

**The Licencing Committee – Licensing Act 2003**

**Brighton & Hove City Council**

**By email only**

**Dear Sirs**

**LICENSING ACT 2003 INDIGO LEISURE LIMITED**

**APPLICATION FOR A VARIATION OF THE PREMISES LICENCE**

**MOLLY MALONES, 57 WEST STREET, BRIGHTON, EAST SUSSEX, BN1 2RA**

Indigo Leisure Limited runs Molly Malones, a live music venue and Irish pub in the heart of Brighton's night time economy.

The licence was amended on 3 May 2022 as a result of a Magistrates' Consent Order in the course of an appeal prompted by a review of the premises licence. By agreement between the Council, the Police and the Licensee, various conditions were added to the licence. There was a dispute at the time as to their likely efficacy, but in the spirit of cooperation, the conditions were added as an alternative to a fully fought appeal. The case was by no means all one way; all parties compromised and made concessions. It was always an overt part of the Appellant's case that the premises would open and continue to trade for a period of time, before making a further application to restore the licence to operational standards. This variation application comes as no surprise to anyone involved in the appeal.

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The premises have traded without problem or concern for over a year, and three of the conditions imposed are causing problems. They are not promoting any licensing objective, and they are unreasonably hampering the operation of the premises, and causing difficulties for members of the public. This variation application seeks to remove these three conditions:

***1. From midnight each day the premises shall operate as a dedicated and bona fide (non-DJ) live music venue and/or associated staged cabaret space. The sale of alcohol shall be ancillary to the provision of and /or presentation of live music and/or cabaret events. At these premises live music will not include DJ presentations. For the avoidance of doubt the sale of alcohol shall end at the conclusion of the programmed live music and/or cabaret entertainment. Save in genuinely exceptional circumstances (for example, but not limited to, a failure of performer/s to attend) of which there can be no more than 21 occasions per calendar year. A record of each exemption and the reason for it shall be retained at the premises and shall be available for inspection by the licensing authority and the police on request.***

The phrase “dedicated and bona fide live music venue” is ambiguous. The ability to make a relatively large number of exceptions to the condition before the condition will be deemed to be breached demonstrates not only the lack of need for the condition, but the difficulty with complying with it as written. Any condition that needs at least 21 exceptions to it in a year is a weak condition, and virtually unenforceable, as no Authority would easily be able to tell, on any given occasion, whether it was an “exception” night or not. The difficulty of booking and retaining musicians to attend without default is hugely stressful for the management, and this condition achieves nothing meaningful whatsoever. It has nothing at all to do with any of the issues that were ever alleged against the premises, and plays no part in the ability of the premises to prevent issues arising in the future, which they are more than capable of doing without this condition. The premises books around sixteen acts a week. There are times where the manager has to get out of bed in order to deal with a situation where a musician cancels at the last minute, or fails to show up. Defaulting to recorded music in such a situation would make

no difference at all to the operation of the premises, but a huge difference to the strain on staff, which is pointless.

***5. The premises shall install a recognised electronic identification scanning system for customers entering the premises. The system shall be operated from 22:00 and all persons who appear to be under 30 entering the premises will be scanned. The system should have the ability to share alerts with other venues using similar ID scanning equipment, identify the hologram of an ID and read both Passports and ID cards, including PASS cards. The system should be able to conduct tests to determine if a document is genuine or counterfeit. The system must be compliant with the Information Commissioner's good practice guidance for ID scanning in clubs and bars.***

***Entry to customers who appear to be under the age of 30, without ID, shall be risk assessed and admitted to the venue on the discretion of the door entry team on duty. The name, date of birth, of these customers shall be recorded and a photographic image obtained. This information shall be made available to the police or licensing authority on request.***

ID scanners are largely overrated, and represent a playing field within the night time economy that is not level. Many other comparable premises do not have ID scanners. Conditioned scanners make premises commercial hostages to the scanner providers. Molly Malones runs a strict No ID, No Sale for their Challenge 30 policy. This is the highest age verification policy in Brighton and one of the highest in the country. Door staff are well able to check ID's manually without a scanner being present. Scanners are not 100% reliable; tend to create queues and frustration, and have not been demonstrated to be effective to prevent any conflict with a licensing objective in this case.

***6. The premises will adopt and operate a daily last entry time of 2:30am***

The 2:30am restriction brings trouble to both venue staff and door staff. The policy has the effect of excluding patrons who have not caused any problems, but need to leave the venue briefly and then re-enter. A classic scenario is where a customer would like to escort a friend in safety to the taxi rank, or step outside to make a phone call, and then return. Under the current condition this is not permitted. One of the key demographics visiting Molly Malones was the hospitality staff who had finished their shift at other premises and liked to finish

their evening at the music venue. By definition, such individuals are low risk, but are prevented from accessing the premises for no particular reason.

