

Report for: Licensing Panel

Date of Meeting:	15 February 2021
Subject:	Application for a new premises licence for Moka Pan Asian, 246-248 Uxbridge Road, Hatch End, HA5 4HS
Responsible Officer:	Paul Walker, Corporate Director – Community Directorate
Exempt:	No
Wards affected:	Hatch End
Enclosures:	Appendix 1 - Application and plans Appendix 2 - Location map Appendix 3 - Representations Appendix 4 – Current Premises Licence Appendix 5 – Agreed conditions between Applicant, Police and Licensing Appendix 6 - Planning – Hours for Garden and Lower Ground Floor Extension

Section 1 – Summary

An application for a new premises licence has been received for Moka Pan Asian, 246-248 Uxbridge Road, Hatch End, HA5 4HS. Representations have been received from 41 members of the public and 1 body representing persons living in the vicinity of the premises. The representations express concerns about the possible undermining of one or more of the licensing objectives should the licence be granted.

Representations received

From	Representations details
The Planning Authority	No representations received
Health & Safety	No representations received
Environmental Health	No representations received
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	No representations received

Representations from other persons

1. Representations received from 41 members of the public and 1 from a body representing persons living in the vicinity of the premises.

Section 2 – Report

2. SS Social Enterprise Limited has applied for a new premises licence (appendix 1) for Moka Pan Asian, 246-248 Uxbridge Road, Hatch End, HA5 4HS. A location map and image of the premises is available in Appendix 2
3. The following hours open to public and licensable activities have been applied for:

	Recorded Music, Performance of dance and Late night refreshment	Supply of alcohol	Hours open to public
* C o n d i t i o n s			
Monday	23:00 – 01:00*	10:00 – 01:00*	09:00 – 01:30*
Tuesday	23:00 – 01:00*	10:00 – 01:00*	09:00 – 01:30*
Wednesday	23:00 – 01:00*	10:00 – 01:00*	09:00 – 01:30*
Thursday	23:00 – 01:00*	10:00 – 01:00*	09:00 – 01:30*
Friday	23:00 – 02:00*	10:00 – 02:00*	09:00 – 03:00*
Saturday	23:00 – 02:00*	10:00 – 02:00*	09:00 – 03:00*
Sunday	23:00 – 00:00	10:00 – 00:00	09:00 – 00:30*

*Continues into the following day

Seasonal Variations/ non-standard timings

On Sunday before a Bank Holiday to have licensable activities as per Saturday night.

On New Year's Eve to have licensable activities until 0300 next morning.

The applicant has agreed with the licensing authority that the hours open to public shall terminate at 02:30 on Saturday and Sunday mornings.

The current premises licence (under Pizza Express) authorise the following hours open to public and licensable activities:

	Late night refreshment	Supply of alcohol	Hours open to public
Monday	23:00 – 00:30*	10:00 – 00:00	Not specified
Tuesday	23:00 – 00:30*	10:00 – 00:00	Not specified
Wednesday	23:00 – 00:30*	10:00 – 00:00	Not specified
Thursday	23:00 – 00:30*	10:00 – 00:00	Not specified
Friday	23:00 – 00:30*	10:00 – 00:00	Not specified
Saturday	23:00 – 00:30*	10:00 – 00:00	Not specified
Sunday	23:00 – 00:00	10:00 – 23:30	Not specified

. *Continues into the following day

Seasonal variations/ non-standard timings for the current premises licence:

1. Christmas day and Good Friday restrictions apply
2. Sale by retail of alcohol can be extended between the terminal hour on New Year's Eve and the commencement hour on the following morning.
4. The application offers Mr Sanjay Malik to be the designated Premises Supervisor. He is also a director of SS Social Enterprise Limited
5. Section 18 of this report gives more information about the prevention of public nuisance.
6. Description of the premises
7. This is a two-story semi-detached building on a busy street that is comprised of other commercial and residential premises. The garden area of the premises is adjacent to the gardens of other residential premises.

8. Details of application

9. Received: 21 December 2020

10. Closing date for representations: 18 January 2021

11. The application has been advertised in accordance with the prescribed regulations

12. Licensing Officer's observations

13. The applicant is a company – SS Social Enterprise Limited. The directors of the company are Sanjay Malik and Sanjay Sehgal. This premises used to be known as Pizza Express and already benefits from a premises licence (appendix 4). This licence was transferred to SS Party Ventures Limited in September 2020. Sanjay Sehgal is the sole director of this company.

14. Sanjay Malik and Sanjay Sehgal are also directors of Social Dhaba Limited – company number 11332729 – the licensee for Social Dhaba, 294 Uxbridge Road, Hatch End, HA5 4HR and SD Lanes Limited – the licensee for SD Lanes, 16 Church Road, Stanmore, HA7 4AR.

15. Most of the representations (Appendix 3) are concerned the undermining of the prevention of public nuisance objective - late night noise from customers leaving the premises. The objectors highlight that there are other premises in the vicinity that are already causing problems with crime and disorder, anti-social behaviour and noise as well as car parking around the area. Some of these issues would not be under the control of the licensee. As Harrow Council does not have a cumulative impact policy, saturation of licensed premises in a single area is not a consideration for this application.

16. The police and the licensing authority have worked with the applicant and agreed conditions that appear under appendix 5 of this report.

17. Some representations refer to section 18 (d) of the application where the applicant offered a condition about music and has omitted the word "not". The condition has agreed and worded as "Music will be played at a level that will not cause a nuisance to nearby residents".

18. With reference to the plan (appendix 1), the garden area does not have a red outline which indicates that there will not be any licensable activity taking place in this area. The applicant has submitted that "The sale of alcohol by retail area is marked by red line and this does not include any of the outside area. The bar shown outside is only available for soft drinks and returns. Only consumption of alcohol is allowed in the beer garden."

