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WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 4 ("The Committee")

Thursday, 25 February 2021

Membership:	Councillor Karen Scarborough (Chairman), Councillor Heather Acton and Councillor Rita Begum	
Officer Support:	Legal Advisor:	Vivien Walker
	Policy Officer:	Aaron Hardy
	Committee Officers:	Sarah Craddock
	Presenting Officer:	Jessica Donovan

APPLICATION FOR A NEW PREMISES LICENCE – KIN CAFÉ, BASEMENT AND GROUND FLOOR, 22 FOLEY STREET, LONDON W1W 6DT – 20/11005/LIPN

FULL DECISION

Premises

Kin Café, Basement and Ground Floor, 22 Foley Street, London W1W 6DT

Applicant

Araz Farm Feed Ltd

Cumulative Impact Area?

N/A

Ward

St James's West End

Proposed Licensable Activities and Hours

Sale by Retail of Alcohol (On-sales)

Sunday to Thursday:	10:00 hours to 22:30 hours
Friday to Saturday:	10:00 hours to 23:30 hours

Hours Premises Are Open to the Public

Sunday to Thursday:	07:00 hours to 23:00 hours
Friday to Saturday:	07:00 hours to 00:00 hours

Representations Received

- Environmental Health (Anil Drayan)
- Metropolitan Police (PC Adam Deweltz) (withdrawn)
- Robert Lux (local resident)
- Hanna Gough (local resident)

Summary of Objections

- Environmental Health stated that the supply of alcohol and for the hours requested may have the effect of increasing public nuisance in the area;

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- Local residents were concerned that if granted the licence would undermine the peaceful nature of the surrounding area

Summary of Application

The application was for a new premises licence to operate as a restaurant.

Policy Position

Under Policy HRS1, applications within the core hours will generally be granted subject to not being contrary to other policies in the SLP.

Under Policy RTN1(a), applications outside the West End Cumulative Impact Zone will generally be granted subject to matters set out in Policy RTN1(a).

SUBMISSIONS AND REASONS

Ms Donovan, Senior Licensing Officer, summarised the application set out in the report before the Sub-Committee. She advised that the Sub-Committee had before it an application for a new Premises licence which intended to operate as a restaurant. The Sub-Committee heard that the applicant had requested Sale by Retail of Alcohol (On Sales) Monday to Thursday: 10:00 to 22:30, Friday to Saturday: 10:00 to 23:30 and Sunday: 12:00 to 22:30 but that during consultation the applicant had agreed to reduce the hours for the sale of alcohol on Sundays to 12:00 to 22:30. The Sub-Committee further noted that the applicant had also reduced the opening hours on Sundays to 10:00 to 23:00.

Mr Noel Samaroo acting on behalf of the applicant, of NTAD Consultants Ltd, advised that the Premises had been operating for four years and that patrons had been allowed to 'bring their own' alcohol to the Premises to consume with their meal. The Sub-Committee noted that it was a very small Premises and that the applicant now wished the Premises to be regulated so that he could control what alcoholic drinks his customers were consuming with their meals.

Mr Samaroo advised that the applicant had been surprised to receive representations against the application from local residents as he had never received any noise complaints. Mr Samaroo emphasised that he was disappointed that the residents were not in attendance at the hearing as he would have liked to explore and hopefully alleviate their concerns regarding the new proposed licence.

In response to Members' questions, Mr Samaroo provided the following information.

- (a) There had been no noise complaints regarding patrons eating and drinking in the outside area of the Premises in the past four years. Mr Samaroo confirmed that the outside area was used until 11pm when the weather permitted.
- (b) The Premises had been trading as Kim Café for the past four years.
- (c) The benches and tables were within the private boundary of the Premises and not situated on the public highway. Mr Samaroo confirmed that once the tables and benches were taken down only four people would be allowed to smoke outside of the Premises. Mr Samaroo further confirmed the plan of the Premises was accurate

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The Sub-Committee heard that Environmental Health and two local residents had maintained their representation against the application on the grounds that the supply of alcohol and the hours requested may have the effect of increasing Public Nuisance in the area. The Sub-Committee noted, however, that Environmental Health considered that the proposed conditions setting out that all alcohol sold would be ancillary to a meal would alleviate resident's concerns and that the Premises was well managed. The Sub-Committee further noted that the Police had withdrawn their representation.

In response to questions regarding the existing and proposed conditions attached to the Premises Licence, by the Sub-Committee's Legal Officer, Ms Vivien Walker, Mr Samaroo provided the following information.

- (a) The opening hours for Sunday trading had already been agreed with the police and the sale of alcohol would not commence until noon.
- (b) The Premises only had the capacity for 20 patrons.
- (c) The Environmental Health Officer confirmed that he was happy with the proposed condition regarding smoking to be attached to the Premises licence.

Conclusion

The Sub-Committee were grateful to all parties for their representations. They noted that they have a duty to determine each application on its individual merits. In this case, the Committee had to consider whether to grant a premises licence for a restaurant which had been operating for the last 4-years.

