

REPORT FOR: LICENSING PANEL

Date: 14 September 2016

Subject: Application for the variation of a premises licence for Dil Se Restaurant and Lounge, 56 – 60 Northolt Road, South Harrow, Middlesex HA2 0DW

Responsible Officer: Tom McCourt - Corporate Director – Community Directorate

Exempt: No

Enclosures: Location map (appendix 1)
Current premises licence and plan (appendix 2)
Representations and petition (appendix 3)
Summary of applicant's proposed times and conditions (appendix 4)

Section 1 – Summary

An application has been received for a variation to the premises licence for Dil Se Restaurant and Lounge, 56 – 60 Northolt Road, South Harrow HA2 0DW to allow hotel residents/guests to use its' restaurant facilities 24 hours a day and to change the licensable activities and hours for the premises. Representations including a petition have been received from local residents.

Representations received

From	Representations details
The Planning Authority	No representations received
Health & Safety	No representations received
Environmental Health Authority (Pollution and environmental enforcement)	Representation made
Trading Standards	No representations received
Area Child Protection Service	No representations received
London Fire Brigade	No representations received
Metropolitan Police	No representations received
Licensing authority	Representation made

Representations from other persons

Letter	From	Relevant Representations details
A	Robert Clark	Prevention of crime and disorder and prevention of public nuisance
B	Claudia How Kiang Hee	Prevention of crime and disorder and prevention of public nuisance
C	Indy Paddan	Prevention of crime and disorder and prevention of public nuisance
D	Maryam Tariq	Prevention of crime and disorder and prevention of public nuisance
E	Yasmir Ahmad	Prevention of crime and disorder and prevention of public nuisance
F	Kalpesh Patel	Prevention of public nuisance and protection of children from harm
G	Steve Carey	Prevention of public nuisance and protection of children from harm

Section 2 – Report

- 2.1 The applicant, Mr Jayesh Patel, has applied to extend the hours for licensable activities (see paragraph 2.3) and amend the licence conditions (see paragraph 2.10) for Dil Se Restaurant and Lounge, 56 – 60 Northolt Road, South Harrow HA2 0DW.
- 2.2 The effect of proposed variation is described as “the first floor restaurant is to be used as part of the hotel as now it has been taken over by the hotel operators. In order to allow the hotel residents/guests to use it at all times this variation is applied to open the

restaurant 24 hours a day. The variation also changes the hours of operation for the restaurant and licensable activities for the general public”.

2.3 Licensable activities

The application has been amended since it was submitted in the light of representations made. The table below sets out the existing licensable activities and those applied for in respect of the proposed new licence:

DAY	Existing licence			Proposed variation (see note 2)			
	Hours open to public	Alcohol sales (on and off-sales)	Licensable activities (see note 3)	Hours open to public	Alcohol sales (on and off-sales)	Licensable activities (see note 3)	Late night refreshment
Monday	0700 – 2300	0700 - 2230	0700 – 2300	1030 - 0030	1030 - 0000	0700 – 0000	2300 – 0000
Tuesday	0700 – 2300	0700 - 2230	0700 – 2300	1030 - 0030	1030 - 0000	0700 – 0000	2300 – 0000
Wednesday	0700 – 2300	0700 - 2230	0700 – 2300	1030 - 0030	1030 - 0000	0700 – 0000	2300 – 0000
Thursday	0700 – 2300	0700 - 2230	0700 – 2300	1030 - 0030	1030 - 0000	0700 – 0000	2300 – 0000
Friday	0700 – 2300	0700 - 2230	0700 – 2300	1030 - 0130	1030 - 0100	0700 – 0100	2300 – 0100
Saturday	0700 – 2300	0700 - 2230	0700 – 2300	1030 - 0130	1030 - 0100	0700 – 0100	2300 – 0100
Sunday	0700 – 2230	0700 - 2200	0700 – 2230	1030 - 0030	1030 - 0000	0700 – 0000	2300 – 0000

Notes:

- (1) Hours beyond midnight include the hours of the following day
- (2) It is proposed to provide alcohol and licensable activities to hotel residents 24 hours a day
- (3) Films, live and recorded music, dance, provision of music and dance facilities and provision of similar facilities
- (4) The restaurant will close at 0200 hours on days when there is a pre-booked party

2.4 Description of premises

The premises were described in the application for a new premises licence in 2012 as “a restaurant and bar situated on the first floor of the Euro Traveller next to South Harrow Police Station. The building is a 3* hotel. The first floor is an ancillary bar/restaurant/lounge which is accessible also on the ground floor via a separate entrance for the public and residents of the hotel.”

