

Crawley Borough Council

Report to Licensing Sub-Committee

12 February 2024

Application for the Variation of a Premises Licence: Mon Ami, 20 Broad Walk, Northgate, Crawley, RH10 1HQ

Report of the Head of Community Services – HCS/076

1. Recommendations

- 1.1 That the Sub-Committee considers the contents of this report and any oral or documentary evidence provided in connection with the hearing, and determines, with reasons, an application made vary the Premises Licence granted in respect of a premises known as Mon Ami, 20 Broad Walk, Northgate, Crawley, RH10 1HQ under the Licensing Act 2003 (the 'Act').

2. Type of Hearing and Powers of the Sub-Committee

- 2.1. Crawley Borough Council is the Licensing Authority for the borough of Crawley and determines all matters under the Licensing Act 2003. This includes where an application to vary a premises licence. Where relevant representations are made under the Act, and not resolved, the matter must be heard by the Licensing Sub-Committee.
- 2.2. The Sub-Committee is required to determine the application by taking such of the steps set out below (in paragraph 8.4) as it considers appropriate for the promotion of the Licensing Objectives under the Act.

3. Reason for the Hearing – Variation of Premises Licence

- 3.1 On 29/11/23, the Council as Licensing Authority received an application to vary the premises licence.
- 3.2 On 22/12/23, Karen Plympton, Health, Safety and Licensing Manager on behalf of the Licensing Authority as a Responsible Authority, submitted a relevant representation to relation to the premises under the Act. This representation has not been resolved and it now falls to the Sub-Committee to consider and determine the application to vary the licence.

4. Licensing Objectives

- 4.1 The Licensing Sub-Committee must consider each application on its own merits, in accordance with the provisions within the Act, including the Licensing Objectives which are:
- The prevention of crime and disorder
 - The protection of children from harm
 - Public safety
 - The prevention of public nuisance.

- 4.2 A relevant representation was made by the Council as Licensing Authority on the grounds that the following Licensing Objectives were not being promoted.
- The prevention of crime and disorder – the premises had repeatedly breached its premises licence conditions contrary to the Licensing Act 2003 and the (now former) Premises Licence Holder/Designated Premises Supervisor Mr Nezaj has both smoked in a smokefree premises and as the person in operational control, has permitted the smoking of shisha by others in an enclosed and/or substantially enclosed premises which is both a workplace and area to which the public have access contrary to the Health Act 2006, and related Smokefree Regulations, including the Smokefree (Enforcement and Premises) Regulations 2006
 - Public Safety – as above
 - The protection of children from harm – children are permitted unrestricted access to premises where licence conditions are being breached and smoking is taking place in a substantially enclosed premises.
- 4.3 The Licensing Authority formed this view because premises licence conditions attached to the premises licence as issued under the Act have been repeatedly breached and that those in operational control both participated and allowed the smoking of shisha in a substantially enclosed premises contrary to Smoke Free (Premises and Enforcement) Regulations 2006. Further, that despite repeated advice, guidance and warnings to those in operational control along with the then Premises Licence Holder and Designated Premises Supervisor, Ergon Nezaj, that the breaches of premises licence conditions and offences under smokefree legislation continued. This led to a loss of confidence by the Licensing Authority in the management to operate the premises in accordance with various regulatory regimes, and that the Licensing Objectives were not being promoted.
- 4.4 By way of background, on 08/09/23, Ergon Nezaj applied to be issued a premises licence under the Act and sought to be specified as the Designated Premises Supervisor (DPS) and Premises Licence Holder.
- 4.5 The application specified the proposed trading hours as 07:00 hours until 23:00 hours on Sunday through to Wednesday, and 07:00 hours to 01:00 hours on Thursday through to Saturday. The application also sought to authorise the licensable activity “Supply of Alcohol” 11:00 hours - 22:30 hours Sunday to Wednesday, and between 11:00 hours to 00:30 hours the following day Thursday to Saturday, and to authorise the licensable activity “Late night refreshment” (hot food) between 23:00 hours and 01:00 hours, Thursday to Saturday.
- 4.6 Following representations by Sussex Police as a Responsible Authority on 27/09/23 to the grant of a new premises licence at the site, agreement was reached via the owners Licensing Consultant that a series of further conditions be added to the licence, limiting the sale of alcohol to persons seated at tables partaking in a table meal. A copy of the premises licence issued at that time and a layout plan is included at **Appendix C** to Document 1.
- 4.7 On 29/11/23, an application to vary the premises licence was made by Noel Samaroo, Licensing Consultant in the name of the then premises licence holder and DPS, Ergon Nezaj. The application to vary the premises licence is available to view on the Council’s website [here](#).
- 4.8 In summary, the variation application sought to remove conditions requiring that the consumption of alcohol would only be permitted when taking a table meal/substantial refreshment. The variation sought to remove the requirement for food in relation to

all alcohol sales and that the premises would seek to operate as a “café bar” type premises whereby alcohol could be purchased without the need for food, but that there would be no vertical drinking

