INTRODUCTION

1. This is an application for a new premises licence by Poppleston Allen Solicitors on behalf of Bosco Surbiton Limited. The premises are a newly developed 20 bedroom hotel, operating over three floors, on a main road, in an area of mixed retail and residential use. The proposed operation incorporates a bar, restaurant, first floor meeting room and bedrooms for hotel guests.

2. In line with its operating capability, the application seeks to provide licensable activities for the benefit of both hotel residents and non residents. Live and recorded music (indoors) is applied for between 09.00 and 00.30 from Sunday to Thursday, and between 09.00 and 01.30 on Friday and Saturday. Provision of late night refreshment (hot food or drink between 23.00 and 05.00) is applied for from 23.00 to 00.30 from Sunday to Thursday, and from
23.00 to 01.30 on Friday and Saturday. The retail sale of alcohol is applied for between the hours of 09.00 and 00.00 from Sunday to Thursday, and between 09.00 and 01.00 on Friday and Saturday. However, it appears the applicant proposes to close to the general public at midnight with licensable activities to continue until 00.30 and 01.30 respectively for the benefit of hotel patrons only. In the case of hotel residents, the ability to provide alcohol 24 hours a day is sought, this is common practice for hotels and also pertained under the previous licensing regime.

3. Extended hours are sought for all licensable activities over the New Year period, from the end of permitted hours on New Years Eve to the start of permitted hours on New Years Day.

4. The application is required by statute to be advertised at the premises and in the local press to enable interested parties to make relevant representations on the application. To be relevant, any representation must be solely confined to the likely effect of the application on the promotion of one or more of the four licensing objectives (see below). ‘Interested parties’ are people living or working in the vicinity, and persons or bodies representing people living or working in the vicinity. While not a statutory duty, Kingston’s Licensing Policy also requires the Authority to inform residents abutting the premises and within a 50 metre radius, of applications for new premise licences or variations of existing licences. In complying with these requirements the Licensing Department wrote to ten residents concerning this application.

5. The application is also required by law to be copied in full to Responsible Authorities – which are public bodies that are entitled to make representations to the Licensing Authority on applications for the grant, variation or review of a premises licence. Any representations must be relevant to the licensing objectives. These authorities include the police, environmental health services, planning authority, fire and rescue service, trading standards, and children’s services, all of have powers/responsibilities relevant to the licensing objectives.

6. In consultation with the Police, the applicant has agreed the following conditions be attached to any premises licence issued:

- A digital CCTV system to be installed to cover the front and rear entrances/exits and the external patio area. This system to be maintained in accordance as per the guidance issued by the Information Commissioner. Copies of any images to made available to the Police or an authorised officer of the council on request.
- The external garden area will not be used for the consumption of alcohol after 00.00 hours.
- All members of bar staff to be trained regarding the sale of alcohol and the requirements of the Licensing Act 2003. Staff to receive refresher training at not more than 6 monthly intervals. Signed and dated records to be kept of all staff training and such records be made available for inspection by Police or an authorised officer of the council on request.
• A minimum of two designated door supervisors who have been licensed by the Security Industry Authority are to be on duty from 21.00 hours when alcohol is likely to be sold to non-residents after 01.00 hours or when live music or karaoke is provided. These door staff are to maintain order within the curtilage of the premises. An incident book is to be maintained.
• This licence permits the sale outside the permitted hours, by way of retail only, to any person staying on the premises, or any guest of a person stating on the premises, for consumption either on or off the premises where any cost incurred is charged to the room account of the person staying at the premises.

7. The applicant expresses, in an operating schedule, the intention to control noise disturbance to hotel residents, and to minimise noise breakout from the building.

LOCATION

8. A map showing the immediate location of the premises is attached as Annex 2. A larger scale map will be available at the meeting if required. Aerial photographs may also be produced if required.

LICENSING OBJECTIVES

9. In considering this report the Sub-Committee must take into account the licensing objectives of:
   • The prevention of crime and disorder
   • Public safety
   • The prevention of public nuisance
   • The protection of children from harm

REASONS FOR THE HEARING

10. This hearing arises from a single representation made by an interested party who lives approximately 100 metres from Hotel Bosco. The letter of representation, attached at Annex 3, was received within the statutory consultation period and objects to the application on grounds of public nuisance and disorder. However, reference was made in the letter to areas not relevant to the licensing objectives and it also contained misinformation concerning the timings of licensable activities at another licensed premises in the area. Consequently the Principal Licensing Officer wrote, attached at Annex 4, to the interested party, informing him of these matters. At the time of writing this report, the objector has not replied. It is understood the applicant intends to enter into dialogue with the objector. At this time no mediation/conciliation has been effected.
11. No Responsible Authority has made a representation. The Police have agreed a number of conditions with the applicant (see paragraph 6) in order to promote the prevention of crime and disorder licensing objective. Environmental Health Services were consulted as the authority responsible for public nuisance and safety, and have not suggested any control measures be added over and above those proposed by the applicant.

12. The Sub-Committee sit in a quasi-judicial role. In considering this application, the Sub-Committee are reminded that they must have regard to the National Guidance and the Council’s Licensing Policy, relevant extracts of which are contained in Annex 1. The Sub-Committee must also consider the written testimony adduced and heard orally at the hearing.

