

APPLICATION FOR A NEW PREMISES LICENCE : CK FOOD & WINE

Committee	Licensing Sub-Committee
Officer Contact	Ian Meens, Residents Services
Papers with report	Appendix 1- New premises licence application including plan Appendix 2 - Representation from the Licensing Authority Appendix 3 - Representation from the Metropolitan Police Appendix 4 - Map of the area Appendix 5 - Photographs
Ward name	Pinkwell

1.0 SUMMARY

To consider an application for a premises licence in respect of CK Food and Wine, 153 North Hyde Road, Hayes, UB3 4NS with representations received from two Responsible Authorities.

2.0 RECOMMENDATION

That the Licensing Sub-Committee refuse the premises licence, having regard to the Government's guidance issued under s182 of the Licensing Act 2003. Granting the licence will undermine the crime prevention objective under the Act.

3.0 APPLICATION

The new premises licence application has been made by Varyam Singh CHOPRA for an off-licence known as CK Food and Wine, 153 North Hyde Road, Hayes, UB3 4NS. The application submitted is for a licence to sell alcohol for consumption off the premises between the hours of 07.00 hours and 23.00 hours. A copy of this new premises licence application form and the premises plan is attached as **Appendix 1**.

3.1 Type of application applied for

New Premises Licence

4.0 CONSULTATION

4.1 Closing date for representations

29th June 2018

4.2 Public Notice published in local newspaper

13th June 2018 - Uxbridge Gazette

5.0 REPRESENTATIONS

5.1 RESPONSIBLE AUTHORITIES

There are 2 representations from the Responsible Authorities appended as **Appendices 2 and 3**

Responsible Authority	Ground for Representation	Appendix
Licensing Authority	Prevention of Crime and Disorder	Appendix 2
Metropolitan Police	Prevention of Crime and Disorder	Appendix 3

5.2 There were no other representations received from any other responsible authorities or interested parties.

6.0 BACKGROUND INFORMATION

6.1 Premises licence

- a) A premises licence held at the address was revoked following a sub-committee licensing hearing on 20 February 2018 following a review of the premises licence submitted by the Council's Trading Standards Department.

The revoked premises licence holder was Mr Amandeep Singh Sachdeva

- b) On 19 March 2018 the Licensing Authority received notification that Mr Sachdeva had appealed the revocation decision reached by the Council and this currently awaits being heard at Uxbridge Magistrates Court on a date to be arranged. Meanwhile, the premises can continue trading until final determination of the revocation issue.
- c) Further to the revocation, a new premises licence application was submitted. The applicant was Mrs Taranjit Kaur Kapoor. This application received representations and subsequently was heard by the licensing committee on the 23rd April 2018. At the hearing the application was refused.
- d) A second new application was subsequently submitted on the 4th June by Personal Licence courses for and on behalf of Mr Chopra. This is the application subject to this report.

6.2 Description of the Premises

The premise was primarily an off-licence selling alcoholic and non alcoholic drinks, various tobacco products, groceries, fruits and vegetables. It is located on a parade of shops on a busy stretch of road. The range of fresh produce items are sold outside the front of the store under a Street Trading Licence issued under London Local Authorities Act 1990 (as amended).

A site map of the local area and photos of the premises are attached as **Appendix 5**

6.3 Other licensed premises nearby

There is another off-licence along the same parade of shops called Sirago at 147, North Hyde Road, Hayes, UB3 4NS which stays open and sells alcohol on:
Mondays to Saturdays from 08.00 - 23.00 hours and on
Sundays from 10.00 - 22.30 hours.