- 4.9 Given the matters outlined in the application to Review the premises licence had not been resolved when the application to vary the premises licence was made, Kareen Plympton, Health, Safety and Licensing Manager, lodged a representation on behalf of the Licensing Authority as Responsible Authority on 22/12/23 on the same grounds as outlined in application to review the premises licence.
- 4.10 Full details of the representation lodged by Kareen Plympton, Health, Safety and Licensing Manager on behalf of the Licensing Authority are included at **Document 1**, and its **Appendices A to M**. It highlights the repeated attempts by the Council’s Licensing Team to engage, warn and educate those responsible for the premises to secure compliance and actions taken by them as well as other Regulatory Officers.

5. Additional Information & Consecutive Sub-Committee Hearing

- 5.1 Both the application to vary and then seek a review of the premises licence have been listed to be heard consecutively as a means to make best use of public funds and to ensure a better understanding of the matters in hand as this is a complex case as there are inter relationships between the two.

6. Consultation and Relevant Representations

- 6.1 Following receipt of the application to vary the premises licence by the Council’s Licensing Team, a statutory 28-day consultation period began, during which representations in respect of the review application could be submitted to the Licensing Authority. The representation period concluded on 28/12/23.
- 6.2 As required by the Act, the application to vary the premises licence was properly advertised. Copies of the application were also circulated to all Responsible Authorities under the Act, with the deadline for any representation to be made within the 28 day consultation period.
- 6.3 No other relevant representations were received in relation to the application to vary the premises licence.

7. Discussions with all Parties making Representations

- 7.1 As a result of the representation by the Council as Licensing Authority in relation to the application to vary the premises licence (and subsequently, the application to review the premises licence,) Noel Samaroo, Licensing Consultant and Kareen Plympton, Health, Safety and Licensing Manager had ongoing discussions regarding both the applications to see if matters could be addressed.
- 7.2 On 28/12/23, Lutfi Neza, premises owner contacted Kareen Plympton, Health, Safety and Licensing Manager to try to seek a resolution of matters in relation to both the variation application and review of the premises licence, His email stated

“Dear Kareen and Warren,

I am writing to you regarding Mon Ami Lounge.

I have applied for a Full Variation to change / amend some of the restrictions on the Operating Schedule of the current license.

I am writing to confirm that I am happy to work with you. I am fully aware of your issue regarding the Shish aspect of the business. For this, I am happy to stop Shisha activities on the premises for the time being.

I have invested a lot of time, money and effort into the property in a bid to boom the night time economy of Crawley. I have also given employment to others.

This is an extremely busy time for the hospitality sector and I really need my doors to be open so that I have a chance to trade at this crucial time.

I would be grateful if you could please accept the current application and as I stressed above, I am happy to remove all Shisha aspects from the business until we can reach a resolution.

I would be grateful if we could stop the license review and I will operate the business without Shisha. I would be grateful if you could provide me with a speedy response.

