

Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 28 August 2014

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>A1</p>	<p>APPLICATION FOR A PREMISES LICENCE AT RELISH, UNIT 4 , 168 HIGH STREET, HORNCHURCH, RM12 6QU</p>	<p align="right">Licensing Act 2003 Notice of Decision</p> <p>PREMISES Relish Restaurant Unit 4, 168 High Street Hornchurch RM12 6QU</p> <p>DETAILS OF APPLICATION</p> <p>This application for a new premises licence was made under section 17 of the Licensing Act 2003 (“the Act”).</p> <p>APPLICANT Tasty Plc. 32 Charlotte Street London W1T 2NQ</p> <p>1. Details of requested licensable activities</p> <p>The applicant intended to act as a “Restaurant and Takeaway” premises and sought to supply alcohol to those customers taking a meal in the premises.</p>
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Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 28 August 2014

Agenda Item No	Topic	Decision
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		<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th align="center" colspan="3">Supply of Alcohol, Opening Hours</th> </tr> <tr> <th align="center">Day</th> <th align="center">Start</th> <th align="center">Finish</th> </tr> </thead> <tbody> <tr> <td align="center">Monday - Sunday</td> <td align="center">12:00hrs</td> <td align="center">23:00hrs</td> </tr> </tbody> </table> <p><u>Seasonal variations / Non-standard timings</u></p> <p>2. Non Standard Timings</p> <p>No seasonal variations or non-standard timings were requested.</p> <p>3. Promotion of the Licensing Objectives</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 of the application was advertised in the Romford recorder on 25 July 2014.</p> <p>The Licensing Officer also raised the following observations in his report and verbally at the hearing:</p> <p>That premises was on the ground floor and not first floor.</p> <p>That the required newspaper advertisement of the application was advertised in the Romford recorder on 25 July 2014 vaguely detailed the advert.</p>	Supply of Alcohol, Opening Hours			Day	Start	Finish	Monday - Sunday	12:00hrs	23:00hrs
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Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 28 August 2014

Agenda Item No	Topic	Decision
		<p>It stated that: “<i>To permit the sale of alcohol until 23:00 Monday to Sunday</i>” was included in the advert. It had no starting time.</p> <p>With regards to the applicants responsibilities under the premises licence regulations 25 and 26 relating to the advertising of the application. On initial examination of the notice on the premises on the 22 July 2014 the following defects were found:-</p> <p style="padding-left: 40px;">SI 2005/42</p> <ul style="list-style-type: none"> • Regulation 25(a)(i)(bb) The notice was on white paper rather than the required pale blue • Regulation 26(4)(c) The website address of this licensing authority was not provided on the notice • Regulation 26(4)(d) The wrong consultation period terminal date, i.e. 11 August 2014, as provided on the notice. This date suggests that representations may be made to the licensing authority until 11th August whereas any representations received after 7th August will be too late for consideration. The date provided is therefore misleading. <p>The applicant’s solicitor was contacted by E-Mail to highlight these errors/omissions on the 22 July.</p> <p>A further inspection was carried out of the notice on the premises on the 24 July and it was found that the notice had been placed on the required blue paper but that the content remained the same.</p> <p>It is also noted that the summary of the application contained in the notice stated, “<i>To permit</i></p>

Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 28 August 2014

Agenda Item No	Topic	Decision
		<p><i>the sale of alcohol until 23:00 Monday to Sunday</i>". This is a vague statement and does not assist the public with the actual licensed hours being applied for as there was no start time.</p> <p>Attempts were made with the applicant by both the Police and Licensing Authority to mediate with regards to the operating schedule of the application. As a result of the communication by the Police, the applicant agreed to the following additional conditions on the premises licence.</p> <ol style="list-style-type: none"> 1) The premises shall be operated strictly as a Restaurant and Takeaway. 2) Alcohol shall be sold ancillary to table meals with all service by waiting staff. 3) Persons taking a table meal shall be permitted to purchase alcohol before, during and after the meal. 4) Alcohol shall not be supplied to persons collecting take away meals. 5) A proof of age scheme such as Challenge 25 shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification card such as a driving licence or passport. 6) All staff shall be trained for their role including the operation of Challenge 25 on induction and at six-monthly intervals. Training shall include identifying persons under 25 years of age, making a challenge, acceptable proof of age and checking it, making and recording a refusal, avoiding conflict and responsible alcohol retailing. Written records shall be kept of all such training. 7) No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance. 8) A premises daily register shall be kept at the premises. This register shall be maintained

Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 28 August 2014

Agenda Item No	Topic	Decision
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		<p>and kept for a minimum of 12 months. This register should record the name of the person responsible for the premises on each given day. The premises daily register shall record all calls made to the premises where there is a complaint made by a resident or neighbour of noise nuisance or anti-social behaviour by persons attending or leaving the premises. This shall record the details of the caller, the time and date of the call, the time and date of the incident about which the call is made and any actions taken to deal with the call. The premises daily register shall be readily available for inspection by an authorised person throughout the trading hours of the premises. The premises daily register shall also record all incidents in relation to the use of any force by staff or door supervisors in the removal of persons from the premises. It shall record the time and date of the occurrence, name or brief description of the person removed and details of the staff members involved.</p> <p>9) Prominent, clear notices shall be displayed at [all exits] requesting that customers respect the needs of local residents and leave the premises and the area quietly.</p> <p>10) All staff shall be suitably trained for their job function for the premises. The training shall be written into a programme on going and under constant review and must be made available to a relevant responsible authority when called upon.</p> <p>11) All staff shall be trained in dealing with persons who are incapacitated through the use of drugs or the combined effect of drugs and alcohol.</p> <p>12) A properly specified and fully operational CCTV system shall be installed or the existing system maintained to a satisfactory standard. The system shall incorporate a camera covering each of the entrance doors and be capable of providing an image which is regarded as 'identification standard' of all persons entering and/or leaving the premises. All other areas of risk identified in the operational requirement shall have coverage appropriate to the risk.</p> <p>13) To obtain a clear head and shoulders image of every person entering the premises on the CCTV system. Persons entering the premises should be asked but not compelled, either by a</p>
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Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 28 August 2014

Agenda Item No	Topic	Decision
		<p>sign in a prominent position or request from staff members, to remove headwear unless worn as part of religious observance.</p> <p>14) The CCTV system shall incorporate a recording facility and all recordings shall be securely stored for a minimum of one calendar month. A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained. The system shall comply with other essential legislation and all signs as required shall be clearly displayed. The system shall be maintained and fully operational throughout the hours that the premise is open for any licensable activity.</p> <p>15) A staff member from the premises who can operate the CCTV system shall be on the premises at all times when the premises is open to the public. This staff member shall be able to show Police recent data or footage with the absolute minimum of delay when requested.</p> <p>16) Recordings shall be made available to an authorised person of the Licensing Authority or Havering Police together with facilities for viewing.</p> <p>17) The premises frontage shall be kept tidy at all times.</p> <p>4. Details of Representations</p> <p>Valid representations may only address the four licensing objectives.</p> <ul style="list-style-type: none"> • The prevention of crime and disorder • Public safety • The prevention of public nuisance • The protection of children from harm

Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 28 August 2014

Agenda Item No	Topic	Decision
		<p>There was one representation against this application from a responsible authority.</p> <p>Mr Jones made a representation on behalf of Havering's Licensing Authority. His representation was based on concerns over the applicant's application and its promotion of all four licensing objectives. He also made comment on the application in line with Havering's Licensing policy 09.</p> <p><u>Responsible Authorities</u></p> <p>Licensing Authority:</p> <p>Havering Licensing Authority make representation against the application based upon the following concerns in relation to the promotion of all four of the licensing objectives.</p> <p>Havering's licensing policy 09 states that – The Local Licensing Authority (LLA) seeks to encourage the highest standards of management in licensed premises and expects the operating schedule to describe how these standards will be achieved in relation to promoting the licensing objectives.</p> <p>The LLA to have concerns about this application as it is of the view that the operating schedule submitted does not sufficiently address the promotion of the licensing objectives. Indeed, most of the steps identified in section 18 of the application are already statutory requirements.</p> <p>The Sub-Committee was informed that the undertakings provided by the applicant in section 18 of the application were not sufficient to address the position in which this premises is located. High Street Hornchurch is in the middle of Hornchurch town</p>

Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 28 August 2014

Agenda Item No	Topic	Decision
		<p>centre. As such the area is subject to a special policy in relation to cumulative impact:</p> <p>It is the LLA’s policy to refuse applications in the St Andrews Ward area for pubs and bars, late night refreshment premises offering hot food and drink to take away, off licences and premises offering facilities for music and dancing other than applications to vary hours with regard to licensing policy 012. While not directly applicable to this application, the Licensing Authority would expect that an applicant would be aware of the special policy and the associated issues in the area.</p> <p>At the hearing, Mr Jones reiterated his concerns against the application even though he accepted that the Police and the applicant had reached agreement on additional conditions to be placed on the licence. The Sub-Committee was informed that the applicant had an obligation to address all of the licensing objectives in his submitted application. Mr Jones was of the opinion that the information on the application was inadequate and thus led to him questioning the due diligence of the application.</p> <p>Mr Jones informed the Sub-Committee that he exchanged emails with the applicant’s agent who had sought clarification of what was required of him in respect of the application. Mr Jones responded to him on 6 August 2014 setting out that it was not incumbent upon the licensing authority to provide an applicant with a list of suggested or required conditions. The application process requires that the applicant identifies the steps he is prepared to take to promote the licensing objectives. By doing so the responsible authorities are reassured that the applicant is able to identify and anticipate potential problems and put in place measures to mitigate them.</p> <p>Mr Jones had suggested to the applicant’s agent that his client risk assess his operation in relation to the provision of licensable activity and, having identified any issues which may have the potential to impact negatively upon the promotion of the licensing objectives, identifies a</p>

Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 28 August 2014

Agenda Item No	Topic	Decision
		<p>series of steps he intends to take to mitigate these concerns. The application process itself required this rather than Havering’s licensing authority providing a list of preferred conditions. This is entirely in keeping with the due diligence duty placed upon licence holders.</p> <p>Such an undertaking would reassure this licensing authority that the applicant is aware of his responsibilities under the Act. Simply agreeing to a list of conditions proffered by a third party does not reassure the licensing authority that the applicant has the required level of diligence when it comes to the supply of alcohol at a premises located in a special policy area and one which is likely to be predominantly occupied by teenagers.</p> <p>Mr Jones stated that following the email of 6 August 2014, he had not had any further responses from the applicant’s agent.</p> <p>Chief Officer of Metropolitan Police (“the Police”): None</p> <p>Planning Control & Enforcement: None</p> <p>Public Protection: None</p> <p>London Fire & Emergency Planning Authority (“LFEPA”): None</p> <p>Health & Safety Enforcing Authority: None.</p> <p>Public Health: None</p> <p>Children & Families Service: None</p> <p>The Magistrates Court: None</p>

Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 28 August 2014

Agenda Item No	Topic	Decision
		<p>The Applicant failed to attend the hearing, and had not informed the authority that it did not intend to attend. The Sub-Committee took the decision to proceed in the applicant's absence. The written application and conditions as agreed between the applicant and the Police were considered.</p> <p>5. Determination of Application</p> <p>Decision</p> <p>Consequent upon the hearing held on 28 August 2014, the Sub-Committee's decision regarding the application for a Premises Licence for Relish Restaurant.</p> <p>The Sub-Committee was obliged to determine this application with a view to promoting the licensing objectives, which are:</p> <ul style="list-style-type: none"> • The prevention of crime and disorder • Public safety • The prevention of public nuisance • The protection of children from harm <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>

Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 28 August 2014

Agenda Item No	Topic	Decision
		<p>Agreed Facts <u>Facts/Issues</u></p> <p>Whether the granting of the premises licence would undermine the licensing objectives.</p> <ul style="list-style-type: none"> • The prevention of crime and disorder • Public safety • The prevention of public nuisance • The protection of children from harm <p>The Sub-Committee accepted as legitimate the concerns raised by the licensing authority, which had not been addressed by the applicant prior to the hearing, and were unable to be addressed at the hearing given the applicant's failure to attend.</p> <p>While not an application that is subject to the cumulative impact policy in force in the area, the sub-committee accepted that applicants should be aware of the issues in the area they seek to operate in, and address how it will successfully promote the licensing objectives. It also accepted that it is for an applicant to address how it would do so, and simply asking the responsible authorities what it ought to do was insufficient.</p> <p>Having considered the written representations and oral responses, the sub-committee was satisfied given the legitimate concerns detailed in writing and verbally by the Licensing Authority.</p>

Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 28 August 2014

Agenda Item No	Topic	Decision
		<p>The locality was one that had faced alcohol related problems, and the Licensing Authority would expect this to be addressed by anyone making an application in the area, and that a robust operating schedule would be submitted with any such application, to demonstrate an ability and willingness to confront the issues associated with the area, and to promote the licensing objectives. Little consideration of either was able to be shown to the Sub-Committee.</p> <p>A combination of a sparse operating schedule, genuine and unaddressed concerns raised by the Licensing Authority, along with several errors made in the application process, led the sub-committee to the conclusion that it could not have confidence in the applicant to successfully promote the licensing objectives. Simply imposing conditions, particularly without having heard from the applicant, would not address the concerns raised by the Licensing Authority, or satisfy the sub-committee that the applicant was able or willing to properly promote the objectives. Conditions should emerge from risk assessments carried out by applicants prior to making applications, which should be reflected in their operating schedules.</p> <p>The sub-committee were not therefore convinced that the management of the premises had sufficiently addressed the licensing objectives, and it was appropriate for the promotion of the objectives to refuse the application before it.</p> <p>The sub-committee therefore after careful consideration of the representation decided to reject the application.</p> <p>The sub-committee stated that in arriving at this decision, it took into consideration the licensing objectives as contained in the Licensing Act 2003, the Licensing Guidelines as well as Havering Council's Licensing Policy.</p>

Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 28 August 2014

Agenda Item No	Topic	Decision
		<p>7. Right of Appeal</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 <u>within 21 days of notification of the decision</u>. On appeal, the Magistrates' Court may:</p> <ol style="list-style-type: none"> 1. dismiss the appeal; or 2. substitute the decision for another decision which could have been made by the Sub Committee; or 3. remit the case to the Sub Committee to dispose of it in accordance with the direction of the Court; and 4. make an order for costs as it sees fit.