

## **Decision of Licensing Sub Committee. Hearing 16 March 2021**

### **Application for a premises licence at Chef H, 27-31 Langney Road, Eastbourne, BN21 3QA.**

The hearing concerned a premises licence for Chef H, 27-31 Langney Rd, Eastbourne, BN21 3QA. The application was for late night refreshments on Monday to Saturday 23:00 to 04:00, and the supply of alcohol for consumption off the premises on Monday to Sunday between 11:00 to 23:00.

In discharging its functions, the Sub Committee considered the promotion of the relevant licensing objectives, the Council's own Licensing Policy, the Home Office Guidance and the rules of natural justice. It also took into account the information contained within the Specialist Advisor's report.

Due regard was given to the written representations of Helen Hughes, Andreas Andrea and other unnamed local residents. Those expressed concerns about the problems arising from the late-night sale of food and the sale of alcohol which had in the past lead to problems, including but not limited to, violence, criminal damage and unacceptable noise levels in the area.

Due regard was given to the written and oral representations received from Paul Thornton made on behalf the Licensing Authority as a Responsible Authority. Those were that the application did not address that the premises were in the Cumulative Impact Zone and that the licence applied for would undermine the licensing objectives. It was stated that the applicant had given little thought to the promotion of all four licensing objectives. Further, that the application provided little detail about the nature of the premises and it lacked detail in the some of the conditions, for example, when SIA registered door staff would be employed and he considered that the condition relating to the delivery of alcohol was unworkable. In addition, he commented that the conditions offered within the application did not adequately address the specific licensable activities at these premises (not site specific). He noted that the applicant's representative had made no contact with him to discuss the application.

Due regard was also given to the written and oral representations of Sussex Police. Those were the licence would undermine the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance and public safety. Further, that the premises lie within the Cumulative Impact Zone and that the application does not refer to or address the Cumulative Impact Policy nor do the offered conditions mitigate the risks in that area. Further, the Police had concerns that the applicant had not understood the Council's Policy when they had approached the applicant's agent prior to the hearing. Therefore, they had no confidence that the premises would be managed effectively. The Police presented evidence that the premises were in a hot spot for crime and disorder. The Police had particular concerns about the proposed late-night hours for the premises which they considered would encourage people to gather in that area. Further, the Police considered that if the licence was granted there were deficiencies with some conditions including the lack of a condition within the application which relating to the training of staff. Therefore, they did not consider that the premises application presented an exceptional case for overriding the presumption to refuse the application. The Police also noted that the applicant's representative had not engaged with them about their concerns before the hearing.

The Sub Committee considered the application and the oral representations made by the applicant's representative Ziya Merton at the hearing. He accepted the concerns expressed by the representors and having taken those concerns into account he offered to reduce the licensable hours for late night refreshments to on Monday to Thursday 23:00 to midnight; Friday and Saturday 23:00 to 3:00 and noted that on Sunday would only be serving refreshments until 23:00. He noted that the opening hours for the premises would be revised to Monday to Thursday 11:00 to midnight, Friday and Saturday 11:00 to 3:00 and Sunday 11:00 to 23:00.

He stated that he wished the licensable hours for consumption of alcohol off the premises to be Monday to Sunday 11:00 to 23:00. Ziya Merton accepted that there had been confusion within the application in relation to some conditions and at parts a lack of detail.

Ziya Merton clarified that the application was only for consumption for alcohol off the premises either by takeaway service or delivery. He explained that the sale of alcohol would be ancillary to food orders. In answer to a question, he agreed that alcohol would only be sold for consumption off the premises in conjunction with the sale of food for takeaway or delivery.

He offered a new condition that alcohol would not be displayed at the premises.

He also clarified that all alcohol sold at the premises would be in sealed containers to discourage its consumption in the area of the premises.

He offered a new condition that all staff would be trained in alcohol sales every six months and receive training on how to be alert at all times to any potential danger from customers and in conflict management.

He explained that alcohol was not an important part of the business plan and that the premises were primarily a food takeaway with limited seating. He suggested that the licence for the supply of alcohol was not significant to the applicant.