*Kind regards,
Lutfi Neza”*

- 7.3 This led to a meeting on 10/01/24 attended by Noel Samaroo, Kareen Plympton and Senior Licensing Officer, Warren Jones. Mr Lutfi Neza also attended the meeting but was unable to participate as he was not specified on the premises licence, nor had he lodged a notification of interest.
- 7.4 The purpose of the meeting was to discuss the representations made to see if any matters could be resolved in relation to variation and review applications.
- 7.5 Shortly before this date, on or around 09/01/24, Mr Lutfi Neza contacted Kareen Plympton to advise that he had closed the business as he could not meet the requirements of the current premises licence, and confirmed that would remain closed until the licensing situation had been resolved. This was confirmed by Noel Samaroo at the meeting on 10/01/24.
- 7.6 In addition to those conditions drafted in conjunction with the Licensing Authority in relation to the application to vary the premises licence, a series of other conditions and changes to staff were discussed to address the representation and concerns of the Licensing Authority. It was agreed by the Council and the licence holder that any common ground, condition proposals and operational changes be formalised by way of a Memorandum of Agreement.
- 7.7 Prior to the conclusion of discussions, and as a consequence of the discussions to try and regain the Licensing Authority's trust and confidence in management, changes were made to the licence to remove the then DPS and Premises Licence Holder, Mr Ergon Nezaj and replace him with the business owner, Mr Lutfi Neza as the person who will be in day to day operation at the premises. This change took effect from 27/01/24.
- 7.8 Further assurances about staff training and a commitment to working in partnership with the Licensing Authority were agreed in principle and have been included in a Memorandum of Agreement for consideration by the Licensing Sub-Committee in relation to the variation application.
- 7.9 The Memorandum of Agreement containing the outcomes of the discussions including detailing proposed licence conditions to be added to the premises licence, and other matters requiring a change in premises licence holder and DPS to Mr Lutfi Neza retraining of staff on all matters under the Licensing Act 2003 and entire

removal of all shisha products and related paraphernalia from the premises. A signed copy of the Memorandum of Agreement dated 01/02/24 is included at **Appendix N**.

8. Relevant Considerations & Determination

- 8.1 In the case of an application to vary a premises licence, where relevant representations have not been fully resolved, the matter is placed before a Licensing Sub-Committee for consideration.
- 8.2 However, Sub-Committee members are invited to have regard to the Memorandum of Agreement that has been signed by Mr Lutfi Neza, the newly appointed Premises Licence Holder and Designated Premises Supervisor, Mr Samaroo and Kareen Plympton on behalf of the Licensing Authority, which sets out the premises licence conditions and measures proposed to be put in place to address the representations made.
- 8.3 In reaching its determination, the Sub-Committee must consider the case on its merits, and carry out its role with a view to promoting of the four Licensing Objectives. The Sub-Committee must also have regard to Council's Statement of Licensing Policy (particularly Section 5), the current Section 182 Guidance (August 2023) Revised Guidance issued under section 182 of the Licensing Act 2003 ([December 2023](#)) along with the written and/or oral evidence presented during the hearing.
- 8.4 Section 182 Guidance under the Act makes reference to applications to vary premises licences at Section 8.
- 8.5 The Licensing Authority must, having regard to the application to vary the premises licence, and any relevant representations received by all parties, take such steps (if any) as it considers appropriate for the promotion of the Licensing Objectives:
- Grant the variation to the premises licence without any change
 - Modify the conditions of the Premises Licence (that is, adding new conditions or any alteration to or omission of existing conditions);
 - Refuse to vary the premises licence.
- 8.6 The Sub-Committee must give reasons for any decision it takes.

9. Right of Appeal

- 9.1 Under Section 181 and Schedule 5 of the Act, right of appeal to the Magistrates' Court in respect of application for review of an existing licence include:
- The applicant
 - The licence holder
 - Any person who made relevant representations.

10, Hearing Papers and Process

- 10.1 The Hearing Notice and Committee Procedure for determination by the Sub-Committee have been sent to all parties in relation to the hearing under Regulation 7(2) and Schedule 3 of the Licensing Act 2003 (Hearings) Regulations 2005.

11. Implications

- 11.1 There are no extra staffing or financial implications to the Council, save for those in respect of possible appeal(s) against any decision taken. The Licensing Service is a self-financing service, funded via fees and charges set by statute.
- 11.2 The Council is required to consider the impact any decision may have on crime and disorder in the area (Section 17, Crime and Disorder Act 1998) which states as follows:
- “Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent:*
- (a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and*
- (b) the misuse of drugs, alcohol and other substances in its area; and re-offending in its area”*
- 11.3 Human Rights considerations must be taken into account in balancing licensing issues, in particular, article 1 of the first protocol and articles 6 and 8. Article 1 relates to the protection of property and the peaceful enjoyment of possessions and property (holding a licence would be considered a possession). Article 8 relates to the right to respect for private and family life, home and correspondence. Article 6 relates to the right to a fair trial. These are however qualified rights and can be deprived of “in the public interest”. Interference is permissible if what is done:
- Has its basis in law;
 - Is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim;
 - Is proportionate to the aims being pursued; and
 - Is related to the prevention of crime or the protection of public order or health or the protection of the rights and freedoms of others.
- 11.4 The Sub-Committee must consider each application on its own merits, and in accordance with the principles of natural justice, as well as the provisions of the Licensing Act 2003. All relevant factors must be taken into account, and all irrelevant factors must be disregarded.
- 11.5 All applications before the Sub-Committee must be considered against the backdrop of anti-discriminatory legislation including the Equality Act 2010 and in accordance with the Council's current Equality Strategy.

