

Havering Council – Decisions taken by the Licensing Sub-Committee on Friday, 23 January 2015

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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 TO VARY A PREMISES LICENCE FOR OH MY COD (TO BE KNOWN AS SHISH MEZE), 2 BERTHER ROAD, HORNCHURCH, RM11 3HS</p>	<p align="right">Licensing Act 2003 Notice of Decision</p> <p>PREMISES Oh My Cod (to be known as Shish Meze), 2 Berther Road, Hornchurch RM11 3HS</p> <p>DETAILS OF APPLICATION</p> <p>Application for a variation to a premises licence under section 34 of the Licensing Act 2003 (“the Act”).</p> <p>APPLICANT Bilal Nadir Gul, 96A North Street, Hornchurch, Essex. RM11 1SU</p> <p>1. Details of the application</p> <p>The current premises licence conditions</p>
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		<table border="1"> <thead> <tr> <th align="center" colspan="3">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 Sunday</td> <td align="center">10:00</td> <td align="center">23:00</td> </tr> <tr> <td>Bank Holidays, Valentine’s Day, Christmas Eve, New Year’s Eve</td> <td align="center">10.00</td> <td align="center">00.00</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>Bank Holidays, Valentine’s Day, Christmas Eve, New Year’s Eve</td> <td align="center">23.00</td> <td align="center">00.00</td> </tr> </tbody> </table> <p>The application seeks to permit the following:</p> <p>In respect of the exterior areas shown on the plans</p> <table border="1"> <thead> <tr> <th align="center" colspan="3">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 Sunday</td> <td align="center">10:00</td> <td align="center">23:00</td> </tr> </tbody> </table> <p>2. Promotion of the Licensing Objectives</p> <p>The applicant completed the operating schedule, which formed part of the application, to promote the four licensing objectives.</p>	Supply of Alcohol			Day	Start	Finish	Monday to Sunday	10:00	23:00	Bank Holidays, Valentine’s Day, Christmas Eve, New Year’s Eve	10.00	00.00	Late Night Refreshment			Day	Start	Finish	Bank Holidays, Valentine’s Day, Christmas Eve, New Year’s Eve	23.00	00.00	Supply of alcohol			Day	Start	Finish	Monday to Sunday	10:00	23:00
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		<p>The applicant acted in accordance with regulations 25 and 26 of the pertinent regulations governing the advertising of such applications. The required public notice was installed in the Romford Recorder on Friday 12 December 2014.</p> <p>3. 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 • The prevention of public nuisance • The protection of children from harm • Public Safety. <p>There were nine representations against this application from interested parties relating to different addresses.</p> <p>There were three representations against this application from responsible authorities.</p> <p><u>Responsible Authorities</u></p> <p>Metropolitan Police: The Metropolitan Police have objected as they believe that in granting the variation at least two of the licensing objectives, namely:</p> <ul style="list-style-type: none"> • The prevention of Public Nuisance; and • The Prevention of Crime & Disorder, would be undermined.

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		<p>The premises in question is situated in a mixed use area, primarily enclosed by residential premises. The venue is surrounded on all sides with private premises of a residential nature. Police have been made aware of complaints made to the local authority via residents regarding a number of issues to noise generated from diners and service on the outside terrace. Some have complained about food smells emitting from the area into their residential premises.</p> <p>Upon inspection of the application, no measures or steps are listed to inform police, local authority and other responsible agencies how they plan to uphold the “Public Nuisance” strand of the licensing act, the applicant merely states “ALL WASTE GENERATED BY THE PREMISES WILL BE DEALT WITH APPROPRIATELY”. The application does not address the logistics of outside alcohol sales, nor does it address any other potential crime related issues, such as -</p> <ul style="list-style-type: none"> • Is alcohol to be stored in the marquee / tented area? if so what measures are being put in place to keep such stock safe. • What steps is the applicant putting in place relating to glassware outside the premises? How do they plan to prevent injury and potential instant arming outside the venue if glassware is served? • What further steps is the applicant putting in place to reduce the possibility of underage sales outside? How will they monitor ages of customers etc. <p>This application causes police a number of concerns; it basically requests outside dining very close to residential premises, premises that in turn may be detrimentally affected by noise and food smell nuisances especially during the prolonged daylight</p>

