

Meeting	Licensing Committee
Portfolio Area	Communities, Community Safety and Equalities
Date	7 December 2023

APPLICATION FOR A VARIATION OF PREMISES LICENCE – TASTE OF INDIA, 48A HIGH STREET, STEVENAGE. SG1 3EF.

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1 PURPOSE

- 1.1 To determine an application for the Variation of a Premises Licence for Taste of India, 48a High Street, Stevenage. SG1 3AW. The Planning Authority, Environmental Health and local residents have made representations.

2 RECOMMENDATIONS

- 2.1 That the Committee reviews the evidence presented by the responsible authorities, local residents and applicant (and/or representatives) and determines what action should result in respect of this application, for the grant of a premises licence.

3 SUMMARY OF APPLICATION

- 3.1 Mr MD Shadikur Rahman has applied for the variation of the premises licence for The Taste of India, 48a High Street, Stevenage SG1 3EF. The premises wish to provide hot food/late night refreshment off the premises in

addition to on, by way of delivery. The application also proposes to extend the hours for the provision of late-night refreshment by 30 mins Friday, Saturday, and Sunday, so that late night refreshment is provided between the hours of 23:00 and 00.00 Friday and Saturday and between 23:00 and 23:30 on a Sunday.

3.2 The applicant has included with this application, a list of additional conditions which are to be included in the operating schedule to promote the four licensing objectives in light of the proposed variation. These include the following:

- There shall be no delivery of alcohol.
- The premises shall ensure that all orders taken by the premises will be delivered to customers at a bona fide address.
- No deliveries shall be made to an open space.
- Delivery vehicles shall switch off their engines whilst stationary and collecting orders for delivery.
- Delivery vehicles horns shall not be used except in accordance with the Highway Code
- Notices will be displayed at the rear of the premises requesting staff to respect the local residents and use the area quietly.

3.3 This application was accepted as valid and duly made by the Council on 18th October 2023. **A copy of the application is attached at Appendix A.**

4 BACKGROUND INFORMATION

4.1 The Taste of India is a restaurant/takeaway located in a three-storey terraced property on the western side of the High Street. The premises is surrounded by other takeaway food outlets which include the Old Town Fish Bar and The Surma Indian Takeaway. The premises is also located within the Stevenage Old Town Conservation Area.

4.2 There are also residential properties adjacent to the premises and some located on the upper floors. **A location map is attached at Appendix B.**

4.3 The Taste of India currently hold a premises licence which authorises them for the sale of alcohol, 10:00hrs to 23:00hrs Monday – Saturday and between 12:00hrs and 22:30hrs on a Sunday. The provision of late-night refreshment (Inside) 23:00 - 23:30 Monday to Saturday and the playing of recorded music 00:00hrs to 24:00hrs. The hours for the sale of alcohol and the provision of late-night refreshment vary on New Years Eve and Bank Holidays. **A copy of the premises licence and plan is attached at Appendix D.**

4.4 The Licensing Officer carried out an inspection of the premises on 6th November 2023. The premises, at the time of the inspection was not selling alcohol and there was no alcohol being kept on site.

- 4.5 The Taste of India closed the restaurant side of the business during the COVID pandemic. The restaurant has not re-opened, and the business have been operating a takeaway/delivery only service since this time. They were unaware that their premises licence did not authorise them for the provision of late-night refreshment outside of the premises by way of delivery and have subsequently submitted this application for a variation of their premises licence.
- 4.6 Late night refreshment is the provision of hot food and/or drink and becomes a licensable activity between the hours of 23:00 and 05:00. The supply of hot food and/or drinks takes place when it is given to the customer and not when payment is made.
- 4.7 The Surma Indian Takeaway which is located at 44 High Street is authorised for the provision of late-night refreshment between the hours of 23:00 and 01:00. Friday to Saturday and between the hours of 23:00 and 00.30 on a Sunday. The Old Town Fish Bar, which is located at 46 High Street, is authorised for the provision of late-night refreshment between the hours of 23:00 and 04:00 Friday to Saturday and 23:00 to 02:00 on a Sunday.

5 RESPONSIBLE AUTHORITIES

- 5.1 Representations have been made by two of the Responsible Authorities, the Local Planning Authority and Environmental Health.
- 5.2 The Principal Planning Officer and Development Manager for the Local Planning Authority has objected to this application on the basis that the restaurant is now closed, and the premises are currently operating as a hot food takeaway with delivery (Planning use class sui generis) without planning permission and are therefore in breach of the planning regulations. In summary, the proposed variation of the premises licence is not in accordance with the current lawful use of the property as a restaurant (Planning use class E) and is therefore considered unacceptable from a planning perspective. Moreover, as the use is unauthorised, the planning authority has not assessed its suitability with respect to its impact on nearby residential properties from a public nuisance perspective.
- 5.3 Environmental Health have concerns relating to the licensing objective prevention of public nuisance. To summarise, complaints have been received regarding the operations of the Taste of India adversely affecting an adjacent resident. The premises no longer operates as a restaurant, only as a takeaway with delivery staff accessing the premises from the rear. Delivery drivers park on the privately allocated parking spaces to the rear of the resident's home under their openable windows, with their engines running. The regular opening and closing of the metal gate caused continual disturbance. The Food business Operator has now secured the gate open whilst trading, however this still clanks when it is closed at the end of the night. The refuse bin is also placed outside the resident's openable window, prior to collection.

