

Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 8 January 2015

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>Review of premises licence - Akash Tandoori, 185 High Street, Hornchurch, RM11 3XS</p>	<p align="right">Licensing Act 2003 Notice of Decision</p> <p>PREMISES Akash Tandoori, 158 High Street, Hornchurch, RM11 3XS</p> <p>DETAILS OF APPLICATION</p> <p>Application for a review of the premises licence by the London Borough of Havering’s Licensing Authority under section 51 of the Licensing Act 2003 (“the Act”).</p> <p>APPLICANT Paul Jones, Licensing Officer, London Borough of Havering, Mercury House, Mercury Gardens, Romford, RM1 3SL</p>
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		<p>1. Details of existing licensable activities</p> <table border="1"> <thead> <tr> <th align="center" colspan="3">Live Music</th> </tr> <tr> <th align="center">Day</th> <th align="center">Start</th> <th align="center">Finish</th> </tr> </thead> <tbody> <tr> <td>Monday to Saturday</td> <td align="center">10.00</td> <td align="center">00.00</td> </tr> <tr> <td>Sunday</td> <td align="center">12.00</td> <td align="center">23.30</td> </tr> </tbody> </table> <table border="1"> <thead> <tr> <th align="center" colspan="3">Late Night Refreshment</th> </tr> <tr> <th align="center">Day</th> <th align="center">Start</th> <th align="center">Finish</th> </tr> </thead> <tbody> <tr> <td>Monday to Thursday</td> <td align="center">23.00</td> <td align="center">00.00</td> </tr> <tr> <td>Friday & Saturday</td> <td align="center">23.00</td> <td align="center">00.30</td> </tr> <tr> <td>Sunday</td> <td align="center">23.00</td> <td align="center">23.30</td> </tr> </tbody> </table> <table border="1"> <thead> <tr> <th align="center" colspan="3">Recorded Music, Supply of Alcohol</th> </tr> <tr> <th align="center">Day</th> <th align="center">Start</th> <th align="center">Finish</th> </tr> </thead> <tbody> <tr> <td>Monday to Thursday</td> <td align="center">10.00</td> <td align="center">00.00</td> </tr> <tr> <td>Friday & Saturday</td> <td align="center">10.00</td> <td align="center">00.30</td> </tr> <tr> <td>Sunday</td> <td align="center">12.00</td> <td align="center">23.30</td> </tr> </tbody> </table> <table border="1"> <thead> <tr> <th align="center" colspan="3">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>Monday to Thursday</td> <td align="center">10.00</td> <td align="center">00.30</td> </tr> <tr> <td>Friday & Saturday</td> <td align="center">10.00</td> <td align="center">01.00</td> </tr> <tr> <td>Sunday</td> <td align="center">12.00</td> <td align="center">00.00</td> </tr> </tbody> </table>	Live Music			Day	Start	Finish	Monday to Saturday	10.00	00.00	Sunday	12.00	23.30	Late Night Refreshment			Day	Start	Finish	Monday to Thursday	23.00	00.00	Friday & Saturday	23.00	00.30	Sunday	23.00	23.30	Recorded Music, Supply of Alcohol			Day	Start	Finish	Monday to Thursday	10.00	00.00	Friday & Saturday	10.00	00.30	Sunday	12.00	23.30	Opening Hours			Day	Start	Finish	Monday to Thursday	10.00	00.30	Friday & Saturday	10.00	01.00	Sunday	12.00	00.00
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		<p>2. Grounds for Review</p> <p>The application for a review of the Premises Licence had been served under section 51 of the Licensing Act 2003 under all four grounds:</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 application for review stated that the premises licence holder had consistently ignored the conditions and terminal hours of the premises licence which govern the provision of licensable activity at Akash Tandoori restaurant. A series of formal warnings and prosecutions had had little effect upon the licence holder’s legal duty to comply with the terms of his premises licence.</p> <p>3. Requirements upon the Licensing Authority</p> <p>The application was received on 13 November, 2014 and the application was advertised on the council’s website and on the notice board in front of the Town Hall. Notice was also posted at the premises. The public notice invited interested persons and responsible authorities to make representations against, or in support of, the application.</p> <p>When determining an application for a premises licence review made after an</p>

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		<p>application under section 51 the relevant Licensing Authority is required to hold a hearing to consider the review application.</p> <p>During the hearing the Licensing Authority must take any of the following steps it considers necessary to promote the licensing objectives. These steps are:</p> <ol style="list-style-type: none"> a. To modify the conditions of the premises licence; b. To exclude a licensable activity from the scope of the licence; c. To remove the designated premises supervisor from the licence; d. To suspend the licence for a period not exceeding three months; or e. To revoke the licence. <p>Where the Licensing Authority takes a step as defined by (a) or (b) above it may provide that the modification or exclusion is to have effect for a specified period not exceeding three months.</p> <p>4. Promotion of the Licensing Objectives</p> <p>The review had been requested in order to promote the licensing objectives as shown below:</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.

