

**Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 13 June 2013**

Agenda Item No	Topic	Decision
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**Note: this decision list is for guidance only. The text of the minutes, which may be different, is definitive.**

**Part A – Items considered in public**

<p><b>A1</b></p>	<p>APPLICATION TO VARY A PREMISES LICENCE - AKASH TANDOORI 185 HIGH STREET, HORNCHURCH RM11 3XS</p>	<p align="right"><b>Licensing Act 2003 Notice of Decision</b></p> <p><b>PREMISES</b> Akash Tandoori 185 High Street Hornchurch RM11 3XS</p> <p><b>DETAILS OF APPLICATION</b></p> <p>An application made on 14 April 2013 to vary a premises licence under section 34 of the Licensing Act 2003 (“the Act”).</p> <p><b>APPLICANT</b> Mr Irshadur Rahman 185A High Street Hornchurch RM11 3XS</p> <p><b>1. Details of the application:</b></p> <p><b>The current licence hours were as follows:</b></p> <table border="1" data-bbox="840 1268 1684 1412"> <thead> <tr> <th align="left" colspan="3"><b>Live Music</b></th> </tr> <tr> <th><b>Day</b></th> <th><b>Start</b></th> <th><b>Finish</b></th> </tr> </thead> <tbody> <tr> <td>Monday - Saturday</td> <td>10:00hrs</td> <td>00:00hrs</td> </tr> <tr> <td>Sunday</td> <td>12:00hrs</td> <td>23:30hrs</td> </tr> </tbody> </table>	<b>Live Music</b>			<b>Day</b>	<b>Start</b>	<b>Finish</b>	Monday - Saturday	10:00hrs	00:00hrs	Sunday	12:00hrs	23:30hrs
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		<p><b><u>Current Non Standard Timings</u></b></p> <p>All licensable activities</p> <p>Sundays preceding bank holiday Mondays – 12:00 to 00:30                      Christmas Eve &amp; Boxing Day (except where they fall on a Friday or Saturday) – 10:00 to 01:00                      New Year’s Eve – from the start of permitted hours to the end of permitted hours on New Year’s Day</p> <p><b><u>Variation Non-standard timings</u></b></p> <p>In respect of all licensable activities on Christmas Eve, Boxing Day, New Year’s Eve, New Year’s Day and the Sundays preceding Bank Holiday Monday until 02:30 the following day.</p> <p><b><u>Comments and observations on the application</u></b></p> <p>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 24<sup>th</sup> April 2013 edition of the Yellow Advertiser.</p> <p>The advert indicates in relation to the provision of live music that the application is -</p> <p><i>"to change the start time for live music on Sundays to 10:00. There is no other change for live music. (The provisions of the Live Music Act 2012 apply to this premises and the activity is deregulated.)"</i></p> <p>This is incorrect as the application seeks to reduce the live music terminal hour from 00:00 to 23:00 generally but to extend it until 02:30 via non-standard timings.</p>

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		<p>The advert then goes on to indicate the non-standard timings extension to 02:30 for "<i>all authorised licensable activities</i>", having previously stated that live music is not a licensable activity at this premises. A person reading this notice might believe that live music is not included in the 02:30 non-standard timings portion of the application.</p> <p>Legal advice was sought on this matter and their opinion was that this discrepancy did not invalidate the advert.</p> <p><b>2. Summary</b></p> <p>There were 3 representations against this application from Responsible Authorities.</p> <p><b><u>Details of representations</u></b></p> <p>Valid representations may only address the following licensing objectives:</p> <ul style="list-style-type: none"> <li>The prevention of crime and disorder</li> <li>The prevention of public nuisance</li> <li>The protection of children from harm</li> <li>Public safety</li> </ul> <p><b><u>Responsible Authorities' representations</u></b></p> <p><b>Licensing Authority</b></p> <p>The representation raises several issues with the application, and in summary states the "<i>Licensing Authority is not in a position to be able to support an application to extend licensable activity at the premises outside those provisions identified in Havering' Licensing Policy 012.</i>"</p>

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		<p><b>Planning Control Service</b></p> <p>The representation is based on the effect on residents in respect of noise and disturbance.</p> <p><b>Environmental Health</b></p> <p>The representation against the application details concerns over the close proximity to nearby residential properties and being contrary to Licensing Policy 012.</p> <p><b>History of the Application</b></p> <p>The application had been made on 14 April 2013. This had first been listed for a hearing on 13 June 2013</p> <p>The applicant's representative, Mr Hopkins submitted a request on 11 June for an adjournment following the service of a supplementary agenda which alleged that an offence may have been committed and that this information was to form the basis of a criminal prosecution. Mr Hopkins sought an adjournment of the Hearing until after the completion of any Court proceedings.</p> <p>The Sub-Committee agreed to an adjournment until 15 July 2013, commencing at 10.30am stating that a hearing had to be adjourned to a specified date.</p> <p>The hearing on 15 July was vacated following the submission of a request on 8 July 2013 by the applicant's representative for an adjournment following the allegation that</p>

