

Item No. 5.	Classification: Open	Date: 21 March 2019	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Chandni Restaurant, 134a Thurlow Park Road, London SE21 8HN	
Ward(s) or groups affected:		Dulwich Wood	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Chandni Restaurant Limited to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as Chandni Restaurant, 134a Thurlow Park Road, London SE21 8HN.
2. Notes:
 - The application seeks to vary the premises licence held under current legislation in respect of the premises known as Chandni Restaurant, 134a Thurlow Park Road, London SE21 8HN under section 34 of the Licensing Act 2003. Existing permitted licensable activities are not under consideration at this meeting.
 - Paragraph 8 of this report provides a summary of the existing premises licence. A copy of the existing premises licence is attached at Appendix A.
 - Paragraphs 9 to 13 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix B. A map showing the location of the premises is attached as Appendix E.
 - Paragraphs 15 to 25 of this report deal with the representations submitted in respect of the application by the responsible authorities and local resident and are attached in Appendices C and D.

BACKGROUND INFORMATION

3. The Licensing Act 2003 provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
4. Within Southwark the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
 - The prevention of crime and disorder
 - The promotion of public safety

- The prevention of nuisance
 - The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to
- The Act itself
 - The guidance to the act issued under Section 182 of the Act
 - Secondary regulations issued under the Act
 - The licensing authority's own statement of licensing policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations.
7. The premises licence application process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives

KEY ISSUES FOR CONSIDERATION

The current premises licence

8. The current premises licence was issued on 7 September 2006 to Chandni Restaurant Limited which traded as Chandni Restaurant, 134a Thurlow Park Road, London SE21 8HN. The licence permits the following:
- The sale of alcohol to be consumed on the premises:
 - Monday to Sunday: 12:00 to 00:00
 - The provision of late night refreshment (indoors):
 - Monday to Sunday: 23:00 to 00:00
 - Opening hours:
 - Monday to Sunday: 12:00 to 00:00.
 - A copy of the existing premises licence is attached as Appendix A.

The variation application

9. On the 13 December 2018 Chandni Restaurant Limited applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence issued in respect of the premises trading as Chandni Restaurant, 134a Thurlow Park Road, London, SE21 8HN.
10. This application is dated 13 December 2018 but received at the licensing authority on 10 January 2019.
11. The variation licensing application was initially due to be determined at Licensing Sub - Committee on the 1 March 2019. On the 21 February 2019 the applicant contacted the licensing department to request postponement of the licensing sub

committee hearing due to exceptional circumstances. This request was agreed and all interested parties were informed that the revised Licensing Sub – Committee hearing date would be the 21 March 2019.

12. The application for variation is described as:

- Extension of permitted hours in respect of the sale of alcohol, late night refreshment (Indoors) and opening times.

13. The application seeks to vary the following hours on the current premises licence:

- The sale by retail of alcohol (Indoors):
 - Friday and Saturday: 12:00 to 02:30
- The provision of late night refreshment (indoors):
 - Friday and Saturday: 23:00 to 02:30
- Opening hours:
 - Friday and Saturday: 12:00 to 02:30.
- A copy of the application is attached to this report as Appendix B.

Designated Premises Supervisor

14. The designated premises supervisor (DPS) under the existing premises licence is Mohammad Nizamul Hoque holding a personal licence with the London Borough of Lambeth.

Representations from responsible authorities

15. The Metropolitan Police (licensing division) have made a representation. They state that the premises are situated in a residential area. The current operating hours are Monday to Friday 12:00 to 00.00 which is generous as the Southwark council licensing policy states the terminal hours should be 23:00 for a restaurant in a residential area.

16. The Metropolitan Police Service state policy hours are in place to assist in the complying with the licensing objectives and although the applicant has offered some additional conditions I cannot see any reason to deviate from the policy and with this in mind we object to the granting of this licence.

17. This council's public health department have made representation against the application. Public health state that this premises is located close to a populated residential area. The increased noise from more individuals consuming alcohol after 23:00 in the local area could have an impact on the sleep of residents living around this premises.

18. Additionally public health state that the applicant already benefits from generous hours, which exceed the recommended times set out in Southwark's statement of licensing policy for restaurants. Public health recommend that the application is refused.