Background Papers

- Licensing Act 2003 (as amended)
- Home Office Guidance issued under Section 182 of the Licensing Act 2003 (August 2023)
- Crawley Borough Council's current Statement of Licensing Policy

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Premises: MON AMI, 20 BROADWALK, NORTHGATE,CRAWLEY, WEST SUSSEX, RH10 1HQ

REPRESENTATION BY THE LICENSING AUTHORITY AS A RESPONSIBLE AUTHORITY OBJECTING TO THE VARIATION OF THE PREMISES LICENCE UNDER THE LICENSING ACT 2003

I correspond in connection with the above application to vary the Premises Licence in respect of the above. I make this representation on behalf of the Licensing Authority as a Responsible Authority on the following grounds.

The premises has failed to promote the following Licensing Objectives under the Licensing Act 2003 and has not heeded the advice, warnings and guidance afforded to them on a repeated basis in relation to compliance with the Licensing Act 2003, premises licence conditions and compliance with the Smoke Free (Premises and Enforcement) Regulations 2006.

It is the view of the Licensing Authority that the premises is failing to promote the following Licensing Objectives:

The prevention of crime and disorder The premises has repeatedly breached its premises licence conditions contrary to the Licensing Act 2003 and the Premises Licence Holder/Designated Premises Supervisor [REDACTED] has both smoked in a smokefree premises and as the person in operational control, has permitted the smoking of shisha by others in an enclosed and/or substantially enclosed premises which is both a workplace and area to which the public have access contrary to the Health Act 2006, and related Smokefree Regulations, including the Smokefree (Enforcement and Premises) Regulations 2006

The protection of children from harm Children are permitted unrestricted access to a premises where licence conditions are being breached and smoking is taking place in a

Public Safety As above

Overview

On the 8th September 2023, Crawley Borough Council, as the Licensing Authority, received an Application for a new Premises Licence, in respect of "Mon Ami" at 20 Broadwalk, Northgate, Crawley, West Sussex, RH10 1HQ.

The application was submitted by a licensing consultant, on behalf of the individual applicant, [REDACTED], of [REDACTED].

The Operating Schedule that formed a part of the application, described the premises as, "*Mon Ami Lounge is a forthcoming cafe/bistro that will feature a diverse menu including burgers, flatbread pizzas, fish, and various other culinary delights*".

The application specified the proposed trading hours as 07:00 hours until 23:00 hours on Sunday through to Wednesday, and 07:00 hours to 01:00 hours on Thursday through to Saturday.

The application also sought to authorise the licensable activity "Supply of Alcohol" 11:00 hours - 22:30 hours Sunday to Wednesday, and between 11:00 hours to 00:30 hours the following day Thursday to Saturday.

It also sought to authorise the licensable activity “Late night refreshment” (hot food) between 23:00 hours and 01:00 hours, Thursday to Saturday.

On the 27th September 2023, Sussex Police, in their capacity as a Responsible Authority under the Licensing Act 2003, submitted a representation to the application for a new Premises Licence on the grounds of the Prevention of Crime and Disorder, and the Protection of Children from Harm Licensing Objectives. In their representation, Sussex Police recommended a number of licence conditions be attached to the Premises Licence in order to promote the Licensing Objectives. A copy of this representation is included at **Appendix A**.

The second proposed condition in the Police representation stated that “The sale, supply, and consumption of alcohol on the premises, shall be restricted to patrons seated at tables, and ancillary to them partaking of a table meal.”

On the 4th October, the then Licensing Consultant for the applicant, [REDACTED], of ESI LICENCING AND LEGAL CONSULTANCY LTD, [REDACTED], confirmed via email that the applicant, [REDACTED] agreed to the conditions proposed by Sussex Police. A copy of this email is included at **Appendix B**.

The Premises Licence issued under the Licensing Act 2003 was granted on the 7th October 2023, with the agreed conditions and a layout plan, including condition numbered 2 on the Premises Licence stating that “*the sale, supply, and consumption of alcohol on the premises, shall be restricted to patrons seated at tables, and ancillary to them partaking of a table meal*”. A copy of this is included at **Appendix C**.

On the social media pages of the premises, Mon Ami indicated that it intended to open on 13th October 2023 as a “Grand Opening” and thereafter had commenced trading.

