

# Licensing Sub-Committee

19 March 2018



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|------------------------------|---------------------------------------------------------------------------------------------------------------|------|---------|
| <b>Title</b>                 | Application for a Premises Licence at Unit 5 Thames Edge Court, Clarence Street, Staines-upon-Thames TW18 4BU |      |         |
| <b>Purpose of the report</b> | For determination                                                                                             |      |         |
| <b>Report of</b>             | Deputy Chief Executive                                                                                        | Ward | Staines |
| <b>Contact</b>               | Rob Thomas, Interim Principal Licensing Officer (PLO), 01784 446439                                           |      |         |

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| <b>Description and Location</b> | <p>Unit 5 is part of a residential and commercial complex.</p> <p>There are four commercial units located on the ground floor and basement levels and the rest of the building comprises three floors of residential apartments.</p> <p>Two of the other commercial units currently operate as restaurants and one is a bar/restaurant.</p> <p>A plan of the premises is attached as <b>Appendix A</b>.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>The Application</b>          | <p>The application is to permit:</p> <ul style="list-style-type: none"><li>• the sale of alcohol for consumption on the premises 07:00 – 01:00, seven days a week</li><li>• provision of films 08:00 – 23:00, seven days a week</li><li>• provision of indoor sporting events 08:00 – 23:00 Sunday to Thursday; and 08:00 – 00:00 Friday and Saturday</li><li>• provision of live and recorded music 08:00 – 01:00, seven days a week</li><li>• provision of performances of dance 09:00 – 01:00, seven days a week</li><li>• provision of anything of a similar description to live music, recorded music or performances of dance 08:00 – 01:00, seven days a week</li><li>• late night refreshment 23:00 – 01:00, seven days a week</li></ul> <p>The opening hours of the premises are noted as 07:00 – 02:00 seven days a week, with mention of the premises being open until 03:00hrs 20-30 nights a year (since the application was submitted, it has been clarified that these additional 20-30 nights will be applied for using Temporary Event Notices [TENs], though the applicant has been advised that the Licensing Act 2003 only permits 12 of these a year, per premises).</p> <p>Opening hours until 05:00 on Christmas Eve and New Years Eve have been specified, though for the avoidance of confusion – no seasonal variations to licensable hours have been specified, so in order to</p> |

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|                        | <p>conduct any licensable activity beyond the hours specified above the applicant would need to serve TENs for these occasions.</p> <p>The application form is attached in full at <b>Appendix B</b>.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Representations</b> | <p>Relevant representations have been received from the following responsible authorities: -</p> <p>Licensing Enforcement Officer, Lucy Hopkins (<b>Appendix C</b>);</p> <p>Surrey Police (<b>Appendix D</b>); and</p> <p>Senior Environmental Health Officer, Leslie Spearpoint (<b>Appendix E</b>).</p> <p>47 relevant representations have been received from other persons living nearby and are attached at <b>Appendix F</b>.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Options</b>         | <ol style="list-style-type: none"> <li>1. The Sub-Committee is requested to consider the application for the grant of a premises licence on its merits.</li> <li>2. Having had regard to the representations, the Sub-Committee must decide on one or more of the following options as it considers appropriate for the promotion of the licensing objectives: <ul style="list-style-type: none"> <li>• <b>To grant the application subject only to such conditions as are consistent with the operating schedule and the mandatory conditions; or</b></li> <li>• <b>To grant the application and modify the conditions of the licence, by alteration, addition or omission; or</b></li> <li>• <b>To exclude from the scope of the licence any of the licensable activities to which the application relates; or</b></li> <li>• <b>To refuse to specify a person in the licence as the premises supervisor; or</b></li> <li>• <b>To reject the whole or part of the application.</b></li> </ul> </li> </ol> |

## **1. Premises history**

- 1.1 The premises has historically operated as several different businesses (Coco's, Kandi Klub, Diablos and Diesel), as a "nightclub".
- 1.2 In its most recent incarnation (as Soirée), it was run – according to the previous licence holder – as a "bar/restaurant". However, it would be fair to say that the operation changed over time into something which more closely resembled a business most people would regard as a "nightclub".
- 1.3 Over the years, when the premises has been open the Council and other responsible authorities have consistently received complaints in relation to the premises, commonly:
  - drunk and disorderly behaviour including shouting, swearing and fighting;
  - noise disturbance from regulated entertainment within the premises, from smokers in the alleyway adjacent to the premises and people arriving and leaving the premises;
  - anti-social behaviour;
  - lewd behaviour;
  - criminal damage to the property of residents;
  - cigarette smoke smells;
  - litter;
  - vehicles parking dangerously in Clarence Street, on the pavement and blocking access with a view to dropping off and picking customers up; and
  - the premises not being fit for use as a nightclub due to its close proximity to residential properties.
- 1.4 Whilst these complaints were received in response to operations run by former licence holders, it is important to note that in a decision notice issued to Howlaw (431) Ltd. in January 2010 with respect to an application for a Premises Licence at the address, the Sub-Committee was persuaded by the evidence that these premises are not suitable for use as a nightclub and are not suitable for any form of regulated entertainment without the imposition of conditions to ensure that noise does not cause a disturbance to residents.

