

APPLICATION FOR THE GRANT OF A PREMISES LICENCE: CHAI ROOMS

Committee	Licensing Sub-Committee
Officer Contact	Mark McDermott, Licensing Officer
Papers with report	Appendix 1 - Application for the grant of a new premises licence Appendix 2 - Representation from local resident, Mrs Ann Wright Appendix 3 - Representation from local resident, Mr Stephen Carroll Appendix 4 - Map of the area Appendix 5 - Photo of the premises Appendix 6 - Existing Premises Licence (suspended)
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 Chai Rooms, 219 Field End Road, Eastcote, HA5 1QZ. This has attracted representations from two interested parties.

2.0 RECOMMENDATION

To grant the licence consistent with the operating schedule conditions but to reduce the terminal hour for regulated entertainment, 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>
Live Music	Indoors	x
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

	Opening hours of the premises	Live Music	Recorded Music	Sale by retail of alcohol	Late Night Refreshment
Monday	10:30 - 00:00	10:30 - 00:00	10:30 - 00:00	10:30 - 00:00	23:00 - 00:00
Tuesday	10:30 - 00:00	10:30 - 00:00	10:30 - 00:00	10:30 - 00:00	23:00 - 00:00
Wednesday	10:30 - 00:00	10:30 - 00:00	10:30 - 00:00	10:30 - 00:00	23:00 - 00:00
Thursday	10:30 - 00:00	10:30 - 00:00	10:30 - 00:00	10:30 - 00:00	23:00 - 00:00
Friday	10:30 - 01:00	10:30 - 01:00	10:30 - 01:00	10:30 - 01:00	23:00 - 01:00
Saturday	10:30 - 01:00	10:30 - 01:00	10:30 - 01:00	10:30 - 01:00	23:00 - 01:00
Sunday	10:30 - 00:00	10:30 - 00:00	10:30 - 00:00	10:30 - 00:00	23:00 - 00:00

The application has been made by **Kushal Jayeshkumar Shah** for a restaurant situated at 219 Field End Road, Eastcote HA5 1QZ.

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 close to Eastcote underground station.

3.5 Other licensed premises nearby

Premises	Activities Authorised	Times Authorised
GEO Bar 163 Field End Road	The sale by retail of alcohol The provision of regulated entertainment The provision of late night refreshment	Sale of alcohol On Sundays between 10.00 hours and 23.30 hours On Mondays, Tuesdays, Wednesdays and Thursdays between 10.00 hours and 00.00 hours On Fridays and Saturdays between

		<p>10.00 hours and 01.00 hours the following day</p> <p>Regulated Entertainment On Sundays between 10.00 hours and 23.30 hours On Mondays, Tuesdays, Wednesdays and Thursdays between 10.00 hours and 00.00 hours On Fridays and Saturdays between 10.00 hours and 01.00 hours the following day</p> <p>Late Night Refreshment On Sundays between 23.00 hours and 23.30 hours On Mondays, Tuesdays, Wednesdays and Thursdays between 23.00 hours and 00.00 hours On Fridays and Saturdays between 23.00 hours and 01.00 hours the following day</p>
<p>Champers Wine Bar 184 Field End Road</p>	<p>The sale by retail of alcohol The provision of regulated entertainment The provision of late night refreshment</p>	<p>Sale of alcohol Sunday to Thursday between 10.00 hours and 00.00 hours On Fridays and Saturdays between 10.00 hours and 01.30 hours the following day</p> <p>Regulated Entertainment Sunday to Thursday between 10.00 hours and 00.00 hours On Fridays and Saturdays between 10.00 hours and 01.30 hours the following day</p> <p>Late Night Refreshment Sunday to Thursday between 23.00 and 00.30 the following day Friday and Saturday between 23.00 and 02.00 the following day</p>
<p>Captain Morgans 210 Field End Road</p>	<p>The sale by retail of alcohol The provision of regulated entertainment</p>	<p>Sale of alcohol Monday to Sunday between 11.00 and 23.00 hours</p> <p>Regulated Entertainment Monday to Sunday between 11.00</p>

		and 23.00 hours
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3.6 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. Training manual to promote the 4 licensing objectives properly and to avoid any breaches of conditions.

The prevention of crime and disorder

2. The premises will have CCTV and the system shall be maintained in effective working order at all times the premises is open, all images shall be stored for a minimum of 31 days.
3. The CCTV shall have a playback facility and all staff members will be able to show and provide recent data footage with minimum delay when requested.
4. An incident book and refusal book be kept on the premises and updated as and when required.
5. CCTV posters will be displayed in the premises so customers are aware they are being recorded.
6. All staff employed at the premises will have UK right to work status checked, once passed that stage they shall be offered employment.

Public Safety

7. Installation of appropriate safety equipment.
8. Fire exit signs displayed.
9. To comply with all current fire and health and safety law.
10. First Aid Box will be available on the premises

The prevention of public nuisance

11. No stock deliveries shall be taken between 10.00pm and 7.00am.
12. Waste collection contract shall be in place with regular pick up of waste.
13. Customers to leave quietly and consider our neighbours - posters shall be displayed in the premises

The protection of children from harm

14. No under 16s shall be allowed on the premises after midnight.

15. Challenge 25 Policy will be in place at all times.

4.0 CONSULTATION

4.1 Closing date for representations

13 August 2019

4.2 Public Notice published in local newspaper

25 July 2019 - Harrow Times

5.0 REPRESENTATIONS

5.1 We have received two representations from residents.

Interested Parties	Ground for Representation	Appendix
Mrs Ann Wright	Prevention of Public Nuisance.	Appendix 2
Mr Stephen Carroll	Prevention of Crime and Disorder & Prevention of Public Nuisance	Appendix 3

6.0 BACKGROUND INFORMATION

6.1 Designated Premises Supervisor

The proposed Designated Premises Supervisor is Kushal Jayeshkumar Shah, a personal licence holder under number LN/000010119/2016/1 issued by the London Borough of Harrow.

6.2 Map of the area and photos of the premises and the surrounding area are attached as **Appendices 4 and 5.**

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 bar/restaurant. The premises has a premises licence for a restaurant known as Hot Red Chillies that was suspended on 19 May 2015 due to non payment of annual fees and is attached as **Appendix 6.**

7.2 The representations received mainly raise the following issues:

- a) **The prevention of crime and disorder** - Both of the representations received from interested parties refer to the crime and disorder objective but it is based on general problems in the area that cannot be attributed to the premises.
- b) **The prevention of public nuisance** - Both of the representations received from interested parties refer to the public nuisance objective. The concerns raised relate to the sale of

alcohol and playing of music adding to existing problems of anti social behaviour in the area and anticipated noise disturbance for residents in the residential premises above the premises (Ann Wright is the Landlord of these premises) and in the local vicinity. One representation requests that the hours for music should be restricted to 23.00 hours in line with the licence held at Captain Morgans. 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.

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 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 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 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.