

Report for: Licensing Sub Committee 19th January 2023

Item number: 6

Title: Application for a Variation of an existing premises licence at Rakkas, 365-369 Green Lanes, London N4.

Report authorised by : Daliah Barrett-Licensing Team Leader – Regulatory Services.

Ward(s) affected Harringay

Report for Key/ Non Key Decision: Not applicable

1. **Describe the issue under consideration**

1.1 An application has been submitted by Mr Garip Toprak to vary the existing licence as follows:

Late Night Refreshment

Friday to Saturday 2300 to 0200 hours

Supply of Alcohol

Sunday to Thursday 1100 to 2300 hours

Friday to Saturday 1100 to 0200 hours

Supply of alcohol **ON** the premises only.

Hours open to Public

Sunday to Thursday 0600 to 2330 hours

Friday to Saturday 0600 to 0230 hours

1.2 There are also changes to the layout in particular the bar area adjoining the shisha area has been increased. The variation application form is attached at Appendix 1. A copy of the existing Premises Licence and layout plan is attached at Appendix 2.

1.3 The application is asking for this condition:

“THE PREVENTION OF CRIME AND DISORDER

1. All outside areas must be closed and cleared of customers by 2100 hours. Adequate notices shall be displayed to inform patrons of this requirement. The premises licence holder shall take appropriate measures to ensure that patrons using any outside areas do so in a quiet and orderly fashion.

1.4 To be replaced with this condition:

“With the new application the operable hours need to be amended as follow:

1. All outside areas must be closed and cleared of customers by 23:30 hours. Adequate notices shall be displayed to inform patrons of this requirement. The premises licence holder shall take appropriate measures to ensure that patrons using any outside areas do so in a quiet and orderly fashion.”

1.5 Representations against the premises licence application have been received from residents and from Responsible Authorities. The matter is put to the Licensing Sub-Committee for determination at a public hearing.

- 1.6 The premises is situated along a row of terraced shops with residential accommodation above and to the rear. The application seeks to have a later finish in particular for the 'external rear' shisha area.
- 1.7 The application has listed a variety of timings for other businesses across the borough as their reason for this variation to be granted. The LSC is reminded that it is important that each case is considered on its own merits.
- 1.8 The application goes on to offer conditions that are already existing on the current licence but are not being adhered to under the current management.
- 1.9 The applicant has submitted a document at Appendix 7 said to be a petition in support of the business. The document is out of time to be accepted as a petition but can be accepted as a supporting document showing feedback gathered by the business from residents. In that regard the Licensing Authority are not required to contact anyone who has submitted their feedback. The onus lies with the business if they wish to have any of the residents who have submitted their feedback attend the hearing as a witness on their behalf. The questionnaire does not refer to the application or the licensing objectives that would be in play in this matter. The hearings are publicly accessible but only those who have been previously notified to the Licensing Service will be able to address the Licensing Sub Committee.
- 1.10 Representations have been received against this application by 'other persons' and Councillors. APP 3.
Representation are also received from Responsible Authorities --App 4.
- 1.10 As such, in accordance with the legislation the Licensing Authority must hold a hearing to consider the application and any relevant representations. The Sub-Committee is asked to consider the content of this report and appendices, together with any oral submissions given at the hearing, and determines the application.

2 Background

- 2.1 The LSC has previously dealt with the application for the new Premises Licence on 27th July 2021. A copy of the minutes and the resolution from that meeting is attached as Appendix 5. The premises has ongoing enforcement actions related to breaches of Planning Permission, the use of the premises as a shisha lounge is unauthorised. The Planning Officers email speaks to this matter in Appendix 4.
Whist, the applicant will state that these are separate regimes, the Planning permission granted in particular for the rear area required an enclosed conservatory to be installed. Mr Toprak has instead built a shisha lounge which does not have Planning permission and would also require by law to be 50% open to the elements. As a result the activities that take place in this area was likely to lead to noise nuisance from both people and music noise, due to this factor the LSC determined that the area should be closed to the public at 21:00 each day in order to ensure the prevention of noise nuisance would be upheld and promoted. This existing condition has not been observed by Mr Toprak,
- 2.2 The Planning permission for this 'new' 3 unit Rakkas placed **a requirement for** rebuilding the rear single storey back extensions, to be fully enclosed, with roof windows specifically required to be non opening to prevent noise nuisance. The Licensing Authority sought clarity from the applicant and the agent as to whether the intention was to use the rear garden area shown on the plan for shisha smoking activity. The agent responded to say that they are separate matters and he wished to

focus on the alcohol licence application being sought at the time in July 2021. The email response from the agent at the time stated that the rear external lounge area of the restaurant would be used for fine dining, but if smoking was to take place the premises would be compliant with tops and sides being open. The agent advised that plans showing how this would be achieved were not available at the time of the initial application in 2021. The plans for the shisha area and retractable roof specifications have still not been made available to the Environmental Health Team.

