

# Application for the grant of a Premises Licence: Fusion Tadka

<b>Committee</b>	Licensing Sub-Committee
<b>Officer Contact</b>	Mark McDermott Licensing Officer Ex 01895 277262
<b>Papers with report</b>	<b>Appendix 1</b> - Application for the grant of a new premises licence <b>Appendix 2</b> - Representation from Licensing Authority <b>Appendix 3</b> - Representation from local resident, Seema Parmar <b>Appendix 4</b> - Representation from Northwood Residents Association <b>Appendix 5</b> - Representation from local residents, Mr & Mrs Malkan <b>Appendix 6</b> - Map of the area <b>Appendix 7</b> - Photo of the premises <b>Appendix 8</b> - Lapsed Licence
<b>Ward name</b>	<b>Northwood</b>

## 1.0 SUMMARY

To consider an application for a premises licence as seen in **Appendix 1** in respect of Fusion Tadka, 36 High Street, Northwood HA6 1BN. This has attracted representations from 1 responsible authority and 3 interested parties.

## 2.0 RECOMMENDATION

To grant the licence with additional conditions as proposed in the Licensing Authority's representation in **Appendix 2**. The operating schedule set out in the application is too brief and not robust enough to uphold the Licensing Objectives.

## 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>	23:00 - 23:30	12:00 - 23:30
<b>Tuesday</b>	23:00 - 23:30	12:00 - 23:30
<b>Wednesday</b>	23:00 - 23:30	12:00 - 23:30
<b>Thursday</b>	23:00 - 23:30	12:00 - 23:30
<b>Friday</b>	23:00 - 23:30	12:00 - 23:30
<b>Saturday</b>	23:00 - 23:30	12:00 - 23:30
<b>Sunday</b>	23:00 - 23:30	12:00 - 23:30

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

The new premises licence application has been made by **Fusion Tadka Limited** for a bar/restaurant situated at 36 High Street, Northwood HA6 1BN.

### 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.

### 3.7 Other licensed premises nearby

<b>Premises</b>	<b>Activities Authorised</b>	<b>Times Authorised</b>
Red Klove 48 High Street Northwood	The sale by retail of alcohol Provision of regulated entertainment The provision of late night refreshment	<p><b><u>Sale of alcohol</u></b> From 11.00 hours until 24.00 hours, Monday to Saturday From 11.00 hours until 22.30 hours on Sunday</p> <p><b><u>Regulated Entertainment</u></b> From 11.00 hours until 24.00 hours, Monday to Saturday From 11.00 hours until 22.30 hours on Sunday</p> <p><b><u>LNR</u></b> From 23.00 hours until 24.00 hours, Monday to Saturday</p>
Bina Tandoori 110 High Street Northwood	The sale by retail of alcohol Provision of regulated entertainment The provision of late night refreshment	<p><b><u>Sale of alcohol</u></b> From 10.00 hours until 24.00 hours, Monday to Saturday From 12.00 hours until 23.30 hours on Sunday</p> <p><b><u>Regulated Entertainment</u></b> The provision of recorded music is not time restricted</p> <p><b><u>LNR</u></b> From 23.00 until 30 minutes after the terminal time for the sale of alcohol.</p>

### 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.

#### The Prevention of crime and disorder

1. We are installing CCTV in the premises to prevent crime and disorder.

#### Public Safety

2. We are installing CCTV, Having appropriate insurances, Managing Hygiene standard and following safe business guidance.

#### The Prevention of Public Nuisance

3. We are installing CCTV in the premises and ask our guests to leave quietly and respect our neighbours.

## The Protection of Children From Harm

4. We are installing CCTV in the premises and providing training to the staff to ask and see proof of age id for anyone buying alcohol and look younger.

### **4.0 CONSULTATION**

- 4.1 Closing date for representations  
10 July 2020
- 4.2 Public Notice published in local newspaper  
25 June 2020 - Harrow Times

### **5.0 REPRESENTATIONS**

- 5.1 We have received two representations from Responsible Authorities:

<b>Responsible Authorities</b>	<b>Ground for Representation</b>	<b>Appendix</b>
Licensing Authority	Crime and Disorder Prevention of Public Nuisance.	<b>Appendix 2</b>

- 5.2 We have received three representations from residents:

<b>Interested Parties</b>	<b>Ground for Representation</b>	<b>Appendix</b>
Miss Seema Parmar	Prevention of Public Nuisance. Protection of Children From Harm	<b>Appendix 3</b>
Northwood Resident Association	Prevention of Crime and Disorder, Prevention of Public Nuisance	<b>Appendix 4</b>
Mr and Mrs Malkan	Prevention of Public Nuisance, Protection of Children From Harm	<b>Appendix 5</b>

### **6.0 BACKGROUND INFORMATION**

- 6.1 Designated Premises Supervisor

The proposed Designated Premises Supervisor is Dip Bhartkumar Sukhadiya, a personal licence holder number 845121 issued by the London Borough of Southwark.

- 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' Enquiries for this premises.

### **7.0 OFFICER'S OBSERVATIONS**

- 7.1 This is an application for a premises licence for a bar/restaurant. This premises previously benefitted for a premises licence for a restaurant known as Delhi Spice Lounge that lapsed on 21 January 2020 attached as **Appendix 8.** You will note on the application form, recorded music has been applied for between the hours of 08.00 and 23.00; this not licensable due to deregulation and has not been included at 3.2.

- 7.2 The representations received mainly raise the following issues:

- a) **The Prevention of Crime and Disorder**- The Licensing Authority's representation in **Appendix 2** refers to upholding the Crime and Disorder objective and this is certainly a concern as the Operating Schedule is too vague and not extensive enough to uphold this Objective; I believe that the addition of conditions as suggested would deal with this.
- b) **The Prevention of Public Nuisance** - The three representations received from interested parties in **Appendix 3, 4 and 5** refer to the public nuisance objective. They have concerns that if this application is granted it could have a direct impact in relation to noise and disturbances from the premises. The main concerns raised appear to relate to issues at the premises under a previous tenant and the applicant cannot be held responsible for issues with the previous licence holder. Also, one of these representations refers to off sales but this application is for on sales only so it is not relevant. I believe that the conditions as suggested in the Licensing Authority's representation in **Appendix 2** will help in upholding this objective.
- c) **The Protection of Children From Harm** - The Licensing Authority's representation in **Appendix 2** refers to upholding this objective and I believe that the addition of conditions as suggested would deal with this.

## 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, the Revised Guidance issued under section 182 of the Licensing Act 2003 informs that 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 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:-
  - 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.