

**TITLE: APPLICATION FOR THE GRANT OF A NEW PREMISES LICENCE - LICENSING ACT 2003**

Committee: Statutory Licensing Sub-Committee

Date: 22 September 2020

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[V61]

1.0 PURPOSE/SUMMARY OF REPORT

1.1 To determine an application for the grant of a new premises licence in respect of Inferno BBQ, 78 Broad Street, Ely, Cambridgeshire, CB7 7BE

2.0 RECOMMENDATION(S)

2.1 That Members consider the content of this report and all of the evidence provided during the hearing, and determine the application in accordance with the options contained in paragraph 4.2 of this report.

3.0 BACKGROUND/OPTIONS

3.1 Premises History

The premises was previously known as Basmati Indian Cuisine. The premises held a premises licence for alcohol and late night refreshment which was converted during the 2005 transitional period from a restaurant licence. The licence permitted licensable activities on the days/times shown in table 1 below. Due to holding a premises licence, the premises was also permitted to have live and recorded music by virtue of the Live Music Act 2012 and the Legislative Reform (Entertainment Licensing) Order 2014. Opening hours were not restricted, as it was a converted licence. This licence lapsed in 2020 as a result of the previous Limited Company which held the licence being dissolved.

*Table 1*

Licensable Activity	Permitted Hours
Sale by retail of alcohol for consumption on the premises only	11:00 to 00:00 Monday to Saturday
	12:00 to 23:30 Sunday, Good Friday, Christmas Day, New Year's Eve (Sunday)
Late Night Refreshment for consumption on the premises only (table meals)	23:00 to 00:00 Monday to Saturday
	23:00 to 23:30 Sunday, Good Friday, Christmas Day, New Year's Eve (Sunday)

Live and Recorded Music by virtue of the Live Music Act 2012 and the Legislative Reform (Entertainment Licensing) Order 2014.	08:00 to 23:00 Monday to Sunday
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Details of the new application

- 3.4 On 5 August 2020 Inferno BBQ Limited applied for a Premises Licence under section 17 of the Licensing Act 2003 for Inferno BBQ, 78 Broad Street, Ely, CB7 7BE (**Appendix 1**). The application was served on the responsible authorities and advertised in accordance with the regulations of the Licensing Act 2003.
- 3.5 The applicant states that the premises will be an American themed BBQ house, serving breakfast, lunch and dinners, and offering a delivery service. To support this they have applied for a licence that requests the following:

*Table 2*

Licensable Activity	Proposed Hours
Sale by retail of alcohol for consumption on and off the premises	10:00 to 00:00 Sunday to Thursday
	10:00 to 01:00 Friday and Saturday, Christmas Eve, Boxing Day, New Year's Eve.
Late Night Refreshment (Indoors and Outdoors)	23:00 to 00:30 Sunday to Thursday
	23:00 to 01:30 Friday and Saturday, Christmas Eve, Boxing Day, New Year's Eve.
Films (Indoors), Live Music (Indoors), Performances of Dance (Indoors), Anything similar to Live Music, Recorded Music and Performance of Dance (Indoors)	10:00 to 00:00 Monday to Sunday
	10:00 to 00:30 New Year's Eve
Recorded Music (Indoors)	06:30 to 00:00 Sunday to Thursday
	06:30 to 01:00 Friday and Saturday, Christmas Eve, Boxing Day, New Year's Eve.
Opening Hours	06:30 to 00:30 Sunday to Thursday
	06:30 to 01:30 Friday and Saturday, Christmas Eve, Boxing Day, New Year's Eve.

- 3.6 The plans of the premises can be found at **Appendix 2**.
- 3.7 The applicant has offered steps that they are willing to take to promote the licensing objectives. These can be found in **Appendix 3** to this report.

- 3.8 Although Late Night Refreshment has been completed to say that food will be provided indoors and outdoors, there are no outside areas covered on the plans, and therefore, Late Night Refreshment will only be provided from inside the premises. This is not to be confused with the consumption of the food which would be able to take place on and off the premises, unless conditions were added to prevent such an action.
- 3.9 The existence of planning permission is not a matter for licensing to be concerned with when determining an application, but Members are advised that 78 Broad Street is classed as a restaurant and falls within A3 use, which means that they have permission to serve food and drink for consumption on the premises. They are also able to sell hot food and drink for consumption off the premises providing the main use of the premises was still that defined by the A3 class. It is important to stress that the activity permitted by the planning permission only becomes a licensing issue between the hours of 11pm and 5am, or at any time the drink being sold/served is alcoholic.

