

## **OBJECTION TO APPLICATION FOR VARIATION (MAJOR) OF PREMISES LICENCE**

**NAMASTE DELHI, 64 BRIDGE STREET, ABERDEEN**

**REFERENCE: AC827**

We act for ██████████, which is the property company responsible for the management of Bridge House, ██████████ Aberdeen. This property lies adjacent to the application site.

Our client objects to the application which has been submitted on behalf of Namaste Delhi SLR Limited, the Premises Licence holder at 64 Bridge Street, for the Major Variation of the Premises Licence at 64 Bridge Street for the following reasons:

- The proposal does not have planning permission.
- Lack of appropriate space for bins
- Impact on neighbouring occupiers
- Potential for crime and disorder.

We would make the following observations and comments in respect of each of the above matters:

### **1. Planning Permission**

- 1.1 In terms of Section 50 of the Licensing Scotland Act 2005, a premises licence application must be accompanied by a planning certificate in respect of the subject premises, confirming that that planning permission in respect of any development of the subject premises in connection with their proposed use as licensed premises has been obtained.
- 1.2 It is clear from Section 50 that the Licensing Board must be satisfied that the appropriate planning permission is in place before the application for a premises licence will be processed. The planning permission process deals with many of the public issues relating to the use of the premises, including the appropriateness of such a use in the specific location. The Board will quite rightly wish to be satisfied that the appropriate planning aspects have been given proper consideration, and approved, prior to any consideration by the Board in relation to the Licensing aspects.
- 1.3 In relation to the subject premises, planning permission was sought in relation to the use of the subject premises as a nightclub in September 2013. The decision notice approving this application was issued on 13 December 2013.
- 1.4 In terms of Section of the Town & Country Planning (Scotland) Act 1997 (inserted by Section 20 of the Planning Etc (Scotland) Act 2006) planning permission lapses on the expiration of a period of 3 years, beginning with the date on which the permission is granted.
- 1.5 The Planning permission granted in December 2013 has not been implemented, and has therefore lapsed. Therefore the subject premises do not have planning permission to be used as a nightclub.

- 1.6 If the owners wished to operate the premises as a nightclub, they would require to reapply for permission, and this would be considered in line with current policies.
- 1.7 Since the planning permission was granted in 2013, a new Local Development Plan has been approved. Different policies may therefore apply in determining any such application, and it is imperative that this is established prior to the Licensing Board taking a decision in relation to the granting of a variation to the Premises Licence to allow for the sale of alcohol in the manner proposed.
- 1.8 The Board is obliged, under Section 30(5) of the 2005 Act, to give consideration to the nature of the activities proposed to be carried on in the subject premises, the location, character and condition of the premises, and the persons likely to frequent the premises when considering any application for variation of the Premises Licence.
- 1.9 The purpose of the Section 50 Certificate on an application for a Premises Licence is to provide the Board with the relevant confirmation that from a planning perspective, these elements have been satisfied.
- 1.10 In the absence of a Section 50 Certificate, and in this situation, where a historic planning consent was never implemented, and has long since lapsed, the Board cannot be satisfied that the location of the subject premises, nor the activities proposed to be carried on, are acceptable or satisfactory from a planning perspective, before the Board is able to give any consideration to these aspects from a licensing perspective.
- 1.11 Whether Section 50 of the 2015 Act applies to a major variation is perhaps open to debate. However Section 17 confirms that a "Premises Licence" means a licence issued by a Licensing Board under section 26(1) or 47(2) authorising the sale of alcohol on the premises. In the present circumstances, the applicant is seeking a variation to the Premises Licence which, if approved, would result in a Premises Licence being issued by the Licensing Board.
- 1.12 If the Board has not received a Section 50 Certificate as part of the application, then can the board be satisfied that the location of the subject premises, nor the activities proposed to be carried on, are acceptable?
- 1.13 Simply because a premises already has a Premises Licence in one form, (perhaps a gift shop selling souvenir alcohol for off sales) should this be sufficient to avoid the requirements for Section 50 Certificates in the event of an application for a major variation of the Premises Licence?
- 1.14 Given the fact that the planning permission for use as a nightclub has long since expired, we would suggest that the Board is unable to approve the variation requested.

## 2 Bins

- 2.1 The titles to Namaste Delhi include a right of access over the pend and courtyard to the north for the purpose of access to and egress from the premises. They do not include any rights in relation to the storage of bins or any other entitlements.

- 2.2 Notwithstanding that fact, the occupiers of the subject premises store their waste bins within the pend and courtyard, along with other items of general waste, including gas canisters, used cooking fat canisters, scaffolding, waste flooring, and other items. This is often to the detriment, and to the safety risk of other users of the courtyard and pend. The bins for the current premises are often stored directly in front of the fire escape for our client's premises at Bridge House.
- 2.3 We attach a photograph taken in the last week showing the waste bin of the Namaste Delhi situated in front of the fire door for Bridge House.
- 2.4 Approving the extension of the permitted hours, to enable to subject premises to operate as a nightclub is only likely to enhance this issue, given the likelihood of increased waste, and increased requirements for the storage of empty bottles and kegs within the pend.
- 2.5 While not necessarily a matter for the licensing Board, it is reasonably foreseeable that the enhanced hours of operation requested, in order to trade as a nightclub, will increase the requirements for waste storage, which increases the risk of public safety, and in particular fire safety to other users of pend, which is a relevant consideration of the Board.

