pan Asian, 246-248 Uxbridge Road, Hatch End, HA5 4HS

TO: The applicant
All persons who made representations

TAKE NOTICE:

THAT following a hearing before the Licensing and General Purposes Sub Committee (“the Sub-Committee”)

ON 15 February 2021

HARROW COUNCIL, as the Licensing Authority for the premises

RESOLVED TO GRANT THE PREMISES LICENCE FOR THE FOLLOWING HOURS AND SUBJECT TO THE FOLLOWING CONDITIONS:

Hours Open to the Public and for Licensable Activities:

	Recorded Music, Performance of dance	Late night refreshment	Supply of alcohol	Hours open to public
Monday	23:00 – 00:00*	23:00 – 00:30*	10:00 – 00:00*	09:00 – 00:30*
Tuesday	23:00 – 00:00*	23:00 – 00:30*	10:00 – 00:00*	09:00 – 00:30*
Wednesday	23:00 – 00:00*	23:00 – 00:30*	10:00 – 00:00*	09:00 – 00:30*
Thursday	23:00 – 00:00*	23:00 – 00:30*	10:00 – 00:00*	09:00 – 00:30*
Friday	23:00 – 01:00*	23:00 – 01:30*	10:00 – 01:00*	09:00 – 01:30*
Saturday	23:00 – 01:00*	23:00 – 01:30*	10:00 – 01:00*	09:00 – 01:30*
Sunday	23:00 – 00:00*	23:00 – 00:30*	10:00 – 00:00*	09:00 – 00:30*

*Continues into the following day

Seasonal Variations/ non-standard timings

On Sunday before a Bank Holiday to have licensable activities as per Saturday night.

On New Year’s Eve to have licensable activities as per Saturday night.

Conditions

1. The Premises shall install and maintain a comprehensive CCTV system to the satisfaction of the police. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the Premises is open for licensable activities and during all times when customers remain on the Premises. All recordings shall be

stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available upon the request (within 24 hours) of Police or authorised officer in accordance with the Data Protection Act throughout the preceding 31-day period.

2. A staff member from the Premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the Premises is open to the public. This staff member shall be able to show Police recent data or footage with the absolute minimum of delay when requested.
3. All drinks to be consumed whilst seated – no drinking standing-up.
4. Substantial food and non-intoxicating beverages (including free drinking water) shall be available during the whole of licensed hours in all parts of the Premises where intoxicants are provided.
5. All food to be consumed whilst seated.
6. A log (which may be electronically recorded) shall be kept detailing all refused sales of alcohol. The log should include the date and time of the refused sale and the name of the member of staff who refused the sale. The log shall be available for inspection at the premises by the police or an authorised officer of the licensing authority at all times whilst the Premises is open.
7. An incident log shall be kept at the Premises for at least 12 months and examined on a regular basis by the DPS and the date and time of each examination will be endorsed in the register.
8. The register shall be made available on request to an authorised officer of the licensing authority or the Police, which will record the following:
 - (a) all crimes reported to the venue, or by the venue to the Police
 - (b) all ejections of patrons
 - (c) any complaints received
 - (d) any incidents of disorder
 - (e) any visit by a relevant authority or emergency service.
9. The Premises must implement a “Challenge 25” policy whereby all customers who appear to be under 25 must produce photographic identification in the form of a passport, driving licence or Proof of Age Scheme (P.A.S.S) when attempting to purchase alcohol.
10. No children shall enter or remain at the Premises after 21:00 hours unless accompanied by a responsible adult.
11. Any staff directly involved in selling alcohol for retail to consumers, staff who provide training and all managers will undergo regular training of Licensing Act 2003 legislation. This will be documented and signed for by the DPS and the member of staff receiving the training. This training log shall be kept on the premises and made available for inspection by police and relevant authorities upon request.
12. Notices will be clearly displayed at all exits requesting that patrons respect the needs of local residents and leave the premises and area quietly.

13. A maximum of 6 smokers outside the premises at any one time, and no drinks in open containers to be taken outside the Premises (in this instance premises includes the licensed area and the “beer garden”).
14. A minimum of two door supervisors shall be employed from 22:00 hours on any day when the Premises are open to the public past 00:30 hours.
15. A register/log containing the names, badge number, dates & times of duty of security staff and any incidents that occur shall be kept and made available to the Police and Licensing Authority.
16. All external doors and windows to be closed, except for entrance and exit, from 23:00 hours onwards whenever music is played, or there is a performance of dance.
17. Music will be played at a level that will not cause a nuisance to nearby residents.
18. No music is to be played in the outdoor area.
19. The garden area is to be closed at 23:00 hours every day and lighting turned off.
20. All alcohol is to be ordered ancillary to a table meal or take away meal.
21. No take-away food is to be made available after midnight on any day.