On 3rd November 2023, [REDACTED], Food Inspector, visited the premises, which was open and trading, with a view to carrying out a food inspection but noted that the premises was not ready to offer food. A copy of this email is included at **Appendix D**.

Earlier in the day on 17th November 2023, as part of routine licensing checks, publicly available social media posts displayed by Mon Ami, 20 Broadwalk, Northgate, Crawley, West Sussex, RH10 1HQ, were viewed by Council Authorised Officers. These showed customers smoking Shisha inside the premises at the rear and apparently consuming alcoholic drinks without any table meals visible or in evidence. The only food seen was a single plate of fruit. Screenshots of social media sites taken at the time to support these observations are included at **Appendix E**.

At 14:52 hours on 17th November 2023, Senior Licensing Officer [REDACTED] visited the premises, and spoke to the Premises Licence Holder / Designated Premises Supervisor (DPS), [REDACTED], the person through whom all alcohol sales are authorised, who on arrival was smoking Shisha from a Shisha pipe in the rear of the premises.

Another person was also seen to be smoking Shisha from a Shisha Pipe in the rear of premises, specifically in the area resembling a conservatory with 4 walls, and a roof, a rear door and windows, which at the time of the visit were closed. [REDACTED] formed the view that the premises was a smokefree premises, being that it was open to the public and people were seen working in the premises and that the smoking of shisha and other tobacco products should not be taking place. He also determined that at the time of the visit, no windows or doors were open, that the premises was substantially enclosed, and that offences were being committed under the Smokefree Regulations.

Under the Smokefree (Premises and Vehicles) Regulations 2006 the smoking of shisha and tobacco products is not permitted in premises that are enclosed or substantially enclosed. Smoke free Regulations were made using powers under the Health Act 2006 and means that smoking is not permitted in a premises which is open to the public (a public place) and/or a workplace which is enclosed or substantially enclosed public places or workplaces and that “No Smoking” signage should be displayed to indicate this. The law is enforced by Local Authorities.

[The Smoke-free \(Premises and Enforcement\) Regulations 2006 \(legislation.gov.uk\)](http://legislation.gov.uk)

Enclosed and substantially enclosed premises.

2.—(1) For the purposes of section 2 of the Act, premises are enclosed if they—

(a) have a ceiling or roof; and

(b) except for doors, windows and passageways, are wholly enclosed either permanently or temporarily.

(2) For the purposes of section 2 of the Act, premises are substantially enclosed if they have a ceiling or roof but there is—

(a) an opening in the walls; or

(b) an aggregate area of openings in the walls,

which is less than half of the area of the walls, including other structures that serve the purpose of walls and constitute the perimeter of the premises.

(3) In determining the area of an opening or an aggregate area of openings for the purposes of paragraph (2), no account is to be taken of openings in which there are doors, windows or other fittings that can be opened or shut.

(4) In this regulation “roof” includes any fixed or moveable structure or device which is capable of covering all or part of the premises as a roof, including, for example, a canvas awning.

██████████ as the Premises Licence Holder and DPS was advised regarding the viewed social media posts in respect of the premises, which showed people smoking in an enclosed area at the rear and alcohol being served without food (a table meal as per the premises licence conditions) and that they appeared to also show breaches of the Smoke Free Regulations as well as breaches of the conditions attached to the Premises Licence issued under the Licensing Act 2003. ██████████ accepted that the social media posts showed the smoking of shisha in the premises but argued that the premises is “fully ventilated” and the roof could open. He appeared unaware of the Smokefree Regulations.

██████████ agreed with ██████████ that the social media posts showed alcohol being sold without food (a table meal) and appeared surprised when ██████████ advised that this was a breach of the Premises Licence conditions.

██████████ claimed that he was unaware of any of the Premises Licence conditions, particularly Condition 2 which stated that that “the sale, supply, and consumption of alcohol on the premises, shall be restricted to patrons seated at tables, and ancillary to them partaking of a table meal”. The meaning of this was discussed, and ██████████ stated that the “the kitchen is not ready yet.” ██████████ appeared not to understand the requirements of Condition 2. He was informed by ██████████ that the premises could not sell alcohol without a table meal, as per the conditions agreed with Sussex Police. ██████████ advised ██████████ to remove the social media posts as they showed the premises trading in breach of the premises licence and Smokefree Regulations.