19. Licensing as a responsible authority object to the application. Their representation is based on the Southwark statement of licensing policy 2016 – 2020 and relates to the licensing objectives for the prevention of crime and disorder and the prevention of public nuisance. They advise that this premise is situated within a residential area and under the Southwark statement of licensing policy 2016 - 2020 the appropriate closing times for restaurants; cafes, public houses, wine bars or other drinking establishments on Monday to Sunday is 23:00 and this application seeks hours in excess of that which is deemed appropriate for a residential area.
20. Licensing as a responsible authority also raised concerns that in the application there was no time left between the last sale of alcohol 'on sales' and the closing time when patrons should be leaving the premises. They advise that this can lead to conflict between staff and customers who have purchased an alcoholic drink for consumption on the premises minutes before closing time and being asked to either finish the drink or hand it back and to leave the premises. Additionally this will encourage patrons to rush consumption of alcoholic drinks at the same time of closing which can lead to antisocial behaviour problems when patron have left the premises.
21. Licensing as a responsible authority state should the licensing sub committee be of a mind to grant the variation hours outside of the hours deemed appropriate within the policy they would recommend the following:
 - That the sales of alcohol cease at least half an hour before the closing time (To be conditioned).
 - That an accommodation limit for the premises be set. (To be conditioned)
 - That a written dispersal policy for the premises be provided. (To be conditioned)
 - That intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking a substantial table meal and by consumption of such persons as an ancillary to their meal. (To be conditioned)

Representations from other persons

22. A representation was received from the Dulwich Society.
23. The Dulwich Society representation states that they believe that an extension of opening hours until 02:30 on Fridays and Saturdays by a licensed restaurant which plays music and has a busy take-away trade, is likely to result in increasing (rather than preventing) both nuisance and crime and disorder in what is a largely residential area.
24. The Dulwich Society representations also states that the extension sought to opening hours might be appropriate for a bar or night club served by good public transport in a part of Southwark with an already busy night time economy (as per recommended closing times for such establishments in Southwark's statement of licensing policy) but is not appropriate for this location.
25. Additionally, the Dulwich Society representation states that If this application is granted, it could be the thin end of the wedge, with other similar establishments using it as a precedent for seeking similar extensions.

Conciliation

26. All representations were sent to the Applicant on 8 February 2019, with contact details for the responsible authorities. At the point of the report going to publication, no representations have been withdrawn following conciliation discussion.

Operating history

27. The current premises licence was issued on 7 September 2006. The premises licence has remained unchanged in that time with Mohammad Nizamul Hoque still detailed on the licence as the Designated Premises Supervisor.
28. Since the current premises licence was granted no temporary event notices (TENs) have been applied for this premises.
29. There is no history of complaints regarding the premises, since this current licence was issued.

Map

30. A map of the area is attached to this report as Appendix E. There are no other licensed premises located in the immediate vicinity:

Southwark council statement of licensing policy

31. Council assembly approved Southwark's statement of licensing policy 2016 - 2020 on 25 November 2015. The policy came into effect on 1 January 2016. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:
 - Section 3 – Purpose and scope of the policy. This reinforces the four licensing objectives and the fundamental principles upon which this Authority relies in determining licence applications
 - Section 5 – Determining applications for premises licences and club premises certificates. This explains how the policy works and considers issues such as location; high standards of management; and the principles behind condition setting.
 - Section 6 – Local cumulative impact policies. This sets out this authority's approach to cumulative impact and defines the boundaries of the current special policy areas and the classifications of premises to which they apply. To be read in conjunction with Appendix B to the policy
 - Section 7 – Hours of operation. This provides a guide to the hours of licensed operation that this Authority might consider appropriate by type of premises and (planning) area classification.
 - Section 8 – The prevention of crime and disorder. This provides general guidance on the promotion of the first licensing objective.
 - Section 9 – Public safety. This provides general guidance on the promotion of the second licensing objective.