6 INTERESTED PARTIES

- 6.1 Representations have been received from the landlord and tenant of 44a, a residential premises located adjacent to The Taste of India. These representations have been made under all four of the licensing objectives, though predominantly for the objective, 'Prevention of Public Nuisance'. To summarise, there is concern with regards to delivery vehicles parking underneath the windows of the property at 44a High Street. Drivers leave their engines running whilst they collect orders which subsequently cause noxious fumes to enter the property. The family residing at the property have young children and are unable to open their windows to increase ventilation. Rubbish bins are left in the private parking area underneath the windows of the property causing nuisance, with the smell of rotting food entering their property. Persistent use of the rear entrance of The Taste of India is also causing noise disturbance, the gate is left open whilst the business is operating and slams in the wind. There is also concern that the extended hours will lead to increased anti-social behaviour. **Representations are attached at Appendix C.**
- 6.2 The Licensing Officer has liaised with Environmental Health and the applicant to discuss all representations received. Additional conditions have been proposed to the applicant to address the concerns of all persons making representations. The applicant has agreed to voluntarily amend their application to include 4 additional conditions to the operating schedule on the premises licence. These are as follows:
- Delivery vehicles shall not park in the private parking area to the rear of 48a High Street when collecting food orders for delivery.
 - All delivery drivers shall park in the small public car park in Primett Road which is at the rear of 48a High Street when collecting food orders for delivery.
 - The collection of food orders for delivery shall be from the front entrance of 48a High Street from 20:00hrs Sunday to Thursday and from 21:00hrs Friday to Saturday.
 - Waste receptacles shall not be placed within the area designated for private parking at the rear of 48a High Street.
- 6.3 The applicant has also agreed in an email dated 16th November 2023 that the restaurant will re-open in January 2024 as per the lawful use of the property.
- 6.4 The proposals made and subsequently agreed by the applicant to voluntarily amend their application, have been passed to those responsible authorities and other interested parties who have made representations. The Local Planning Authority and Environmental Health have both withdrawn their representations following the amendments made to this application by the applicant.

- 6.5 Environmental Health are happy with the agreed conditions for the premises licence and believe they address the issues raised by the resident of 44a High Street. Environmental Health have advised the premises licence holder, Mr Rahman about the issues with the rattling of the gate when in the closed position. Mr Rahman has advised that he will speak to his builder with regards to resolving the issue.
- 6.6 The Licensing Officer continues to liaise with the landlord and tenant of the residential property adjacent to the Taste of India with regards to their representations. These remain upheld upon the deadline for the publishing of this report.

7 IMPLICATIONS

7.1 Financial Implications

- 7.1.1 There are no financial or resource implications arising from the content of this report.

7.2 Legal Implications

- 7.2.1 The Committee is advised that paragraphs 9.31- 10.10 of the Guidance under section 182 of the Act describe the powers of a Licensing Authority on the determination of an application.
- 7.2.2 The following options are available to the committee under section 18(4) (a) and (d) of the Licensing Act 2003:
- To modify the conditions of the licence
 - To reject the whole or part of the application

7.3 Policy Implications

7.3.1 *Stevenage Borough Council Statement of Licensing Policy 2020 – 2025*

The following sections of the licensing authority's statement of licensing policy apply to this application:

17.2 The Licensing Authority, in determining if the application for a review is relevant, will have regard to the current guidance issued by the Secretary of State under section 182 of the Act in so far as to whether an application is frivolous, vexatious, or repetitious. Representations made by a responsible authority cannot be deemed as being frivolous, vexatious or repetitious.

17.4 In instances where the crime prevention objective is being undermined, revocation, even in the instance of this being a first review of the premises licence, or club premises certificate, will be given serious consideration.

7.3.2 Guidance issued under section 182 of the Licensing Act 2003

The Committee is reminded of the Guidance issued under section 182 of the Licensing Act 2003. These particular sections are relevant to this application:

- Application for Premises Licences paragraphs 8.1 – 8.9
- Determining Applications paragraphs 9.1 – 9.30

7.4 Equalities and Diversity Implications

7.4.1 Any decision by the Committee is based on evidence before it at the meeting; there are no equalities and diversity implications.

7.5 Crime and Disorder

7.5.1 The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the Borough.

8. BACKGROUND DOCUMENTS

BD1 Licensing Act 2003

BD2 Stevenage Borough Council, Statement of Licensing Policy 2020-2025

BD3 Guidance issued under section 182 of the Licensing Act 2003

9 APPENDICES

A Application to vary a premises licence

B Location map

C Representations from Responsible Authorities and interested parties.

D Current Premises Licence and Plan