#### Relevant Representations

- 3.9 During the consultation period the Licensing Authority received a valid representation from Environmental Health (**Appendix 4**). No other representations were received from any other responsible authorities.
- 3.10 A total of 22 valid representations were received from other persons permitted by the Licensing Act 2003 to submit representations. During the consultation period 3 of the valid representations were withdrawn. The remaining 19 representations can be found at **Appendix 5**.
- 3.11 At the time of writing this report the applicant has agreed to have the proposed conditions put forward by Environmental Health (table 3 below) added to their licence, should Members be minded to grant a licence. No further agreement has been reached between the applicant and the 19 other persons with outstanding representations.

*Table 3*

1)	The licence holder shall ensure that, the sale of food and drink above ambient room temperature (late night refreshment) beyond 11pm, is only consumed by persons sitting at a table on the premises, or delivered to their customer's home or place of work.
2)	The licence holder shall ensure that no vehicles used for the delivery of their food shall attend the premises, or park on Broad Street, Jubilee Terrace, Missin Gate, and Ship Lane after 11pm.
3)	The licence holder shall ensure that no new customers enter the premises after 12:30am.

#### 4.0 CONCLUSIONS/DETERMINATION OF APPLICATION

- 4.1 Members are obliged to determine this application with a view to promoting the licensing objectives which are:

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

In making their decision Members are also obliged to have regard to the Statutory Guidance issued under Section 182 of the Licensing Act 2003 and the Council's Statement of Licensing Policy. Should Members depart from either they must specify their reasons for doing so. Members must also take into account the information contained within this report, and the evidence submitted, both written (if submission of such information is agreed by all parties at the hearing) and orally during the hearing.

4.2 Members can determine the premises licence application as follows:

- a) to grant the premises licence subject to:
  - (i) the conditions that are consistent with the operating schedule accompanying the application modified to such extent as Members consider appropriate for the promotion of the licensing objectives; and
  - (ii) any mandatory conditions that must be included in the licence;
- (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
- (c) to refuse to specify a person in the licence as the premises supervisor; or
- (d) to reject the application.

4.3 Members are asked to note that they may not modify or impose new conditions, or reject the whole or part of the application merely because they consider it desirable to do so. It must actually be **appropriate** to do so in order to promote the licensing objectives, and any such step must relate to the actual representations made.

4.4 In determining the premises licence application, Members must provide the reasons for their decisions, and consider their responsibilities under the Human Rights Act 1998, when balancing the rights of the applicant and the rights on those who may be affected.

4.5 Any decision taken must be **appropriate and proportionate** to the objective being pursued. In particular the following should be taken into consideration:

Article 6 – the right to a fair hearing

Article 8 – respect for private and family life

Article 1, First protocol – peaceful enjoyment of possessions (which can include the possession of a licence)

Article 14 – the right to freedom from discrimination.

## 5.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT

- 5.1 The cost of convening a Licensing Sub-Committee to determine an application is covered by the fees paid by licence applicants.
- 5.2 Should there be a decision to modify the premises operating schedule, exclude a licensable activity from the scope of the licence, refusal to specify a person as the designated premises supervisor or reject the application, the applicant can appeal to the Magistrates' Court. There will be costs associated with this process. The right of appeal is 21 days from the date of notification of the decision.
- 5.3 Any party who made relevant representations in relation to the application may appeal the decision. There will be costs associated with this process. The right of appeal is 21 days from the date of notification of the decision.
- 5.4 Equality Impact Assessment (EIA) is not required, as this does not relate to a service provided by the Council or a decision on a change of policy, but an application for a licence by an individual/ organisation.

## 6.0 APPENDICES

- 6.1 Appendix 1 Application form
- 6.2 Appendix 2 Plan of the premises
- 6.3 Appendix 3 Offered conditions as part of the operating schedule
- 6.4 Appendix 4 Representation from Karen See, Senior Environmental Health Officer
- 6.5 Appendix 5 Representations from other persons

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<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
Licensing Act 2003	Room SF208 The Grange Ely	Lin Bagwell Licensing Officer  01353 616477  stewart.broome@eastcambs.gov.uk
Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003, March 2018		
ECDC Statement of Licensing Policy 2016		