### **3. Impact on neighbouring occupiers**

- 3.1 A further objective of the Licensing Board is the prevention of public nuisance. The Board seeks to maintain and protect the amenity of the surrounding neighbourhoods
- 3.2 The proposed variation of the Premises Licence from a restaurant to a nightclub, together with the extended hours, has the potential to severely impact on neighbouring properties. The proposal to open until 3.00am is at variance with the other three restaurants in the building, which close at either 10.30pm or 11.00pm
- 3.3 One of the other neighbouring occupiers, whose premises open out on to the common pend, is a travel and logistics company which often operates 24 hours a day as a result of offshore requirements. Staff within this property may be concerned at having to negotiate late night revellers, particularly through a dark pend, when accessing their own premises.
- 3.4 Although the surrounding area is generally commercial, the interests of those other commercial occupiers should also be taken into account. Above the subject premises are other restaurants, including the Royal Thai, Saigon and Nazma Tandoori. These premises may be impacted by the noise that is likely to emanate from the ground floor premises if they are to operate as a nightclub, potentially long before customers have finished eating.
- 3.5 Operating as a nightclub until 2am or 3am has the significant likelihood of being detrimental to the ambience of the locality, which, again, contradicts the licensing objective of preventing public nuisance.
- 3.6 The Board acknowledges that that licensed hours and activities must be appropriate for the type of premises and locality, and that the terminal hours indicated in the Supplementary Policy on Licensed Hours are the maximum available and will not be suitable for all premises.

#### **4 Potential for crime and disorder**

- 4.1 Our clients are concerned with the likelihood of vandalism and damage to their adjacent building, and to any vehicles parked within the courtyard accessed from the common pend, as a result of the proposed variation of Licence.
- 4.2 The Board has expressed their commitment to improving the quality of life for the people of the city by adopting and enforcing policies designed to increase community safety and reduce the threats of crime and disorder.
- 4.3 Amongst the factors to be considered when questioning the risk of crime and disorder are that of anti-social behaviour and vulnerability.
- 4.4 This area of Bridge Street, where late night entertainment is available, is prone to late night vandalism. This can include broken windows to the other businesses fronting on to the street. This is evidenced by the fact that a number of buildings have added metal shutters to protect the front windows. Our client's property at Bridge House has a large area of glass which would be expensive and difficult to install shutters over, or otherwise protect.
- 4.5 Increasing the operating hours of the subject premises to those of a nightclub, would attract additional members of the public to the southern end of Bridge Street, and the extended licensed hours, until 3am at weekends, would result in increased alcohol consumption, and therefore a greater potential for damage to properties on Bridge Street. While this could be said of any late night premises, Bridge Street in particular has a record of late night damage.
- 4.6 There are also issues with the large red doors which protect the pend and courtyard being opened by the current occupiers of the subject premises in the evenings and weekends, during its current opening hours, and left open. This not only creates a security issue generally for the area as described but when not closed at night the courtyard suffers constantly from members of the public using the area to urinate, defecate, vomit, drop cans and bottles or otherwise loiter in the area.
- 4.7 In terms of vulnerability, our comments reflect those already made in relation to the use of the pend to the north of the Premises, as a location for smokers, or other clientele of the subject premises. The pend and courtyard are unlit and entirely unsuitable for congregating club-goers, or for individuals who may find themselves vulnerable in a dark alleyway on their own.
- 4.8 We would also highlight the potential for damage to vehicles by those accessing the subject premises to and from the pend and courtyard, whether as smokers, or if that is to be used as an entrance to the club. The potential for people spilling out in to a courtyard of this nature, in varying levels of intoxication, clearly puts vehicles at risk, as well as other users of the pend and courtyard.

#### **5. Determination**

- 5.1 The present Application for Variation of the Premises Licence is a Major Variation. Section 30 of the 2005 Act states that the Licensing Board must hold a hearing for the purpose of considering and determining the application,

and must consider whether any of the grounds for refusal applies. If any of the grounds for refusal apply, the Board must refuse the application.

- 5.2 If the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives the application must be refused
- 5.3 If the Licensing Board considers that the location, character and condition of the premises means that the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation, then again, the Board must refuse the application.
- 5.4 It is therefore for the Board to consider whether the proposed variation to the premises, when taken against the points highlighted above, would result in the premises being unsuitable for the late night sale of alcohol and operation as a nightclub.

### Conclusion

- 6.1 Against the above background we would therefore respectfully request that the application is refused.

[REDACTED]

1. Photograph of bin serving Namaste Delhi blocking the fire exit from Bridge House.

