

**Licensing Act Sub-Committee – Record of Hearing held on Thursday,  
11 June 2015 at 6.00 pm**

**Members:** Councillor Hearn (Chairman) and Councillors Belsey and Murray

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**1 Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests under the Code of Conduct.**

None were declared.

**2 Variation of a Premises Licence - Fresh and Grilled Piri Piri Restaurant, 25 Langney Road.**

The Chairman introduced members and officers present and detailed the procedure to be followed at the meeting.

The Senior Specialist Advisor outlined the report regarding the application to vary a premises licence for Fresh and Grilled, Piri Piri Restaurant, 25 Langney Road, Eastbourne.

The applicant's current licence was detailed in the report and included at Appendix 1.

When submitting an application for a variation to a premises licence, the applicant is required to describe any steps they intend to take to promote the four licensing objectives, defined by the Licensing Act 2003. Steps detailed by the applicant were included at Appendix 2 of the report. The applicant had also submitted as part of the application a new plan of the premises that was being structurally altered to create a take-away hot food counter at the Langney Road end of the premises.

The premises were located in the Cumulative Impact Zone, defined as where a significant number of licensed premises are concentrated in an area. When an area becomes saturated it created exceptional problems that undermined the promotion of one or more of the licensing objectives. When valid representations were received in respect of a premises located within the area identified as being subject to the Council's Cumulative Impact Policy, a rebuttable presumption was created that the application would be refused. It is for the applicant to address the Cumulative Impact Policy and produce evidence that the application would not add to the cumulative impact caused by the licensed premises or the challenges already being experienced in the area, or otherwise undermine the promotion of the licensing objectives.

Representations had been received from three members of the public, Councillor Wallis, Mr Ley on behalf of Town Centre Neighbourhood Panel and a petition signed by 42 local residents opposing the application. The concerns centred on the prevention of public nuisance licensing objective.

Representations had also been received from Sussex Police as a responsible authority. Copies of these representations were included at Appendix 3 of the report.

The applicant's representative had submitted further correspondence, dated 15<sup>th</sup> May 2015 advising that the applicant would like to negotiate an amendment to the variation applied for. This was included at Appendix 4.

Mr Savill, Barrister representing Sussex Police addressed the Sub-Committee objecting to the application. He made reference to the detailed representation made by Sussex Police, included at Appendix 3. He then referenced the issue of cumulative impact and that the issue related to a significant number of licensed premises concentrated in one area rather than a specific premises. If individual premises were seen to give rise to problems or undermine the licensing objectives, the appropriate course of action would be to seek a review of the licence.

Mr Savill also advised that cumulative impact could occur some distance from a licensed premises and as such issues outside the licence holders control must be taken into consideration. No matter how well operated a premises may be, issues of cumulative impact could still arise. Mr Savill continued that regardless of the steps taken internally by the applicant to try and promote the licensing objectives, the premises would inevitably add to the cumulative impact in the area. Mr Savill referenced the Secretary of State guidance and reiterated the issue of cumulative impact not being premises specific.

Mr Savill stated that an additional fast food/takeaway outlet operating at the hours sought, which was a significant increase over its current licence would contribute to the existing cumulative impact in the area. It was the applicant's responsibility to show that no increase in cumulative impact would arise should the application be granted. The Sub-Committee was also advised that the premises existing licence had been granted before the Council's Cumulative Impact Policy had been imposed.

Mr Savill concluded by advising the Sub-Committee that Sussex Police were currently deploying significant overtime resources to address the problems of dispersal in the vicinity near the premises and this remained a big issue.

Mr Hall, Licensing Consultant to the applicant, addressed the Sub-Committee in support of the application. Mr Hall clarified that the applicant would like to negotiate a reduction in the closing time sought. Mr Haydari, applicant now sought for a closing time of 03.00 hours for Monday, Friday and Saturday, 02.00 hours for Thursday, 01.00 hours for Tuesday, Wednesday and Sunday and 03.00 hours in the case of a Sunday preceding a Bank Holiday. The amendment to the original application was made to address the concerns that had been raised by Sussex Police and interested parties.