2.5 It is understood the licensed area has a capacity of about 250 people (although different capacities may apply for different types of events).

2.6 A layout of the premises is shown at appendix 1.

2.7 Licensing history

- Premises licence granted on 20 November 2012 to 3K Events Management Ltd.
- licence transferred to Warrison JR Ltd on 16 January 2014
- licence transferred to current premises licence holder on 27 August 2015

2.8 Designated premises supervisor

Mr Jayesh Patel

2.9 Details of application

Received: 12 July 2016

Application advertised 12 July 2016 – 9 August 2016

2.10 Representations

Representations have been received from local residents living immediately adjacent to and immediately across Northolt Road from the premises. The representations are concerned about:

- cars parking and blocking access to the residents' car parks
- litter and rubbish being left outside the residents' flat at Sherbourne House
- children's' sleep being disturbed by late-night noise
- anti-social behaviour and noise from people leaving the premises after midnight
- customers drinking longer if the hotel is open for 24 hours

Representations have also been made by Environmental Health and the Licensing Authority.

2.11 Conditions

The applicant had applied to delete conditions 1, 2, 4 and 6 in annexe 2 of the current licence. Environmental Health object to the deletion of those conditions (see appendix 3) and the applicant has subsequently agreed to retain conditions 1 and 2.

2.12 Condition 4 of the licence has been effectively replaced under the Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014 in annexe 1 of the licence prohibiting irresponsible alcohol sales promotions, and there is no objection by the Licensing Authority to that being deleted from annexe 2.

2.13 The Premises Licence Holder has accepted the Licensing Authority's suggested condition in lieu of the existing condition 6 as set out in the summary at appendix 4.

- 2.14 At the time of writing the applicant has not accepted the other conditions proposed by Environmental Health, other than in relation to conditions 1 and 2 (see paragraph 2.11 above) and agreeing to close thirty minutes between the end of licensable activities and the premises closing.
- 2.15 Members will be aware that an operating schedule forms part of the licensing process. This document outlines what activities are proposed, the opening hours, and how the activities will be managed particularly in respect of the licensing objectives.
- 2.16 The most critical part of the operating schedule are the steps taken by the applicant to promote the licensing objectives. Applicants are always reminded to take careful consideration as to what is entered in this section as whatever is proposed will be converted into conditions on the licence. The Panel will be aware that breach of any licence condition is potentially a criminal offence, for which the maximum penalty before a magistrates' court is an unlimited fine and/or six months' imprisonment.
- 2.17 Conditions must be clear, unambiguous and capable of being understood and complied with by the licence-holder.
- 2.18 Applicants should give consideration to the local area and reflect this in their application (see para 8.33 of the statutory guidance). It should demonstrate an awareness of the local community, local crime and disorder issues, and the local environment.
- 2.19 Appendix 4 sets out the applicant's proposed times and what the conditions extracted from the operating schedule and representations would appear as on the licence should the Panel be minded to grant the licence application as sought.
- 2.20 The Panel has the discretion to add to or modify these conditions where it is appropriate to do so to promote the licensing objectives.
- 2.21 Officers' observations
In response to the representations, the applicant amended his application as he is entitled to do. One proposed amendment is "the restaurant will close at 0200 hours on days when there is a pre-booked party". This will be reflected in the premises opening and closing hours.
- 2.22 The applicant has confirmed the intention in this scenario would be for licensable activities to end at 0130 hours on the days there is a pre-booked party without any further application or consent from the licensing authority. If the Panel is minded to agree this proposed amendment, for the sake of clarity and enforcement, it is recommended that that a condition is included on the licence:
- "(1) The restaurant will close at 0200 hours on days when there is a pre-booked party.
(2) No licensable activities may be provided after 01.30 hours on those days."
- 2.23 The Panel will be aware that providing late night refreshment to hotel residents is not a licensable activity, although the licence is needed for non-residents. The

representations are predominately concerned with the sale of alcohol to, and the late night-dispersal of, non-residents.

2.24 The Panel should bear in mind the following paragraphs of the statutory guidance to the Act in relation to the representation about public nuisance:

2.15 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

2.16 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 15). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.

2.17 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.

2.18 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.

2.25 The Panel is entitled to take account of the prospective effect of the application when considering the representations. The Panel may wish to note however that none of the responsible authorities, particularly the police, have made representations concerning levels of crime or anti-social behaviour in the vicinity of the premises. The statutory guidance (at paragraph 2.1 and 9.12) suggests that licensing authorities should rely on the police as the primary source of advice on crime and disorder matters.