The imposition of conditions under any regulatory regime, including the licensing regime must meet certain tests. The tests under the Secretary of State's s.182 Guidance are set out at paragraph 1.16:

"1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as "must", "shall" and "will" is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met;
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format."

See also paragraph 10.10.

The three conditions challenged in this variation do not meet the terms of this guidance. They are not clear in what they are trying to achieve; they are not achieving anything in fact, as demonstrated over the course of the last year, and in fact they are causing problems. Therefore, they are not proportionate and justified.

Any issues that the responsible authorities purported to rely upon from 2014 or even the single incident in July 2021 were isolated and now historical. Even at the time of the appeal, it was overtly agreed in writing, based upon the evidence that the level of engagement between the Police and Molly Malones has been high and constructive. That remains the case. The incident in July 2021 arose due to a rogue member of doorstaff taking a bribe. It was not a result of endemic operational or management failure. It was not something that could ever have been prevented by any of the three conditions now under challenge.

The Applicant will be pleased to place before the Licensing Committee the extensive email threads that have arisen between the Licensee and the Police over the course, of the last year, including with Chief Inspector Michelle Palmer-Harris personally. These demonstrate close and cooperative working; regular engagement and complete satisfaction by the Police with the operation of Molly Malones. Chi Inspector has stated in terms, in writing, that she was pleased that Molly Malones was trading again. This ability to trade is seriously compromised by the conditions that are in this application, at a time where business trading is heavily threatened by a range of considerations, including energy and cost of living crises.

Evidence will be demonstrated of the visit by Police on 3 May 2023, once again confirming that the Police are entirely happy with reporting and compliance at Molly Malones. There has been overt confirmation that there have been no concerns arising over the course of the last year.

The Police, shortly before submitting this application to vary the conditions on this Premises Licence, were specifically asked if they had any issues or concerns regarding the operation of the premises. They did not reply, signifying, we contend, that they are content

The Police representation references the Cumulative Impact Zone. Molly Malones has always been within the CIZ. The previous appeal had nothing to do



with this. The Police cite the Policy, and also refer to the apparent crime statistics for the ward in which these premises are situated. These statistics would need to be examined in some detail to establish nexus with the night time economy. In any event, it is noted that the Licensing Authority has just granted a premises licence to the Botanist, in the same ward as Molly Malones - some fifty metres away.

Ms Lynsdale has made a representation on behalf of the Licensing Authority. Ms Lynsdale was involved in the review in 2022, and confirmed that the training that had been administered, in part by her, to the premises was satisfactory. No issues have been raised by Ms Lynsdale about the premises since. Although Ms Lynsdale states that the licensing objectives “*are* not being upheld”, her only references are historical, and pre-date the last appeal, namely November 2014, and July 2021. The issues raised there were comprehensively dealt with in the last consent order. What would have been more helpful to the decision maker would have been a consideration of what has happened since. The exact circumstances pertaining to 2014 and 2021 are well known to all parties, and it would not be appropriate to default to earlier representations about them that are not accurate.

Ms Lynsdale maintains in her representation that the Licensing and Trading Standards Team resist the removal of the conditions on the basis that to do so would undermine the licensing objectives of Prevention of Crime and Disorder and Protection of Children from Harm. She does not explain why she is of this view, nor what evidence she relies upon to make this assertion. Ms Lynsdale has no reason to criticise Molly Malones in the last year.

Complaint is made that the applicant did not consult with the Police as part of a pre-application process. From experience, Responsible Authorities typically decline to engage in formal pre-application approaches. In any event, Molly Malones management are in contact with the RA's all the time, and would have expected to have received any concerns directly, if there had been any. Molly Malones will disclose the email threads between management and the RA's, to demonstrate close and cooperative working over more than a year.

Molly Malones is an important part of the Brighton night time economy and cultural offering. It is a grass roots music venue, which are acknowledged to be

under threat in the current economy. The premises employs at least seven personal licence holders in management positions, and at least twenty bar staff. The premises trade every night of the week, and bring important business to Brighton's local economy. The Council will have many policies concerning the support of local business and its economy in these difficult times, and these are all relevant to consideration of this application, as indeed they were for the Botanist application.

The importance of financial and commercial considerations in licensing decisions has been endorsed by the Court of Appeal:

In the Court of Appeal Toulson LJ set out the range of considerations that should be addressed by a licensing decision maker:

***R (Hope and Glory Public House Limited) v City of Westminster Magistrates' Court [2011] EWCA Civ 31***

"42. Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance. Although such questions are in a sense questions of fact, they are not questions of the "heads or tails" variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact."

It is notable in this list that the first three elements identified by the Learned Judge relate to demand, economic benefit, and stimulating the locality.

This application is commended to the Licensing Sub-Committee as appropriate and proportionate, and amply supported by the protracted period of trouble free trading, which is being hampered not aided by the three conditions in this application.

Yours Faithfully

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Dean Wilson LLP

Solicitors for the Applicant