

Licensing Act 2003



Licensing and Gambling Acts Casework Sub-Committee

Notification of determination

Hearing under Sections 34 and 35 of the Act, and the Licensing Act 2003 (Hearings) Regulations 2005 In respect of an application made to Oxford City Council for variation of a Premises Licence

Date of hearing:	14th June 2021
Place:	Remote hearing via 'Zoom'
Case No.	21/01141/PREM
Applicant	HEAT African Bar And Restaurant Ltd
Premises:	HEAT African Restaurant
Premises address:	189 Cowley Road, Oxford, OX4 1UT
Licensing Sub-Committee Councillors:	Cllr Colin Cook (Chair), Cllr Ajaz Rehman, Cllr Imogen Thomas
Legal Advisor:	Daniel Smith
Licensing Officer:	Emma Thompson
Clerk:	Richard Masters

The Sub-Committee heard representations from the following:

Licensing Authority: Emma Thompson (Senior Licensing Compliance Officer)

Emma Thompson presented the Licensing Authority's report, stating that the application had attracted representations from Thames Valley Police (TVP) and Environmental Health, as well as eight objections from Interested Parties, all of which highlighted concerns in relation to how the application may fail to promote the licensing objectives of the prevention of crime and disorder and prevention of public nuisance.

Mrs Thompson also stated that in addition the Licensing Authority had received 20 representations in support of the application, including a petition signed by 25 members of the African Football Group.

Applicant: Charles Denny (Licensing Consultant – Innpacked Ltd on behalf of the Applicant)

Mr Denny reiterated that the name of the premises is Heat African Restaurant and it is a restaurant rather than a bar, as reflected by the current conditions attached to the existing premises licence which only allow the sale of alcohol to be ancillary to food. However Mr Denny did concede that the nature of the operation was “not exclusively a restaurant”.

Mr Denny stated that the current permitted hours for licensable activity were similar to the permitted hours for licensed premises prior to the introduction of the Licensing Act 2003, which was established to allow flexibility whilst also upholding the licensing objectives.

He claimed that the current licence contained more conditions than any other licence in the vicinity, including the O2 Academy.

He explained the hours sought, which would be crucial to the successful trading of the business and that the aim was to keep customers in the premises rather than have a large turnover of them and offered a last admission condition, as described in the application.

Mr Denny volunteered to amend the existing condition 28 attached to the licence, which currently states there will be no use of the rear yard after 22:00, to no use after 21:00, in response to the representations received by Interested Parties concerning noise nuisance. The rear yard would also be monitored by staff when it is occupied.

Mr Denny expressed doubt over a recent noise complaint as it was at a time when he believed the premises was not trading.

Heat is a unique restaurant that offers African cuisine, music and atmosphere meaning a total experience for a night out and customers will look at it as a destination venue.

It has a capacity of 100, with around 70 covers and without the increase in hours the business may fail. Aim is to encourage people to remain at the premises for 2 to 3 hours to enjoy the facilities including African food and music with alcohol ancillary to both.

Other premises in the vicinity have longer hours than Heat Restaurant and Mr Denny listed some examples.

Mr Denny stated that the business relies heavily on Fridays and Saturdays trade so needs to operate to their full potential at that time to offer customers what they want but also to be a successful business.

Mr Denny referred to the number of conditions on the existing licence and that they were, in his belief, adequate to cover the later hours sought.

Due to the pandemic, the business has only been able to operate for six months since the initial grant of the licence, resulting in the business making a loss.

They have conformed with all Covid-19 related restrictions and Mr Halilu has tried to build a reputation as a African restaurant and entertainment venue. Mr Halilu is both the Designated Premises Supervisor (DPS) and managing director of the company and is a businessman passionate about meeting his aims whilst at the same time addressing the needs of both the Responsible Authorities and the local community.

In conclusion, Mr Denny reiterated that the rear yard will be closed at 21:00, 7 days a week and monitored when used to prevent noise nuisance. They already have a condition which does not permit music to be played outside and due to the thickness of the walls, as the premises was

previously a bank, this would prevent noise inside from escaping.

He also said that there will be a latest admission time as stated in the application and that Mr Halilu is 100% committed to the successful running of the premises and to make it a welcome addition to the local nightlife.

Their aim is to showcase African cuisine and culture and all residents of Oxford are welcome, which is indicated by the number of representations in support of the application.

Cllr Cook queried the capacity of 100 but only 70 covers. Mr Denny explained that the additional 30 people could be in the rear yard, awaiting a table and natural movement to the toilet etc. 70 is the reasonable capacity for diners and unlikely to reach the full capacity of 100.

Cllr Cook also asked for the number of services per night at the venue and Mr Denny proposed that the likely turnover is once per night as they would be encouraging people to stay at their tables and be served by waiter service throughout their stay.