The Committee noted that no noise complaints had been made against the restaurant. Whilst local residents had expressed concerns about the noise that may be caused by the granting of the licence, the Committee concluded that the lack of previous complaints alongside Environmental Health's considering that the proposed condition would alleviate residents' concerns would ensure that the licensing objectives were promoted. The applicant had stated that he wished for the Premises to be properly regulated by the grant of a licence.

The Committee placed weight on the fact that conditions had been agreed with all responsible authorities, noting that the Police representation had been withdrawn. Furthermore, the applicant following consultation with the responsible authorities had reduced their hours for the sale of Alcohol on Sundays to 12:00 to 22:30 and their opening hours on Sunday to 10:00 to 23:00

In light of the consultation with responsible authorities leading to agreed conditions, the Committee considered that the premises licence would promote the licensing objectives. Furthermore, the Sub-Committee further considered that if any problems were experienced than an application for a review of the Premises Licence could be made by local residents.

Having carefully considered the committee papers and the submissions made by all the parties, both orally and in writing, **the Sub-Committee has decided**, after taking into account all the circumstances of this application and the promotion of the licensing objectives to **grant** the application with the following permissions:

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In summary, the Committee has decided, after taking into account all of the individual circumstances of this application and the promotion of the four licensing objectives:

1. To grant permission for Sale by Retail of Alcohol (On Sales) for the following hours:
Monday to Thursday: 10:00 to 22:30 hours;
Friday to Saturday: 10:00 to 23:30 hours;
Sunday: 12:00 to 22:30 hours.
Seasonal Variations: None
2. To grant permission for the Hours the Premises are open to the Public as follows:
Monday to Thursday: 07:00 to 23:00 hours;
Friday to Saturday: 07:00 to 00:00 hours;
Sunday: 10:00 23:00 hours.
Seasonal Variations: None
3. That the Licence is subject to relevant mandatory conditions as specified in the agenda papers.
4. That the Licence is subject to the conditions consistent with the operating schedule as specified in the agenda papers.
5. That the Licence is subject to the following conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

Conditions imposed by the Committee at the Hearing

11. The premises shall only operate as a restaurant:
 - (i) in which customers are shown to their table,
 - (ii) where the supply of alcohol is by waiter or waitress service only,
 - (iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery,
 - (iv) which do not provide any takeaway service of food or drink for immediate consumption,
 - (v) which do not provide any takeaway service of food or drink after 23:00, and
 - (vi) where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises and bona fide taking substantial table meals there and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.

12. There shall always be a personal licence holder on duty on the premises when the premises are authorised to sell alcohol.
13. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall always be available for inspection at the

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premises by the Police or an authorised officer of the Council whilst the premises are open.

14. A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
15. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises are open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of the Police or authorised officer throughout the entire 31-day period.
16. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open. This staff member must be able to provide Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
17. If a serious assault is committed on the premises (or appears to have been committed) the management will immediately ensure that
 - (i) The Police (and where appropriate, the London Ambulance Service) are called without delay;
 - (ii) All measures that are reasonably practicable are taken to apprehend any suspects pending the arrival of the Police;
 - (iii) The crime scene is preserved so as to enable a full forensic investigation to be carried out by the Police; and
 - (iv) Such other measures are taken (as appropriate) to fully protect the safety of all persons present on the premises.
18. An incident log shall be kept at the premises and made available on request to an authorised officer of the Council or the Police. It must be completed within 24 hours of the incident and will record the following:
 - (a) all crimes reported to the venue
 - (b) all ejections of patrons any complaints received concerning crime and disorder
 - (c) any incidents of disorder all seizures of drugs or offensive weapons
 - (d) any faults in the CCTV system
 - (e) any refusal of the sale of alcohol
 - (f) any visit by a relevant authority or emergency service.
19. The Designated Premises Supervisor (DPS) will ensure that the premises operate in line with existing health and safety legislation and is aware that it is also the responsibility of the premises licence holder that this legislation is adhered to.

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20. The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the plans provided.
21. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
22. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
23. A direct telephone number for the manager at the premises shall always be publicly available whilst the premises are open. This telephone number is to be made available to residents and businesses in the vicinity.
24. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.
25. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23:00 and 08:00 on the following day.
26. No deliveries to the premises shall take place between 23:00 and 08:00 on the following day.
27. The premises licence holder shall ensure that any patrons drinking and/ or smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.
28. No fumes, steam or odours shall be emitted from the licensed premises to cause a nuisance to any persons living or carrying on business in the area where the premises are situated.
29. The DPS will take full responsibility to ensure that all staff training is documented and to include obligations under the Licensing Act 2003, offences under the Act, underage sales, proxy sales, sales of alcohol to drunks, awareness and application of policies particular to the premise and with a comprehensive knowledge of Challenge 25, where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof age card with the PASS Hologram.
30. Training is to be fully documented and refreshed every six months. The training records will be presented to an authorised officer or the Police upon request.
31. There shall be a maximum of 3 tables and 6 chairs placed on the forecourt immediately outside the premises.
32. All outside tables and chairs shall be removed or rendered unusable by 23:00 each day.
33. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.

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If problems are experienced, then an application for a review of the Premises licence can be made.

This is the Full Decision reached by the Licensing Sub-Committee. This Decision takes immediate effect.

**The Licensing Sub-Committee
25 February 2021**

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