

Licensing Sub-Committee Meeting

16/03/2020



Subject	Application for a new Premises Licence at Fora Restaurant, 13-15 High Street, Staines, TW18 4QY.		
Purpose	For determination		
Report of	Deputy Chief Executive	Ward	Staines
Contact	Paul Morey, Licensing Enforcement Officer, (01784) 446450		

Description and Location	<p>Fora Restaurant is a Turkish restaurant, part of a chain of restaurants, located on the High Street in Staines, serving food and alcohol until 11pm.</p> <p>See plan attached at Appendix A</p>
The Application	<p>The application is for a new Premises Licence to carry on a business which involves the use of the premises for licensable activities, namely, the sale of alcohol from 11am to 11pm.</p> <p>The application also proposes amendments to the operating schedule and further conditions following a previous unsuccessful application.</p> <p>The application form and revised operating schedule are attached at Appendix B.</p>
Applicant	Sadettin Guler
Agent	Benchmark Licensing
Representations	Relevant representations have been received from 1 relevant authority attached at Appendix C .
Options	<ol style="list-style-type: none">1. The Sub-Committee is requested to consider the application for the grant of a new Premises Licence on its merits.

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:

- **To grant the application subject only to such conditions as are consistent with the operating schedule and the mandatory conditions; or**
- **To grant the application and modify the conditions of the licence, by alteration, addition or omission or**
- **To reject the whole or part of the application.**

1. Background

- 1.1 On 19 October 2019, an application for a new Premises Licence was submitted by Mr Halit Ertas, an agent from North Point UK, on behalf of Fora (**Appendix D**). The application outlined the proposed licence holder and Designated Premises Supervisor (DPS) as Mr Gurhan Cetin.
- 1.2 The Licensing Department at Spelthorne Borough Council received no valid objections to the application.
- 1.3 On 2 January 2020, the Licensing Department spoke with Mr Ertas to confirm that the Premises Licence was to be granted and no representations had been received. An email was also sent to Mr Ertas on 3 January 2020 from the Licensing Department to advise that the Department had taken steps to issue the Premises Licence however there would be a delay in granting the Licence due to IT issues and staff availability (**Appendix E**). The email also included a request for Mr Ertas to provide the Licensing Department with a copy of the newspaper article advertising Fora's application, as required under s17(5) of the Licensing Act 2003.
- 1.4 On 14 January 2020, the Licensing Department were informed by Mr Ertas that the application had not been advertised as required as the applicant for Fora had not paid for the advertisement. The Licensing Department advised Mr Ertas that licensable activities must cease with immediate effect (**Appendix F**).
- 1.5 On 14 January 2020 the Licensing Department also spoke with Mr Cetin by telephone to advise that the Fora Premises Licence application was void as the statutory requirement to advertise had not been complied with. Mr Cetin was advised to submit a new Premises Licence application form and make a further payment. Mr Cetin was strongly advised to remove all alcohol from display and not to sell alcohol until a subsequent application was approved. Mr Cetin was also informed by the Department that a representation would be submitted by a Licensing Officer representing the Department.
- 1.6 Following discovery of Fora's non-compliance with advertising requirements, Officers of the Licensing Department met with Mr Sadettin Guler (Director of Fora), Mr Gurhan Cetin and Mr Soner Mulougim (previous manager at the Fora) on 15 January 2020. During the meeting, Mr Guler informed the Licensing Officer that he had thought the advert had been circulated as he had paid the agent on 24 October 2019 to put the advert out (**Appendix G**). The Officers advised that a new Premises Licence application would need to be submitted for Fora and suggested that a licensing solicitor assist with their application. The Licensing Officers noted various bottles of alcohol behind the counter and bar of the restaurant. The Officers also advised that customers who had bookings should be informed that the restaurant does not yet have a Premises Licence to sell alcohol. The Officers were informed by Mr Guler, Mr Cetin and Mr Mulougim that no alcohol had been served at the restaurant

since 31 December 2019. The meeting had been documented in a logbook of the Officers (**Appendix H**).

- 1.7 On 16 January 2020, the Licensing Department were notified by Surrey Police that a Designing Out Crime Officer was sold a bottle of Prosecco at Fora Restaurant during a visit off duty on 15 January 2020. A witness statement has been provided at **Appendix I**.
- 1.8 On 17 January 2020, letters were sent by Licensing Officer, Lucy Catlyn, to Gurham Cetin and Sadettin Guler outlining the sequent of events which have led to the Licensing Department taking action to issue a representation against an application for a Premises Licence by Fora Restaurant (**Appendix J**).
- 1.9 On 20 January 2020, Licensing Officers visited Fora Restaurant and met with Mr Mulougim. The Licensing Officers noted alcohol bottles in the fridge and behind the bar of the restaurant. Mr Mulougim explained that he had made a mistake on Thursday 16 January by giving 6 glasses of wine to customers without charge and also provided free wine to customers on Friday 17 January. The Licensing Officers advised Mr Mulougim that alcohol could not be displayed at the Restaurant (**Appendix K**).
- 1.10 On 21 January 2020, a new application for a Premises Licence for Fora Restaurant was submitted by agent, Reba Danson, of Benchmark Licensing along with a revised operating schedule (**Appendix B**).
- 1.11 On 27 January 2020, Licensing Officers visited the Fora Restaurant to view CCTV footage for the evening of 15 January 2020. The footage demonstrated Mr Mulougim serving alcohol to customers.
- 1.12 On 31 January 2020, Licensing Officers visited the Fora Restaurant and met with interim manager, Marcos Sebastian. The Officers took a copy of the CCTV for 15 January 2020 and till receipts for 15 January 2020 which detailed the sale of alcohol (**Appendix L**).
- 1.13 On 18 February 2020, a representation was submitted by the Licensing Authority at Spelthorne Borough Council, outlining the objections to granting a Premises Licence to Fora Restaurant (**Appendix C**).
- 1.14 On 19 February 2020, Ms Reba Danson challenged the validity and relevance of the representation in light of the Licensing Act 2003 (**Appendix M**).
- 1.15 Ms Danson's email of 19 February was reviewed by the Head of Governance at Spelthorne Borough Council who confirmed that the Licensing Authority is under a statutory obligation to promote and uphold the licensing objectives and concluded that the representation was valid (**Appendix N**).

