

# APPLICATION FOR THE GRANT OF A PREMISES LICENCE: EASTCOTE KARAHİ

Committee	Licensing Sub-Committee
Officer Contact	Mark McDermott, Licensing Officer
Papers with report	<b>Appendix 1</b> - Application for the grant of a new premises licence <b>Appendix 2</b> - Summary of amendments to application <b>Appendix 3</b> - Representation from local resident, Paul Faith <b>Appendix 4</b> - Representation from local resident, Caren Westhead <b>Appendix 5</b> - Representation from local resident, Matthew Westhead <b>Appendix 6</b> - Map of the area <b>Appendix 7</b> - Photo of the premises <b>Appendix 8</b> - Lapsed Licence
Ward name	Eastcote and East Ruislip

## 1.0 SUMMARY

To consider an application for a premises licence, as seen in **Appendix 1**, in respect of Eastcote Karahi, 105 Field End Road, Eastcote, HA5 1QG. This has attracted representations from three interested parties.

## 2.0 RECOMMENDATION

**To grant the licence, consistent with the operating schedule conditions and amendments/additions as sought, but to reduce the terminal hour for late night refreshment, sale of alcohol and opening hours to midnight on Friday and Saturday, due to the close proximity of residential properties above the premises.**

## 3.0 APPLICATION

### 3.1 Licensable Activities

<u>Activity</u>		<u>Proposed for new premises licence</u>
Recorded Music	Indoors	x
Late Night Refreshment	Indoors	x
Sale of alcohol	Consumption on the premises	x

3.2 Opening Hours and proposed hours for licensable activity

	Recorded Music	Proposed hours for sale by retail of alcohol
<b>Monday</b>	18:00 - 01:00	12:00 - 01:00
<b>Tuesday</b>	18:00 - 01:00	12:00 - 01:00
<b>Wednesday</b>	18:00 - 01:00	12:00 - 01:00
<b>Thursday</b>	18:00 - 01:00	12:00 - 01:00
<b>Friday</b>	18:00 - 01:30	12:00 - 01:00
<b>Saturday</b>	18:00 - 01:30	12:00 - 01:00
<b>Sunday</b>	18:00 - 00:00	12:00 - 00:00

	Proposed Late Night Refreshment Hours	Opening hours of the premises
<b>Monday</b>	23:00 - 01:00	12:00 - 01:00
<b>Tuesday</b>	23:00 - 01:00	12:00 - 01:00
<b>Wednesday</b>	23:00 - 01:00	12:00 - 01:00
<b>Thursday</b>	23:00 - 01:00	12:00 - 01:00
<b>Friday</b>	23:00 - 01:30	12:00 - 01:30
<b>Saturday</b>	23:00 - 01:30	12:00 - 01:30
<b>Sunday</b>	23:00 - 00:00	12:00 - 00:00

The new premises licence application has been made by **Eastcote Karahi Limited** for a restaurant situated at 105 Field End Road, Eastcote, HA5 1QG.

On receipt of representations, officers entered into mediation between the applicant and the objectors to see if concerns raised could be resolved by way of amendments to the operating schedule. This led to the applicant amending the application, as shown at **Annex 2** and detailed below (3.3 to 3.8).

3.3 Type of application applied for

New Premises Licence application under Licensing Act, 2003.

3.4 Description of the premises

The premise is a single unit restaurant on the ground floor with residential flats above situated on a parade of shops on a busy high street.

3.5 Revised Licensable Activities following mediation

<u>Activity</u>		<u>Proposed for new premises licence</u>
Late Night Refreshment	Indoors	x
Sale of alcohol	Consumption on the premises	x

3.6 Revised opening Hours and proposed hours for licensable activity following mediation

	Opening hours of the premises	Proposed hours for sale by retail of alcohol
<b>Monday</b>	12:00 - 00:00	12:00 - 00:00
<b>Tuesday</b>	12:00 - 00:00	12:00 - 00:00
<b>Wednesday</b>	12:00 - 00:00	12:00 - 00:00
<b>Thursday</b>	12:00 - 00:00	12:00 - 00:00
<b>Friday</b>	12:00 - 01:00	12:00 - 01:00
<b>Saturday</b>	12:00 - 01:00	12:00 - 01:00
<b>Sunday</b>	12:00 - 00:00	12:00 - 00:00

