

## APPLICATION FOR A VARIATION OF A PREMISES LICENCE

<b>Committee</b>	Licensing Sub-Committee	
<b>Officer Contact</b>	Sharon Garner	01895 277230
<b>Papers with report</b>	<ul style="list-style-type: none"><li>• Appendix 1 – copy of application form</li><li>• Appendix 2 – copy of Premises Licence</li><li>• Appendix 3 – copy of representation from Metropolitan Police</li><li>• Appendix 4 – copy of representation from Environmental Protection Unit</li><li>• Appendix 5 – list of responsible authorities</li><li>• Appendix 6 – map of area</li><li>• Appendix 7 – photographs of the premises</li></ul>	
<b>Ward(s) affected</b>	Manor	

### SUMMARY

To consider representations from the Metropolitan Police and the Council's Environmental Protection Unit in respect of an application for a variation of a premises licence to **Rajdoot Tandoori Restaurant, Windmill Hill, Ruislip Manor**. The application is to extend the layout of the premises, to increase the number of persons permitted in the premises, to permit the selling of alcohol without being ancillary to a meal and to extend the hours for all licensable activities.

### RECOMMENDATION

**That the Licensing Sub-Committee determine the application.**

### INFORMATION

1.0 An application for a variation of a premises licence was received on 14<sup>th</sup> May 2010 from Mr Alan Golding on behalf of Rowvale Limited t/a Rajdoot Tandoori Restaurant, 59 Windmill Hill, Ruislip Manor, HA4 8PU. The variation being:

To extend the restaurant into the premises next door.

To provide regulated entertainment for customers taking table meals.

To increase the capacity figure from 52 to 120.

To remove the condition that alcohol shall only be sold to persons taking table meals in the premises and when ancillary to the meal.

To provide regulated entertainment, sale of alcohol and provision of late night refreshment at the hours stated below:

***Provision of regulated entertainment for live music, recorded music, performances of dance and anything of a similar description.***

***Provision of entertainment facilities for making music, dancing and anything of a similar description.***

***Sale by retail of alcohol.***

**From 11.00 hours until 03.00 hours the following day, everyday.**

**From 11.00 hours on New Years Eve until the commencement of business on New Years Day.**

***Provision of late night refreshment***

**From 23.00 hours until 03.30 hours the following day, everyday.**

**From 23.00 hours on New Years Eve until 05.00 hours on New Years Day.**

A copy of the application form is annexed to this report as **Appendix 1**.

A copy of the current Premises Licence for Rajdoot Tandoori Restaurant is annexed to this report as **Appendix 2**.

- 1.1 The application was advertised in accordance with the standard procedures required by the Licensing Act 2003.
- 1.2 In accordance with the legislation, the applicant is required to send copies of the application to the responsible authorities being:
  - The Metropolitan Police Service
  - London Fire & Emergency Planning Authority
  - Child Protection Service, LBH
  - Commercial Premises Service, LBH
  - Environmental Protection Unit, LBH
  - Trading Standards Service, LBH
  - Planning Service, LBH

**(See Appendix 5 for full details)**

One representation (annexed to this report as **Appendix 3**) was received from the Metropolitan Police Service under the licensing objectives of Prevention of Crime and Disorder, Public Safety and Prevention of Public Nuisance.

One representation (annexed to this report as **Appendix 4**) was received from the Environmental Protection Unit under the licensing objective of Prevention of Public Nuisance.

- 1.3 The period for consultation and the making of representations in respect of this application expired on 11<sup>th</sup> June 2010.

1.4 **The following conditions have been offered by the applicant in the operating schedule in addition to the conditions currently on the premises licence and will be imposed as conditions on any premises licence granted:-**

The maximum number of persons in the premises shall not exceed 120.

1.5 **General Information**

- The premises is currently a single shop unit, brick built with single glazing.
- The proposed variation of the restaurant will extend it into the adjacent shop unit
- There are residential premises above the restaurant.
- It is unknown at this stage is if the premises will be fitted with air conditioning and mechanical ventilation and double glazing.

## **FINANCIAL IMPLICATIONS**

- 2.0 Members should be aware that the Planning, Environment and Community Services does not have a budget provision for costs, should the applicant be successful in appealing to the Court(s) against a decision of the Council. In the event that a Court was to uphold an appeal, officers would need to identify how the costs would be funded before action could be taken in order to comply with Council financial policy.

## **LEGAL IMPLICATIONS**

### **Principles for making the determination**

- 3.0 The general principle is that applications for Premises Licence applications must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.