2. Application Summary

- 2.1 The application seeks to apply for a Premises Licence to carry out licensable activities, namely, the sale of alcohol.

2.3 The required notices have been displayed and published in the Surrey Advertiser on 31 January 2020 (**Appendix O**).

3. Representations

3.1 i) Representations from Responsible Authorities (RA's)

There has been one relevant representation received from an RA

3.2 The grounds for objection are summarised below in relation to each Licensing Objective.

Prevention of crime and disorder

The representation by the RA outlines concerns over the ability of the proposed DPS and restaurant owner, Mr Sadettin Guler, to uphold the licensing objectives in taking steps to prevent crime and disorder. Mr Guler has not cooperated with the Licensing Department which has led to unlawful activities taking place at the Fora Restaurant. Under section 136 of the Licensing Act 2003, it is a criminal offence to carry out licensable activities without authorisation.

The representation makes reference to chapter 2.5 of section 182 guidance outlining that it is the employer's responsibility to ensure managers are competent and well trained. Mr Guler, acting as director of Fora, failed to comply with advertising requirements under s17(5) of the Licensing Act 2003 and further failed to oversee and train staff, leading to the unlawful sale of alcohol by Mr Soner Mulougim (previous manager at the Fora) after clear instructions provided by the Licensing Officers.

Under the section 182 guidance, it will normally be the responsibility of the Premises Licence holder as an employer, not the licensing authority to ensure managers appointed at the premises are competent and appropriately trained. As the DPS is the key individual responsible for day to day management of premises by the Premises Licence holder, it is important that the individual appointed is capable of taking appropriate steps to promote the licensing objectives.

Although a revised operating schedule has been provided by the new agent for the applicant, the previous operating schedule outlined in section 18 of the Premises Licence application dated 19 October 2019 failed to be complied with and therefore there is uncertainty in relation to future compliance of the objectives outlined.

As the proposed DPS and restaurant owner has undermined the licensing objective to prevent crime and disorder, a representation has been submitted to determine the application for a new Premises Licence

It is important to note that under the Licensing Act 2003, each responsible authority has equal standing and may act independently without waiting for representations from any other responsible authority.

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

4. Licensing Policy

4.1 The following sections of the Council's Licensing Policy are relevant;

- 3.0 LICENSING OBJECTIVES AND LICENSABLE ACTIVITIES
- 9.0 ADMINISTRATION AND DECISION MAKING
- 25.0 CRIME & DISORDER

5. National Guidance

5.1 The relevant section (chapter 9) 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.

6. Making a decision

6.1 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.

6.2 The Sub-Committee must give reasons for its decision.

6.3 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.

6.4 Conditions on licences must:

- be precise and enforceable;
- not be unambiguous;
- not duplicate other statutory provisions;
- be clear in what they intend to achieve; and,
- be appropriate, proportionate and justifiable.

6.5 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 – site plan

Appendix B – application form and revised operating schedule dated 21.01.10

Appendix C – representation from Licensing Authority 18.02.20

Appendix D – application form dated 19.10.19

Appendix E – email from Licensing Officer, Lucy Catlyn, to North Point UK regarding the Premises Licence dated 03.01.20

Appendix F – email correspondence between Licensing Officer and Mr Halit Ertas regarding advertising of Fora Restaurant

Appendix G – email from Sadettin Guler with screenshot of payment for advertisement

Appendix H – logbook of Licensing Officer, Lucy Catlyn, outlining meeting on 15.01.20

Appendix I – witness statement of Victor Norman Smith

Appendix J – letters from Licensing Officer to Sadettin Guler and Gurhan Cetin dated 17.01.20

Appendix K – logbook of Licensing Officer, Lucy Catlyn, outlining meeting on 20.01.20

Appendix L – copies of receipts of alcohol sold at Fora Restaurant on 15 January 2020

Appendix M – email from Reba Danson to Senior Environmental Health Officer, Tracey Wilmott-French, challenging the representation on 19.02.20

Appendix N – email from Licensing Officer, Lucy Catlyn, to Reba Danson dated 28.02.20

Appendix O – confirmation of advertisement of Fora Restaurant

Appendix P – chapters 1-3 and chapter 9 of the Revised Guidance issued under section 182 of the Licensing Act 2003 dated April 2018

Appendix Q – sections 1-4, 13, 17, 136 and 182 of Licensing Act 2003

Appendix R – chapters 3, 4, 9 and 25 of the Spelthorne Borough Council Statement of Licensing Policy 2019 - 2024

Appendix S – chapter 6 of the Alcohol licensing: using case law guidance, East Lindsey District Council v Abu Hanif

Appendix T – Webpage of Spelthorne Borough Council regarding Premises Licences