



**Lewes District Council**

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## **Licensing Sub-Committee**

**Minutes** of a meeting of the **Licensing Sub-Committee** held in the **Warren Room, Lewes House, 32 High Street, Lewes** on **Friday, 24 June 2011** at 11.00am

### **Present:**

Councillor C R O’Keeffe (Chair on election)

Councillors A X Smith and B M Warren

### **Officers Present:**

Mr G Clark, Licensing Officer

Ms Z Downton, Committee Officer

Ms J Fletcher, Trainee Solicitor

Mr R Harris, Senior Legal Assistant

Ms S Lindsey, Assistant Licensing Officer

### **In attendance:**

Mr E Hele, Principal Environmental Health Officer

### **Applicant Attending:**

Mr N Caglayan

### **Representing the Applicant:**

Mr D Simmonds, Licensing Consultant

### **Representors Attending:**

Mr and Mrs Moran

	<b>Minutes</b>	<b>Action</b>
<b>1</b>	<b>Election of Chair of the Sub-Committee</b>  <u>Resolved:</u>  <b>1.1</b> That Councillor C R O’Keeffe be elected Chair of the Sub-Committee for this meeting.	
<b>2</b>	<b>Application for a Premises Licence for Golden Grill, 211 South Coast Road, Peacehaven, BN10 8LA</b>  Those attending the hearing introduced themselves and the procedure under the Licensing Act 2003 was read out to all parties present.	

The Sub-Committee considered Report No 92/11 to determine the Application for a Premises Licence at Golden Grill, 211 South Coast Road, Peacehaven.

The Licensing Officer presented the Report to the Sub-Committee.

The Application related specifically to:

- The provision of late night refreshment from Sunday to Thursday between 11pm until 12am and on Friday and Saturday between 11pm and 12.30am.
- The premises opening hours to the public from Sunday to Thursday between 11am until 12am and on Friday and Saturday between 11am until 12.30am.

The Golden Grill was a modern, small retail outlet which supplied a range of hot fast food and non alcoholic beverages to customers and currently opened between the hours of 11am and 11pm Monday to Sunday. The premises was situated on the busy South Coast Road (A259) where the area provided a mix of residential and retail properties.

The Applicant had owned the premises for approximately 18 months and he provided hot food to customers for consumption both on the premises and to take away. Internally, there was a full length servery and display counter with cooking, frying and grilling equipment situated behind the counter and a kitchen and food preparation area at the back of the premises. There were three small tables and chairs along the far side of the internal layout to allow customers to consume food on the premises.

Next door to the Golden Grill, separated by Dorothy Avenue at 209 South Coast Road, was the Oriental Taste chinese food take away which was licensed from Monday to Sunday until 12am. Further down the road in the other direction at 219 South Coast Road was Big Mouth Burger Bar, a late night take away which was licensed for the provision of hot food and hot drink from Sunday to Thursday until 12am and on Friday and Saturday until 12.30am. Nearby to the Golden Grill was the White Schooner public house which was licensed until 12.30am from Thursday to Saturday and on the opposite side of the road was a new build for Sainsburys supermarkets which had recently been granted a licence for alcohol and late night refreshments until 12am Monday to Sunday. Therefore, in the immediate vicinity of the Golden Grill there were four other premises licensed for late night refreshments throughout the week beyond the 11pm threshold.

Behind the Golden Grill and attached to the rear of the premises were five residential properties, Flats 1 to 5, 18 Dorothy Avenue, Peacehaven. Four of those residents occupying two flats had made representations against the Application. Directly above the premises and the adjoining retail Unit 2, at 211 South Coast Road, there were three further residential flats.

The Applicant had offered to apply conditions to promote the four licensing objectives. As a result of recommendations from the Health and Safety Officer, a further condition had been accepted by the Applicant under the public safety objective, further details of which were set out in Section 1.5 of the Report.

Letters had been received within the relevant 28 day notice period from people who wished to make representations about the Application, copies of which were set out at Appendix 2 of the Report. Two written representations had been received from four residents in the flats attached to the rear of the premises. The grounds for their objections were that the Application would undermine the licensing objectives relating to public nuisance. They were considered to be relevant to the Application and were not frivolous or vexatious.

The Applicant and the premises had been the subject of six complaints of noise nuisance between 2009 and April 2011, mainly concerning noise from the extractor fan and noise from cleaning up activities. The Applicant had also been found to have been operating on occasions beyond 11pm and had been sent a letter by the Licensing Officer warning him that to trade beyond 11pm required a premises licence for late night refreshments.

The Licensing Officer explained that one representation in relation to the Application had been received from the Council's Environmental Health department. No other representations had been received from the responsible authorities.

The Principal Environmental Health Officer had made representations to the Licensing Officer concerning the extension to the opening hours of the premises and the negative effect it would have on residents in the vicinity. The representation from the Environmental Health department, as set out in Appendix 1 of the Report, could be withdrawn if the Applicant was willing to accept reduced hours to those applied for, plus additional conditions.