- 2.3 From a Licensing Authority perspective it is a relevant matter as the offering of shisha smoking whilst not a licensable activity can give rise to public nuisance and can have a very serious impact on the objective of preventing public nuisance from licensed premises. Such activity is required by law to take place in premises that are 50% open. Therefore, there is more of an opportunity for nuisance from people noise socialising whilst smoking shisha at the venue to impact on nearby residents. The previous business that used to operate at 399 Green Lanes (also known as Rakkas) received a number of complaints from residents affected by noise arising from the use of the rear garden as a shisha lounge by that particular venue. The current larger operational Rakkas has also had complaints lodged since the licence was granted in July 2021, see appendix 6. It is therefore a matter that the LSC requires clarity from the applicant on and therefore engages their discretion on the prevention of public nuisance on the licensing objective. The applicant is also seeking the ability to offer late night refreshment and alcohol sales for a further 3 hours throughout the area shown on the plan and the LSC discretion is engaged on ensuring that the objectives are able to be promoted.

3 Relevant Representations

- 3.1 The representations from Residents (Appendix 3) cite the ongoing noise and anti social behaviour late into the evening that has impacted on them since the granting of the new licence. Concerns relate to the use of the rear and the impact that noise from use of this area later in the evening causes.
- 3.2 Representations from the Responsible authorities speak to matters relating to the use of the rear area as an outside space until midnight could have a further negative impact on residents lives.
- 3.4 The LSC should be aware that a review application has been initiated by the ASB Enforcement Team against the premises due to the ongoing noise nuisance and breaches of the existing conditions.
- 4 All the responsible authorities have been consulted about this application. They are as follows:
- The Licensing Authority
 - The Metropolitan Police
 - The London Fire and Emergency Planning Authority
 - Planning
 - Health and Safety (includes Building Control)
 - Noise Environmental Health
 - Food Environmental Health
 - Trading Standards
 - Child protection
 - Public Health.

5 Licensing Officer comments

- 6.1 The following information is intended to advise Members of the relevant aspects of the

Statement of Licensing Police, guidance issued by the Secretary of State, legislation and good practice. Members may depart from the Councils Policy and or Section 182 Guidance provided they consider it appropriate to do so and provide clear reasons for their decision.

- 6.2 Committee will also wish to be aware of the guidance issued under section 182 of the Licensing Act 2003. Licensing is about regulating the provision of licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the Licensing Act 2003. The terms and conditions attached to various permissions are focused on matters which are within the control of individual licensees and others granted relevant permissions. Accordingly, these matters will centre on the premises and places being used for licensable activities and the vicinity of those premises and places.
- 6.3 It is the Licensing Authority's wish to facilitate well run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents.
- 6.4 In considering licence applications, where relevant representations are made, this Licensing Authority will consider the adequacy of measures proposed to deal with the potential for public nuisance and/or public disorder having regard to all the circumstances of the case.
- 6.5 Where relevant representations are made, this authority will demand stricter conditions with regard to noise control in areas that have denser residential accommodation, but this will not limit opening hours without regard for the individual merits of any application. This authority will consider each application and work with the parties concerned to ensure that adequate noise control measures are in place. Any action taken to promote the licensing objectives will be appropriate and proportionate.
- 6.6 Also The Licensing Authority may not impose conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of the hearing that it is appropriate to impose conditions to promote one or more of the four licensing objectives. Therefore conditions may not be imposed for the purpose other than promoting the licensing objectives and in some cases no additional conditions will be required.
- 6.7 In cases Members should make their decisions on the civil burden of proof, that is the balance of probability.
- 6.8 Members should consider in all cases whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.
- 6.9 The Government has advised that conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. Conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff.
The Councils Licensing policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.

7 Options:

- 7.1 The Authority must, having regard to the application and the representations, take such steps (if any), as it considers appropriate for the promotion of the licensing objectives.
The steps are:

In determining this application the Sub-Committee may take any of the following steps as it considers appropriate for the promotion of the licensing objectives, namely:

- To grant the licence subject to such conditions as are consistent with the operating schedule accompanying the application, modified to such extent as the authority considers appropriate for the promotion of the licensing objectives.
- To exclude from the scope of the licence any of the licensable activities to which the application relates.
- To refuse to specify a person in the licence as the premises supervisor.
- To reject the application.

For the purposes of the Licensing Act 2003 the conditions of the licence are modified if any of them are altered or omitted or a new condition added.

8 The licensing authority's determination of this application is subject to a 21 day appeal period or if the decision is appealed the date of the appeal is determined and /or disposed of.

9. Other considerations

Section 17 of the Crime and Disorder Act 1998 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 function on, and the need to do all that it reasonably can to prevent crime and disorder in its area".

9.1 Human Rights

While all Convention Rights must be considered, those which are of particular relevance to the application are:

- Article 8 – Right to respect for private and family life.
- Article 1 of the First Protocol – Protection of Property
- Article 6(1) – Right to a fair hearing.
- Article 10 – Freedom of Expression

10 Use of Appendices

Appendix 1 – Variation application document

Appendix 2 – copy of current Premises Licence

Appendix 3- Representations from Residents & Councillors

Appendix 4 – Representation from RAs – supporting documents

Appendix 5- Copy of minutes and resolution from LSC hearing July 2021

Appendix 6 – Noise complaint summary since July 2021

Appendix 7- feedback questionnaire submitted by the Rakkas 03/01/2023

Background papers: Section 82 Guidance

Haringey Statement of Licensing policy