██████████ noted that there were no food menus on display or apparently available in the premises. When asked when the kitchen would be ready by ██████████, ██████████ corrected himself to say that they had previously been serving food “until now” but had lost their chef and were looking for another. When looking around the premises, ██████████ noted that there were shisha pipes on some tables and no food menus in evidence and no smokefree signage was in evidence.

██████████ was repeatedly advised that the smoking of Shisha was not permitted indoors as it was a premises which should be smoke free and was substantially enclosed. ██████████ stated that the rear area was not classed as indoors or enclosed (in his view) as it was fully ventilated, and the roof could be retracted and opened. At the time of this visit, ██████████ observed that the rear roof comprising of several glass panels appeared closed.

The requirements of the Smoke Free (Premises and Enforcement) Regulations 2006, were explained to ██████████ in detail, in that for the premises to be suitable to smoke Shisha, there must either not be a roof, or, if there is a roof, then 50% of the sides should be missing and should not be substantially enclosed as was currently the case. He was advised that any opening that was capable of being closed (such as a door or window) was not classed as “open” and could not be counted. ██████████ explained the consequences of breaching the premises licence and smokefree Regulations. An advice sheet explaining this, and the penalties for breaching the Smokefree Regulations was provided to him. A copy of this advice sheet is included at **Appendix F**.

Following this visit, on the same day, 17th November 2023 ██████████ sent a formal warning email setting out the issues identified, and breaches observed, to ██████████ as the Premises Licence Holder /Designated Premises Supervisor. The email was also copied to the West Sussex Police Licensing Team. A copy of this letter is included at **Appendix G**.

On 23rd November 2023, Food Inspector, ██████████, visited the premises to assess the premises in relation to food hygiene matters. During this inspection, ██████████ noted that the premises kitchen was only partly open, and a basic menu was produced to him, but was not visible elsewhere in the premises. The chef present, a ██████████, confirmed that they were still only offering small starter plates and not full meals yet. A copy of this menu and his initial inspection report is included at **Appendix H**.

In addition, ██████████ observed staff and customers smoking on the premises within areas that were fully enclosed contrary to Smoke free Regulations, and that the premises roof appeared fully closed. He warned the persons in charge.

Following his inspection on 23rd November 2023, ██████████ sent ██████████, the owner of the premises, a formal email repeating the previous advice in relation to the Smoke-free (Premises and Enforcement) Regulations 2006, in short, explaining that all smoking activity must cease immediately in the premises. A copy of this email is included at **Appendix I**.

At 20:15 hours on 1st December 2023, ██████████, Senior Licensing Officer and ██████████, Health, Safety and Licensing Manager for Crawley Borough Council, visited the premises to confirm that licensable activity was being carried on in accordance with the premises licence (Section 179, Licensing Act 2003). The visit was captured on Body Worn Camera.

The following matters were initially observed:

- All parts of the premises were substantially enclosed, including the roof.
- The premises was open to the public as a licensed premises, and also operating as a workplace.
- In the window at the entrance of the premises, only advertising material relating to alcoholic beverages, including cocktails was seen, with no reference to the need for such to be with a table meal, nor was there a food menu on display. The display board on the Highway outside of the premises stated "Mon Ami Cocktail Bar, 241 Cocktails".
- No menus (food or otherwise) were seen on display in the premises nor on any table in the premises.
- Only alcoholic and non-alcoholic beverage, and shisha menus were seen in the vicinity of the bar, and these included prices.
- Whilst the kitchen was illuminated, no food preparation appeared to be taking place. ██████ stated that they didn't have a chef on duty, but a person was preparing "snacks only," such as fruit plates.
- Shisha was being smoked, using shisha pipes, in the rear of the premises.
- The roof to the rear of the premises was entirely closed.

During the visit, a number of persons present in the rear of the premises were seen to be smoking Shisha via shisha pipes. Alcoholic drinks were also seen being consumed by customers, without any food or table meals being taken as required by Condition 2 of the Premises Licence. Some "snack plates" in the form of a small plate of humous and flat bread, and fruit platters appeared to have been served to customers.

Customers were spoken to regarding the smoking of shisha in the premises, the flavour of the Shisha being smoked, and to confirm what they were drinking. This included alcoholic beverages without a table meal, in breach of the premises licence conditions.

██████ as the Premises Licence Holder and Designated Premises Supervisor was present along with the owner of the premises ██████. Both were spoken to regarding the clear breaches of the Smoke Free regulations, and the breaches of the condition attached to the Premises Licence. The owner explained that their chef had left them, and that they had a new helper/chef who was serving snacks only.