The Licensing Officer explained that it was important to note that all residents living in the vicinity of the licensed premises had an equal right to make representations concerning applications for premises licences and hours of trading, and to have those representations given equal weight, regardless of the area of the District in which they lived.

A plan of the premises layout, street plan of the premises location and photographs of the premises were included at pages 27 – 30 of the Report.

The Sub-Committee expressed its thanks to the Licensing Officer for providing a comprehensive Report.

Mr Simmonds, Representative of the Applicant, stated that:

- A late night refreshment licence had been applied for, in accordance with the Licensing Act 2003, as the Applicant wished to open the

premises beyond 11pm.

- The Application to extend the premises opening hours beyond 11pm was a genuine business need based on good grounds, namely that the South Coast Road, Peacehaven, was a busy area and the Applicant believed there was a customer demand to stay open after 11pm.
- The Applicant acknowledged that there had been problems in the past concerning noise nuisance but had taken steps to address them.
- With reference to the reports of noise nuisance during clearing up sessions on the premises after closing, the Applicant had since fitted rubber mounts to the bottom of the chairs and tables. It was not feasible to fix the tables and chairs to the tiled floor due to the layout of the shop.
- To prevent the potential for noise nuisance, the Applicant offered two additional conditions for the Sub-Committee to consider;

(i) That the rubbish bins stored outside at the rear of the premises are not used by staff after 11pm; and

(ii) That all windows and the only door entrance at the front of the premises be kept closed after 11pm.

Those additional measures were thought, by the Applicant, to be suitable and enforceable conditions and demonstrated the Applicant's willingness to work with Officers and neighbours in the vicinity and adjoining properties.

- There was no regulated entertainment on the premises which could add to the potential for noise nuisance.
- The Applicant had installed a new extractor fan and although the noise had been minimised due to the use of rubber mounts, it was acknowledged that the humming was still audible. The noise may be reduced further by completing the insulation but the works and costs involved would need to be explored by the Applicant.
- The extractor fan extracted heat and smells and it was not feasible to turn it off directly after closing the premises. The Applicant proposed an additional, enforceable condition of turning the fan off 15 minutes after closing.
- The premises had good facilities to meet the needs of customers, such as a toilet, a disabled toilet and it was a convenient location which had free parking and a bus stop nearby.

- It was relevant that there had been no reported incidents relating to crime and disorder or public nuisance associated with the premises since the Applicant had been operating at the Golden Grill.
- It was also considered relevant to the Application that there were no representations from the responsible authorities, other than that received from the Environmental Health department at the Council.
- The extended hours until 12 midnight Sundays to Thursdays was felt to be appropriate and would not increase the potential to breach the licensing objectives. The later opening hours requested on Fridays and Saturdays to 12.30am would be in line with other licensed premises in the vicinity.

Mr Simmonds asked that the Sub-Committee consider and accept the additional conditions put forward by the Applicant.

The Applicant explained to the Sub-Committee that the location of the premises was on a very busy road. His was a small business which was struggling to pay the bills and therefore the ability to extend the opening hours and to serve more customers was necessary. He had worked with the Principal Environmental Health Officer to minimise noise to levels which would be acceptable by local residents.

In response to a question from the Sub-Committee the Licensing Officer confirmed that, to this knowledge, there had been no reported incidents of public nuisance or noise in relation to the Big Mouth Burger Bar, a similar licensed take away establishment in the vicinity of the Golden Grill. Mr Moran, an objector to the Application, brought to the Sub-Committee's attention that there were no residential properties attached to that particular business.

The Sub-Committee invited the Principal Environmental Health Officer to present his representation. He referred to the memo, as set out on pages 23 and 24 of the Report, which outlined the chronology of his involvement at the premises and the reasons why he was not able to support the Application in its current form. The premises had been the subject of six nuisance complaints between 2009 up to the present day. Those complaints related mainly to noise from the premises and in particular to noise from the extraction fan and noise from cleaning up activities. The noise from late night cleaning activities had been made worse by the Applicant closing the premises later than 11pm, especially at the weekends. The Applicant had been made aware to minimise noise levels and was told by the Licensing Officer that he should not operate beyond 11pm without obtaining an appropriate late night refreshment licence.

The Principal Environmental Health Officer explained that in the Summer of 2010, the Applicant had replaced the extraction fan and flue which had been the cause of complaints being received regarding noise and vibration being transmitted through the building. He had continued working with the

Applicant to improve the situation for the residents and, although the noise and vibration had improved, the noise was still just audible in the residents' flats.

The Principal Environmental Health Officer explained that the representation may be withdrawn if the Applicant was willing to change the Application to the hours of operation and conditions as outlined on page 24 of the Report.

The Principal Environmental Health Officer explained that, whilst he did not want to prohibit the extension of all the Applicant's hours, it was necessary to balance the needs of the business with the rights of residents. He informed the Sub-Committee that the residents accepted that there would be associated noise in living in a property adjoining the premises. From discussions with the residents, it was clear that they were willing to accept the current noise levels if the kitchen extraction system was turned off as soon after 11pm as possible.

