

**Report for:** Licensing Sub Committee 07<sup>th</sup> February 2023

**Item number:** 6

**Title:** Application for a Review Of a Premises Licence - Rakkas 365-369 Green Lanes, London N8

**Report authorised by :** Regulatory Services Manager

**Lead Officer:** Daliah Barrett – Licensing Team Leader -Regulatory Services. 0208489 8232. Daliah.barrett@haringey.gov.uk

**Ward(s) affected:** Harringay

**Report for Key/ Non Key Decision:** Not applicable

**1. Describe the issue under consideration**

1.1 This report relates to an application for the Review of Rakkas Premises License brought by the ASB Enforcement Noise RA the responsible authority designated under Section 13(4)(e) of the Act as being responsible for “minimising or preventing the risk of pollution of the environment or of harm to human health”.

1.2 Summary of review received:

i) The operation of the premises has failed to uphold and promote the prevention of crime and disorder, public safety, prevention of public nuisance licensing objectives. In this regard the licensing objectives are being undermined by the operation of the premises.

The application raises concerns that:

- The provision of entertainment and use of the shisha lounge area at the rear of the premises is causing a nuisance to members of the public;
- Non compliance with licensing conditions
- The Shisha smoking area is not managed to comply with the provisions of the Health Act 2006 (Smoke free premises);
- Council officer have been prevented/delayed from accessing the premises to check compliance

1.3 The full review application and supporting documentary evidence can be found at **Appendix A**. This includes emails to Mr Toprak from the Licensing Service warning of the need to comply with the licence conditions. Warning from the ASB Team and witness statement from officers who have interacted with the business in the process of dealing with complaints.

1.4 The current Premises Licence – APPENDIX B The premises is a restaurant which is authorised to provide regulated entertainment, late night refreshment and the supply of alcohol. Its main activity is the provision for smoking Shisha.

**Supply of Alcohol**

**Late night refreshment**

**The times the Licence authorises the carrying out of licensable activities:**

**Supply of Alcohol**

**Sunday to Thursday 1100 to 2230**

**Friday to Saturday 1100 to 2330**

**Late Night Refreshment**

**Friday and Saturday 2300 to 2330**

**The opening hours of the premises:**

**Sunday to Thursday 0600 to 2300**

**Friday and Saturday 0800 to 0000**

**Any external area can only be used during the following times:**

All external areas must be closed and cleared of customers by 2100 hours.

**Where the Licence authorises supplies of alcohol whether these are on and/or off supplies:**

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

- 1.5 The LSC will note from the documents and footage submitted that entertainment is also being provided at the premises. This is being provided during its operating hours under deregulation. Section 177A of the Licensing Act 2003 provides that any condition on a premises that relates to live or recorded music is not applicable if that music takes place between 08:00am and 23:00 and the premises holds a premises licence and is open for the sale of alcohol. This section also provides that on review the Licensing Authority can dis-apply this provision and condition any regulated entertainment if it is minded to do so to ensure the licensing objectives are upheld and promoted.

1.6 **RELEVANT ADDITIONAL INFORMATION IN RELATION TO THE LEGAL**

**PROVISIONS REGULATED ENTERTAINMENT**

The Legislative Reform (Entertainment Licensing) Order 2014 amended the 2003 Act so as to categorise Live and Recorded Music as not being “regulated entertainment” when provided at licensed premises between 8am and 11pm and where audiences number less than 500 people. Any conditions imposed on a premises licence in do not apply when music is provided within these limits. Section 177A (4) states that “On a review of a premises licence ... a licensing authority may (without prejudice to any other steps available to it under this Act) add a condition relating to music as if— (a) the music were regulated entertainment, and (b) the licence or certificate licensed the... music” In order for the Licensing Authority to be able to control the noise from the premises caused by live and recorded music at all times, the Licensing Authority need to endorse the premises licence with a condition, as suggested in the application, that all entertainment held at the premises is to be considered as regulated entertainment. The sub-committee should note that the premises has been alleged to be causing a nuisance between 8am and 11pm when licence conditions are not applicable as well as after 11pm when they are applicable. This may mean that the current conditions are still not sufficient to control the alleged concerns even if applicable throughout the entirety of premises trading hours.

1.7 **HEALTH ACT 2006 SMOKE FREE PREMISES**

Smoke-free legislation in the Health Act 2006 came into force in England on 1 July 2007. It made virtually all indoor public places and work places smoke-free. It is a criminal offence to smoke in a smoke-free place (section 7 of the Health Act 2006). It is also the legal duty of any person who controls or is concerned with the management of smoke-free premises to stop any person smoking on the premises (section 8 of the Health Act 2006). It is also an offence not to display no smoking signs in a smoke-free workplace or public place (section 6 of the Health Act 2006). The law applies to smoking any substance, or being in possession of lit tobacco or any other lit substance in a form in which it could be smoked, such as: manufactured cigarettes, hand-rolled cigarettes pipes, cigars, herbs, water/shisha pipes. Smoke-free premises The legislation covers all premises, which are wholly or substantially enclosed, and used as a place of work by more than one person, and/or open for use or access by the public. 'Enclosed' means an area with permanent walls and doors without any gaps. Windows and doors are not classed as gaps. 'Substantially enclosed' would be a structure (with a roof/ceiling) with an opening in the walls where the opening would make up less than half of the area of the total wall space. Again doors and windows are not classed as gaps. Therefore - smoking is banned in all enclosed or substantially enclosed public and work places. This includes the smoking of shisha through a water pipe. Water pipes can only be smoked outside in the open air, or where a smoking shelter is at least 50% open to comply the smoke-free regulations 2006.

