

## LICENSING SUB-COMMITTEE – 13 FEBRUARY 2020

### APPLICATION TO VARY A PREMISES LICENCE

#### INDIA COTTAGE, 35 CHRISTCHURCH ROAD, RINGWOOD

#### 1. INTRODUCTION

- 1.1 The purpose of the report is to provide Members with information at the hearing to determine an application to vary a premises licence under section 34 of the Licensing Act 2003. The premises being India Cottage, 35 Christchurch Road, Ringwood, BH24 1DG.

#### 2. BACKGROUND INFORMATION

- 2.1 India Cottage is an Indian Restaurant situated on Christchurch Road Ringwood. The premises is within a conservation area and is surrounded by older properties. However, Elizabeth Court, a residential development has been built next door to the restaurant in recent years. A location plan is provided at **Appendix 1**. There are commercial properties opposite and along the road, as can be seen in photos 2, 3 and 4 in **Appendix 2**.
- 2.2 The premises has held a licence issued under the Licensing Act 2003 since November 2005, however, it had operated under previous legislation for some years. The restaurant can provide seating for 54 inside and the outside seating area to the rear of the property has been added to provide seating for approximately 16 additional patrons. There are also two dining beach huts to the rear of the property which can seat four persons in each. The roof of the external seating area is made of a corrugated Perspex construction and heaters are provided for customer comfort (see photo 10 in **Appendix 2**).
- 2.3 The outside seating area has existed for at least 6 years, albeit initially in the form of a pergola. However, there is no provision on the current licence for licensable activities in this outside area, which has been developed to provide improved facilities for customers. The application seeks to address this, as well as making additional variations to the current licence as set out below.
- 2.4 The doors to this outside area are of a bi-fold construction and can be opened to effectively merge the inside and outside when required.
- 2.5 Photographs of the property, front and rear are provided for Members as **Appendix 2**. These photographs also reference the properties of neighbours who have made relevant representations.
- 2.6 The photographs are described as follows:-
- Photo 1- Front of premises and neighbouring properties
  - Photo 2- Front of premises
  - Photo 3- Properties opposite
  - Photo 4- Church opposite
  - Photo 5- Car park and Elizabeth Court properties
  - Photo 6- Rear customer car park
  - Photo 7- Rear of premises looking towards entrance
  - Photo 8- Side view of outdoor seated area
  - Photo 9- View of outdoor seated area looking towards restaurant
  - Photo 10- Roof of outdoor seated area
  - Photo 11- Heater in outdoor seated area

Photo 12- Heaters  
Photo 13- Restaurant and rear bi-fold doors  
Photo 14- Bar  
Photo 15- Covered outdoor seating area  
Photo 16- Beach hut dining facilities  
Photo 17- Rear of premises and bins

2.7 The applicant has also supplied further photographs of the outdoor seating area and has requested that these are included in the report, these are provided at **Appendix 3**.

Photo 1- External view at night  
Photo 2- Beach hut dining  
Photo 3- Illuminated bench seating  
Photo 4- Bench seating and heater

2.8 The current premises licence (number 713) is provided as **Appendix 4** and it permits the following activities:-

Monday to Sunday 12:00 to 14:30 and 18:00 to 00:00

- Recorded music (Indoors)
- Supply of alcohol (on the premises)

The opening hours of the premises are also Monday to Sunday 12:00 to 14:30 and 18:00 to 00:00

2.9 The current plan attached as Annex 4 to the licence is also provided, however this does not include the outside seating area. Mr Shadeq Ahmed Mannan is the Premises Licence Holder and also the Designated Premises Supervisor (DPS).

### 3. THE APPLICATION

3.1 On 23 December 2019 the Council received an application to vary the premises licence from Mr Shadeq Ahmed Mannan ('the applicant'). The application is attached as **Appendix 5** (blank pages removed).

3.2 The variation seeks the following:-

**Live music (in and outdoors)**

18:00 to 00:00 Thursday, Friday and Saturday

**Recorded music (Outdoors)**

12:00 to 14:30 and 18:00 to 00:00

**Late Night Refreshment (in and outdoors)**

23:00 to 00:00 Monday to Sunday

**New plan** submitted to include outdoor seated area and dining huts.

There are no proposed changes to the sale of alcohol or the opening times, the terminal hour for these being Monday to Sunday 12:00 to 14:30 and 18:00 to 00:00.

3.3 Members should note that legislative exemptions permit amplified or non-amplified live and recorded music to be played from 08:00 to 23:00 daily on any premises licensed for the sale of alcohol for consumption on the premises. However, any later or earlier times will need to be included on a premises licence.

3.4 This is a full variation application and, therefore, consultation by way of public notices and notification to the Responsible Authorities must take place during a 28 day period.