2.26 The representations are concerned about nuisance parking, without any direct evidence that Dil Se's customers are responsible for this at present. There are also concerns expressed about noise break-out from the premises, noise from people smoking outside the premises and dispersal noise under its' existing operating

conditions. There are concerns about extending the licensable activities including alcohol sales to twenty-four hours and late night dispersal noise. The representation from Environmental Health proposes conditions to address those concerns.

- 2.27 Representation A is accompanied with videos and photographs from 2013, 2014, three from 2015 and from 2016. The premises licence holder has had the opportunity to view those videos and photographs prior to the hearing.
- 2.28 Representations refer to previous incidents since the premises opened in 2012. Whilst the Panel is entitled to take a prospective view of the likely effects of granting the application, it should not necessarily take into account events prior to August 2015 when the licence was transferred to the current holder on the principle that each application ought to be considered on its own merits.
- 2.29 The Panel will note that representation G is supported by a petition signed by seventy five people. The Panel is recommended to treat the petition organiser as the party to the hearing although he may call people to speak in support of the petition if the Panel thinks fit. Five of the petitioners have separately submitted representations against the application.
- 2.30 Representation G suggests that there is no requirement for children to leave the bar at a reasonable hour, thus undermining the child protection objective. The Panel's attention is drawn to section 145 of the Act which makes it illegal for unaccompanied children under 16 to be on the premises between midnight and 0500 hours when the premises are open for the supply of alcohol.
- 2.31 The Panel will be aware that they may only consider the representation in relation to the varied hours and conditions only. If the Panel refuses the variation the applicant retains the existing licence hours and conditions to which he is entitled.
- 2.32 These above comments are to assist the Panel in its decision-making process based on the evidence before it and the legislative requirements. It is for the Panel to decide how much weight and emphasis ought to be given to each representation.
- 2.33 Licensing policy
There are no implications in relation to the statement of licensing policy arising from this application.
- 2.34 Legal implications
The Licensing Panel is required to hold a hearing to consider any relevant representations made in relation to the premises licence application unless all parties agree that a hearing is unnecessary. The hearing must be held in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.
- 2.35 The Licensing Panel is required to give appropriate weight to the representations (including supporting information) presented by all the parties, the Guidance issued pursuant to section 182 of the Licensing Act 2003, the Council's statement of licensing policy and the steps that are appropriate to promote the four licensing objectives.
- 2.36 Having considered those relevant matters, the Licensing Panel is required to take such of the following steps (if any) as it considers appropriate for the promotion of the licensing objectives –

- (1) to modify the conditions of the licence
- (2) to reject the whole or part of the licence

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added (section 35(4) of the Act).

2.23 It should be noted that –

- clear reasons should be given for the decision.
- any additional or modified conditions should be practical and enforceable
- the applicant and any person who made relevant representations would have the right of appeal to a magistrates' court on one of the grounds provided in schedule 5 to the Licensing Act 2003.

2.24 In addition to determining the application in accordance with the legislation, Members must have regard to the common law rules of natural justice by ensuring that every party has a fair hearing, they are not judges in their own cause and they do not make a decision until they have heard all of the evidence.

2.25 The Panel must also act proportionately to apply the European Convention for the Protection of Human Rights and Fundamental Freedoms implemented under the Human Rights Act 1998, particularly articles 6 (relating to the right to a fair trial); article 1 (prohibition against discrimination); article 8 (protection of private and family life); and article 1 of the First Protocol (protection of property). No decision may be arbitrary or unreasonable.

2.25 Under section 17 of the Crime and Disorder Act 1998 the Panel has a duty to (a) have due regard to the likely effect of crime and disorder, and (b) to do all that it reasonably can to prevent crime and disorder, when exercising its powers under the Licensing Act.

Financial Implications

2.26 There are no financial implications.

Appeals

2.27 If any party is aggrieved with the decision of the licensing panel on one of the grounds set out in schedule 5 to the Licensing Act 2003, they can appeal to a magistrates' court within 21 days from notification of the decision.

Section 3 - Statutory Officer Clearance

Name: Jessie Man	<input checked="" type="checkbox"/>	on behalf of the* Chief Financial Officer
Date: 02 September 2016		
Name: Baljeet Virdee	<input checked="" type="checkbox"/>	on behalf of the* Monitoring Officer
Date 6 September 2016		

Section 4 - Contact Details and Background Papers

Contact: Jeffrey Leib, Principal Licensing Officer extension 7667

Background Papers: Application, Statutory Guidance