

REPORT TO: LICENSING SUB-COMMITTEE - 22 SEPTEMBER 2005

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: NICKII HUMPHREYS

**Licensing Act 2003 – Application for the variation of a premises licence
The Romance of India Restaurant, 61 Albert Road, Southsea**

1. PURPOSE OF REPORT

The purpose of this report is for the Committee to consider an application for the variation of a premises licence under the Licensing Act 2003 (“the Act”). The matter has been referred to the Committee for determination following formal representations being made by an interested party, namely a resident living in the vicinity of the premises.

2. THE APPLICATION

The application to vary the premises licence has been made by the holder of the premises licence, Mr Abdul Goni.

The applicant requests that the premises licence be varied so as to:

1. extend the hours for the sale of alcohol on Mon – Sat from 17:30 until 02:30 hours and on Sun from 17:30 until 01:30 hours the following morning;
2. permit the premises to be open to the public every day from 17:30 until 03:00 hours the following morning;
3. when Christmas Eve or New Year’s Eve falls on a Sunday to extend the hours for the sale of alcohol from 17:30 until 03:00 hours the following morning.

3. BACKGROUND INFORMATION

This application has been submitted as part of an application for an existing licence to be converted to a premises licence under the Act and a simultaneous application to vary the premises licence.

Under existing licensing regimes, the premises currently benefits from a justices’ licence and supper hour certificate (Section 68 certificate) granted by the Licensing Justices’ in accordance with the Licensing Act 1964. The premises are currently permitted to supply alcohol as follows:

Weekdays from 10:00 until 23:59 hours, Sundays from 12:00 until 23:30 hours and Christmas Day from 12:00 until 15:00 hours and 19:00 until 23:30 hours.

In respect of New Year’s Eve the premises are entitled to supply alcohol for a continuous period from 10:00 hours on New Year’s Eve until 23:00 New Year’s Day.

The extended hours available by virtue of the supper hour certificate is conditional upon substantial refreshment being provided to which the sale and supply of alcohol is ancillary.

The justices' licence has been granted subject to the following conditions:

- (a) Intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary to his meal.
- (b) By Section 94(5) of the Licensing Act 1964, it is an implied condition that suitable beverages other than intoxicating liquor (including drinking water) shall be equally available for consumption with or otherwise as an ancillary to meals served in the licensed premises.

The applicant wishes to retain these conditions should the application be granted.

The premises are currently permitted to provide recorded music and also late night refreshment during all the hours permitted for the sale of alcohol and 30 minutes thereafter.

In addition to the above licences, the premises also currently benefits from a late night refreshment house licence issued by this authority under the Late Night Refreshment House Act 1969. This permits the licence holder to open the premises for public refreshment, resort and entertainment at any time between 30 minutes after the end of permitted drinking hours and 5:00am the following morning. In respect of these particular premises, late night refreshment is permitted to be provided until 03:00 hours every day.

Under transitional arrangements provided for by the Act, existing licence holders are entitled to certain "grandfather rights" when applying to convert their existing licences into the new premises or personal licences. This effectively means that (subject to very limited exceptions) such rights, "embedded restrictions" and conditions under existing licences are transferred onto the new premises licence.

In addition to the conversion process referred to above, existing licence holders are also given the opportunity to simultaneously apply during the transition period for a variation of the premises licence. However, any such variations will not come into effect until the second appointed date when the current licensing regimes will cease and the new Act goes live. The Department of Culture, Media and Sport has announced that this date will be 24th November 2005.

No representations were made by the police in relation to the conversion application and therefore the premises licence is deemed granted subject to existing rights, conditions and limitations which have been carried forward from the current licences referred to above.

4. CHARACTER OF LOCALITY AND IMMEDIATE ENVIRONS

Enforcement team report?

5. OPERATING SCHEDULE – PROMOTION OF LICENSING OBJECTIVES

The applicant does not consider that any additional steps are required to be taken to promote the four licensing objectives.