6.4 Licensable Activities currently authorised at the premises

<u>Activity</u>		<u>Proposed for new premises licence</u>
Sale of alcohol	Consumption off the premises	✓

6.5 Licensable Activity and opening hours currently authorised at the premises

	Proposed hours for the sale of alcohol	Proposed Opening hours
Monday	07:00 - 23:00	07:00 - 23:00
Tuesday	07:00 - 23:00	07:00 - 23:00
Wednesday	07:00 - 23:00	07:00 - 23:00
Thursday	07:00 - 23:00	07:00 - 23:00
Friday	07:00 - 23:00	07:00 - 23:00
Saturday	07:00 - 23:00	07:00 - 23:00
Sunday	07:00 - 23:00	07:00 - 23:00

6.6 Visits made by Licensing Officers

Licensing officers visited the premises on Thursday 28th June and the person present at the premises was Mr Bhajan Singh Kapoor, who has been confirmed as the business partner of Mr Amandeep Singh Sachdeva and also the husband of Mrs Taranjit Kaur Kapoor, who had her application refused previously. The premise was operating as normal pending the outcome of the appeal process.

6.7 Complaints received

There is no record of any complaints being received by the Regulatory Services Team.

7.0 OFFICER'S OBSERVATIONS

Observations

This is an application from Mr Varyam Singh CHOPRA. The applicant is applying as an individual. Mr Chopra has shown that he resides at 82 Norwood Road Southall. UB2 4DR. The application has not included that Mr Chopra is a personal licence holder. Therefore, he is not currently in a position to be an authorised Designated Premises Supervisor.

Historically within the licensing trade and wholly with this premises application, there is concern that when a premise has had its licence revoked that any further re licence of the same premises is from a person wholly unconnected with the previous licence holder under whose control the licence was removed.

From the time the application was received until the time the licensing report was compiled no contact has been made from the applicant's agent regarding the applicant making himself available for this type of investigation.

On many occasions at Hillingdon and in this case the applicants agent is aware that there is a concern by the responsible authorities regarding qualifying this separation and that failure to do so would likely be met with a representation as in this case. The fact that the new applicant has not been available for any examination of his position and for said concerns to therefore be quantified and possibly dismissed it therefore remains a concern that the applicant has not met the standards of the licensing objectives.

A conclusion that could be drawn is that the new applicant has not permitted the Responsible Authorities any opportunity to satisfy any concerns and this must be seen in relation to the facts that the applicant is not in a position to wholly satisfy the authorities that a proper and clean change of control and ownership has been made.

No proof of assignment of lease or proof of segregation of the above relationship in the business has been submitted with the application or subsequently to show a clear separation between the new applicant and the previously revoked (pending an appeal) licence holder.

A licensing visit conducted on 28th June to the premises further establishes that at the point the application was made, the business was still effectively being controlled by the previously revoked (pending an appeal) licence holder. This new application may be an attempt to circumvent the legal process (revocation proceedings) and it is very likely that a close personal and /or business relationship still exists

Local Authorities have to examine carefully the facts of an application to prevent reckless licence holders from using the system to continue to operate where licenses are lost and licensing authorities are right to take a careful examination of these applications particularly those that appear to be a ruse.

8.0 Relevant sections of S.182 Guidance

The Guidance issued by the Secretary of State under S182 of the Licensing Act 2003 states:

The purpose of the Guidance

At paragraph 1.7, "This Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality."

Determining actions that are appropriate for the promotion of the licensing objectives

At paragraph 9.42, "Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be."

At paragraph 9.43, "The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve."

9.0 Relevant sections of the Licensing Policy

8.46 While applicants are not required to seek the views of responsible authorities before formally submitting their application, they may find them to be a useful source of expert advice on local issues that should be taken into consideration when making an application. Licensing authorities may wish to encourage co-operation between applicants, responsible authorities and, where relevant, local residents and businesses before applications are submitted in order to minimise the scope for disputes to arise.

8.47 Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.

14.0 Representations

At paragraph 14.1, "This policy will not seek to exclude any rights enshrined in the Act or any other legislation for applicants or those making representations against applications. Each application and representation will be treated on its merits taking into account the legislation, the Guidance issued under section 182 of the Licensing Act 2003 and this policy."