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		<p>5. Details of Representations</p> <p>The following Responsible Authorities submitted no representation:</p> <p>London Fire & Emergency Planning Authority (“LFEPA”)</p> <p>Health & Safety Enforcing Authority</p> <p>Planning Control & Enforcement</p> <p>Children and Family Services</p> <p>Magistrates Court</p> <p>Valid representations were received from Trading Standards, Metropolitan Police and Havering’s Licensing Authority.</p> <p>Trading Standards</p> <p>Keith Bush, Specialist Trading Standards Officer advised that on 3 June, 2014 a complaint had been received that the premises were substituting their spirits. As a result of the complaint officers visited the premises on 31 July 2014.</p> <p>During the visit the bar area was checked and the ‘spirits’ dipped. This was a screen test to check whether the spirits on sale had been substitutes. Two of the drinks tested, Smirnoff vodka and Gordon’s Gin appeared to have been</p>

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		<p>substitutes and samples of both spirits were taken.</p> <p>The samples were sent to the Public Analyst. With regard to the Smirnoff vodka sample the analyst concluded that whilst the alcohol level was satisfactory and there were no unexpected methanol or congeners found the absence of brand marker sugars was not consistent with the sample being Smirnoff vodka. A similar result was obtained on the Gordon's Gin sample.</p> <p>Spirit substitution was a misleading action contrary to Regulation 9 of the Consumer Protection from Unfair Trading Regulations 2008, and therefore a crime.</p> <p>This substitution demonstrated Mr Rahman's desire to defraud his customers.</p> <p>Metropolitan Police</p> <p>P.C. Jason Rose, Metropolitan Police Licensing Officer for Havering supported the application for a review of the premises licence, on the basis that one of the four licensing objectives, Prevention of Crime & Disorder was not being upheld.</p> <p>The premises are situated on a busy main road linking Hornchurch with Romford and Upminster. The venue was set within a parade of shops, with close proximity to night time economy bars and clubs as well as being positioned extremely close to bus stops that were serviced by night time routes. This particular area has a thriving night time economy, in turn bringing a large amount of night time patrons to the area.</p>

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		<p>His report referred to a number of occasions where the operators had displayed a blatant disregard to its authorised permitted hours. These matters first came to light following consumer complaints and had been verified by licensing officers who had visited the premises outside the permitted hours.</p> <p>Licensing Authority</p> <p>Both Paul Jones and Arthur Hunt, Licensing Officers provided evidence of occasions when the premises licence holder had disregarded the licence conditions.</p> <p>Conclusion</p> <p>Although three responsible authorities had supported the application for review, all three and the applicant acknowledged that since the application was submitted the Premises Licence had been transferred to Mr Jakir Hussain Khan and the DPS changed to Mr Noor Uddin Ludi.</p> <p>Both Paul Jones and P.C. Rose advised that both Mr Khan and Mr Ludi were known to them and they had no concerns at their taking over the premises. They were fully convinced of their willingness to comply with the licence conditions. P.C. Rose suggested a possible condition on the licence barring Mr Rahman from any involvement in the business.</p> <p>Keith Bush asked that if the Sub-Committee decided to take no action on the</p>

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		<p>review that a condition withdrawing the sale of alcohol on the premises be considered.</p> <p>6. Response from new Premises licence Holder and DPS</p> <p>Mr Ludi, Designated Premises Supervisor responded on behalf of himself and Mr Khan. In response to a question he confirmed that Mr Khan was not related to Mrs Rowshon Ara Khan the previous Designated Premises Supervisor.</p> <p>Mr Ludi has submitted a copy of a Memorandum of Agreement of Sale, dated 24 November 2014, between Mr Irshadur Rahman and Mr Jakir Hussain Khan in which Mr Rahman agreed to sell the premises to Mr Khan. A deposit had been paid by Mr Khan. It was established from Mr Ludi that the lease had about 14 years to run and the landlord was a company Phillips Fisher.</p> <p>At the meeting Mr Ludi provided additional documentation including an Assignment of Goodwill, dated 19 December 2014, where for a financial consideration Mr Rahman ‘assigned’ to Messrs Khan and Ludi the goodwill of the business known as ‘Akash Tandoori.’ The agreement also covers the ‘assignment’ of the business known as Akash Tandoori to Messrs Khan and Ludi.</p> <p>Mr Ludi advised that Mr Rahman would have no interest in the business although he was still living in the flat above the premises. Mr Rahman would continue to live in the flat until the lease was finally assigned.</p>

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		<p>Mr Rahman’s solicitors had contacted the landlord’s solicitor’s regarding the assignment of the lease but this had not progressed so far.</p> <p>7. Consideration of Application</p> <p>Consequent upon the hearing held on 8 January 2015 the Sub-Committee’s decision regarding the review of the premises licence for Akash Tandoori, 185 High Street, Hornchurch is set out below, for the reasons shown:</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 of the First Protocol of the Human Rights Act 1998.</p>
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		<p>Decision:</p> <p>It was not in dispute that the premises had been mismanaged by Mr Rahman and there had been multiple contraventions of licence conditions, and other trading offences. In the light of the change of Premises Licence Holder and Designated Premises Supervisor the Sub-Committee decided to defer consideration of the application pending further clarification from Mr Khan and Mr Ludi. The Sub-Committee were concerned to ensure that Mr Rahman would have no part in the new business. The papers provided by Mr Khan and Mr Ludi went so far in providing that evidence, however, these were not conclusive. For instance, under the terms of the Memorandum of Agreement of Sale, paragraph 3 ‘The Parties to this Agreement of Sale agree Completion Date immediately upon grant of unconditional ‘Licence to Assign’ from the landlord.’ Mr Ludi confirmed that the licence had not been assigned. Mr Rahman remained the lessee of the premises and, therefore, would have the legal right to be on the premises.</p> <p>The Sub-Committee have requested Mr Khan and Mr Ludi to use their best endeavours to provide the sub-committee with the following documents:</p> <ol style="list-style-type: none"> a. A copy of the lease between Mr Rahman and the landlord; b. A copy of the correspondence between Mr Khan and Mr Ludi’s solicitors and Mr Rahman’s solicitors; c. A copy of the letter from Mr Rahman’s solicitor’s to the landlord’s solicitors seeking consent to assign the lease; d. If available a copy of the assignment of the lease, and e. A copy of the two receipts for the deposit and assignment of goodwill.

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		<p align="center">within 3 months and the hearing is to be adjourned to the first available date after three months.</p> <p>James Goodwin Clerk to the Licensing Sub-Committee</p>
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