## **2. Application Summary**

- 2.1 On 6 November 2017, Spelthorne's Licensing department, Surrey Police Licensing Officer Jacquie Clark and Senior Environmental Health Officer (SEHO) Leslie Spearpoint met with a prospective applicant for a new Premises Licence at the address. The prospective applicant, Bakshish Ltd., was accompanied by Adrian Goldsmith from Howlaw (431) Ltd., an agent who purported to be the person who would co-ordinate and submit the application, and an acoustic specialist.
- 2.2 The purpose of the meeting was to discuss the history of the premises in light of a proposal for a new business which was described as a media-driven themed restaurant, similar to that found in London and Dubai – whereby projections on the wall and accompanying background music / sound effects would transport the diner to different locations through use of media-created

ambience. The applicant said they wished to “bring the London vibe” to Staines, and explained that by this they meant that they wanted to provide an executive experience, selling high-end food at an elevated price in comparison to other outlets in Staines. It was also their intention to provide facilities for local businesses to host meetings and functions.

- 2.3 Officers at the meeting were keen to divert the applicant’s attention to the history of the premises and the problems associated with it. A focus was placed on the problems with noise and the issues with the structure which exacerbated them. With this in mind, the Licensing department stressed to the applicant how contentious the application was likely to be and that it was likely to draw representations and subsequently be determined by a Licensing Sub-Committee.
- 2.4 An application was received for a Premises Licence on 21 December 2017. The application was rejected on 22 December 2017, as there were issues which needed rectifying (details were omitted from the application form, the plan was inadequate, and the consent form showed some inconsistencies with regard to the DPS’s address and personal licence number).
- 2.5 A subsequent application was submitted on 23 January 2018, validated and processed accordingly.
- 2.6 Consultation notices were displayed in accordance with the Licensing Act 2003, at the premises itself and in the 2 February 2018 edition of the Surrey Advertiser.
- 2.7 The application in its entirety was also available for inspection via Spelthorne Borough Council’s Licensing Online system, for the duration of the 28-day consultation period.

### **3. Promotion of the Licensing Objectives**

- 3.1 The Licensing Objectives, together with examples from Government Guidance, are set out below for information:

#### **Prevention of crime and disorder**

- Criminal behaviour on, or directly attributable to, the premises
- Under age sales
- Anti-social behaviour on, or directly attributable to, the premises

#### **Public safety**

- Overcrowding
- Fire safety
- Emergency exits
- Anything related to the safety of the public at the premises

#### **Prevention of public nuisance**

- Noise / light or odour nuisance
- Litter

#### **Protection of children from harm**

- In relation to sales of alcohol, the most relevant issue under this licensing objective is the prevention of sales of alcohol to under 18s

- 3.2 Section 18 of the application form (hereafter known as the 'Operating Schedule') at **Appendix B**, details the proposed steps to be taken to promote the licensing objectives.
- 3.3 Unfortunately, the steps put forward by the applicant weren't clear, didn't always make sense, and – as offered – would not have formed enforceable licence conditions. The Licensing Act 2003 provides local authorities the facility to reword points offered on the Operating Schedule so that they are clearer and more enforceable. This typically involves minor adjustments and word substitutions which do not alter the meaning of the conditions, and is done at such a time as when the licence is granted. However, given the circumstances, Spelthorne's PLO opted to amend them in advance, and rewrote the entire Operating Schedule for consideration by the applicant.
- 3.4 Following extensive liaison between the applicant, Spelthorne's Licensing department, Surrey Police, Environmental Health and Surrey County Council's Child Employment & Strategy; the applicant submitted a revised version of the Operating Schedule (attached as **Appendix G**) on 21 February 2018 – having agreed to numerous suggestions by the various authorities.
- 3.5 Should the licence be granted, the points on this version of the Operating Schedule will be converted into enforceable conditions which will be attached to the licence to ensure the promotion of the licensing objectives.

