

**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE
Council Chamber - Town Hall
13 June 2013 (10.40 - 11.40 am)**

Present:

COUNCILLORS

Conservative Group Peter Gardner (Chairman) and Wendy Brice-Thompson

Labour Group Denis Breading

Present at the hearing were Mr Irshadur Rahman the applicant, Mr Abdul Kalam, Ms Linda Potter and Mr Graham Hopkins applicant's agent. Mr Gasson, the Havering Noise Specialist officer, the LB Havering Licensing officers, Mr Arthur Hunt and Mr Paul Jones, the legal advisor and the clerk to the Sub-Committee were also in attendance.

The Chairman reminded all present of the action to be taken in an emergency.

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

1 **APPLICATION TO VARY A PREMISES LICENCE MADE BY MR
IRSHADUR RAHMAN UNDER SECTION 117 OF THE LICENSING ACT
2003.**

13 JUNE 2013

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.

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.

The hearing was vacated.

15 JULY 2013

The applicant's representative submitted a request on 8 July 2013 for an adjournment following the allegation 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.

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.

On instructions of the Sub-Committee, the letter to the parties notifying of the adjournment stated:

“ 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.”

19 August 2013

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.

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 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.

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.

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.

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. 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.

Chairman