	Proposed hours Late Night Refreshment
<b>Monday</b>	23:00 - 00:00
<b>Tuesday</b>	23:00 - 00:00
<b>Wednesday</b>	23:00 - 00:00

<b>Thursday</b>	23:00 - 00:00
<b>Friday</b>	23:00 - 01:00
<b>Saturday</b>	23:00 - 01:00
<b>Sunday</b>	23:00 - 00:00

### 3.7 Other licensed premises nearby

<b>Premises</b>	<b>Activities Authorised</b>	<b>Times Authorised</b>
Thai Lemon 91 Field End Road	Sale by Retail Of Alcohol Provision of regulated entertainment	<b><u>Sale of alcohol</u></b> From 11.00 hours to 23.00 hours every day <b><u>Regulated Entertainment</u></b> From 11.00 hours to 23.00 hours every day
Yi Ban 98 Field End Road	The sale by retail of alcohol Provision of regulated entertainment	<b><u>Sale of alcohol</u></b> From 12.00 hours until 23.00 hours, Monday to Saturday From 12.00 hours until 22.30 hours on Sunday <b><u>Regulated Entertainment</u></b> From 12.00 hours until 23.00 hours, Monday to Saturday From 12.00 hours until 22.30 hours on Sunday
Virundhu Restaurant 113 Field End Road	The sale by retail of alcohol The provision of regulated entertainment The provision of late night refreshment	<b><u>Sale of alcohol</u></b> On weekdays, between 10.00 and 24.00 hours. On Sundays between 12.00 and 23.30 hours. <b><u>Regulated Entertainment</u></b> The provision of recorded music is not time restricted <b><u>LNR</u></b> From 23.00 until 30 minutes after the terminal time for the sale of alcohol
Aroma Lounge 134 Field End Road	The sale by retail of alcohol The provision of regulated entertainment The provision of late night refreshment	<b><u>Sale of alcohol</u></b> On weekdays between 10.00 and 24.00 hours <b><u>Regulated Entertainment</u></b> On weekdays between 10.00 and 24.00 hours <b><u>LNR</u></b> From 23.00 until 30 minutes after the terminal time for the sale of alcohol
Ascott 144 Field End Road	The sale by retail of alcohol The provision of regulated entertainment The provision of late night	<b><u>Sale of alcohol</u></b> Monday and Tuesday between 11.00 and 23.00 hours Wednesday between 11.00 and 00.00

	refreshment	<p>hours Thursday, Friday and Saturday between 11.00 and 01.00 hours Sunday between 11.00 hours and 00.00 hours</p> <p><b><u>Regulated Entertainment</u></b> Monday and Tuesday between 11.00 and 23.00 hours Wednesday between 11.00 and 00.00 hours Thursday, Friday and Saturday between 11.00 and 01.00 hours Sunday between 11.00 hours and 00.00 hours</p> <p><b><u>LNR</u></b> Wednesday between 23.00 hours and 00.00 hours Thursday, Friday and Saturday between 23.00 hours and 01.00 hours the following day Sunday between 23.00 hours and 00.00 hours</p>
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### 3.8 Operating Schedule and Conditions

Section 18 of the operating schedule of the Application demonstrates the steps the applicant proposes to take in order to promote the licensing objectives.

#### General

1. Alcohol only can be sold with table meals.

#### The Prevention of crime and disorder

2. The installed CCTV system shall be maintained in effective working order at all times. The CCTV system shall retain all recordings for a minimum of 31 days and shall contain the correct date and time of the image capture. Recordings shall be made available immediately upon request to the Police and/or authorised officers of the London Borough of Hillingdon.
3. Alcohol will not be accessible to members of the public.

#### Public Safety

4. A Fire alarm system shall be installed.
5. Staff shall be trained in respect of evacuation procedure

#### The prevention of public nuisance

6. All refuse shall be kept in waste containers.
7. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises that gives rise to a nuisance.

8. The external back door shall be kept closed between 19.00 hours and [closing] hours, except for the immediate access and egress of persons.
9. Notices shall be prominently displayed near the entrance and exit doors requesting patrons to respect the needs of local residents and leave the area quietly.
10. Staff shall monitor customers smoking outside the premises on a regular basis to ensure patrons do not cause a public nuisance.