6. RELEVANT REPRESENTATIONS BY RESPONSIBLE AUTHORITIES

No representations have been made by any of the responsible authorities. Discussions were undertaken between the applicant and the police in relation to Section O of the operating schedule (hours that the premises are open to the public) and the possible ambiguity which may arise. The applicant subsequently amended these hours from 02:00 hours to 03:00 hours and the police, in light of this amendment, made no representations.

7. RELEVANT REPRESENTATIONS BY INTERESTED PARTIES

One formal representation has been received in respect of this application, a copy of which is attached as Appendix C. The applicant is concerned that the application appears to be a request for longer opening hours and extended hours which alcohol can be sold when compared to existing licensing details.

The interested party is concerned that the premises is situated close to residential areas. He has experienced disturbance and vandalism caused by revellers making their way from the Albert Road area and he feels that the grant of extensions to licensing hours would result in disturbance to local residents occurring much later on in the night.

Members should be aware that the interested party, whilst making representations about this particular premises, actually refers by name to another premises, namely Bubba. This may well be an inadvertent error, and your Licensing Manager has corresponded with the interested party to clarify this but has received no response.

The Committee must also consider very carefully the references to incidents of general anti-social behaviour and criminal damage in the area and whether they can be satisfied that they are directly attributable to the customers of these particular premises.

8. POLICY AND STATUTORY CONSIDERATIONS

When determining the application to vary the premises licence the Committee must have regard to:

- Promotion of the licensing objectives which are;
 - prevention of crime and disorder
 - public safety
 - prevention of public nuisance
 - protection of children from harm
- The Licensing Act 2003;

- Its Statement of Licensing Policy;
- The statutory guidance issued by the Secretary of State in accordance with section 182 of the Act; and
- The representations, including supporting information, presented by all the parties.

The Statement of Licensing Policy lays down a general approach to the determination of licensing applications and any such application will be considered on its individual merits. Equally, any person permitted by the Act to make relevant representations to the Committee will have those representations considered on their individual merit.

The Committee should consider the fundamental principles set out in its policy, particularly paragraphs 5.3, 5.4 and 5.5 which are reproduced below:

5.3 *The Licensing Authority recognises that longer licensing hours for the sale of alcohol may avoid large concentrations of customers leaving premises at the same time, which in turn may reduce friction at late night fast food outlets, taxi ranks and other sources of transport that lead to disorder, disturbance and other anti-social behaviour.*

5.4 *The Licensing Authority believes that providing consumers with greater choice and flexibility is an important consideration and that whilst safeguarding and promoting the licensing objectives the licensing hours should not inhibit the development of thriving evening and night-time local economies which are important for investment and employment locally and attractive to domestic and international tourists.*

5.5 *However, in addition to the above statement, when considering applications for premises licences on individual merit, the Licensing Authority will take the following factors into account:*

- *Any cumulative impact policy*
- *Residential amenity and character or function of a particular area; and*
- *Nature of proposed activities to be provided at the premises*

Consideration will be given to imposing stricter conditions in respect of noise control, if not volunteered by the applicant in their operating schedule and following relevant representations, where premises are situated in mainly residential areas. However, this will not limit opening hours without regard to the individual merit of any application.

Paragraphs 8.16 – 8.22 of the policy refers to matters relation to the prevention of public nuisance.

The Committee should also have regard to paragraphs 12.0 to 12.5 in relation to such circumstances where it may be necessary to consider the imposition of conditions on a premises licence.

The statutory guidance issued in accordance with section 182 of the Act refers to the consideration of applications for the variation of premises licences in paragraphs 5.65 to 5.72.

Members are reminded of the statutory guidance contained in paragraph 5.68 which states:

“..... As a matter of practice, licensing authorities should seek to focus the hearing on the steps needed to promote the particular licensing objective which has given rise to the specific representation and avoid straying into undisputed areas.....”

Whilst the interested party is concerned about the extension to existing licensing hours, in effect this variation sees no difference in the hours of trading but merely seeks to provide those persons eating in the restaurant until 03:00 hours, as is currently permitted, to be able to purchase alcohol to accompany their meal to a later hour.

