

Waverley Borough Council

Report to: Licensing Sub-Committee A

Date: 10 June 2024

Ward(s) affected: All Farnham Wards

Report of Director: Community Wellbeing/Place/Transformation & Governance

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Report Status: Open

Licensing Act 2003 – Application to vary a Premises Licence – Diem, 24 Lion and Lamb Yard, Farnham GU9 7LL.



1. Executive Summary

- 1.1 An application has been received to vary a premises licence from Fati London Ltd, in respect of a coffee shop that also sells food and alcohol, situated on the ground floor.
- 1.2 One relevant representation has been received in objection.

2. Recommendation to Council

It is recommended that the Sub-Committee determine the application.

3. Reason(s) for Recommendation:

- 3.1. To address the application to vary a Premises Licence following representations as required by the Licensing Act 2003. The general principle is that an application for a variation of a Premises Licence must be considered by a Licensing Sub-Committee if within the statutory 28 day period for determining an application relevant representations are received unless subsequently withdrawn. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.

Relevant representations are those which:

- Are about the effect of the granting of the application on the promotion of the licensing objectives
 - Are made by a Responsible Authority or other persons
 - Have not been withdrawn
 - Are not, in the opinion of the relevant Licensing Authority, frivolous or vexatious.
- 3.2. Licensing authorities are required to carry out licensing functions under the Licensing Act 2003 with a view to promoting the four licensing objectives of:-
- Prevention of crime and disorder;
 - Public safety;
 - Prevention of nuisance; and
 - Protection of children from harm.
- 3.3. Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.

- 3.4. The Licensing Sub-Committee must also consider Waverley Borough Council's Statement of Licensing Policy when deciding whether or not to grant the application. The terms of the Statement of Licensing Policy are highly persuasive, but not binding, on the Licensing Sub-Committee. The Licensing Sub-Committee may depart from the guidance contained in the Statement of Licensing Policy if it considers there are clear and convincing reasons to do so.
- 3.5. Where there is a conflict between the Licensing Act 2003 and the Statement of Licensing Policy, the Licensing Act 2003 must prevail.

4. Exemption from publication

- 4.1. No

5. Purpose of Report

- 5.1. The purpose of the report is to enable the Sub-Committee to consider an application for Diem, 24 Lion & Lamb Yard, Farnham, Surrey GU9 7LL under section 34 of the Licensing Act 2003, where one relevant representation has been received, in objection.

6. Strategic Priorities

- 6.1. Waverley promotes a strong, resilient local economy, supporting local businesses and employment and the health and wellbeing of our communities. Waverley's strategic priorities are supporting a strong, resilient local economy and improving the health and wellbeing of our residents and communities.

7. Background

- 7.1. An application has been received to vary a premises licence from Fati London Ltd, in respect of a coffee shop that also sells food and alcohol. situated on the ground floor.

7.2. In accordance with the legislation, the applicant has sent copies of the application to responsible authorities and was advertised in accordance with the requirements of the Licensing Act 2003. The expiry date for making representations was midnight on the 18th May 2024.

7.3. **Activities sought under this licence application**

In brief, the applicant seeks to extend the opening hours and the hours for the sale or Supply of Alcohol as shown below. An extract of the relevant pages from the new application form is attached at Annexe 1.

- **Sale of Alcohol (Consumption both On and Off the Premises)**

Monday to Saturday	0730 to 2230
Sunday	0900 to 2230

- **Opening hours**

Monday to Saturday	0730 to 2300
Sunday	0900 to 2300

7.4. Attached at Annexe 2 is a copy of the current premises licence.

7.5. Attached at Annexe 3 is a copy of the plans of the premises.

7.6. Attached at Annexe 4 is a plan showing the area of the premises and surrounding properties.

7.7. **Representations received**

Within the consultation period one relevant representation has been received.

7.8. **Responsible Authorities**

No representations have been received from responsible authorities in respect of the application.

7.9. **Other Persons**

There has been one relevant representations from “other persons”, in opposition. A copy of the representation received is attached at Annexe 5.

Statutory Guidance

7.10. Statutory Guidance issued under Section 182 of the 2003 Act, published in December 2023,

The guidance will be available for reference purposes at the meeting.* Particular attention is drawn to:

- Conditions – paragraphs 1.16-1.17 and 10.1 to 10.66
- The Licensing Objectives — paragraphs 2.1-2.37
- Hearings — paragraphs 9.31 to 9.44

The guidance can be found at:

Revised guidance issued under section 182 of Licensing Act 2003 - GOV.UK (www.gov.uk)

7.11. When relevant representations are received then the Sub-Committee must have regard to them.

7.12. The Licensing Sub-Committee can attach a “weight” to any relevant representations, such factors that could influence the “weight” to be placed on a representation could include:

- Whether the representation can be clearly related to any one of the four licensing objectives;
- Whether the representation concerns matters over which the applicant is able to exercise control;
- Whether the representation is based on “hearsay” evidence;
- Whether the representation is supported by firm evidence;

- Whether the person making the representation has attended the hearing in person.