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		<p>hours of the summer months. Police note the requested terminal hour of 2300hrs and feel this is not appropriate for a premises set amongst residential premises. Such premises may have school children residing and noise nuisances, even loud voices may have an effect on sleep patterns.</p> <p>Police could not support an application for the venue in its current format. The Police believe the majority of their customer base within the hours requested (2300hrs) may be pre-loaded with alcohol from other venues within the area. Police feel to dine outside where noise travels greater distances up until the requested terminal hour of 2300hrs would increase the risk of nuisance to local residents. Police feel the applicant needs to evidence steps he will put into place to minimise the impact on local residents in relation to noise and food odour nuisances.</p> <p>In summary police believe the requested outdoor activity does not run parallel to promoting the licensing objectives. If, however, the committee is mindful to grant such a variation, police believe a terminal hour between 2000hrs to 2130 hrs is a more acceptable end time for such activity. This will most certainly reduce the possibility of impacting residents during unreasonable hours.</p> <p>London Fire & Emergency Planning Authority (“LFEPA”): None.</p> <p>Planning Control & Enforcement: Planning Control and Enforcement drew the Sub-Committee’s attention to Condition 1 attached to the planning permission P1178.14 for these premises.</p>

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		<p>The condition states:</p> <p>“The internal areas of the premises shall not be used for the purposes hereby permitted other than between the hours of 1000 and 2200 Monday to Friday and between 1000 and 2300 on Saturday, Sunday and Bank or Public holidays. The external seating areas shall not be used for the purposes hereby permitted other than between the hours of 1000 and 2200 on Monday to Sunday and Bank or public holidays. The hours of operation shall be implemented unless agreed in writing by the Local Planning Authority.”</p> <p>The Planning view is that the additional time, if granted is likely to cause noise and disturbance to residents thereby causing a public nuisance. The licensing act does not state that proof is required of this, it is only that there is potential. Further that if the Licence were granted there would be conflict between Licensing and Planning rules.</p> <p>Paragraph 13.56 of the Guidance states that if the closing times on the licence and planning consent differ the applicant must observe the earlier closing time, which in this instant is the planning permission.</p> <p>Children & Families Service: None</p> <p>Environmental Health Service: This representation refers to the potential for noise disturbance to be caused to nearby residents due to customer noise arising from client’s use of the external decking/seating areas of the premises.</p>

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		<p>In his opinion the use of these areas until a terminal hour of 23.00 hours will cause unacceptable levels of noise disturbance. Unless the applicant was willing to restrict the use of the external areas to say 20.00 hours the likelihood of noise disturbance means he would not be able to withdraw his objection.</p> <p>The Magistrates Court: None</p> <p><u>Interested parties' representation</u></p> <p>The representations against this application were based upon all four licensing objectives..</p> <p>None of the objectors attended the meeting so the sub-committee considered their written representations.</p> <p>All the representations refer to the difficulty they face in parking in Berther Road because of clients of Oh My Cod parking in Berther Road. In addition to the problems of parking the representations also refer to the noise created when patrons return to their cars slamming car doors, loud music and shouting to each other.</p> <p>The representations also refer to the direct correlation between alcohol and crime and fear these opening hours would exacerbate the situation.</p> <p>One of the representations, submitted by Kevin Lenehan, also refers to a flurry of house burglaries in the local area, where the increased foot traffic could have</p>

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		<p>some correlation and to damage to neighbours cars.</p> <p>Mr Lenehan also expresses a fear that extended drinking hours could lead to violent and rowdy behaviour. He also states that the residents do not want an all day boozier in the area and is worried that children passing the restaurant would be exposed to drinking, smoking, swearing, loud, violent and threatening behaviour.</p> <p>4. Applicant's response.</p> <p>Mr Dimitrious Kyriacou, the owner of the premises and the applicant's business partner attended the hearing and was represented by Steve Burnett, solicitor of Poppleston Allen. Mr Burnett confirmed that he had instructions directly from the applicant and was authorised on his behalf. The Applicant could not attend the hearing as he was out of he country. Mr Burnett opened by stating that the application for a variation was inadequate and not detailed enough. He asked the sub-committee to ignore section P where the application attempted to show how the applicant intended to promote the four licensing objectives. He would address this in his submissions.</p> <p>He referred the Sub-Committee's attention to the plan attached to the application (KT-11082014-RM113HS-2) which showed the two external areas which were the subject of this application. What was needed were conditions to restrict the use of these two areas. He indicated a desire to withdraw the application and just use the new plan and the existing conditions, however, he did not pursue this after the Sub-Committee indicated that they would not allow him to amend the application in that</p>