The protection of children from harm

11. A Challenge 25 scheme shall be operated at the premises. Only photographic ID shall be acceptable as proof of age (passport, photo driving licence, or PASS card).
12. Staff shall be trained in responsible alcohol retailing. Staff training records shall be made available for inspection upon request by officers of a Responsible Authority.

**4.0 CONSULTATION**

4.1 Closing date for representations

2 July 2019

4.2 Public Notice published in local newspaper

12 June 2019 - Uxbridge Gazette

**5.0 REPRESENTATIONS**

5.1 We have received three representations from residents'.

<b>Interested Parties</b>	<b>Ground for Representation</b>	<b>Appendix</b>
Mr Paul Faith	Prevention of Public Nuisance. Protection of Children From Harm	<b>Appendix 3</b>
Ms Caren Westhead	Prevention of Crime and Disorder, Prevention of Public Nuisance	<b>Appendix 4</b>
Mr Matthew Westhead	Prevention of Public Nuisance, Protection of Children From Harm	<b>Appendix 5</b>

**6.0 BACKGROUND INFORMATION**

6.1 Designated Premises Supervisor

The applicant has not included a DPS on the application form and has stated that alcohol will not be sold until a Designated Premises Supervisor has been added to the Licence if granted. The absence of a DPS on the application does not prevent the application from being granted.

6.2 Map of the area and photos of the premises and the surrounding area are attached as **Appendices 6 and 7.**

6.3 There have been no recorded Members' Enquires for this premises.

## 7.0 OFFICER'S OBSERVATIONS

- 7.1 This is an application for a premises licence for a restaurant. This premises previously benefitted for a premises licence for a restaurant known as Ortenzi, that was surrendered on 19 November 2018 attached as **Appendix 8**.
- 7.2 The representations received mainly raise the following issues:
- a) **The prevention of crime and disorder** - Two of the representations received from interested parties refer to the crime and disorder objective but they are based on general problems in the area that cannot be attributed to the premises as they have not started trading.
  - b) **The prevention of public nuisance** - All three of the representations received from interested parties refer to the public nuisance objective. The main concerns raised were directly connected to the proposed hours of sale of alcohol. The view taken is that the hours of operation were excessive and would cause noise disturbance for residents in the residential premises above the premises, along with litter and a nuisance being caused by additional traffic outside the premises. In accordance with the Council's Licensing Policy, arbitrary restrictions that would undermine the principle of flexibility are best avoided and each case is judged on its individual merits. As Hillingdon does not have a Cumulative Impact Policy there is no fixed restriction on terminal hours for any particular areas of the borough. The applicant has reduced the hours applied for, withdrawn recorded music and offered additional conditions following concerns raised by the objectors to demonstrate the promotion of this licensing objective.
  - c) **The protection of children from harm** - One representation refers to the protection of children from harm objective regarding disturbance that may be caused to children who live in the residential premises above the restaurant. It should be noted that the premises does not have shared access with the residential properties.

## 8.0 Relevant sections of S.182 Guidance

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

**At paragraph 9.42** it states that "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** it states that "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".

**At paragraph 9.44** it states that "Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is 76 Revised Guidance issued under section 182 of the Licensing Act 2003 imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is

appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination".

### **Proportionality**

**At paragraph 10.10** it states that "The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives".

### **Hours of trading**

**At paragraph 10.13** it states "The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application"

**At paragraph 10.15** it states "Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours".

### **Licensing hours**

**At paragraph 14.51** it states "With regard to licensing hours, the Government acknowledges that different licensing approaches may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make such decisions based on their local knowledge and in consultation with other responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application".

**At paragraph 14.52** it states "Statements of licensing policy should set out the licensing authority's approach regarding licensed opening hours and the strategy it considers appropriate for the promotion of the licensing objectives in its area. The statement of licensing policy should emphasise the consideration which will be given to the individual merits of an application. The Government recognises that licensed premises make an important contribution to our local communities, and has given councils a range of tools to effectively manage the different pressures that licensed premises can bring. In determining appropriate strategies around licensed opening hours, licensing authorities



cannot seek to restrict the activities of licensed premises where it is not appropriate for the promotion of the licensing objectives to do so".

### **The need for licensed premises**

**At paragraph 14.19** it states "There can be confusion about the difference between the "need" for premises and the "cumulative impact" of premises on the licensing objectives, for example, on crime and disorder. "Need" concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of Revised Guidance issued under section 182 of the Licensing Act 2003 I 109 licensing policy".