At paragraph 14.2, "Representations can be made to the Council, as Licensing Authority, by a 'Responsible Authority' or by 'Interested Parties' which include bodies or individuals who live in the vicinity of such a premises, and residents association, trade associations and other businesses operating in the vicinity. Representations can be made concerning:-

- Applications for new premises licences or club premises certificates

- Applications to vary premises licences or club premises certificates
- Personal licence applications on criminal grounds (only by the Police)"

At paragraph 14.3, "Responsible Authorities are the public authorities specifically designated under the Licensing Act 2003 to be consulted on all licence applications and are also entitled to make representations."

At paragraph 14.10, "All valid representations will form part of a committee report that will become a public document. It will be given to the applicant, their agent, responsible authorities, other persons making representations and any other party requesting a copy as well as the Licensing Sub-committee 10 working days prior to the hearing. Anonymous representations will not be accepted."

16.0 Decision Making and Licensing Hearings

At paragraph 16.4, "A Licensing Sub-Committee will sit to hear all applications for premises licences, club premises certificates, interim authorities, provisional statements, designated premises supervisors and personal licences which have attracted relevant representations from either a 'responsible authority' or 'other person'."

10.0 Legal Considerations

When considering licence applications the Sub-Committee shall carry out its functions with a view to taking steps it considers appropriate for promoting the licensing objectives. The licensing objectives are:

- Prevention of crime and disorder
- Public Safety
- Prevention of public nuisance
- Protection of children from harm

The Sub-Committee must ensure that all licensing decisions:

- Have a direct relationship to the promotion of one or more of the four licensing objectives
- Have regard to the Council's statement of licensing policy
- Have regard to the Secretary of State guidance
- Must not be subject to a blanket policy to the extent that it is applied so rigidly that an exercise of discretion in each individual case is precluded

The Sub-Committee is advised that when considering applications for a new premises licence, regard must be had to any relevant representations that are made before taking such steps (if any) as it considers necessary for the promotion of the licensing objectives.

The steps are:

- grant the application.
- grant the application subject to conditions the Sub-Committee considers necessary to promote the licensing objectives
- exclude from the scope of the licence any licensable activity(ies) to which the application relates
- refuse to specify a designated premises supervisor
- reject the application

Officers have provided the Sub-Committee with recommendations related to this application. Subject to the above-mentioned factors having been properly considered, the Sub-Committee may depart from the recommendations if there are good reasons for doing so. The Sub-Committee is advised that such departures could give rise to an appeal or judicial review.

In considering this application, the Sub-Committee may wish to take into account the judgement in the case of **R v Knightsbridge Crown Court ex p International Sporting Club (London) Ltd [1982] 1 QB 304**. The case concerned three London casinos which had operated in breach of the relevant gaming laws. Each lost its licence. The licence holders appealed and then sold the companies to third parties in the interim. The new 14 RBNB §9 (Lord Bingham). 15 McCool §7 (Lord Bingham CJ) 16 Ibid. §25. 6 owners replaced the entire previous management with new staff. The sale amounted to a re-structuring of the businesses. In its judgement, the Court stated:

“We have no hesitation in saying that past misconduct by the licence holder will in every case be a relevant consideration to take into account when considering whether to cancel a licence. The weight to be accorded to it will vary according to the circumstances of the case. There may well be cases in which the wrongdoing of the company licence holder has been so flagrant and so well publicised that no amount of restructuring can restore confidence in it as a fit and proper person to hold a licence; it will stand condemned in the public mind as a person unfit to hold a licence and public confidence in the licensing justices would be gravely shaken by allowing it to continue to run a casino”

The Court commented that it risks bringing the licensing regime into disrepute if reckless licence holders can avoid the consequences of their behaviour by simply transferring the licence into someone else's name or selling the business when they got caught and so, effectively, get away with it. The deterrent effect of licensing enforcement would be lost and licensing authorities are right to take a robust stance against such transfers, particularly those which appeared to be a ruse.