Mr Haydari addressed the Sub-Committee and gave a background to his business history. He advised that he had operated a successful takeaway business at 24 Seaside since December 2012 without any issues. He stated that his reason for moving to 25 Langney Road was that he saw it as a good location to start a new business. The premises included a sit down restaurant area that could seat approximately fifty people, takeaway section that had space for six to seven people to wait and a delivery service was provided. He had hoped that the application would reduce the issues of cumulative impact and troubles in the area for Sussex Police.

Mr Haydari stated that steps taken to promote the licensing objectives had included a CCTV system being installed with two cameras outside the premises, one at the back and five inside the premises. He advised that the takeaway and restaurant were separate sections in the premises. Once the premises shut its restaurant section for the night it could focus entirely on the takeaway service.

He advised that 80% of his business at his premises on 24 Seaside took place between 02.00 – 03.00 hours and these were takeaways. The remaining 20% consisted of deliveries and sit down restaurant use.

Mr Haydari explained why he had sought the amended hours for specific days. The Sub-Committee was informed that on Monday there was only one nightclub operating opposite the premises at 03.00 hours and as a result there were substantial queues. It was hoped that opening his premises at a similar time could reduce the queues and alleviate any trouble caused. A closing time of 01.00 hours on Tuesday, Wednesday and Sunday was sufficient as the area was not heavily populated on these days. Thursday saw the opening of the majority of nightclubs in the area but this day wasn't as popular as Friday or Saturday and the hours sought for those days compared to Thursday reflected that. Mr Haydari reiterated that he hoped to reduce trouble encountered in the area.

The Sub-Committee asked the applicant regarding the delivery service and the hours that the service would be provided. Mr Haydari clarified that two cars and a motorbike would be used and that the service would be provided until 00.00 hours.

Councillor Belsey acknowledged the issue of cumulative impact and queried whether the effect of an increased number of licensed premises in an area could in fact reduce the disturbances in the area. Mr Savill responded that the Council had already accepted the view that a number of licensed premises in a given area could potentially give rise to problems of noise, nuisance, crime and disorder, evident by its adoption of the Cumulative Impact Policy. Mr Savill reiterated that the delay of dispersal from the area was a contributing factor to negative cumulative impact, detailed in the Secretary of State Guidance.

Mr Savill stated that the revised application was only a 30 minute reduction from the original application and that this remained a significant extension from the premises' current licence.

In response to a question from Councillor Murray, PC Wilkes, representing Sussex Police advised that he was not aware of any establishments within

the Cumulative Impact Zone that offered late night refreshments that didn't have a 03.00 hours closing time on its licence. Mrs Irving representing Sussex Police added that this was a contributing factor to the Cumulative Impact Policy being implemented.

Councillor Wallis addressed the Sub-Committee in objection to the application. Although he welcomed that there would be no change in the sale of alcohol at the premises, he raised concerns that the extension of hours would have a negative impact on those residents living within the vicinity. Councillor Wallis stressed the importance of striking the right balance in the Town Centre in terms of the number of late night licensed premises operating in the area. He added that his objections to the application was not a criticism of Mr Haydari or his business but related to the sheer congregation of people in the area that could contribute to noise and disturbance to local residents and children living in the area. Councillor Wallis concluded by urging the Sub-Committee to take into consideration the Cumulative Impact Zone and the residents living in the area when deliberating their decision.

Mr Haydari responded that by operating later he would be able to reduce the noise and trouble in the area.

Mr Ley representing the Town Centre Neighbourhood Panel addressed the Sub-Committee in objection to the application. He advised that the panel regularly received complaints relating to noise disturbance in the area. This was caused by people exiting late night entertainment venues and visiting late night eating venues rather than exiting the area promptly. Mr Ley advised that the only successful strategy in reducing noise and disturbance in the area was to disperse people as quickly as possible. The panel had undertaken several initiatives such as working with local universities to provide a late night bus service to assist with dispersal. Mr Ley stated that his objection was not against the applicant or the premises but that an extension of hours would increase the number of licensed premises operating late at night and would undermine the Cumulative Impact Policy.

Mrs Hughes, local resident addressed the Sub-Committee and outlined the problems that had been experienced in the area at night including a lack of dispersal, no bathroom facilities or a place for people to eat their food and fast cars accumulating in the area. This had caused noise and disturbance to local residents.