## **9.0 Relevant sections of the Licensing Policy**

### **Licensing Hours**

**At Paragraph 21.1** it states that "Prior to the introduction of the Licensing Act 2003, it was believed that fixed and artificially early closing times (established under the Licensing Act 1964) were one of the key causes of rapid binge drinking prior to closing times and one of the causes of disorder and disturbance when large number of customers were required to leave the premises simultaneously".

**At Paragraph 21.2** it states that "The aim through promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through flexible opening times".

**At Paragraph 21.3** it states that "Arbitrary restrictions that would undermine the principle of flexibility will therefore be avoided. The four licensing objectives will be paramount at all times and the Council will always consider the individual merits of each case".

**At Paragraph 21.4** it states that "In accordance with guidance there is no fixed restriction on terminal hours for any particular areas of the borough. Such a restriction could cause the migration of patrons from one area to another and create the circumstances that the legislation is attempting to avoid. Each application will be dealt with on its merits. It is for the applicants to detail in their Operating Schedule exactly what times they intend to open and close the premises and what measures they will take to ensure that they do not cause nuisance or disturbance to their neighbours in the vicinity. The later the terminal hour applied for, the greater will be the need to address the issues of disturbance and nuisance".

**At Paragraph 21.5** it states that "Shops, stores and supermarkets licensed to sell alcohol will normally be allowed to do so for the full duration of their trading hours. Restrictions may be applied, for example where representations are made indicating the particular premises or patrons of the premises are linked to disorder and or disturbance".

### **Licence Conditions**

**At Paragraph 17.1** it states that "Conditions on premises licences and club certificates are determined by:

- a) The measures put forward on the Operating Schedule
- b) Mandatory conditions within the Act
- c) Measures decided at a hearing by the Licensing Sub Committee"

**At Paragraph 17.2** it states that "Any conditions attached to licences following relevant representations will focus on matters within the control of the Premises Licence Holder or Club Management Committees. They will address matters which have a direct impact on those living, working or engaged in normal activities in the vicinity, as well as patrons of the licensed premises.

They will not be used as a means of attempting to attach responsibility to Premises Licence Holders or Club Management Committees for matters outside their reasonable control, such as anti-social behaviour once away from the premises or licensable activity".

**At Paragraph 17.3** it states that "The Licensing Authority will not impose standard conditions upon every licence issued, however it may have regard to model conditions produced by the Government and/or the Institute of Licensing and it may choose to impose these in appropriate circumstances".

## 10.0 LEGAL CONSIDERATIONS

### LEGAL COMMENTS

1. When considering an application for a grant of a new Premises Licence, 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
2. 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. 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.
4. Relevant representations are those that relate to the effect of the granting of the application on the promotion of the licensing objectives made by an interested party or responsible authority that have not been withdrawn and are not, in the opinion of the relevant licensing authority, frivolous or vexatious s.18(7) Licensing Act 2003.
5. 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.
6. Following a hearing, the Sub-Committee must consider all relevant representations, and having taken into account the promotion of the licensing objectives, under s.18(3)(b) and (4) Licensing Act 2003, a decision can be taken to:
  - I. To grant the licence, subject to the mandatory conditions and conditions consistent with the operating schedule;
  - II. To impose additional relevant conditions to such an extent as is considered necessary for the promotion of the licensing objectives;
  - III. To exclude any of the licensable activities to which the application relates;
  - IV. To amend the times for all or some of the licensable activities;
  - V. To refuse to specify a person in the licence as the premises supervisor
  - VI. To reject the application

7. Conditions will not be necessary if they duplicate a current statutory requirement. The Licensing Authority may therefore only impose such conditions that are necessary to promote the licensing objectives arising out of the consideration of the representations.
8. If the Sub-Committee determines that it is necessary to modify the conditions, or to refuse the application for a Premises Licence application, it must give reasons for its decision.
9. The Council in its capacity as Licensing Authority has a duty to have regard to its public sector equality duty under section 149 of the Equality Act 2010. In summary section 149 provides that a Public Authority must, in the exercise of its functions, have due regard to the need to:
  - i. eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - ii. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and,
  - iii. foster good relations between persons who share a relevant protected characteristics and persons who do not share it.
10. Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, race, religion or belief, sex sexual orientation, marriage and civil partnership and pregnancy and maternity.
11. 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 21days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.