The Environmental Health Officers have advised that the shisha area is compliant with the Health Act 2006 only with the retractable roof open 50%. Allbeit the shisha lounge area itself is unauthorised under Planning.

- 1.4 Representations must relate to particular premises for which a Premises Licence is already held and must be relevant to the promotion of the Licensing Objectives. The Licensing Committee, in determining a review, may exercise the range of powers given to them to promote the Licensing Objectives. The Authority will seek to establish the cause or causes of the concern and remedial action will be targeted at such causes. Any action will be proportionate to the problems involved. Where reviews arise and the Licensing Authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that the revocation of the licence- even in the first instance – will be seriously considered (Amended Guidance, paragraph 11.27).

Revocation also remains an option if other licensing objectives are being undermined.

## 2 Recommendations

- 2.1 Determination of this application (Options) Section 52(3) of the Act provides the options that the Licensing Authority must, having regard to the application and any relevant representations, take such of the steps listed below, if any, as it considers appropriate for the promotion of the licensing objectives.

(a) to modify the conditions of the licence; Modifying the conditions of a licence includes the addition of new conditions as well as the removal or re-wording of any existing conditions.

(b) to exclude a licensable activity from the scope of the licence; To remove any activity presently authorised by the licence, either to have permanent effect or for such period the Licensing Sub-Committee may specify for such period not exceeding 3 months.

(c) to remove the designated premises supervisor;

(d) to suspend the licence for a period not exceeding three months;

(e) to revoke the licence;

The Sub-Committee, acting for and on behalf of the Licensing Authority, is bound by Section 4 of the Act to carry out its duties with a view to promoting the four licensing objectives and, in carrying out its functions, have regard to its own Statement of Licensing Policy and any guidance issued to Licensing Authorities by the Home Secretary under Section 182 of the Act.

- 2.2 The Licensing Sub – Committee are reminded of their duty under Section 17 of the Crime and Disorder Act 1989 to consider the crime and disorder implications of their decisions and the Licensing Authority’s responsibility to cooperate in the reduction of crime and disorder in the Borough.

### 3. Background

- 3.1 The original Rakkas premises at 369 Green Lanes was initially licensed in March 2012. It had the following operating times:

- 3.2 The premises was transferred in November 2012 to a Mr Osman who then applied to vary the hours in June 2013:

*The times the Licence authorises the carrying out of licensable activities:*

*Supply of Alcohol*

*Monday to Sunday 1100 to 0130*

*Live Music*

*Monday to Sunday 1800 to 0130*

*Recoded Music*

*Monday to Sunday 1100 to 0130*

*Late Night Refreshment*

*Monday to Sunday 2300 to 0200*

*The opening hours of the premises:*

*Monday to Sunday 0800 to 0200*

***The external rear area can only be used during the following times:***

***Sundays from 10am to 9pm***

***Monday to Thursday from 8am to 9pm***

***Friday and Saturday from 8am to 10.30 pm***

- 3.3 In January 2014 the licence was transferred to Mr Ali Ozbeck. Mr Ozbeck then applied to vary conditions on the licence and to extend the shisha area and hours.

The variation was granted as follows and the shisha area had a 30 minute increase on a *Friday and Saturday night:*