It was noted that there were no food menus available in the premises on display, and none were available when requested by Officers with ██████ stating that they were "still being worked on" and not available. He admitted that no table meals were available, only snacks.

██████, the owner, explained that they had been unaware of the conditions agreed with Sussex Police, and that their former Licensing Agent had not informed them of requirement for customers to have a table meal to be able to consume alcohol, and that they could not simply have alcohol by itself or without the benefit of a table meal. He further explained that they had subsequently appointed a local Licensing Agent to act on their behalf, and that they had applied for a variation of the premises licence, to amend conditions, to allow for the sale and supply of alcohol without food. It was observed that the premises licence variation application site notice was displayed in the window of premises.

The current premises licence specifies the following (as well as other licence conditions to which this review relates)

"The sale, supply, and consumption of alcohol on the premises, shall be restricted to patrons seated at tables, and ancillary to them partaking of a table meal."

The application to vary the premises licence seeks to release this and other licence conditions:

1. To modify existing condition in Annex 2 Condition 2: "The sale, supply, and consumption of alcohol on the premises, shall be restricted to patrons seated at tables, and ancillary to them partaking of a table meal" to read, "The sale, supply, and consumption of alcohol on the premises, shall be restricted to patrons seated at tables, service will be by waiter/ess only."
2. To add Condition - There is to be no Vertical drinking permitted, food will be available throughout the time that alcohol is being served.

Officers explained to [REDACTED], the owner and [REDACTED], the Premises Licence Holder/Designated Premises Supervisor, that until such time as any variation was granted, they had to operate in accordance with their current Premises Licence and licence conditions issued under the Licensing Act 2003. They both stated that they would not serve any more alcohol unless with a table meal.

[REDACTED], the premises owner and [REDACTED], the Premises Licence Holder/DPS were insistent that the premises was not enclosed, due to the retractable roof and appeared to disregard the Officers' repeated advice. The Smoke Free regulations were again explained to them, and they agreed that they would not permit any more smoking of shisha inside of any part the premises, nor sell any further shisha. Both also confirmed that they would not sell alcohol without a table meal being provided in order to avoid further breaches of the premises licence.

At 22:05 hours on 1st December 2023, [REDACTED], and [REDACTED] revisited the premises in company with two Police Constables, to confirm that licensable activity was being carried on in accordance with the Premises licence (Section 179, Licensing Act 2003), and to confirm that the owner and the Premises Licence Holder/Designated Premises Supervisor were adhering to the assurances they had given earlier that evening regarding compliance with the Licensing Act 2003, premises licence conditions and Smokefree Regulations.

The Premises Licence Holder/Designated Premises Supervisor, [REDACTED] and the owner, [REDACTED] were still present, and it was noted that new customers were now present in the premises, and that they were smoking Shisha inside the enclosed premises. No food menus of any sort were in evidence. Enquiries with persons present also confirmed that they were drinking alcohol, and that no table meals were being taken. Officers observed several tables without any food whatsoever and which had alcoholic beverages which were being consumed by customers.

Three customers sitting at Table 42 were seen to have just alcoholic drinks on their table, and no table meals present. [REDACTED], the Premises Licence Holder/DPS, provided [REDACTED] with a receipt that confirmed that these customers had only purchased alcoholic drinks. This receipt is included at **Appendix J**.

Both [REDACTED] and [REDACTED] refused to listen to the advice of attending Officers and took no steps to address the premises licence breaches identified and appeared to continue to sell alcohol without a table meal whilst Officers were present. They also did not take steps to stop the smoking of Shisha in the premises by those present. Both had been spoken to under caution by [REDACTED] during the earlier visit and were reminded that they remained under caution at the second visit. When asked what steps they planned to take to address matters, they advised that they would defer to their Licensing Consultant. [REDACTED] warned both, that the matters could lead to legal action being taken. Officers left the premises still trading, shisha being smoked, and alcohol being served without a table meal.

Following these visits, on 8th December 2023, [REDACTED] emailed [REDACTED], the Premises Licence Holder and DPS, advising him that Council, as the Licensing Authority, was considering its position in relation to the matters identified and raised during the licensing visits, in relation to the Licensing Act 2003, and Smoke-free (Premises and Enforcement) Regulations 2006 and Health Act 2006. It was made clear that this may include legal proceedings and a Review of the Premises Licence, and that their “compliance and co-operation” was advised. The email was copied to their appointed Licensing Agent, [REDACTED], and to the West Sussex Police Licensing team. A copy of this email is included at **Appendix K**.