19. With reference to beer gardens, the statutory guidance states:

8.35 Applicants will want to consider whether they might want to use a garden or other outdoor space as a location from which alcohol will be consumed. The sale of alcohol is to be treated as taking place where the

alcohol is appropriated to the contract. In scenarios where drink orders are taken by a member of staff in the garden or outdoor space and the member of staff then collects the drinks from the licensed premises and returns to deliver them to the customer this would be treated as an off-sale and any conditions that relate to off-sales would apply.

8.36 In such cases it will be not necessary to include the garden or other outdoor space on the plan as part of the area covered by the premises licence. However, it will be necessary for the applicant to include the garden or other outdoor space on the plan as part of the area covered by the premises licence if the intention is to provide a service whereby drinks are available for sale and consumption directly from that area (i.e. the provision of on-sales). This would apply in the case of an outdoor bar or a service whereby a member of staff who is in the garden or outdoor space carries with them drinks that are available for sale (without the need for the staff member to return to the licensed premises to collect them).

8.37 If the beer garden or other outdoor area is to be used for the consumption of off-sales only, there is no requirement to show it on the plan of the premises, but the prescribed application form requires the applicant to provide a description of where the place is and its proximity to the premises.

20. Appendix 6 of the report shows a letter of grant of planning permission in with reference to the use of the rear ground floor extension and the garden area. The letter also sets out reasons for setting the terminal hour and these reasons further underpin the licensing objectives. Section 14.65 of the guidance states: *There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.*

21. The panels attention is drawn towards the statutory guidance regarding public nuisance:

- 2.15 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- 2.16 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.

- 2.17 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 16). 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.
- 2.18 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.
- 2.19 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.
- 2.20 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing

authorities and responsible authorities will need to balance these issues.

- 2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night

22. With reference to the plans, it is noted that the only licensable area is the lounge on the ground floor.

23. Operating schedule and conditions

24. 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.

25. The Panel's attention is directed towards paragraphs 8.41 – 8.49 of the statutory guidance issued under the Act that sets out matters that ought to be considered by an applicant when drafting their operating schedule.

26. 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 transferred into conditions on the licence. The Panel's discretion is engaged in the light of relevant representations to impose conditions that are appropriate to promote the licensing objectives. Conditions should be tailored to the size, type, location, characteristics and activities at the premises, and the Panel should be aware of any indirect costs that may arise from the imposition of conditions.

27. When imposing conditions relating to CCTV the Panel should bear in mind the Information Commissioner's guidance that such conditions should only be imposed where it is justified to do so and in order to meet the licensing objectives.

28. The Panel has the discretion to add to or modify these conditions in light of the representations where it is appropriate to do so to promote the licensing objectives.

29. Licensing policy

30. Paragraph 6.3 of the licensing authority's statement of licensing policy sets out the matters that the Panel may take into account when considering representations (although the Panel is not limited to these matters):

- degree of confidence in the management of the premises
- location of premises
- gang-related activity in the area
- management of waste particularly preventing fly-tipping
- commitment to reporting all crimes and anti-social behaviour associated with premises
- crime prevention audit conducted by police/professional security organisation
- staff training
- anti-theft provisions (eg time-locked safes, magnetic door locks, regular removal of cash from tills)
- suitable and sufficient security plan
- effective wind-down and dispersal policies
- use of CCTV
- noise mitigation measures associated with licensable activities, particularly near to residential properties
- provision of litter bins and litter patrols
- use of low-impact litter materials
- noise from people arriving at or leaving from the premises and which is related to licensable activities
- control of other nuisances relating to licensable activities such as light or odours
- measures to protect children from being exploited or coming to harm

31. Legal implications

32. 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.

33. 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.

34. 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 –

The steps are—

- (a) Grant the licence subject to –
 - (i) Conditions that are consistent with the operating schedule accompanying the application modified to such an extent as the

authority considers appropriate for the promotion of the licensing objectives, and

(ii) any condition which must under section 19,20 or 21 of the Licensing Act 2003 be included in the licence

(b) to exclude from the scope of the licence any of the licensable activities to which the application relates

(c) to refuse to specify a person in the licence as the premises supervisor

(d) to reject the application.

For the purposes of paragraph number 34(a)(i) above, the conditions of the licence are modified if any of them are altered, omitted or any new condition added.

35. It should be noted with all options 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.

36. In addition to determining the application in accordance with the legislation, Members must have regard to the –

- common law rules of natural justice
- provisions of the Human Rights Act 1998
- considerations in section 17 of the Crime and Disorder Act 1998

37. By section 6 of the Human Rights Act 1998, the Panel is required to act in a way that is compatible with rights under the European Convention for the Protection of Human Rights. The following provisions of the European convention seem relevant: Article 6 (right to a fair trial) Article 14 (prohibition of discrimination) and Article 1 of the First Protocol (protection of property)

38. In relation to section 17 of the Crime and Disorder Act 1998, this states:

- 'Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.'

39. Financial Implications

40. There are no financial implications.

41. Appeals

42. 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

Jessie Man

Signed on *behalf of the Chief Financial Officer

Date: 28 January 2021

Statutory Officer:

Andrew Lucas

Signed on *behalf of the Monitoring Officer

Date: 31 January 2021

Statutory Officer:

Michael Butler

Director of Environmental Services, Community Directorate.

Date: 27 January 2021

Mandatory Checks

Ward Councillors notified: YES as it impacts on all Wards

Section 4 - Contact Details and

Background Papers

Contact: Contact: Richard Le-Brun, Head of Community and Public Protection, Ext. 6267 Richard.lebrun@harrow.gov.ukj

Background Papers: Licensing Act 2003 & Revised Guidance issued under section 182 of the Licensing Act 2003.