REASONS:

The Licensing panel carefully considered all the relevant information including:

- Written and oral representations by all the parties
- The Licensing Act 2003 and the steps that are appropriate to promote the licensing objectives
- The Guidance issued under section 182 of the Licensing Act 2003
- Harrow Council’s Licensing Policy
- Human Rights Act 1998

The Licensing panel hearing was held remotely and via an online platform. The subcommittee were present throughout and were able to see and hear all representations made.

In making its decision, the Licensing panel carefully considered the application and all written representations, as set out within the report and the verbal representations made at the hearing. There is an existing premises licence in operation and the Applicant’s representative confirmed that the application was being brought to extend the licensable hours and the licensing activities. Prior to the hearing, the Applicant worked with the Police and the Licensing Authority and agreed a total of 19 conditions, as shown in Appendix 5 of the report. The Licensing panel noted that whilst a significant number of objections had been made, no representations were received from any authorities, including the Police.

The Licensing panel heard the objector’s concerns, most of which related to the prevention of public nuisance. Objectors were concerned about noise disturbance in the immediate vicinity of the Premises should the Premises remain open and be permitted to engage in licensable activities into the early hours of the morning. There were concerns about the use of the

garden area in the evenings, which could affect the neighbouring resident's peaceable enjoyment of their properties and children sleeping during the night-time. The number of covers available in the garden were also raised as a concern and objections were made to potential light pollution emanating from the garden area.

Objectors mentioned the potential for odours emanating from the kitchen causing a nuisance, but given that this is a new premises licence application, the Licensing panel considered it onerous to include a condition at this stage. The Licensing Panel would hope that the Applicant bears this in mind and avoids causing a nuisance in this regard, but also notes that if an issue arises in the future, a review application can be made.

The Licensing panel heard concerns about people standing outside the Premises smoking and noted that whilst this was not a licensable activity, the Applicant had agreed a condition with the Police which should address any potential for noise nuisance arising from smoking outside. The Licensing panel also heard concerns about the appearance of door supervisors at the Premises which may have an affect on property values in the area, but noted this is not a licensing objective consideration.

Whilst the Licensing panel took on board representations about noise nuisance, the Applicant had agreed with the Police to accept conditions to close windows and doors when music was played after 11:00pm and not to play music at a level that would cause a nuisance to the neighbours. The Applicant had also agreed to close the garden area at 11:30pm. The Applicant confirmed that glass bottles would not be disposed of outside after 9:00pm, so as not to disturb neighbouring residents.

The Applicant's licensable area is limited to the area within the red lines of the application plan. The Applicant considered objectors concerns about noise nuisance and disturbance and offered to play no music in the garden and to close the garden earlier and at 11:00pm.

The objectors raised concerns about the potential for anti-social behaviour and attracting late night drinking, particularly should the Premises continue to offer take away meals in the early hours. The Applicant took this into consideration and offered to agree no provision of take away after midnight. There were concerns about the Premises operating like a bar. Whilst the Applicant had already agreed a condition with the Police to have no drinking standing up, the Applicant also agreed during the course of the hearing, that all alcohol would be sold ancillary to a table meal or a take away meal and that take away meals would only be available up until midnight.

The Applicant offered to reduce the licensable activity hours applied for (00:00am from Sunday – Thursday and 01:00am on Friday and Saturday) and to close the Premises earlier (00:30am from Sunday – Thursday and 01:30am on Friday and Saturday) than the hours indicated in the application to address concerns about nuisance, as well as crime and disorder emanating from late night drinking. The Applicant's representative confirmed that the Premises are intended to operate primarily as a restaurant, which would also serve alcohol and which would have occasional music and dancing.

Given that the Premises would not be staying open after 01:30am, the Licensing Panel considered that the condition regarding door supervisors should amended so that they are required to be employed from 22:00 hours on any day when the Premises are open to the public past 00:30 hours. The Licensing Panel also amended the condition agreed with the Police requiring the implementation of a "Challenge 25" policy so that it is applicable only when purchasing alcohol.

Representations were made about the operating times of other businesses in the area that also sell alcohol and which are alleged to have caused noise nuisance. However, the

Licensing panel did not consider this in its decision making process as Harrow Council has not adopted a cumulative impact policy in any part of the borough. The Licensing panel also did not consider any planning or parking issues which were raised.

The Licensing panel believes that the measures taken above are appropriate and proportionate in the circumstances to promote all the licensing objectives.

This determination, in accordance with section 52(11) of the Licensing Act 2003, does not take effect:

- (a) until the end of the period given for appealing against the decision, or
- (b) if the decision is appealed against, the disposal of the appeal.

Right to appeal

Any party aggrieved with the decision of the licensing panel on one or more of the grounds set out in schedule 5 of the Licensing Act 2003 may appeal to the magistrates' court within 21 days of notification of this decision.

Date: **22 February 2021**