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		<p>an offence may have been committed and that this information was to form the basis of a criminal prosecution. Mr Hopkins sought an adjournment of the hearing until after the completion of any Court proceedings.</p> <p>On 9 July the Sub-Committee agreed to an adjournment until 19 August 2013, commencing at 10.30am stating that a hearing had to be adjourned to a specified date.</p> <p>On instructions of the Sub-Committee, the letter to the parties notifying of the adjournment stated:</p> <p>“The Chairman did state that repeated requests for adjournments on this matter will not continue to be granted, as the effect is to have an open ended adjournment, even if dates continue to be specified. As you are aware, prosecution proceedings can take some time to get before a Magistrates Court, and even longer to be decided by them (depending on plea), and we ask that thought be given to either proceeding with this application regardless of that procedure, or to withdrawing the application for the time being.”</p> <p><b>8. Determination of Application</b></p> <p><b>Decision:</b></p> <p><b>Consequent upon the hearing held on 19 August 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:</b></p> <p>The Sub-Committee was obliged to determine this application with a view to promoting the licensing objectives, which are:</p>

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		<ul style="list-style-type: none"> <li>• The prevention of crime and disorder</li> <li>• Public safety</li> <li>• The prevention of public nuisance</li> <li>• The protection of children from harm</li> </ul> <p>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.</p> <p>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.</p> <p>At the reconvening of the adjourned hearing, the Havering Licensing Officer, Paul Jones, requested the subcommittee to consider a procedural matter relating to the hearing namely that the Sub-Committee must make a determination within 2 months of the application first being received or it will be rejected by default. Mr Hopkins on behalf of the applicant objected to this request and sought a further adjournment of the hearing until after the completion of any Court proceedings. He argued as he had done previously that it would be an abuse of the process and a breach of natural justice for the Licensing Sub Committee to deal with this prior to any criminal proceedings.</p> <p>The Sub-Committee stated that they had received two applications that morning. Havering Licensing Officer, Mr Jones argued that the council's own procedures, authorised by section 9 (3) of the Licencing Act 2003, state at paragraph 8.1 that an application for a variation of an existing licence must be determined within two months and if not dealt with in that period, rejected by default. Mr Hopkins had opposed the application and argued that he did not get a notification of this request until that morning, but that in any event he applied for an adjournment until all criminal proceedings had been dealt with. It was agreed that the previous two adjournments were made following</p>



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		<p>applications made by Mr Hopkins on the basis of natural justice and that any criminal proceedings must be concluded before the subcommittee makes its decision. Mr Hopkins position had not changed. It was clear that if the subcommittee were to give the applicant a further short adjournment he could simply re-apply for another adjournment at the next hearing.</p> <p>The subcommittee decided that the application must be rejected because it fell by default because of the provisions of paragraph 8.1 of the council's procedures. The application had been made on 14 April 2013 and it was now approximately 4 months later. The clear reason for that provision is to prevent endless adjournments and to ensure that matters are dealt with within a reasonable timescale.</p> <p>Insofar as it was necessary to do so and in the alternative the subcommittee agreed that whilst criminal proceedings are contemplated these have not yet been commenced. There appears to be no end in sight to the prospect of multiple adjournments and if the Licensing hearing were to have to wait until the conclusion of any criminal proceedings it could not be reasonably expected to conclude within a reasonable time frame.</p> <p>The subcommittee also considered whether it should allow the hearing to proceed on the basis of the representations. However, it was clear that Mr Hopkins (representative for applicant) would argue that his client could not do so because this would mean a breach of natural justice.</p> <p>Therefore they decided not to exercise discretion under paragraph 12 of the council's procedures to extend the time for dealing with the application nor to grant Mr Hopkins request for an adjournment. The application was therefore rejected.</p>

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		<p><b>9. Right of Appeal</b></p> <p>Any party to the decision or anyone who has made a relevant representation [including a responsible authority or interested party] in relation to the application may appeal to the Magistrates' Court <b><u>within 21 days of notification of the decision</u></b>. On appeal, the Magistrates' Court may:</p> <ol style="list-style-type: none"><li>1. Dismiss the appeal; or</li><li>2. Substitute the decision for another decision which could have been made by the Sub Committee; or</li><li>3. Remit the case to the Sub Committee to dispose of it in accordance with the direction of the Court; and</li><li>4. Make an order for costs as it sees fit.</li></ol>