Ziya Merton pointed to some of the conditions offered in the application as demonstrating that the applicant took their responsibilities seriously. Such as the condition in relation to appropriate signs requesting customers to respect the needs of local residents. He suggested that deliveries and collection would be arranged for times that would cause the least disturbance to local residents. He raised the issue of litter around the premises and informed the Sub Committee that there was a public waste bin outside the premises and in any event the staff would keep clean at all times the immediate vicinity.

He offered to modify the condition in the application, relating to SIA staff, which he accepted was not clearly worded, so that on Friday and Saturday SIA staff would be in attendance at the premises from 23:00 until 30 minutes after the premises had closed.

He clarified that the applicant was content to offer that a Challenge 25 Policy would be adopted.

In answer to a question Ziya Merton suggested that the applicant may be agreeable to closing the seating area of the premises at the earlier time of 1:00 rather than 3:00. There was some discussion about whether the premises should close at 1:00 for takeaways

bought face to face at the premises but with deliveries taking place until 3.00 on Fridays and Saturdays.

In answer to a question Ziya Merton explained that the applicant would be the Designated Premises Supervisor (“DPS”) for the premises, and it was expected that the applicant would be on the premises for most of the time although staff would also be employed and some of those would hold personal licences. He agreed a condition that at all times when alcohol was supplied that would only be by a personal licence holder.

At the hearing, after some discussion, the Police accepted that the applicant had addressed many of their concerns. In particular, they suggested that the licensable hours for late night refreshments be reduced to 1:00 rather than 3:00. Paul Thornton, for the Licensing Authority, in summation considered that with the modifications to conditions discussed at the hearing that would alleviate its concerns.

Ziya Merton pointed out that he was aware that other similar businesses in the area were open until later than the proposed hours. He informed the Sub Committee that the applicant has several years’ experience in the food service industry and that he wanted to work with the Council and the local community in order to have a well-run business. He stated in his summation that the applicant was willing to compromise concerning the offered conditions.

In its deliberations the Sub Committee considered what decision would be appropriate and proportionate from the options outlined in para. 9.1 of the Report.

## **Decision**

The Sub Committee resolved to grant the premises licence but modify the hours of licensable activity in relation to late-night refreshment to Monday to Thursday 23:00 to midnight and Friday and Saturday 23:00 to 1:00 and to modify the conditions, as set out below, as appropriate for the promotion of the licensing objectives. It agreed the licensable hours for the supply of alcohol, for consumption off the premises, to be Monday to Sunday between 11:00 to 23:00.

## **Reasons for decision**

The Sub Committee expressed its concerns that the parties had until the hearing failed to act in a cooperative manner in addressing the concerns arising from this application and noted the applicant’s apologies for their failure to communicate with the representors in a timely manner and for the deficiencies in the original application.

The Sub Committee noted that the premises were in the Cumulative Impact Zone and the rebuttable presumption that this application for a new premises licence should be refused.

However, the Members were content on this occasion to grant the licence, subject to the revised hours and the modified conditions, on the basis that the applicant had now demonstrated that the premises would not add to the cumulative impact in the area and would not undermine the promotion of the licensing objectives.

The Sub Committee noted the objections particularly of the local residents and the Police which centred around the late hours originally applied. On that basis it considered that a

reduction in the licensable hours for late night refreshment would be an appropriate and proportionate step to take which would adequately address those concerns. The Sub Committee noted the discussion relating to deliveries taking place until 3:00 if the premises were shut for face-to-face sales at 1:00 on Fridays and Saturdays. However, it was felt that would this on balance undermine the licensing objective of the prevention of public nuisance in relation to noise disturbance for the local residents. Therefore, the Sub Committee decided to make the licensable hours for late refreshments on Fridays and Saturdays 23:00 to 1:00, both at the premises and for deliveries.

In making this decision the Sub Committee welcomed the applicant's plans to work with the Council and the local residents going forward.