Any matters specified by the applicant within the operating schedule will automatically be imposed as a condition of the licence, should the application be approved, together with any mandatory conditions specified by the Act in relation to the supply of alcohol.

Paragraphs 7.17 and 7.19 of the statutory guidance provides advice in relation to proportionality when the licensing authority may be considering the imposition of conditions where formal representations have been made by responsible authorities and/or interested parties.

In particular, paragraph 7.19 states:

“..... Licensing authorities and responsible authorities should also have proper regard for the history of certain events and activities. If over a significant period of time, regular events of a particular kind have not given rise to problems of disorder and nuisance or concerns about safety or children, responsible authorities will be expected to have regard to this when scrutinising an application in respect of the activities involved, and not make representations unless there are new issues which could cause them to do so.....”

The DCMS has issued guidance to applicants when making an application to convert an existing licence and a simultaneous application to vary the premises licence as follows:

*“You should consider carefully whether, because of your proposed variation, you need to take any **additional** steps to meet the licensing objectives. Don't forget that you should already be abiding by relevant legislation in other areas and may have conditions already attached to your licence. Your starting point should be compliance with these requirements. If you feel there is nothing further to do, then it*

is probably better to say that than leave these sections blank. If you feel there is nothing more to add then you might wish to write 'N/A' or something like 'nothing beyond existing Health and Safety/Fire Safety etc requirements'. This shows you have considered the objectives and come to a decision that you have nothing additional to do and not that you have forgotten to write anything in this section. Of course, if a responsible authority for one of the licensing objectives considers that you need to do more than the existing regimes, they will be able to make representations”.

Where an application to vary a premises licence has been made in accordance with section 34 of the Act and where relevant representations have been made, the licensing authority must hold a hearing to consider them, unless the applicant, each person who has made representations and the licensing authority agree that a hearing is unnecessary.

After having regard to the representations, the Committee may take such steps, if any, as it considers necessary for the promotion of the licensing objectives which are:

- modify the conditions of the licence, which could include altering, omitting or adding conditions; or
- reject the whole or part of the application.

In discharging its duty in accordance with the above, the Committee may vary a premises licence so that it has effect subject to different conditions in respect of:

- different parts of the premises concerned;
- different licensable activities.

Schedule 5, part 1, of the Act sets out the appeal provisions in relation to the determination of an application to vary a premises licence.

Should the Committee reject, in whole or in part, an application, the applicant may appeal against the decision to the Magistrates' Court.

Should the Committee grant, in whole or in part, an application, the applicant may appeal to the magistrates' court against any decision to modify the conditions of the licence.

Equally, where a person who made relevant representations, i.e. a responsible authority or interested party, in relation to the variation application wishes to contend that:

- any variation should not have been made or that when varying the licence, the Committee should not have modified the conditions of the licence; or
- should have modified them in a different way,

he may also appeal against the decision to the Magistrates' Court.

Finally, Members may also wish to consider paragraphs 5.99 – 5.117 of the

statutory guidance in respect of reviews of premises licences. Paragraph 5.99 of the guidance states:

“.....The proceedings set out in the Act for reviewing premises licences represent a key protection for the community where problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. It is the existence of these procedures which should, in general, allow licensing authorities to apply a light touch bureaucracy to the grant and variation of premises licences by providing a review mechanism when concerns relating to the licensing objectives arise later in respect of individual premises.....”

A copy of the Statement of Licensing Policy, statutory guidance, the Act and the pool of model conditions has been supplied to each of the Members' Rooms and further copies will be available for reference at the hearing.

9. APPENDICES

- A. Copy of the application form to convert and simultaneously vary the premises licence;
- B. Copy of the existing late night refreshment house licence;
- C. Copy of the representation from the interested party;
- D. Site plan showing location of premises and neighbouring vicinity.

THE COMMITTEE IS REQUESTED TO DETERMINE THE MATTER



Licensing Manager
For Head of Legal & Democratic Services