MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE
Council Chamber - Town Hall
7 February 2013 (9.50 - 11.10 am)

Present:

COUNCILLORS

Conservative Group Peter Gardner (Chairman) and Frederick Thompson

Labour Group Denis Breading

Present at the hearing were:

Mr G Hopkins & Ms L Potter (on behalf of the applicant), Mr I Rahman the applicant and Mr J Abidin

Objectors: Mr P Jones (Licensing Officer), Mr M Gasson (Noise Specialist), Havering Police Licensing Officer PC D Fern and Councillor Georgina Galpin.

Also present were Arthur Hunt (Havering Licensing Officer), the Legal Advisor to the Sub-Committee and the clerk.

The Chairman advised those present of action to be taken in the event of emergency and the evacuation of the Town Hall becoming necessary.

There were no declarations of interest by Members.

1 **APPLICATION TO VARY A PREMISES LICENCE FOR AKASH TANDOORI, 185 HIGH STREET, HORNCHURCH RM11 3XS**

PREMISES
Akash Tandoori
185 High Street
Hornchurch
RM11 3XS

DETAILS OF APPLICATION

An application to vary a premises licence under section 34 of the Licensing Act 2003 ("the Act").

APPLICANTS
Mr Irshadur Rahman
185A High Street
Hornchurch
RM11 3XS

1. Details of the application:

The current licence is for:

Supply of Alcohol (on supply only)		
Day	**Start**	**Finish**
Monday to Saturday	10:00hrs	00:00hrs
Sunday	12:00hrs	23:30hrs

Variation applied for:

Live Music		
Day	**Start**	**Finish**
Monday to Saturday	10:00hrs	00:00hrs
Sunday	12:00hrs	23:30hrs

Recorded Music, Supply of Alcohol		
Day	**Start**	**Finish**
Monday to Thursday	10:00hrs	00:30hrs
Friday and Saturday	10:00hrs	01:30hrs
Sunday	12:00hrs	23:30hrs

Late Night Refreshment		
Day	**Start**	**Finish**
Monday to Thursday	23:00hrs	00:30hrs
Friday and Saturday	23:00hrs	01:30hrs
Sunday	23:00hrs	23:30hrs

2. Seasonal variations

There are no seasonal variations attached to this application.

3. Non-standard timings

The Non-Standard Timings applied for relate to all authorised licensable activities and ask to be licensed from the start of permitted hours on New Years' Eve to the end of permitted hours on New Years' Day. On Christmas Eve and Boxing Day except where they fall on a Friday or Saturday and the Sunday of each Bank Holiday weekend an additional hour for all licensed activities.

4. Comments and observations on the application

The applicant acted in accordance with premises licence regulations 25 and 26 relating to the advertising of the application. The required newspaper advertisement was installed in the Yellow Advertiser on Wednesday 26th December 2012.

The premises have been of concern to the Licensing Authority in relation to unlicensed activity which resulted in Licensing Officer Paul Jones issuing a warning letter on 12 November 2012 and a second on 19 November 2012. The premises failed a test purchase selling alcohol and late night refreshment to Mr Jones on 25 November at 00.25hrs which has resulted in a pending prosecution of the venue for unlicensed activity.

Since this date the premises have applied for four Temporary Event Notices (TENs) amounting to 16 days
19/12/12 – 24/12/12 to 00.00hrs,
26/12/12 – 1/1/13 to 00.00hrs,
11/1/13 – 12/1/13 to 01.00hrs and
18/1/13 – 19/1/13 to 01.00hrs.

5. Summary

There was one valid representation against this application from interested parties.

There were three representations against this application from responsible authorities.

6. Details of representations

Valid representations may only address the following licensing objectives:

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

7. Representations

Interested parties' representations

The representation from the interested party falls mainly under the headings of crime and disorder and the protection of children from harm.

Responsible Authorities' representations

The responsible authorities outline the points they wish the Licensing Sub-Committee to consider.

There were no representations from the following responsible authorities:
The London Fire and Emergency Planning Authority
The Health & Safety Enforcing Authority
The Trading Standards Service

Planning Control & Enforcement
Children & Families Service
Health Service

At the start of the hearing, the applicant asked for the following variation to be considered in place of the original application:

Monday to Thursday: the last admission to the premises to be 00.00hrs. The Friday and Saturday terminal hour for all licensable activities (except live music) to be 01.00hrs and closed to the public by 01.30hrs. Last orders for food to be 00.30hrs Monday to Saturday, and on Sunday, last orders for food to be 23.00hrs, with a terminal hour for licensable activity at 23.30hrs and closure to the public by 00.00hrs.

8. Determination of Application

Decision:

Consequent upon the hearing held on 7 February 2013, the Sub-Committee's decision regarding the application for a variation to a Premises Licence for Akash Tandoori is as set out below, for the reasons shown:

The Sub-Committee was obliged to determine this application with a view to promoting the licensing objectives, which are:

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

In making its decision, the Sub-Committee also had regard to the Guidance issued under Section 182 of the Licensing Act 2003 and Havering's Licensing Policy.