## **Conditions**

- A personal licence holder shall be on the premises at all times the premises are open for the sale of alcohol. A list of staff members who are authorised to sell alcohol on the premises shall be kept. This shall be endorsed by the DPS with the date such authorisation commenced.
- **CCTV:**
  - a) Digital CCTV and appropriate recording equipment to be installed in accordance with Home Office Guidelines, operated and maintained throughout the premises internally and externally to cover all public areas, including the entrance to the premises. The system shall be on and recording at all times the premises licence is in operation.
  - b) CCTV footage will be stored for a minimum of 31 days.
  - c) The management will give full and immediate cooperation and technical assistance to the Police in the event that CCTV footage is required for the prevention and detection of suspected or alleged crime.
  - d) The CCTV images will record and display dates and times, and these times will be checked regularly to ensure their accuracy.
  - e) Any breakdown or system failure will be notified to the police immediately and remedied as soon as is practicable.
- An incident log will be maintained at the premises showing a detailed note of incidents that occur in the premises. The logbook shall be kept at the premises and be available for inspection, at all time the premises are open, by authorised Officers of the Licensing Authority or the Police.
- SIA registered door staff will operate at the premises on Fridays and Saturdays with two door staff from 23:00 until 30 minutes after the premises has closed to the public.
- No alcohol to be on display within the premises.
- All sales of alcohol, for consumption off the premises, to be made in a sealed container.

- Alcohol shall only be sold for consumption off the premises in conjunction with the sale of food for takeaway or delivery.
- **Challenge 25:**
  - a) The premises will operate an age verification policy set at a minimum of 25 years ("Challenge 25") whereby any person attempting to buy alcohol who appears to be under the age of 25 will be asked for photographic ID to prove their age. The forms of ID that may be accepted are passports, official Photographic Identity Cards issued by EU states bearing a hologram or ultraviolet feature, driving licences with a photograph, photographic military ID or proof of age cards bearing the 'PASS' mark hologram.
  - b) Signage advertising the age verification, or 'Challenge 25' policy will be displayed in prominent locations in the premises.
  - c) All refusals will be entered into the refusals book.
- **Training:**
  - a) The premises licence holder shall ensure that all staff members engaged in the supply or delivery of alcohol shall receive induction training. The induction training shall include the lawful selling of age restricted products and the refusal of the sale of alcohol to a person who is drunk, how to be alert to the potential dangers from customers and conflict management.
  - b) This training will take place prior to the selling and delivering of such products.
  - c) Further refresher training covering the above will be carried out thereafter at intervals not to exceed 6 months, with the date and time of the refresher training to be documented.
  - d) All such training shall be fully documented and recorded and signed by both the employee/agent and the DPS. All training records shall be kept on the premises and made available to Sussex Police, authorised officers of the Licensing Authority and officers from the Trading Standards team upon request.
- **Delivery of alcohol:**
  - a) Alcohol shall not be delivered to anywhere other than a recognisable permanent business or residential address, (not to a public place).
  - b) The age verification policy will be clearly advertised at each stage of the order and on all advertising. Customers will be reminded that it is a criminal offence for a person under 18 to purchase or attempt to purchase alcohol and that it is also an offence to purchase alcohol on behalf of a person aged under 18.
  - c) At the time the order is placed a declaration will be required from the person placing the order that the person is aged over 18 years of age and that the intended recipient is over 18 years of age. A record of that confirmation will be kept.
  - d) All deliveries of alcohol must be made by a person over the age of 18 years.
  - e) Each and every delivery must be signed for and the person delivering the alcohol must request appropriate photographic ID from the recipient if that person is believed to be under 25 years of age. If no such ID is produced the deliverer will retain the alcohol and return it to the premises.

- f) In the event that there is no one to accept delivery alcohol shall not be left on the doorstep or any other place.
  - g) Those undertaking deliveries shall be trained in the delivery of alcohol and Challenge 25 prior to commencing deliveries.
- Deliveries of goods necessary for the operation of the business shall be carried out at such a time and in such a manner as to prevent nuisance and disturbance to nearby residents.
  - Waste collections shall be arranged at such time and in such manner as to prevent nuisance and disturbance to nearby residents. The movement of waste bins and rubbish shall be carried out at such a time and in such a manner as to prevent nuisance and disturbance to nearby residents.
  - Appropriate signage will be displayed at all exits requesting customers to respect of the needs of local residents and leave quietly.

The Licensing Act provides a right of appeal to the Magistrates' Court in respect of an application for a premises licence. An appeal must be commenced by notice of appeal being given by the appellant to the Magistrates Court within a period of 21 days beginning on the date the appellant was notified in writing of the decision of the Licensing Sub Committee.

The decision will be provided in writing to all parties within five working days of the decision being made.