In response to questions from the Sub-Committee, the Principal Environmental Health Officer advised that he was not aware during his employment at the Council of any public nuisance issues being reported in relation to any of the take away shops in the vicinity of the premises, or the tanning shop which was adjacent to the premises. He felt that it would be possible for the Applicant to further minimise the noise from the extractor fan, however, he was mindful of the costs involved to the Applicant. In the Principal Environmental Health Officer's opinion, the current level of noise from the extractor fan did not constitute a statutory nuisance.

Mr Moran, who had made a representation against the Application, explained that the noise from the scraping of chairs and tables on the tiled floor during clearing up sessions had stopped. However, there was still a strong vibration from the extractor fan. In his view, if the Applicant did not start the fan until the premises opening time at 11am he did not think there would be a problem, but it was often turned on before that time. Mr Moran stated that he would not object to the premises staying open until 11.30pm Sundays to Thursdays, and for the extractor fan to be turned off as soon as the cooking had finished and not thirty minutes afterwards as was the case at present. Mrs Moran, who had made a representation against the Application, emphasised that the low hum from the extractor fan lasted up to 13 or 14 hours per day and the constant buzzing was an annoyance.

In response to a question from the Sub-Committee, Mr Moran confirmed that his main concern was the noise coming from the extractor fan and had no objections to the sounds of people generally entering and leaving the premises.

In response, the Applicant confirmed that the extractor fan was usually turned on between 10.45am – 11am. He explained that he had done as much as he could for the moment in terms of insulating the fan and that potentially the noise and vibration could be completely stopped with full

insulation. He acknowledged that further improvements could be done if money was spent on fully insulating the wall mounts on the fan.

To summarise, on behalf of the Applicant, Mr Simmonds stated that:

- The Applicant had offered extra conditions concerning the use of the outside rubbish bins and closing all windows and doors by a certain time as a practical offering to reduce noise or the potential for any noise nuisance.
- The Application was a genuine request in order to maximise business takings.
- The Applicant was willing to accept the conditions proposed by the Environmental Health department relating to the cleaning activities and the kitchen extraction system. It was also acceptable to the Applicant to maintain the rubber mountings on the bottom of the chairs and tables on the premises.

The Sub-Committee withdrew to consider the Application. The decision was delivered as follows:

Resolved:

“Having regard to the terms of the application and all the relevant evidence that has been put before us today, we have decided to deal with this application by granting it subject to the following restriction in the hours applied for and conditions, these being relevant, proportionate and necessary, in our view, to ensure the promotion of the Licensing Objectives:

DPES

Hours of Opening:

Sunday – Thursday	11.00 – 23.15
Friday - Saturday	11.00 – 00.00

Conditions:

The following conditions (in addition to those conditions already contained within the operating schedule) will be imposed:

- i. All windows and doors are to be kept closed after 23.00
- ii. The kitchen extraction system shall be turned off at 23.30 on Sunday – Thursday and 00.15 on Friday and Saturday.
- iii. The outside rubbish bin situated behind the premises shall not be used after 23.00
- iv. The chairs and tables in the premises are to be provided and maintained with suitable rubber mountings (feet) to minimise noise.
- v. All cleaning activities shall cease on Sunday – Thursday at 23.45 and on Friday and Saturday at 00.30.



The reason for our decision is that we are of the view that the conditions are necessary to prevent a public nuisance occurring.

In reaching our decision, we took into account all of the representations and submissions that were made. We also took into account the nature and location of the premises. We considered the potential for public nuisance posed by the application and balanced this against the rights of local residents to peace and quiet. We have also considered the statutory guidance and our statement of licensing policy where relevant.

Based on the evidence we have heard and read from the representors and the Council's Environmental Health Officer we are persuaded that the extractor fan is causing a public nuisance to some residents living above the premises.

Bearing this in mind we do not feel that the hours of operation should be any longer those set out in our decision at the present time.

We do believe that there is scope for further investigation in this matter and the licensing committee would be minded to consider a variation if the noise from the extractor fan is further reduced.

A written notification of the decision will be despatched in due course.

Further more, we would like to remind those present that under section 51 (1) of the Licensing Act 2003, an interested party or responsible authority may apply to the licensing authority at anytime for a licence to be reviewed.

In any event, there is a right of appeal under the provisions of section 181 and schedule 5 of the Licensing Act 2003 against the decision of the Licensing Committee should you be aggrieved at the outcome.

This right of appeal extends to the Applicant in the case of refusal or restrictions on the licence or in the imposition of the conditions to the Licence. The right of appeal also extends to persons who have made representations either where the licence has been granted or, where they do not consider that relevant conditions have been imposed.

Full details of the right of appeal can be found within schedule 5 of the Act. Please note that any appeal must be made within 21 days of the notification of this decision."

Mr Simmonds, on behalf of the Applicant, thanked the Sub-Committee for its time and careful consideration of the Application.

The meeting ended at 12.55pm

C R O'Keeffe  
Chair