CONTENT OF ANNEXES TO THIS REPORT

Annex 1 National Guidance and the Council’s Licensing Policy
Annex 2 Location Plan
Annex 3 Letter of representation from a resident in the vicinity
Annex 4 Letter from Licensing Authority, responding to resident making representation

BACKGROUND papers are held by Mr. P. Groves 0208 547 5079
peter.groves@rbk.kingston.gov.uk
1.15 Each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed, may be unlawful where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case.

1.26 Licensing law is not the primary mechanism for the general control of individuals once they are away from a licensed premises and therefore beyond the direct control of individual licensees or certificate holders. However, 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 (once the smoking ban comes into force) in a smoking shelter, where and to the extent that these matters are within their control.

2.4 The essential purpose of the licence or certificate in this context is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives. Conditions attached to licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff or agents, but can directly impact on the behaviour of customers on, or in the immediate vicinity of, the premises as they seek to enter or leave.

2.6 Conditions are best targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television cameras both inside and immediately outside the premises can actively deter disorder, nuisance and anti-social behaviour and crime generally. Some licensees may wish to have cameras on their premises for the protection of their own staff and for the prevention of crime directed against the business itself or its customers. But any condition may require a broader approach, and it may be necessary to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

2.19 Licensing authorities and responsible authorities should note that the public safety objective is concerned with the physical safety of the people using the relevant premises and not with public health, which is dealt with in other legislation. There will of course be occasions when a public safety condition could incidentally benefit health, but it should not be the purpose of the condition as this would be ultra vires the 2003 Act. Accordingly, conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.
2.32 The 2003 Act requires licensing authorities (following receipt of relevant representations) and responsible authorities, through representations, to make judgements about what constitutes public nuisance and what is necessary to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are not disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.33 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.

2.38 In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives.

2.39 Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.

2.40 The cumulative effects of litter in the vicinity of premises carrying on licensable activities can cause public nuisance. For example, it may be appropriate and necessary for a condition of a licence to require premises serving customers from take-aways and fast food outlets from 11.00pm to provide litter bins in the vicinity of the premises in order to prevent the accumulation of litter. Such conditions may be necessary and appropriate in circumstances where customers late at night may have been consuming alcohol and be inclined to carelessness and anti-social behaviour.

8.31 The steps to be taken should be both realistic and within the control of the applicant and management of the premises. If a licence is granted with conditions attached requiring the implementation of such steps, the conditions will be enforceable in law and it will be a criminal offence to fail to comply with them (under section 136 of the 2003 Act). As such, it would be wholly inappropriate to impose conditions outside the control of those responsible for the running of the premises.
9.5 In making their initial decision on the question of vicinity, licensing authorities should consider whether the individual’s residence or business is likely to be directly affected by disorder and disturbance occurring or potentially occurring on those premises or immediately outside the premises. In other words, it is the impact of issues relating to the four licensing objectives that is the key consideration.

9.7 Where a representation concerns “cumulative impact”, the licensing authority may be unable to consider this factor and would probably need to examine issues such as the proximity of the residence or business. In essence, it is expected that the decision will be approached with common sense and individuals living and working in the neighbourhood or area immediately surrounding the premises will be able to make representations.

9.9 The “cumulative impact” on the licensing objectives of a concentration of multiple licensed premises may also give rise to a relevant representation when an application for the grant or variation of a premises licence is being considered, but not in relation to an application for review which must relate to an individual premises.

**Kingston’s Licensing Policy**

7. Through this policy and the implementation of the Act the Council will seek to protect the amenity of local residents in so far as the Act and the need for the fair treatment of applicants permit. However, the Council’s powers under the Act are only one means by which these objectives may be met and the Act must not be regarded as the only method for resolving all problems that result from the use of premises for leisure pursuits and associated night-time activity.

11. The Conditions that the Council imposes will only relate to matters which the licensee can be expected to control and such conditions will therefore only relate to the premises themselves and the vicinity thereof.

32. Unless it can be proven that the terminal hours required will cause adverse and unacceptable effects on those living in the surrounding area or amenities the assumption shall be that the terminal hours requested would be allowed.

46. The Council will seek to protect the amenities of residents and businesses in the vicinity of licensed premises as far as that is practicable. Therefore when considering applications regard will be had to the following:

- procedures for the control of behaviour of customers queuing to gain admission
- sound proofing and other measures to prevent noise escaping from the premises
- installation of a sound limitation device if loud levels of music are played
- minimising nuisance from open areas such as beer gardens and patios
- steps to be taken to prevent nuisance from the delivery and disposal of bottles etc.
- steps to be taken to minimise nuisance which may be caused by persons leaving the premises such as:
  - display of notices requesting patrons to leave quietly
  - loudspeaker announcements at the end of performances
  - collection of litter in the immediate area
  - provision and maintenance of refuse bins for disposal of takeaway foodstuffs
  - banning of patrons who are known to cause nuisance when leaving the premises

47. The Council will carry out its licensing functions so as to promote the prevention of crime and disorder by ensuring that licensees take measures to regulate the behaviour of persons on the premises and patrons who are in the vicinity.