- Section 10 – The prevention of nuisance. This provides general guidance on the promotion of the third licensing objective.
 - Section 11 – The protection of children from harm. This provides general guidance on the promotion of the fourth licensing objective.
32. The purpose of Southwark’s statement of licensing policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the sub-committee when considering the applications. However, the sub-committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.
33. This premises is outside of a cumulative impact policy area and within a residential area. Under the Southwark Statement of Licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for this categories of premises indicated:
- Restaurants and cafes: 23:00 daily
 - Public houses, wine bars or other drinking establishments: 23:00
 - Night clubs (with sui generis planning classification) are not considered appropriate for this area.

Resource implications

34. A fee of £190.00 being the statutory fee payable for premises within non-domestic rateable value band A has been paid by the applicant company in respect of this application.

Consultation

35. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and a similar notice exhibited outside of the premises for a period of 28 consecutive days.

Community impact statement

36. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

37. The sub-committee is asked to determine the application to vary the premises licence under Section 34 of the Licensing Act 2003.
38. The principles which sub-committee members must apply are set out below.

Principles for making the determination

39. Section 35 of the Licensing Act 2003 sets out the licensing authority’s powers and duties in considering the determination of an application for variation.

40. The general principle is that applications for variation must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.
41. Relevant representations are those which:
 - Are about the likely effect of the granting of the application on the promotion of the licensing objectives
 - Are made by an other party or responsible authority
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
42. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to:
 - Add to, omit, and/or alter the conditions of the licence, or
 - Reject the whole or part of the application for variation.

Conditions

43. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the variation, if it is necessary to do so. Conditions must be necessary and proportionate for the promotion of one of the four licensing objectives, and not for any other reason. Conditions must also be within the control of the licensee, and should be worded in a way which is clear, certain, consistent and enforceable.
44. The four licensing objectives are
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
45. 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.
46. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment and take away aspect of the licence must relate to the night time operation of the premises and must not be used to impose conditions which could not be imposed on day time operators.
47. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors. The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2003 introduced three new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional two conditions came into force – age verification policy and smaller measures for alcoholic drinks.
48. Members are also referred to the Home Office guidance on conditions.

Reasons

49. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for to vary the premises licence, it must give reasons for its decision.

Hearing procedures

50. Subject to the licensing hearing regulations, the licensing committee may determine its own procedures. Key elements of the regulations are that:
- The hearing shall take the form of a discussion led by the authority. Cross examination shall not be permitted unless the authority considered that it is required for it to consider the representations
 - Members of the authority are free to ask any question of any party or other person appearing at the hearing
 - The committee must allow the parties an equal maximum period of time in which to exercise their rights to:
 - Address the authority
 - If given permission by the committee, question any other party.
 - In response to a point which the authority has given notice it will require clarification, give further information in support of their application.
 - The committee shall disregard any information given by a party which is not relevant to the particular application before the committee and the licensing objectives
 - The hearing shall be in public, although the committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in private
 - In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.
51. This matter relates to the determination of an application to vary a premises licence under section 34 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

The council's multiple roles and the role of the licensing sub-committee

52. Sub-committee members will note that, in relation to this application, the council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.
53. Members should note that the licensing sub-committee is meeting on this occasion solely to perform the role of licensing authority. The sub-committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of

the application. In this case, members should disregard the council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the licensing law, guidance and the council's statement of licensing policy.

54. As a quasi-judicial body the licensing sub-committee is required to consider the application on its merits. The sub-committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. The licensing sub-committee must give fair consideration to the contentions of all persons entitled to make representations to them.
55. The licensing sub-committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.
56. Members will be aware of the council's code of conduct which requires them to declare personal and prejudicial interests. The Code applies to Members when considering licensing applications. In addition, as a quasi-judicial body, Members are required to avoid both actual bias, and the appearance of bias.
57. Under the Human Rights Act 1998 the sub committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The sub-committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the Borough.
58. Other persons, 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.

Guidance

59. Members are required to have regard to the Home Office guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

Strategic Director of Finance and Governance

60. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file	Southwark Licensing, C/O Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Copy of the existing premises licence
Appendix B	Copy of the application
Appendix C	Copy of representations from responsible authorities
Appendix D	Representations from other person (Dulwich Society)
Appendix E	Map of the local area

AUDIT TRAIL

Lead Officer	Ian Smith, Strategic Director of Environment and Leisure	
Report Author	Richard Kalu, Principal Licensing Officer	
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Dated	25 February 2019	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
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