*Supply of Alcohol*

*Monday to Sunday 1100 to 0130*

*Live Music*

*Monday to Sunday 1800 to 0130*

*Recoded Music*

*Monday to Sunday 1100 to 0130*

*Late Night Refreshment*

*Monday to Sunday* 2300 to 0200

*The opening hours of the premises:*

*Monday to Sunday* 0800 to 0200

***The external rear area can only be used during the following times:***

***Sundays*** 1000 to 2100

***Monday to Thursday*** 0800 to 2100

***Friday to Saturday*** 0800 to 2300

- 3.4 The LSC noted at the time that due to the fact that the licence holder had been found to have breached the licence on at least three occasions, the Committee felt that it would be inappropriate to grant the variation in full as requested.
- 3.5 In September 2016 a review was initiated against Mr Ozbek by the Noise Team RA. Mr Ozbek received a number of warnings to take steps to prevent noise nuisance which was impacting on the residential properties above the premises. The late hours of the enlarged rear shisha area had led to music being provided in this area to customers and a marked increase in nuisance complaints. The LSC at the time imposed a one month suspension and conditions added to the licence. Mr Ozbek appealed but that appeal was later withdrawn and dealt with by way of a Consent Order granted by the Court in May 2017. The conditions determined by the LSC were imposed. These were for a noise limiter and engagement with residents.
- 3.6 In February 2021 the licence held by Mr Ali Ozbek was revoked following ongoing noise Nuisance, at this time the public nuisance was affecting a wider area and residents to the rear of the business were also being affected. This was coupled with ongoing breaches of the licence conditions as well as breaching Covid regulations in place at the time.
- 3.7 A new application was received in June 2021 with Mr Garip Toprak as the applicant. Mr Ali Ozbek however, remains the named person responsible for business rates payer from 2014 to date at 365-369 Green Lanes and 399 Green Lanes.
- 3.8 The current Rakkas at 365-369 Green Lanes is said to be a restaurant. Its isis authorised to provide regulated entertainment, late night refreshment and the supply of alcohol. It also provides a large area for the smoking Shisa across the three units at the rear of the premises. The Premises licence was issued in July 2021 following a hearing with the LSC. A copy of the minutes and the resolution from that meeting is attached as Appendix E. The premises has ongoing enforcement actions related to breaches of Planning Permission, the use of the premises as a shisa lounge is not authorised under Planning. 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.

3.2 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. There are emails from other residents stating that they have not experienced public nuisance from the premises.

The matters highlighted in the review and residents complaints point to the people noise and music noise emanating from this area to be the main cause of the nuisance being experienced. There are various pieces of footage /video filmed by a resident which gives a sense of the sounds emanating from the rear area, regardless of the roof being open and compliant or not.

3.3 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 369 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 F. 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.

3.4 Mr Toprak has recently applied to vary the existing licence to gain later hours of operation citing a list of other venues not like for like operating with slightly later hours than Rakkas. A number of residents made representation to this application and the matter was refused by the LSC on 19<sup>th</sup> January 2023. Appendix G – Resolution.

3.5 Within the report pack are completed survey forms initiated by the business to interact with residents. These forms have then been used as the basis to ask residents to submit emails of support for the business. All parties that have submitted a valid representation during the consultation period have been notified of the hearing.

#### 4. Licensing Policy

4.1 In carrying out their licensing functions a licensing authority must have regard to the licensing authority's Statement of Licensing Policy and the Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003 ("s.182 Guidance"). In relation to "Reviews", the s.182 Guidance recognises that:

11.1- The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.

- The review process – Section 11.1 – 11.11, Page 89-90
- Powers of a licensing authority on the determination of a review – Section 11.16 – 11.23, Page 92

4.2 Similarly, the s.182 Guidance points out, in the context of reviews arising in connection with crime, that the duty of a licensing authority is to make decisions in the interests of the wider community and not simply those of the individual licence holder:

11.26- Where the licensing authority is conducting a review on the grounds that he premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

4.3 Hearsay evidence is admissible although the High Court has observed that:

"Some evidence such as gossip, speculation and unsubstantiated innuendo would be rightly disregarded. Other evidence, even if hearsay, might by its source, nature and inherent probability carry a greater degree of credibility. All would depend on the particular facts and circumstances."

4.4 Given these are administrative/civil proceedings, where a factual issue falls to be decided the standard of proof is the balance of probabilities.

The promotion of the licensing objectives is ultimately a forward looking exercise. Deterrence is also a proper consideration. In *East Lindsey District Council v Abu Hanif*, (Admin), a licensing case involving the employment of illegal workers, the High Court (Jay J) made important observations of more general application to licence review decisions:

"The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder. This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence."

4.5 Similarly, in *R (Bassetlaw District Council) v Worksop Magistrates' Court* [2008] EWHC 3530 (Admin), the High Court considered a case where a licence review followed sales of alcohol to underage test-purchasers. Slade J (at §32), referred to deterrence as a proper consideration in the context of licence reviews. Responsible operators are expected to be compliant with the law.

4.6 The committee will also wish to be aware of the guidance issued under section 182 of the Licensing Act 2003:

#### 4.7 Powers of a Licensing Authority

Powers of a Licensing Authority on the Determination of a Review s11.23 Licensing authorities should also note that modifications of conditions and licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence

could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises.

- 4.8 The decision should be made with regard to the Secretary of the State's guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the Policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal / challenge is increased.

## **5. Other considerations**

### **5.1 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 is reasonably can to prevent crime and disorder in its area".

### **5.2 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

## **6 Use of Appendices**

**Appendix 1- Review application form and supporting Documentation.**

**Appendix 2 – Copy of Premises licence.**

**Appendix 3- Copy of representations in support of review**

**Appendix 4 – Emails in support of Rakkas and Survey responses.**

**Appendix 5 - Copy of resolution from July 2021 hearing-(new application)**

**Appendix 6 – Compliant log since new licence granted**

**Appendix 7- Variation hearing resolution.**