On 10th December 2023, an email response was received from Licensing Agent, [REDACTED], in response to visits to, and warning letters sent to the premises owner and premises licence holder/DPS Mon Ami. This email contained a letter acknowledging receipt of the previous correspondence sent in regard to the aforementioned matters at Mon Ami, regarding the allegations of breaches of the premises licence and smokefree legislation. In this letter, the Licensing Consultant, [REDACTED] outlined advice given to his clients in regard to the Licensing Act 2003, and Smoke-free (Premises and Enforcement) Regulations 2006. A copy of this email and letter are included at **Appendix L**.

On 12th December 2023, [REDACTED] sent an email in response to the Licensing Consultant, [REDACTED] email of 10th December 2023, challenging the advice and interpretation given by him to his clients and challenging the content of his letter, and set out the Council’s position in regard to it, once again including requirements of Smoke-free (Premises and Enforcement) Regulations 2006 and Health Act 2006. [REDACTED] response detailed the potential sanctions available, in the event of further non-compliance. This email was copied to [REDACTED], the Premises Licence Holder and DPS, their advising barrister, and the West Sussex Police Licensing team. A copy of this email is included at **Appendix M**.

A further visit was carried to the premises on 21st December 2023 in the early evening by [REDACTED] and [REDACTED], Senior Licensing Officer as part of routine licensing checks. The visit was captured on Body Worn Camera.

Prior to entering the premises, on the window, there was a variety of information including an alcoholic and non-alcoholic drinks menu, but no food menu or smoke free signage visible. On entering the premises, no menus of any sort were seen on the front tables. The Premises Licence Holder, [REDACTED] and [REDACTED] were present and showed where the new menus were in place, located adjacent to the kitchen. They were advised to display the availability of food in a more prominent location given that alcohol should only be sold as ancillary to a table meal.

On going to the rear of the premises, an area Officers considered to be substantially enclosed, a number of people were seen to be smoking shisha, and confirmed when asked by Officers that this was the case. Customers were also seen consuming food and drinking alcohol. When asked, [REDACTED] demonstrated with till records, that alcohol had been sold with food.

It was noted by [REDACTED] that there had been some changes to the roof in the rear part of the premises, but it still comprised of 4 walls, retractable windows and a new metal frame/roof structure appeared to be in place. [REDACTED] formed the view that this area remained substantially enclosed and advised [REDACTED], the DPS and Premises Licence Holder again that this was contrary to the Smokefree Regulations. However, both men disputed this and challenged the right of [REDACTED] being in the premises, further that she should not be engaging with customers. [REDACTED] explained her remit and that engaging with customers was standard practice in order to check compliance and provide reassurance.

██████████ and ██████████ accepted that the front of premises was substantially enclosed, but not at the rear of the premises and challenged ██████████ assertion that the premises was substantially enclosed as they had spoken to "Building Control and been to London to see shisha places", stating that shisha and smoking was allowed in the rear part of the premises and that they would not be taking steps to stop people smoking in the premises. ██████████, the DPS/Premises Licence Holder was cautioned and continued to debate the point.

2 small no smoking stickers were pointed out to the Officers adjacent to the entrance of the premises and adjacent to the bar, but these were not immediately obvious to Officers and therefore members of the public may not be able to see them, and ██████████ recommended that there should be more prominent signage at the point of entry and in other locations in the premises in the front and rear parts of the premises being entirely or substantially enclosed to inform that the area is smokefree and smoking is not permitted.

The Local Authority is a Responsible Authority under the Licensing Act 2003 and makes a representation to the application to vary the premises licence.

The Premises Licence Holder/DPS has demonstrated that they have repeatedly failed to comply with premises licence conditions and persistently breached Smokefree law and regulations and have failed to act upon repeated advice afforded to them by Officers. It is the view of the Licensing Authority that the Premises Licence Holder/DPS has failed to comply with the current premises and the Authority is not satisfied that any variation to the premises licence will be complied with and is not satisfied that the following Licensing Objectives are being promoted.

- The prevention of crime and disorder
- Public safety
- The protection of children from harm

The Licensing Authority has no confidence in the management nor Premises Licence Holder/Designated Premises Licence Holder and in turn staff under his direction will comply with the requirements of the Licensing Act 2003, Smokefree Regulations, nor other regulatory requirements such as proposed by the application to vary the Premises Licence.

Regards,

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