In addition, the Sub-Committee took account of its obligations under s17 of the Crime and Disorder Act 1998, and Articles 1 and 8 of the First Protocol of the Human Rights Act 1998.

Agreed Facts
Facts/Issues

Whether the granting of a variation to the premises licence would undermine the licensing objectives.

The prevention of public nuisance, The prevention of crime and disorder and the protection of children from

- Marc Gasson, the Council's Noise Specialist on behalf of Public Protection, stated that the premises was located in an area in which there was a mix of residential and commercial properties and the Service had objections based on the close proximity of those residential properties both above and opposite the premises. He reminded the Sub-Committee that Havering's Licensing Policy provided guidance for closing times in mixed use areas and it to consider placing restrictions on the length of time the premises was

harm

open in line with the Council's Licensing Policy 012 should it be minded to grant the application.

- Licensing Officer Paul Jones, making representation on behalf of the Licensing Authority, said that even though the applicant had amended the application to reduce the hours requested, there remained objections to those hours based on Havering's Licensing Policy 012 which he argued was relevant to this application.

  He referred to the location and reiterated what the Council's Noise Specialist had said about the mixed nature of the immediate community and added that the additional hours would not only add to nuisance for those living near-by but was likely to prove attractive to those who were returning home late and, possibly affected by alcohol consumption, were looking for food outlets rather than dispersing quickly to their homes. This could have a negative impact on the locality.

  He further stated that although the premises were located within a ward in which a cumulative impact policy applied, restaurants were not included in its scope but it was subject to Havering's Licensing Policy (012) which stated that although an application for a licence outside those hours defined in the policy would be considered on its merits, regulated activities would normally be permitted until 00.30 hours in mixed use areas. He informed the Sub-Committee that in this instance, the Licensing Service shared the views expressed by its Public Protection colleagues and recommended that if the Sub-Committee were minded to grant the application, the timings in that policy be adhered to.

  In support of this he added that the present applicant who had taken the premises in August 2012 had broken the conditions on his licence and had ignored informal and formal warnings. The result was that the Licensing Service had been obliged to issue proceedings against him and these were pending.

  Mr Jones also drew the attention of the Sub-Committee to a current menu issued by the applicant and delivered to residents locally. Specifically he stated that whilst the terms of the licence prohibited the off-sale of alcohol, the menu offered "free" alcohol along with certain meals, to be delivered to people at home. This, he argued was disingenuous and a ploy to circumvent the conditions of the licence. Further, the licence did not allow for alcohol sales off the premises, and the application did not seek it, or provide safeguards for the delivery of alcohol off premises.

  The Chairman asked for clarification of this assertion.

  Mr Jones replied that if Mr Rahman was genuinely offering to give away alcohol, that should apply whether a meal was purchased or not. The fact that a meal had to be purchased in order to qualify for "free" alcohol suggested that the price charged covered the

purchase of alcohol and as such was a sale, and would be a clear breach of the licence's conditions.

Mr Jones concluded by observing that the flouting of the existing licence – leading to a pending prosecution – along with an attempt to circumvent the prohibition of off-sales by means of false advertising "free" alcohol, did not inspire confidence in the management at the premises.

- PC Fern said that the concern of the Police echoed that of his colleagues in Licensing and Public Health. The premises did fall within St Andrews' "saturation zone" but as a restaurant was not subject to its restrictions – though he did note that as a premises in which alcohol was sold, it may add to the cumulative impact on the area.

  PC Fern referred to crime statistics for the ward and informed the Sub-Committee that because of the mixed nature of the area, the later the premises closed, the more likely it was that residents would experience disturbance and be subjected to some degree of increased risk of anti-social behaviour. He concluded by stating that it was the opinion of the Police that if the Sub-Committee was minded to allow any variation to the licence, it would be prudent in this instance to remain within the guidelines set out in 012 of the Council's Licensing Policy.

- Councillor Georgina Galpin stated that it was her opinion that it was entirely inappropriate to consider extending the applicant's hours of business as officers had demonstrated that he was not complying with the conditions on the licence he already possessed and appeared to be intent on finding further ways of circumventing them.

  She urged the Sub-Committee to consider reducing the hours on the licence until the applicant could show he was capable of adhering to them. She claimed that by allowing the premises to stay open longer, undesirable elements would be attracted to the area and that would put the peace and safety of residents living – not just across the street, but above and either side of the venue – in jeopardy.

  Councillor Galpin expressed concern that staff might be receiving pay in cash (which, she said could put them at risk) and speculated on where the granting of a variation to the licence could lead. In addition she asserted that a possible reason for there being no objections from residents was because they had no confidence in the way the Council applied the licensing policy. To them, objecting was a waste of time. She concluded by saying that she was concerned for the safety of children and that the granting of any extension to the licence would be a clear breach of the Council's Saturation Policy and she did not want to see

Hornchurch town centre become another Romford.

- In response, the applicant's representative, Graham Hopkins, reminded the Sub-Committee that – as officers had already stated - the Saturation Policy did not apply to restaurants and that his clients appreciated that, in a mixed area, they needed to consider their neighbours. He said that they were both experienced and that they apologised for the problems with the Licensing Service concerning hours, but they were trying to compete against another premises not far away which had the advantage of staying open much later.

