

**DUSK, ONGAR ROAD, PILGRIMS HATCH CM15 9SS**

# **APPENDIX 3**

## **REPRESENTATION**

### ***Responsible Authorities***

*Mr. David Carter – Environmental Health Manager*



**BRENTWOOD  
BOROUGH COUNCIL**

Our ref: PRM/0569/000

Your ref:

Date: 11 August 2020

Licensing Authority  
Brentwood Borough Council  
Town Hall Ingrave Road  
Brentwood  
Essex CM15 8AY

cc  
Cassadys Solicitors  
5 Chancery Lane  
London EC4 1BL

Dear Sirs

Application to vary a Premises Licence - Licensing Act 2003  
**Dusk, Ongar Road Pilgrims Hatch Brentwood CM15 9SS**

I refer to the above application for a premises licence at Dusk Ongar Road, Pilgrims Hatch, received on 20 July 2020 by the Pollution Team of Brentwood Borough Council.

I wish to make representation to the Licensing Authority in respect of this application, as in my opinion the application contains insufficient information to demonstrate that the licensing objective of prevention of public nuisance will be achieved.

Dusk operates as a restaurant with late night refreshment, and public entertainment within the premises mostly from recorded music. The premises formerly operated as a Chinese restaurant, with recorded music entertainment in the form of a disco and dancefloor contained within the building.

Dusk has operated an extended area which is open for customers to drink, smoke and use shisha pipes either after or possibly in conjunction with a meal. This area is described as a black pergola with a retractable canopy on the plan attached to the application

Historically this premises once was operating as a nightclub which caused a number of complaints from several residents relating to noise from loud music from the premises, subsequently when operating as a Chinese restaurant the number of complaints had reduced significantly, and it appears that the management present had dealt with any noise issues being reported directly to them.

The operation of Dusk, however has caused a substantial increase in the number of complaints received, largely as a result of the use of the lounge area, which as it is designed to comply with the smoking legislation is required to be at least 50% open, which

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significantly reduces any noise attenuation from the structure and effectively operates as an outside area, with associated noise from customers and any amplified music played in the area.

On observation by officers the operation of this area was found to be causing noise breakout from the building into the car park area of the premises and has been the subject of alleged nuisance resulting in several complaints from neighbours to the Council and the operators of the premises.

The concern of the Pollution Team is that the requested application could result in noise to residents from the hours of operation and regulated entertainment proposed.

In particular, I would wish to make representation on behalf of the Pollution Team on the following matters:

The application seeks to enable the performance of live music, recorded music, and other entertainment falling within the Act from 12:00 until 00:00 midnight Sunday to Wednesday, and on Friday and Saturday from 12:00 to 01:00. Late night refreshment is being requested from 23:00 to 00:00 midnight Sunday to Thursday and from 23:00 to 01:30 Friday and Saturday.

The premises opening hours are requested until 00:00 midnight Sunday to Thursday and until 02:00am on Friday and Saturday.

As residential property is located in the vicinity of the premises and the area is largely rural in nature with no major night-time noise sources other than limited road traffic on the Ongar Road, it is considered likely that the use of the premises has caused and is likely to continue to cause disturbance to residents without additional measures.

There is in my opinion insufficient detail provided in the supporting statement provided to adequately demonstrate that public nuisance will be prevented, in particular as a result of the provision of regulated entertainment and the opening hours of the premises.

The operating plan submitted only specifies that the premises licence holder shall monitor the volume of any entertainment and if appropriate take steps to reduce the volume.

The location of the premises is rural and relatively isolated. Background noise levels in this area are quiet at night-time, with the premises itself currently being the predominant source of noise. The impact of noise from entertainment at the premises previously has been found to cause complaints from residents at some distance.

With the background of existing regular noise complaints, (particularly since the premises has reopened after the Covid-19 restrictions were relaxed), it appears that the application now seeks to remove existing controls in the premises licence conditions aimed at preventing public nuisance from noise:

It is proposed that the premises licence dated 1 October 2019 be varied so that it is not subject to the following two conditions:

1. It is not subject to the condition that there should be a second interior/lobby door at the front entrance.
2. It is not subject to the condition that there shall be in place noise limiters installed in the outside space as no regulated entertainment would be

conducted outside the premises.

3. Opening Hours commence at 12.00 hrs daily.

4. The License will cover the supply of alcohol on the premises daily between the hours of 12.00 hrs and 23.30 hrs (Sunday-Thursday) and 12.00 hrs – 01.30 hrs (Friday & Saturday).

The supporting statement provided with the application, and the variation copied above, refer to there being no regulated entertainment conducted outside the premises. It is my contention that the lounge area is effectively 'outside' the premises as it is deliberately constructed to be open to the air and has also been provided with a retractable canopy.

If the Licensing Authority for the premises wishes to reduce the likelihood of noise nuisance I would strongly recommend that no amplified music is permitted in the area I would describe as 'outside', i.e. the lounge area of the restaurant, and that there are controls in place to prevent music breakout from the inside of the building to the lounge area and beyond the premises curtilage.

It should be noted that the current operation is carried out without the supply of alcohol from the premises, which is proposed to be introduced through the variation sought; it is considered possible that the addition of alcoholic drinks will have an effect on the behaviour of customers both within the premises and whilst in the car park area before leaving the premises.

The supporting statement alleges that the Council 'has never responded to our request for the maximum decibel that it wanted Dusk to comply with'. Whilst I have not dealt directly with this premises much previously I have managed the Pollution Team before and since the premises opened and do not recall being approached by the management to determine an appropriate noise level – it is not merely a case of providing a decibel level and this will need to be set and agreed at the premises.

The Council has, however, offered to meet with the acoustic engineer who has been appointed by the management in order to carry out a noise assessment of the premises at night since the reopening on 4 July, I am still awaiting this offer to be accepted at the time of writing this representation despite having been in recent contact with both the engineer and premises management.

It is therefore my opinion that in the absence of suitable measures within the operating schedule the Licensing Authority should consider the following matters with regard to the objective of prevention of public nuisance:

1. The operation of the premises late at night as a restaurant has been considered as a noise issue in this location; the hours requested are later than many licensed premises in the town centre, including bars, pubs and busier locations with more activity and background noise.
2. The previous operation of this premises has given justifiable cause for complaint from residents to the Council.
3. The controls proposed do not address the concerns over use of the premises; in addition to noise breakout from entertainment noise the activity of the car park and vehicles leaving the premises late at night has also been found to cause concern.



4. The performance of live, recorded music or 'other entertainment falling within the Act' within the external lounge area should be prohibited, such that there is no noise in this area apart from customers talking.
5. If regulated entertainment is prohibited in the lounge area, I do not raise a representation against the variation to remove the lobby required under the existing licence (that has not yet been provided), however in the event that entertainment from music etc. is permitted I would wish to require a suitable lobby to the entrance doors.
6. If regulated entertainment in the lounge/garden area is permitted, a suitable method of setting and permanently controlling the level of sound in this area shall be provided, installed and set to operate at an appropriate level to be agreed with an officer from the Pollution Team present, (i.e. a 'noise limiter' device)
7. All doors and windows of the premises shall be kept closed during the provision of any regulated entertainment.

On behalf of the Pollution Team, I would therefore wish to recommend that the application to vary the premises licence is refused unless appropriate conditions and control over the future operation of the premises are in place.

Yours faithfully



**David Carter**  
Environmental Health Manager

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