

**CONSIDERATION OF APPLICATION UNDER THE LICENSING ACT 2003 –
APPLICATION TO VARY A PREMISES LICENCE (LP 09/08)**

LICENSING PANEL SUB COMMITTEE: 8th January 2009

OFFICER REPORTING: Alan Barwise – Team Leader, Licensing

A) THE APPLICATION

APPLICANT: Mr Malkeet S Johal

PREMISES: Papa G's, 48 Thames Street, Windsor SL4 1PU

Licence Application

The Licence application is to vary an existing Premises' Licence for late night refreshment only. A premises' licence is required to sell late night refreshment between 23.00 and 05.00 hours on any day.

Relevant licensable activities:

1. late night refreshment only

Hours of licensable activities

Current:

23.00 – 03.00 Monday to Wednesday
23.00 – 03.40 Thursday to Sunday

Application:

23.00 – 04.00 on any day
Christmas Eve and Christmas Day
23.00 – 05.00

Conditions in Relation to Doormen

Current:

Two Security Industry Authority
Registered door staff to be on the
Premises Thursday – Sunday
23.00 until closing time

Proposed:

No door staff required on
Thursday and Sunday except one
door staff supervisor from
midnight onwards when there is a
Bank Holiday following the Sunday.
One door supervisor to start at 23.00
Friday and Saturday and then a second
door supervisor to start at 01.00 until
closing time.

Steps to promote licensing objectives

- a) Crime and Disorder
See attached application
- b) Public Safety
See attached application
- c) Public Nuisance
See attached application
- d) Child Protection
See attached application

B. RELEVANT REPRESENTATIONS

Responsible Authorities:

- a) Police
Please see note from PC Paul Dredge, Police Licensing Officer dated 26th November 2008. Essentially, the Police agree with the Applicant's proposed conditions except that two SIA door staff are to be on site on Christmas Eve and New Year's Eve when the closing time will be 4am. The Police recommend that closing time should be 03.40 each day of the week.
- b) Environmental Health
None
- c) Fire Officer
None
- d) Planning Officer
None
- e) Child Protection Agency
None

Interested Parties:

Attached is a letter from Sir Christopher Wren's House Hotel dated 25th November 2008 with a number of photographs. Any business in the vicinity of premises where an application for a licence is made has the right to make a representation, provided it is based on the four licensing objectives.

C) IT IS CONSIDERED THAT THE FOLLOWING POLICIES HAVE A BEARING UPON THE APPLICATION

The following is taken from the Council's Licensing Policy:

The Council maintains that licensing is about the control of licensed premises, qualifying clubs and temporary events with the terms of the 2003 Act and any terms and conditions attached to licences will be focused on matters which are within the control of individual licensees and other granted relevant permissions, centring on the premises and their vicinity. In addressing the issue of "vicinity", the Council will primarily focus on the direct impact of the activities at the premises on members of the public living, working or engaged in normal activities in the area concerned".

Licensing is not the primary mechanism for controlling anti-social behaviour away from premises and beyond the control of operators. However, it is a key aspect of such control and the licensing law is part of the holistic approach to the management of the evening and night-time economy in town and city centres.

The Council will only grant a licence or extend the hours of operating of an existing licence where this would not result in unreasonable disturbance to neighbours.

In considering the affect on neighbours, the Authority will take into account:

1. The nature of the activity
2. The character of the surrounding area
3. Measures for limitation of noise emissions from the premises. This may include as appropriate;
 - Noise limitation devices,
 - Sound insulation,
 - Whether windows are to be opened
 - The installation of acoustic lobbies
 - Double glazing
 - Measures to deal with queuing, where necessary
 - Use of outdoor areas
 - Measures to deal with dispersal of customers from the premises as necessary, including the employment of door supervisors, use of dedicated Hackney Carriage/Private Hire firms, notices in the premises requesting customers to respect neighbours.
 - Winding down periods, particularly in public houses and night clubs, etc.

The licensing authority will normally expect to see proven protective measures included in the operating schedule. Applicants are encouraged to consider the measures set out in this policy and the schedule in forming their operating schedules.

D) NATIONAL GUIDANCE

The following is taken from the National guidance issued under Section 182 of the Licensing Act 2003:

Late Night Refreshment

Schedule 2 of the 2003 Act provides a more precise definition of what constitutes the provision of late night refreshment than that which had existed under earlier legislation. Licensing Authorities, in Greater London particularly, should note the differences. For example, shops, stores and supermarkets selling food that is immediately consumable from 11pm will not be licensable as providing late night refreshment unless they are selling hot food or drink. The legislation will impact on those premises such as night cafes and takeaway food outlets where people may gather at any time from 11pm until 5am, giving rise to the possibility of disorder and disturbance. The licensing regime will not catch premises only selling immediately consumable food, such as bread, milk, or cold sandwiches in all night grocery shops and which do not tend to attract these problems.

Some premises provide hot food or drink between 11pm and 5am by means of vending machines established on the premises for that purpose. A supply of a hot drinks by a vending machine will not be a licensing activity and will be exempt from the Licensing 2003 Act so long as the machine is one to which the public have access and it is operated by members of the public without any involvement of the staff on the premises with a payment being inserted into the machine, although this exemption does not apply to hot food. Premises supplying hot food will charge by vending machine will be licensable when the food has been heated for the purposes of supply, even though no staff on the premises have been involved in the transaction.

It is not expected that the provision of late night refreshment as a secondary activity in licensed premises open for other purposes such as public houses, cinemas or nightclubs or casinos, should give rise to the need for significant additional conditions. The Secretary of State considers that the key licensing objectives in connection with late night refreshment are the prevention of crime and disorder and public nuisance and it is expected that both will normally have been adequately covered in the conditions relating to the other licensable activities on such premises.

The supply of hot drink, which consists of or contains alcohol is exempt under the 2003 Act as late night refreshment because it is caught by the provisions relating to the sale or supply of alcohol.

The supply of hot food or hot drink for no charge it is not a licensable activity. However, where any charge is made for either, admission to the premises or for some other item in order to obtain the hot food or drink, this will not be regarded as “free of charge”. Supplies by a registered charity or anyone authorised by a registered charity are also exempt. Similarly, supplies made on vehicles – other than when they are permanently or temporarily parked – are also exempt.

Supplies of hot food or hot drink at the appropriate time are exempt from the provisions of the 2003 Act if there is no admission to the public of the premises involved and if they are supplied to:

- a) a member of a recognised club supplied by the club
- b) persons staying overnight in a hotel, guesthouse, lodging house, hostel, caravan or camping site, or any other premises whose main purpose is providing overnight accommodation
- c) an employee supplied by a particular employer, (a staff canteen)
- d) a person who is engaged in a particular profession or who follows a particular vocation (eg a tradesman carrying out work at a particular premises)
- e) a guest at any of the above

E) OBSERVATIONS

The Sub Committee is obliged to determine this application with a review to promoting the licensing objectives which are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance
- The protection of children from harm

In making its decision, the Committee is also obliged to have regard to national guidance and the Council's own Licensing Policy.

Of course, the Committee must have regard to all of the representations made and the evidence it hears.

The Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- a) grant the application as asked
- b) modify the conditions of the licence, by altering or omitting or adding to them
- c) Reject the whole or part of the application