  Mr Hopkins also apologised on behalf of his client for the misunderstanding over the "free" alcohol on the take-away menu and assured the Sub-Committee that it was being withdrawn with immediate effect. He informed the Sub-Committee that his clients had installed CCTV which, he considered, would meet all the Police requirements, had adopted Challenge 25, initiated staff training and would ensure that a personal licence holder would be on the premises during the evening. In addition, he could confirm that it already had a refusals book and was working closely with the Safer neighbourhood Team.

  Mr Hopkins referred to the application as being necessary to ensure parity with local competition. He added that, whilst those commercial considerations still applied, his clients had been willing to reduce their operating hours out of respect for their neighbours.

  Mr Hopkins referred to the size of the premises (50 covers) and asked for permission to sell alcohol with late night refreshment as that was part of the service a restaurant should provide customers. Furthermore, he rejected the inference that the family had long-term designs to change the use of the premises as Mr Rahman and his brother were restaurateurs and as Mr Rahman lived above it he would be unlikely to cause problems for his own family by changing the restaurant's character into that of a night-club.

  With respect to the request for music, this was generally going to be of a recorded back-ground nature and was ancillary to the provision of food, not a change in direction. Mr Hopkins added that Hornchurch had good transport links and patrons would be reminded of the necessity to be considerate as they left, by staff.

  He added that this was a family run restaurant catering for families. Its purpose was to allow patrons to have a meal in comfort and to socialize. His client needed additional time in the evening in order to encourage those people visiting the town centre to stay and enjoy a meal in his restaurant. He saw a late evening market and felt that he could provide for its needs.

  Finally he reminded the Sub-Committee that in the unlikely event of there being trouble, the Act provided for the licence to be

reviewed and that would be the proper time to address any breaches of conditions, not deny them based on speculation. He concluded by saying that despite his client's earlier issues concerning licensable activities, since Christmas he had fully complied with the conditions of his licence.

- PC Fern said that the Police still opposed the granting of a licence which only provided 30 minutes between the last order and the premises closing. His view was that the minimum for this would be an hour.

- In response Mr Hopkins said that the revised timing did offer an hour from last orders being placed to closing. The final half hour was for drinking up.

- In reply, PC Fern reiterated that however the timings were set out, the Police remained opposed to any licensable activity on the premises beyond the hours set out in 012 of Havering's Licensing Policy.

- All responsible authority representatives stated that they would have no objection should the times be amended to those set out in the written representations of Public Protection and the Police.

The Sub-Committee stated that in arriving at this decision, it took into account the licensing objectives as contained in the Licensing Act 2003, the Licensing Guidelines as well as Havering Council's Licensing Policy.

The Sub-Committee accepted that the amended application presented to it that morning had shown that the applicant was prepared to consider his neighbours and whilst the Sub-Committee noted that although a similar premises had been allowed to continue trading later than the hours applied for by Mr Rahman, the circumstances were different.

The objectors present maintained their objections on the basis of crime and disorder and public nuisance. Reference had also been made to Havering's Licensing Policy 012 which stated that 00.30 hours was an appropriate time for the cessation of licensable activities in a primarily mixed use area.

This being the position, the Sub-Committee had taken into account the legitimate concerns of the objectors, and had considered the history of non-compliance with the applicant's hours of operation.

After due consideration of all issues the Sub-Committee was prepared to issue a variation to the premises licence as follows:

Live Music				
Day	**Start**			**Finish**
Monday to Saturday	10:00hrs			00:00hrs
Sunday	12:00hrs			23:30hrs

Recorded Music, Supply of Alcohol				
Day	**Start**	**Last Admission to Premises**	**Licensable Activity Ceases**	**Closed to the Public**
Monday to Thursday	10:00hrs	23.30hrs	00.00hrs	00:30hrs
Friday & Saturday	10.00hrs	00.00hrs	00.30hrs	01.00hrs
Sunday	12:00hrs	23.00hrs	23.30hrs	00.00hrs

Late Night Refreshment				
Day	**Start**	**Last Admission to Premises**	**Licensable Activity Ceases**	**Closed to the Public**
Monday to Thursday	23.00hrs	23.30hrs	00.00hrs	00:30hrs
Friday & Saturday	23.00hrs	00.00hrs	00.30hrs	01.00hrs
Sunday	23:00hrs	23.00hrs	23.30hrs	00:00hrs

The Chairman stated that the Sub-Committee had considered the arguments presented by the parties and it was clear that all the responsible authorities remained concerned about the location of the premises and the impact on the local community.

The Sub-Committee took note of the Council's Licensing Policy, and, while used as guidance on the issue, it was bound to consider seriously the strong and maintained objection of all three responsible authorities to any addition to those hours, in the interests of preventing crime and disorder, and public nuisance.

The Chairman added that in light of the previous issues of non-compliance with permitted hours of operation the Sub-Committee fully expected that Mr Rahman would adhere strictly to the hours specified on the licence as granted.

Furthermore, the Sub-Committee agreed that the other amendments to the licence requested by the applicant (being a change to the conditions and non-standard timings, which were not objected to) should be allowed.

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Chairman