The application has been correctly advertised both on the premises and in the local newspaper, thereby fully satisfying the requirements under the Licensing Act 2003.

- 3.5 Within the application, (section M), the applicant submitted a number of conditions to be placed on the premises licence, should any or part of the application be granted. In accordance with Statutory Guidance issued under Section 182 of the Licensing Act 2003, conditions placed on a licence are required to be meaningful, precise, enforceable, unambiguous, prescriptive and clear. Therefore, these have been amended by the Licensing Manager and agreed by the applicant and are provided as **Appendix 6**. Amendments are also proposed to existing conditions which were included on the licence. Both sets of conditions are provided in the appendix and should be considered for imposition by Members in respect of any granted variation of this licence.

#### 4. REQUIREMENTS FOR A HEARING

- 4.1 The Licensing Authority must hold a hearing to determine the application where relevant representations addressing the licensing objectives are made. These objectives being:

- 1) The prevention of crime and disorder;
- 2) Public safety;
- 3) The prevention of public nuisance; and
- 4) The protection of children from harm.

- 4.2 Members are referred to statutory guidance issued by the Home Office under section 182 of the Licensing Act 2003 dated April 2018, in particular the sections on the licensing objectives and variations.

<https://www.gov.uk/government/publications/explanatory-memorandum-revisedguidance-issued-under-s-182-of-licensing-act-2003>

- 4.3 In determining the application, the Licensing Sub-Committee must give appropriate weight to:

- 1) The steps that are appropriate to promote the licensing objectives;
- 2) The relevant representations presented by all the parties;
- 3) Home Office guidance;
- 4) The Council's own Statement of Licensing Policy.

#### 5. REPRESENTATIONS RECEIVED

- 5.1 During the representation period the Licensing Authority received a representation from the Environmental Health Officer responsible for Environmental Protection, acting in the capacity as a Responsible Authority. The representation submitted by the Environmental Health Officer (**Appendix 7**) raises concerns with the use of the outside seating area for licensable activities until midnight, as applied for.
- 5.2 The Environmental Health Officer's recommendation is that the outside seated area should not be used to provide live or recorded music or hot food after 23:00. In addition, they state that, in their opinion, this outside area should also not be used by customers to consume alcohol after 23:00. A number of conditions have also been suggested to support the Prevention of Public Nuisance licensing objective.

- 5.3 There have been no other representations from other Responsible Authorities (save for comments by the Police asking for the current conditions to be re-visited in line with the Home Office Guidance) as included in **Appendix 6**.
- 5.4 A neighbour in Elizabeth Court has submitted a relevant representation objecting to the application. The neighbour further raises an issue regarding noise from the premises in the early hours of New Year's Day. Licensing records confirm that a temporary extension of hours was not received for this period. In addition, there is a relevant representation signed by the residents of the occupied flats in Elizabeth Court also objecting to the application. These are provided as **Appendix 7**. Both relevant representations raise concerns regarding public nuisance from noise at the premises.

## **6. THE HEARING**

- 6.1 This hearing is governed by the Licensing Act 2003 (Hearings) Regulations 2005. These Regulations provide that hearings should be held in public unless the Licensing Authority considers that the public interest in excluding the public outweighs the public interest in the hearing taking place in public.
- 6.2 The applicant and those parties making representations have been invited to attend and have been provided with this report and the procedures to be followed at the hearing.
- 6.3 The applicant and those who have made relevant representations are entitled to address the Sub-Committee and to ask questions of the other party.

## **7. RIGHT OF APPEAL**

- 7.1 It should be noted that the applicant and those who have made relevant representations may appeal the decision made by the Licensing Sub-Committee to the Magistrates' Court. The appeal must be lodged with the Magistrates' Court within 21 days of the notification of the decision.
- 7.2 In the event of an appeal being lodged, the decision made by the Licensing Sub-Committee remains valid until any appeal is heard and the decision made by the Magistrates' Court.

## **8. CONCLUSION**

- 8.1 The Licensing Sub-Committee must, having regard to the application and any relevant representations take such steps as it considers appropriate for the promotion of the licensing objectives. Members may:

- 1) Modify the conditions of the licence; or
- 2) Reject the whole or part of the application.

(and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added).

## **9. RECOMMENDATION**

- 9.1 That the Licensing Sub-Committee determines the application to vary the premises licence.

## 10. APPENDICES

Appendix 1- Location plan

Appendix 2- Photographs of the premises and surrounding area

Appendix 3- Photographs submitted by the applicant

Appendix 4- Current premises licence number 713

Appendix 5- Variation application

Appendix 6- Revised conditions

Appendix 7- Representations from Environmental Health Officer and neighbours

### **Further information:**

Christa Ferguson

Licensing Manager

Tel: 023 8028 5505

Email: [licensing@nfdc.gov.uk](mailto:licensing@nfdc.gov.uk)