#### **4. Representations**

##### **i) Representations from Responsible Authorities**

- 4.1 A relevant representation has been received from Spelthorne Borough Council's Licensing Enforcement Officer (LEO), Lucy Hopkins and is attached at **Appendix C**. Miss Hopkins' representation mainly cites grounds based on the prevention of public nuisance, specifying:
- a concern over how smoking will be regulated;
  - ambiguity over the intended operation, based on the licensable activities and hours applied for within the application; and
  - shared concerns with Environmental Health over the potential for noise disturbance.
- Miss Hopkins also expressed a concern about whether or not someone new to the licensing trade will possess the knowledge and ability to manage a premises of this size and scale.
- 4.2 A relevant representation has been received from Surrey Police and is attached at **Appendix D**. It explains that the Operating Schedule undermines the licensing objectives by being ambiguous and in some places, contradictory. Surrey Police are therefore unclear as to the steps the applicant is going to take to promote the objectives. Surrey Police cite the prevention of public nuisance as well, referencing the lack of a designated smoking area – amongst other points.
- 4.3 A relevant representation has been received from Spelthorne Borough Council's SEHO, Leslie Spearpoint and is attached as **Appendix E**. It is based on the prevention of public nuisance – specifically with reference to

noise. Mr Spearpoint refers in detail to the historical issues with noise emanating from the premises, and explains measures that need to be taken in order to resolve the likelihood of recurrence if any form of regulated entertainment is to resume at the address.

- 4.4 There is a shared concern from the authorities that - in spite of the applicant's assurances that the premises is going to be a "bar/restaurant" - on paper, the licensable activities as applied for appear more suited to a "nightclub" type operation.

**ii) Representations from 'other persons'**

- 4.5 In total, 47 relevant representations have been received from other persons and are attached at **Appendix F**.
- 4.6 The grounds for objection are summarised below in relation to each Licensing Objective.

**Prevention of crime and disorder**

- Drug-taking and selling
- Anti-social behaviour, including fighting amongst customers, trespassing and criminal damage
- Public urination
- Lewd behaviour

**Public safety**

- Potential for drunk people to fall into river
- Cars stopping to drop off / collect customers have no alternative but to stop in an unsafe manner on Clarence Street, due to the location of the premises
- Bottles, glasses and consequent broken glass outside
- Vomit outside

**Prevention of public nuisance**

- Noise from music, customers, and cars respectively
  - Increase in the number of cars (both taxis and private) parking inappropriately / dangerously
  - Congregating smokers will cause noise and pollution
  - Increased litter and cigarette stubs
- 4.7 Issues which are not relevant to the licensing objectives and cannot be taken into account by a Licensing Sub-Committee:
- Objections on the basis of need, or lack of need, for premises to sell alcohol
  - Parking, or other issues relating to general amenity rather than licensing objectives

**5. Planning permissions**

- 5.1 The PLO liaised at length with Spelthorne's Planning Officer, Vanya Popova. Ms Popova confirmed that the most recent Planning usage permission allowed use of this premises as a bar/restaurant.
- 5.2 The current Planning usage permission does **not** permit the premises to be used as a "nightclub" and anyone wishing to use it for this purpose would need to consult with the Planning department before doing so. Failure to do so may result in enforcement action.

## **6. Licensing Policy**

- 6.1 The following sections of the Council's Licensing Policy are relevant.
- Section 24.0 - Crime and Disorder
  - Section 24.5 – Public Safety
  - Section 24.7 - Public Nuisance

## **7. National Guidance**

- 7.1 The relevant section of the National Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 on determining Premises Licence applications is relevant in the consideration of this application, and is attached at **Appendix H**.

## **8. Making a decision**

- 8.1 In making its decision the Sub-Committee must promote the licensing objectives only, taking into account National Guidance and Spelthorne's Statement of Licensing Policy.
- 8.2 The Sub-Committee must give reasons for its decision.
- 8.3 It is only where additional and supplementary measures are appropriate to promote the licensing objectives that there will be a requirement for appropriate, proportionate conditions to be attached.
- 8.4 Conditions on licences must:
- be precise and enforceable;
  - be unambiguous;
  - not duplicate other statutory provisions;
  - be clear in what they intend to achieve; and,
  - be appropriate, proportionate and justifiable.
- 8.5 It is important in considering the promotion of the licensing objective on prevention of public nuisance, that the Sub-Committee focuses on any disproportionate or unreasonable effect the licensable activities at the premises, have on persons living and working in the area around the premises.
- 8.6 In determining the application, the Sub-Committee will need to consider whether there is actual evidence of problems in relation to the licensing objectives at this premises. Where the representations are unable to provide

evidence of observed problems, as in the case of a new licence application, the Sub-Committee should be convinced that there is a very real threat of the fears or the dangers described in the representations actually occurring, before applying any conditions to address such fears or dangers.

**Appendices:**

**Appendix A – Location Plan**

**Appendix B – Application**

**Appendix C – Representation from Spelthorne Borough Council's Licensing department**

**Appendix D – Representation from Surrey Police**

**Appendix E – Representation from Spelthorne Borough Council's Environmental Health department**

**Appendix F - Representations from other persons**

**Appendix G – Revised Operating Schedule submitted by applicant on 21 February 2018**

**Appendix H – Section 9 of the National Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003, on Determining Premises Licence Applications**