

Licensing Sub-Committee
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Licensing Service

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Our Ref: 16/03625/LAPREM

Date: 28 July 2016

Dear Licensing Sub-Committee Members

**Licensing Act 2003 - Application to vary premises licence
Astoria 37-39 Guildhall Walk Portsmouth PO1 2RY**

I refer to the recent application by Invincible Leisure Ltd for the variation of the premises licence in respect of Astoria, 37-39 Guildhall Walk, Portsmouth PO1 2RY.

The application seeks, by way of variation to the licence:

- to extend the hours for the sale of alcohol, regulated entertainment and late night refreshment to 04:00 hours on Friday and Saturday and 02:00 hours on Sunday together with stated non-standard timings for bank holidays;
- Extend the hours of opening and closing for an additional 30 minutes beyond the terminal hour for licensable activities as set out above;
- Reduce the permitted hours for recorded music to coincide with timings for other licensable activities;
- Reduce the opening hours on a Sunday from 12 noon opening to 19:00 hours opening;
- Removal of identified conditions in Annex 2 (Conditions consistent with the operating schedule) of the licence;
- Imposition of additional conditions as set out in the operating schedule for the promotion of the licensing objectives;
- Approval of new drawings of the premises to reflect the current layout of the premises.

On behalf of the Licensing Authority I would wish to make formal representations in respect of part of this application on the following grounds:

- Prevention of crime and disorder
- Prevention of public nuisance
- Public Safety

This representation has been made on the basis that the applicant has failed to adequately demonstrate that the proposed variation in terms of extending the hours for licensable activities, and hours of opening and closing will not have a negative cumulative impact on the promotion of the licensing objectives.

As members will be aware the Licensing Authority has adopted a special policy in relation to cumulative impact and these premises are located within that specific area. As the Statutory Guidance issued by the Home Office under section 182 of the Licensing Act 2003 states; **the effect of adopting a special policy of this kind is to create a rebuttable presumption that applications for the grant or variation of premises licence which are likely to add to the existing cumulative impact will normally be refused or subject to certain limitations.**

I have given careful consideration to the circumstances of this particular application on behalf of the Licensing Authority, and, specifically whether there is any justification for departure from the special policy presumption in this case.

I am of the opinion that parts of the variation application will not add to the existing cumulative impact and therefore I would **not** wish to make representations in terms of the following proposals:

- Reduce the permitted hours for recorded music to coincide with timings for other licensable activities;
- Reduce the opening hours on a Sunday from 12 noon opening to 19:00 hours opening.
- Removal/Rewording of current conditions 7, 8, 9,10,13, 15, 16, 17, 18, 19, 22-30 and 34 in Annex 2 (Conditions consistent with the operating schedule) of the licence;
- Approval of new drawings of the premises to reflect the current layout of the premises. **However, this is subject to resubmission of the drawings of the premises to accord with paragraph 23 of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (as amended). In particular, 23(3)(d) - areas within the premises used for each licensable activity; and 23(3)(i) - location and type of any fire safety and other safety equipment.**

My representation therefore focuses upon the remainder of the application in terms of extending the hours for the sale of alcohol, regulated entertainment and late night refreshment and the associated extension of hours of opening and closing for an additional 30 minutes beyond the terminal hour for licensable activities.

Having regard to the cumulative impact policy and the information submitted by the Chief Officer of Police and the Director of Public Health, it is clear that the evidential basis for adopting such a special policy in relation to cumulative impact remains a valid consideration within the Licensing Authority's statement of licensing policy.

Notwithstanding the efforts of the applicant to effectively manage and supervise the premises concerned, and I wish to make it clear that this representation is not intended to suggest that the licence holder is not currently taking adequate steps to promote the licensing objectives within the premises itself, the fact remains that despite all the measures currently in place, incidents of crime and disorder and public nuisance are still prevalent within the cumulative impact area, particularly in the early hours of the morning. By increasing the opening hours of the premises for the provision of licensable activities, I am of the view that there will be an undoubtable continuation of existing problems for a longer period of time.

I have reviewed the measures that the applicant has put forward in the application and associated operating schedule to demonstrate that there will be no negative cumulative impact on one or more of the licensing objectives, however, I am not satisfied that the proposals are sufficient to negate any cumulative impact.

In particular, I would wish to raise concerns in respect of proposed condition L.1 which states: ***Whenever the premises are open beyond 02:00 hours, only one room within the premises shall be open for the provision of regulated entertainment.***

The wording of this condition is misleading/ambiguous in that it may give the impression that the premises benefits from separate rooms available for licensable activities. This is not the case, as can be seen in the proposed plans submitted by the applicant. The premises is laid out on 3 floors but all are interlinked and open.

Therefore if, for example, persons were asked to vacate the basement area, and then the VIP area, instead of dispersing people out of the premises, this would merely relocate them into another area where there could be a significant risk of overcrowding in one area of the premises or at least a "flashpoint" where lots of people would be congregating at any one time.

Equally, if it is meant that bars will remain open in all areas of the premises but that entertainment by way of a DJ will only be provided on one floor, this will not have any material effect upon the way the premises currently operates as music will be audible in all parts of the premises.

On that basis, I am not satisfied how the imposition of this condition would facilitate gradual dispersal of persons from the premises after 02:00 hours.

I am also given to understand by the Chief Officer of Police that the above wording was not as per prior discussions which have taken place with the applicant.

I would therefore request that the application to vary the premises licence is refused (with the exception of the variations referred to above in relation to amendment of conditions, reduction of hours and submission of plans).

However, if members of the sub-committee are mindful to approve the application as applied for then I would request that consideration be given to the amendment of proposed conditions as follows:

- a) Re-wording of proposed condition D from *"Before commencing their duties"* to *"Before the commencement of their employment"*;
- b) Re-wording condition E from *"When the venue is open past 02:00 hours, at the terminal hour door supervisors shall assist in managing customers....."* to *"At the terminal hour of operation, door supervisors shall assist in managing customers"*.
- c) Re-wording of proposed condition L.1 having regard to the concerns outlined above and suggest that the final wording of the condition be amended in consultation with the Chief Officer of Police;
- d) Condition L.3 to be amended to increase the level of door supervision in the smoking area to a minimum of 2 supervisors at any one time and to extend their role to addressing any public safety/crime and disorder issues instead of merely monitoring noise levels.
- e) Delete existing condition 14 which states: *"All noise arising from regulated entertainment at the premises shall be inaudible one metre outside any noise sensitive premises"*. In consultation with the Environmental Health Manager, we are of the view that this condition is too vague, imprecise and unenforceable having regard to the judgement of the High Court in *R (on the application of Developing Retail Limited) v East Hampshire Magistrates' Court* [2011] EWCH 618 Admin.

Any complaints regarding noise nuisance will be unaffected by deletion of this condition as the Environmental Health Authority have powers under the Environmental Protection Act 1990 to formally deal with public nuisance and can also seek a review of a premises licence on the grounds of prevention of public nuisance.

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