7.13. When considering applications to vary an existing certificate, only the variation is subject to determination. No changes can be made to the certificate unless they are subject to the variation application.

7.14. The Sub-Committee must consider the application on its individual merits and take into account all relevant matters (and exclude non relevant matters), then determine the application by taking the steps it considers appropriate and necessary / proportionate to promote the licensing objectives. Having considered all relevant representations, and having taken into account the promotion of the licensing objectives, a decision can be taken:

- To modify the conditions of the certificate (conditions are deemed to be modified if they are altered, omitted or a new condition added); or
- To reject the whole or part of the application

If neither of these steps are taken, the application must be granted.

7.15 **Conditions**

Conditions will not be necessary if they duplicate a current statutory requirement and there is no duty to impose conditions consistent with the operating schedule – rather it is a power.

Conditions must relate to the representation(s) and any conditions imposed must be proportionate, clear, achievable and enforceable. Evidence is required before conditions, restrictions or refusals can be imposed following representations – speculation is not sufficient (Daniel Thwaites PLC v Wirral Borough Magistrates' Court [2008] EWHC 838 Admin).

7.16 Members are also referred to the Home Office guidance on conditions, specifically section 10 (para 10.10) which states that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises. Conditions

should be determined on a case-by-case basis and standardised conditions, which ignore these individual aspects, should be avoided. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions.

7.17 Licensing authorities should therefore ensure that any conditions they impose, are only those which are appropriate for the promotion of the licensing objectives.

7.18 If the Sub-Committee determines that it is necessary to modify the conditions, or to refuse the application for a Premises Licence application, it must give reasons for its decision.

7.19 **The Role of the Licensing Sub-Committee**

Members should note that the Licensing Sub-Committee is meeting on this occasion solely to perform the role of licensing authority. The Sub-Committee sits in quasi-judicial capacity and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the Licensing Law, Guidance and the Council's Statement of Licensing Policy.

7.20 As a quasi-judicial body the Licensing Sub-Committee is required to consider the application on its merits. The Sub-Committee must take into account only relevant factors and ignore irrelevant factors. The decision must be based on material evidence, which tends logically to show the existence or non-existence of relevant facts, the occurrence of which would be relevant.

7.21 The Licensing Sub-Committee must give fair consideration to the contentions of all persons entitled to make representations to them.

7.22 The Licensing Sub-Committee is entitled to consider events outside of the premises if they are relevant, i.e., are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open,

then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working, or engaged in normal activity in the area concerned.

- 7.23 The Sub-Committee can only consider matters within the application that have been raised through representations from Responsible Authorities (none in this case) and other persons. This will be decided on a case-to-case basis.

8. Consultation

- 8.1. The application has been dealt with in accordance with the requirements of the Licensing Act 2003

9. Key Risks

- 9.1. There are no specific implications arising from this report.

10. Financial Implications

- 10.1. There are no immediate resource implications in this report; resources required to fulfil the Council's duties in respect of the licensing process are met from the existing budget.

11. Legal Implications

- 11.1. The Council has a duty to determine the application under the Licensing Act 2003. A decision of this Committee can be subject to appeal in accordance with section 181 and schedule 5 of the Licensing Act 2003.

12. Human Resource Implications

- 12.1. There are no additional human resource implications

13. Equality and Diversity Implications

13.1 None

14. Climate Change/Sustainability Implications

14.1. There are no implications arising from the recommendations contained within this report in terms of meeting the Council's climate change obligations.

15. Summary of Options

15.1 The general principle is that an application must be considered once relevant representations have been received unless subsequently withdrawn. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.

The Sub-Committee must consider the application on its individual merits and take into account all relevant matters, then determine the application by taking the steps it considers appropriate and necessary / proportionate to promote the licensing objectives. Having considered all relevant representations, and having taken into account the promotion of the licensing objectives, a decision can be taken:

- To modify the conditions of the certificate (conditions are deemed to be modified if they are altered, omitted or a new condition added); or
- To reject the whole or part of the application

If neither of these steps are taken, the application must be granted.

16. Conclusion

16.1 The Committee is asked to consider the report and determine the application.

17. Background Papers

17.1 The Licensing Act 2003 (legislation.gov.uk)

Licensing Act 2003 Revised guidance (December 2023) issued under section 182 of Licensing Act 2003 - GOV.UK (www.gov.uk}

Waverley's Revised Statement of Licensing Policy 2023 (waverley.gov.uk)

18. Appendices

18.1 Annexe 1 – An extract of the relevant pages from the new application form

18.2 Annexe 2 – A copy of the current premises licence.

18.3 Annexe 3 – A copy of the plans of the premises.

18.4 Annexe 4 – A plan showing the area of the premises and surrounding properties.

18.5 Annexe 5 – A copy of the representation in opposition received from 'Other Person'.

Please ensure the following service areas have signed off your report. Please complete this box, and do not delete.

Service	Sign off date
Finance / S.151 Officer	
Legal / Governance	300524
HR	
Equalities	
Lead Councillor	
CMB	
Executive Briefing/Liaison	

Committee Services	
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