Cllr Cook then asked of the six months they have been open, how many had they been operating 'normally'. Mr Denny responded by saying none due to pandemic related restrictions.

Cllr Rehman asked if at 22:00 there are no more admissions, would this mean there would be no more than 70 people in the premises as a maximum? Mr Denny agreed stating they would not allow any more admission after that time.

Cllr Rehman asked how the back yard was used currently. Mr Denny said it had become the outside area due to the pandemic where people could eat and socialize but with no music. Mr Denny conceded that it did get quite noisy at times, resulting in complaints but the proposed alterations would put an end to this.

Mr Denny confirmed that the 70 covers were inside the restaurant.

Cllr Thomas enquired about the use of the rear yard after 21:00 by staff clearing up and taking bins out that could potentially create a noise nuisance.

Mr Denny accepted that one representation referred to the noise of staff in the outside area and that they would comply with the relevant conditions already on the licence to ensure no nuisance was caused.

Daniel Smith stated that the current licence included 'recorded music' which was unusual for a restaurant and asked if the music volume is monitored. He also asked if background music would suffice for the premises or if recorded music was a part of the business plan.

Mr Denny said that people go out to eat on their night out and the premises were not an exclusively restaurant operation, but more one that provides the complete experience of music and food. He said it was common practice to increase the level of music as the night progresses so it would be at a level above background. The premises does have DJs at weekends.

Dave Acreman (Environmental Health Officer) suggested a 'cut off' device would be advisable if the volume was to be louder than background levels given the proximity of neighbours living close to premises.

Mr Denny stated that the layout of the premises and the noise monitoring would prevent any sound breakout and that staff could leave the removal of waste from the restaurant, and the

clearing of the back yard waste, until the morning if preferable.

Mr Acreman agreed that leaving the removal of the waste until the morning would be preferable to removing it late at night.

Responsible Authorities: Sgt Neil Bouse, Thames Valley Police-(TVP)

Sgt Bouse stated that during initial renovations of the premises, it was advertised as a sports bar and karaoke bar and due to the pandemic they have been unable to operate at capacity. TVP need to check licence holders are responsible and are upholding the licensing objectives. Unfortunately, and through no fault of their own, they have not had anywhere near the number of people through doors they might have hoped for and Government restrictions have impacted the business. The business is untested on a licensing basis and the current restrictions have seen the activity in the city reduce as have the number of students. In the evidential bundle it states that nearly 50% of all offences relate to the night time economy on Friday and Saturdays, the busiest period for the Police is between 01:00 and 04:00. On the Cowley Road, the crime hotspot is between O2 Academy and Cowley Retreat. Heat restaurant is located in the middle of this area.

The Special Saturation Policy (SSP) was in place at the time of the original application. Even though it has lapsed due to the pandemic, Sgt Bouse stated that we needed to be mindful of the cumulative impact of having more people leave licensed premises at the same time, especially at the terminal hour sought, which is peak demand time for the services of both the Police, and the NHS.

Interested Parties: Lydia Matthews (on behalf of the Divinity Road Area Residents Association -DRARA).

Ms Matthews stated their objection was on the grounds of public nuisance in relation to the cumulative impact due to the number of businesses on the Cowley Road.

She said that the number of late night venues in the vicinity and the cumulative impact on the residents is significant.

Ms Matthews said that if the premises was to stay open later it would increase the issues of public nuisance. She stated that there was sustained anti-social behavior (ASB) and noise nuisance from patrons from premises on the Cowley Road and she was concerned that adding another venue will act as a draw to traffic on Cowley Road and will have an impact on the residents of Divinity Road and the local community.

Niyi Anubi

Mr Anubi said that he had lived in Oxford for 35 years and never seen anything like this restaurant trading in Oxford and he welcomed its addition with open arms. He said it is key to his existence and enjoyed it's food and experience and had never seen any issues at the premises.

He said he could not see any empirical evidence as to what has been claimed, and argued that the impact of one extra restaurant on the cumulative impact would be marginal. He said the knock on effect was not credible and evidence would need to be seen.

He stated it was unfair that other premises on Cowley Road have longer hours.

He queried the Divinity Road objection due to the distance from the premises and thought that there may be other motives as some complaints were untrue.

He stated that the music is part of the ambience and that African music is very popular. The

premises is different and unique, and to deny the opportunity for longer hours would be a big shame.

He agreed that conditions should be on the licence and adhered to which he believed the licence holder would do.

Samantha Cooke

Ms Cooke agreed with the points raised by Mr Anubi and referred to her written representation in support of the premises.

Responsible Authorities: Dave Acreman, Environmental Health, (EH)

Mr Acreman said he was heartened by the conditions offered by the Applicant, which would go a long way to mitigating the concerns of EH. He said he would like a lobby system at the front of the premises to help prevent noise escaping onto Cowley Road.