- 3.1 Relevant representations are those which:-

- Are about the effect of the granting of the application on the promotion of the licensing objectives
- Are made by an interested party or responsible authority
- Have not been withdrawn
- Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

The four licensing objectives are :

- a. The prevention of crime and disorder;**
- b. Public safety;**
- c. The prevention of nuisance; and**
- d. The protection of children from harm.**

Members should note that each objective is of equal importance. There are no other

licensing objectives, and the four objectives are paramount considerations at all times.

- 3.2 The Licensing Sub-Committee must also consider the London Borough of Hillingdon's Licensing policy when deciding whether or not to grant the application. The terms of the Statement of Licensing Policy are highly persuasive, but not binding, on the Licensing Sub-Committee. The Licensing Sub-Committee may depart from the guidance contained in the Statement of Licensing Policy if it considers there are clear and convincing reasons to do so.

Where there is a conflict between the Licensing Act 2003 and the Statement of Licensing Policy, the Licensing Act must prevail.

- 3.3 Members are required to have regard to the DCMS Guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case
- 3.4 When relevant representations are received then the Sub-Committee must have regard to them. Representations based on commercial reasons or moral grounds are not in themselves relevant representations. For example, a representation from a restaurant owner that the grant of a variation of a premises licence to another restaurant to allow such performances of dance will take customers away from his/her premises is not a relevant representation.
- 3.5 The Licensing Sub-Committee can attach a "weight" to any relevant representations, such factors that could influence the "weight" to be placed on a representation could include:-
- Whether the representation can be clearly related to any one of the four licensing objectives;
  - Whether the representation concerns matters over which the applicant is able to exercise control;
  - Whether the representation is based on "hearsay" evidence;
  - Whether the representation is supported by firm evidence;
  - Whether the person making the representation has attended the hearing in person.
- 3.6 Having considered all relevant representations, and having taken into account the promotion of the licensing objectives, a decision can be taken:-
- To grant the licence, subject to the mandatory conditions and conditions consistent with the operating schedule;
  - To impose additional relevant conditions to such an extent as is considered necessary for the promotion of the licensing objectives;
  - To exclude any of the licensable activities to which the application relates
  - To amend the times for all or some of the licensable activities;
  - To refuse to specify a person in the licence as the premises supervisor
  - To reject the application

## Conditions

- 3.7 Conditions will not be necessary if they duplicate a current statutory requirement.

Members are also referred to the DCMS guidance on conditions, specifically section 10 and Annex D.

The Statutory Guidance states that only necessary, proportionate and enforceable conditions, which promote one or more of the licensing objectives, should be attached to the licence if it is granted (paragraph 10.11).

The Licensing Authority may therefore only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the representations (paragraph 10.11), and should avoid straying into undisputed areas (paragraph 10.12).

Statutory Guidance also states that the pool of conditions that are supplied by the Secretary of State should not be applied universally irrespective of particular circumstances, but may be used as examples that can be tailored to suit individual premises and particular situations.

## Reasons

- 3.8 If the Sub-Committee determines that it is necessary to modify the conditions, or to refuse the application for a variation of a Premises Licence application, it must give reasons for its decision.

## The Role of the Licensing Sub-Committee

- 3.9 Sub-Committee members will note that, in relation to this application, the Council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the Council as authority responsible respectively for environmental health, child protection, trading standards, health and safety and as the planning authority.
- 3.10 Members should note that the Licensing Sub-Committee is meeting on this occasion solely to **perform the role of licensing authority**. The Sub-Committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the Licensing Law, Guidance and the Council's Statement of Licensing Policy.
- 3.11 As a quasi-judicial body the Licensing Sub-Committee is required to consider the application on its merits. The Sub-Committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, the occurrence of which would be relevant.

- 3.12 The Licensing Sub-Committee must give fair consideration to the contentions of all persons entitled to make representations to them.
- 3.13 The Licensing Sub-Committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.
- 3.14 The Sub-Committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
- 3.15 Under the Human Rights Act 1998, the Sub-Committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The Sub-Committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the Borough.
- 3.16 Interested Parties, Responsible Authorities and the applicant have the right to appeal the decision of the Sub-Committee to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

### List of Representations

	Prevention of Crime & Disorder	Public Safety	Prevention of Public Nuisance	Protection of Children from Harm
Sgt Ian Meens Metropolitan Police Service	X	X	X	
Paul Connor, Environmental Protection Unit			X	

### RELEVANT DOCUMENTS

- Appendix 1 – copy of application form
- Appendix 2 – copy of Premises Licence
- Appendix 3 – copy representation from Metropolitan Police
- Appendix 4 – copy of representation Environmental Protection Unit
- Appendix 5 – list of responsible authorities

- Appendix 6 – map of area
- Appendix 7 – photographs of the premises

## **BACKGROUND DOCUMENTS**

The Licensing Act 2003

Guidance under Section 182 of the Licensing Act 2003

The Council's Statement of Licensing Policy