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		<p>way.</p> <p>Mr Burnett indicated that his client was prepared to amend the application to reduce the hours applied for from 10.00 hours to 23.00 hours to 12.00 hours to 22.00 hours. His client was also prepared to accept conditions:</p> <ul style="list-style-type: none"> • PN11 Prominent, clear notices shall be displayed at <i>all exits / in the external areas</i>) requesting that customers respect the needs of local residents and leave the premises and the area quietly. • PN12 The external areas must not be used by customers after the hours of 22.00 . <p>Mr Burnett was offering four other non-standard conditions:</p> <ul style="list-style-type: none"> • The sale and supply of alcohol for consumption in the outside areas shall be restricted to the areas shown on plan no. KT-11082014-RM113HS-2 and shall be supplied by waiter/waitress service only to persons seated at tables taking a meal; • The premises licence holder shall ensure that any persons dining in the outside areas do so in an orderly manner and are supervised by staff so as to ensure there is no public nuisance. • There will be regular collection from and checking of outside areas and the perimeter of the premises for any glass from the premises. • A contact telephone number for the duty manager will be made available to residents in the immediate vicinity.
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		<p>With regard to the representations concerning smell and noise Mr Burnett pointed out that the Local Authority already had separate powers to deal with any issues.</p> <p>Mr Dimitriou Kyriacou stated that he had respect for all the local residents. Indeed most of the residents were his customers. It appeared that most of the complaints concerned parking. If this was the case residents should approach the local authority to tackle these issues. With regard to the issue of smell he was working to tackle this problem.</p> <p>He was a victim of the success of the business. It was this success which had led to the need to expand.</p> <p>Mr Burnett stated that any of the responsible authorities had the option to seek a review of the premises should problems occur. His client did not believe that there was a need for polycarbonate glass, as the premises were a restaurant not a club or public house. Also the premises already have a policy in respect of underage sales.</p> <p>5. Determination of Application</p> <p>Decision</p> <p>Following the hearing held on 23 January 2015, the Sub-Committee’s decision regarding the application to vary the Premises Licence for Oh My Cod (to be known as Shish Meze), 2 Berther Road, Hornchurch was as set out below, for the</p>

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		<p>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 and 8 of the First Protocol of the Human Rights Act 1998.</p> <p>The Sub-Committee had some questions regarding the planning permission granted. Copies of the plans referenced in the planning permission were obtained which confirmed that the applicant had not reduced the number of parking spaces required by the planning permission. Also, the planning permission provided for the use of the two external areas, one fronting Berther Road, the other facing Butts Green Road.</p> <p>Having considered the written representations and the oral representations the Sub-Committee, was mindful of the concerns of the residents regarding noise, and</p>

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		<p>considered that if the external seating areas were not enclosed within the building that noise nuisance would disturb local residents. At the same time they did not consider that a terminal hour of 20.00 hours was necessary as requested by Environmental Health. Accordingly they decided that a terminal hour of 21.00 would be reasonable and proportionate and therefore AGREED to grant the variation subject to the following conditions:</p> <ol style="list-style-type: none"> 1. The sale of alcohol for consumption on the external seating areas shall be restricted to the following hours 12.00 hours to 21.00 hours Mondays to Sundays, all bank holidays, Valentine’s Day, Christmas Eve and New Year’s Eve. 2. PN11 Prominent, clear notices shall be displayed at <i>all exits / in the external areas</i>) requesting that customers respect the needs of local residents and leave the premises and the area quietly. 3. PN12 The external areas must not be used by customers after the hours of 21.00. 4. The sale and supply of alcohol for consumption in the outside areas shall be restricted to the areas shown on plan no. KT-11082014-RM113HS-2 and shall be supplied by waiter/waitress service only to persons seated at tables taking a meal; 5. The premises licence holder shall ensure that any persons dining in the outside areas do so in an orderly manner and are supervised by staff so as to ensure

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		<p>there is no public nuisance.</p> <p>6. There will be regular collection from and checking of outside areas and the perimeter of the premises for any glass from the premises.</p> <p>7. A contact telephone number for the duty manager will be made available to residents in the immediate vicinity.</p> <p>6. 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.

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		James Goodwin Clerk to the Licensing Sub-Committee
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