Councillor Belsey enquired whether any late night takeaways operating in the Cumulative Impact Zone had gone out of business in the last year and whether a list is held detailing those late night businesses in the area and whether that fluctuated. Mr Savill responded by stating that Sussex Police were not aware of any establishments that had gone out of business in the past year. The Sub-Committee was also advised that the Cumulative Impact Policy must be kept under review by the local authority. The policy must be applied unless a review was undertaken and amended if necessary although stating a specific number of licensed premises permitted in the area does not form part of the policy. The last review took place in November 2013.

The Senior Specialist Advisor clarified that due to the Cumulative Impact Policy being enforced there had not been an increase in late night premises operating in the area.

Councillor Murray reiterated that the applicant was required to address the Cumulative Impact Policy and produce evidence that the application would not add to the cumulative impact caused by the other licensed premises and challenges already experienced in the area or otherwise undermine the promotion of the licensing objectives. Councillor Murray queried whether there was any further evidence that could be submitted by the applicant that acknowledged the policy or rebutted the presumption of refusal apart from the installation of a CCTV system that he had mentioned. Mr Haydari responded that the installation of eight cameras was a significant increase compared to other premises in the area. Mr Haydari also stated that around 360 reviews of the premises had been posted on the Just Eat website with the majority being positive. Mr Haydari reiterated that he had not encountered issues with any customer visiting the premises. He concluded by stating that he would install door supervisors after midnight to assist with dispersal.

Following all the evidence presented to the Sub-Committee, Mr Savill, Sussex Police concluded by reiterating the Council's Cumulative Impact Policy and the responsibility of the applicant to address and demonstrate that granting the application would not exacerbate existing issues in the locality or undermine the promotion of the licensing objectives. Although not a criticism of Mr Haydari or his premises, Sussex Police were of the opinion that no evidence had been provided to rebut the presumption of refusal.

Mr Hall concluded on behalf of the applicant by addressing the representations that had been submitted. He stated that the representation from Sussex Police had overlooked the steps taken by the applicant to promote the licensing objectives since the licence was granted in April 2013. Additional features would be added to the premises including the extension of the CCTV system allowing for wider surveillance and a separate takeaway service which would provide extra seating and lighting.

Mr Hall stated that Mr Haydari disagreed with the opinion that the application would cause people to remain in the area longer and instead would alleviate the pressures. He also advised that Sussex Police had failed to provide any evidence of issues or occurrences at the premises or the immediate vicinity, referenced at section 8.2 of the report.

Mr Hall addressed Mr Ley's representation and acknowledged the problem faced with dispersal but stated that even when premises were not operating this remained an issue. Providing public transport in the area had been trialled but had been terminated. The Sub-Committee was advised that an enquiry had been made to the bus company but they stopped operating at midnight. There was also a lack of evidence to suggest that the application for providing late night refreshment would be harmful to children. The reduced hours sought compared to the original application represented a positive move to address concerns.

Mr Hall addressed the petition that had been submitted objecting to the application. Although the petition contained 42 signatures, it was not felt that this represented a consensus of residents living in the area. He also stated that the preface was strongly worded and focused more on the intoxication of alcohol that was not part of the application.

Mr Hall concluded that the application was an appropriate and balanced response to the closing times to late night venues and provided a source of food for when people left. If granted, the licence would help reduce the disturbance in the area, hasten dispersal and reduce trafficking from one premises to another. Mr Hall stated that Mr Haydari had an unblemished track record and had attempted to rebut the presumption of refusal by revising the hours sought to address the concerns raised. Mr Hall concluded by recommending that the Sub-Committee approve the application.

The Sub-Committee then retired to consider and determine the application, having regard to the representations submitted, the four licensing objectives, guidance under Section 182 of the Licensing Act 2003, the Council's Statement of Licensing Policy and Cumulative Impact Policy.

Having taken into account all the relevant considerations the Sub-Committee reconvened and announced the decision as follows.

**RESOLVED:** That the variation to a premises licence application in respect of Fresh and Grilled Piri Piri Restaurant be refused as set out in the attached appendix.

The meeting closed at 7.32 pm

**Councillor Hearn (Chairman)**