He also suggested a cut off device on the rear door which will cut off the music if the door is opened to control noise breakout, as music escaping out of the back door was the most pressing issue.

Emma Thompson confirmed she visited the premises on Friday night with Richard Masters (Senior Licensing Compliance Officer) and stated there is an electric door that opens at the front when people enter.

Daniel Smith asked if the thickness of the walls will assist with adequate noise attenuation.

Mr Acreman clarified that noise breakout is normally from weaknesses in the structure, namely doors, windows and vents and the issue was noise escaping out into the back yard.

Mr Acreman agreed that closing the back yard at 21:00 was a reasonable time to assist with the issue of noise from people outside and that he could assist with a condition in relation to noise limiters or levels if necessary.

Mr Denny concluded by saying that noise nuisance good management practice comes from working with residents and the Responsible Authorities rather than against them. He said it was reasonable to request a winding down period towards the closing time, as this encourages people to leave gradually. He also said that the cumulative effect of the additional hours would be negligible in agreement with Mr Anubi.

Mr Denny remarked that it was an exciting offer to have an African cuisine themed restaurant in Oxford and African music is popular for the 100 people in attendance. He did not expect to have noise issues in the future.

He recommended that the licence be granted to meet customer demand but also to make it economically viable and said that there was a responsible and passionate DPS in charge.

Sgt Bouse reiterated that it is an untested venue, due to the pandemic, and he had not seen the operation in full swing. Cumulative impact was expected at the riskier times requested and the premises is located in a crime hot spot area.

Mr Anubi said that the majority of people using the premises were already on Cowley Road, and it would not create a cumulative impact as the people were already circulating on Cowley Road and the premises provides a further option to the patrons already in the vicinity. He said

that the assertion that it will create problems is not credible.

Decision and Reasons of the Sub-Committee

1. The Sub-Committee considered all submissions, both written and oral. It also had regard to the relevant Home Office Guidance and the Council's Statement of Licensing Policy, in particular policies LH3 (Licensing hours), LH7 (Last admission times) GN18 (Cumulative Impact), PP1 (Pubs, Restaurants, Hotels, Guesthouses) and policies LA2-LA4 (General Prevention of Public Nuisance).
2. The Sub-Committee gave weight to the concerns of TVP in regard to the high levels of crime, disorder and nuisance in the area, particularly after 01.00hrs. The Licence had been granted in 2020 as an exception to the then East Oxford Special Saturation Policy (EOSSP) due to the apparently low impact of the intended operation as a restaurant. The decision at that time gave no expectation that hours of operation would be extended at a later date.
3. The premises had been unable to trade at full capacity due to the restrictions related to the pandemic, for this reason the Sub-Committee had no evidence before it as to the actual impact of the business when operating under normal circumstance. Whilst the EOSSP was not currently in effect the TVP evidence showed that the cumulative impact problems in the area remained high and the representations from the Interested parties indicated noise nuisance was a problem, particularly from use of the outside area.
4. The Sub-Committee also had concerns that although the premises is restricted by its licence to operation as a restaurant, it had many aspects that were not restaurant related and were more akin to a nightclub.
5. For these reasons the Sub-Committee found it appropriate to limit the variation applied for and to impose additional conditions, as follows, in order to promote the licensing objectives of preventing public nuisance and preventing crime and disorder:

hours for licensable activities:

Retail Sale of Alcohol (on sales only)

Friday and Saturday 12:00 to 00:00

Sunday to Thursday 12:00 to 23:00

Late Night Refreshment

Friday and Saturday 23:00 to 00:00

Recorded Music

Friday and Saturday 12:00 to 00:15

Sunday to Thursday 12:00 to 23:00

opening Hours:

Friday and Saturday 12:00 to 00:30

Sunday to Thursday 12:00 to 23:30

additional conditions:

- I. *The Premises Licence Holder shall ensure that there is no use of the rear yard (external area) by customers after 21:00 hours. When in use the rear yard will be monitored by staff. (nb. this condition replaces current condition 28 of the licence)*
 - II. *The Premises Licence Holder shall ensure that a circuit 'cut off' device is fitted and working which automatically switches off the sound system when the rear door is opened after 21.00. Such device to be approved by the Responsible Authority for environmental health.*
 - III. *There shall be no admittance or re-admittance of customers after 22:00hrs Sunday to Thursday and 22:30hrs Friday and Saturday.*
6. The application is **GRANTED** subject to the additional conditions and timings set out above.

Signed: Councillor Colin Cook

Chair of Licensing Sub-committee

Notes:

- A. The applicant, and any responsible authority or interested party that has made representations upon the application has a right of appeal to the Magistrates' Court against this decision. If you wish to appeal you must do so within 21 days of being notified of the decision.

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