

Decision of Licensing Sub Committee. Hearing 18 May 2021

Application for a premises licence at Dirty Burger Ltd, 2 Old Orchard Rd, Eastbourne, BN21 1DB

The hearing concerned a premises licence for Dirty Burger Ltd, 2 Old Orchard Rd, Eastbourne, BN21 1DB. The application was for late night refreshments (outdoor) on Monday to Wednesday between 23:00 to 01:00 and on Thursday to Sunday between 23:00 to 04:00. Plus, the supply of alcohol for consumption (off the premises) on Monday to Sunday between 12.00 to 23.00.

Since the original application the Applicant and the Police had agreed modified licensable hours, in relation to late night refreshments, to be Thursday 23:00 to 24:00 and Friday to Sunday between 23:00 to 02:00 (but only on Sundays which are followed by a Bank Holiday Monday). On those Sundays that are not followed by a Bank Holiday Monday no late night refreshments licence is required. In addition, prior to the hearing, the Applicant had agreed modified licence conditions with Sussex Police which are contained within pages 39 to 41 of the Report, with the minor exception of the condition on page 41 of the Report which was, "In addition you will refuse the sale of all alcohol to persons known to cause drink related anti-social behaviour within the area or persons suspected or (of) supplying alcohol to such individual", which was agreed to be removed by Sussex Police following the publication of the Report.

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 Advisors report.

The Sub Committee considered the application and the oral representations made at the hearing by the applicant Matthew Howard, Grant Howard and Lisa Baker. They outlined their previous experience in operating similar food businesses and their experience in door supervision/security. It was asserted that they ran a well managed premises and held themselves to high standards. Examples were given of their willingness to help others in the area even those who were not their customers. It was stated that they were willing to be the "eyes and ears" of the area and it was offered that even if the licence was not granted that their CCTV footage would be made available, if appropriate. It was stated that the business was conscious of the local residents' concerns and they gave some examples of how they would address those concerns. Those included that they had provided a new bin outside the premises which they would be regularly emptied, that they would constantly check for litter in the area and undertake a regular litter pick in the area. They explained that they were willing to listen to any concerns from local people and would work with the Council and the Police to address any issues. The applicant explained that alcohol would be simply complementary to the provision of food and that they did not expect that they would sell much alcohol. They explained that the food would be in sealed containers to deter people from eating it in the streets and that the majority of their food provision was delivered to customers rather than served at the premises.

Due regard was given to the written representations of Juliette Hale, and the written and oral representations of Mary Gray who attended the hearing. Those expressed concerns about the problems arising from the late-night sale of food and the sale of alcohol leading to problems, including but not limited to, crime and anti-social behaviour, littering and noise nuisance in the area. Mary Gray raised an issue at the hearing in relation to the problems of nuisance relating to parking in the area which she considered were connected to the premises, but the Sub Committee were unable to consider that matter since that issue was not included in her written representation at page 53 of the Report. At the hearing it was clarified that the representation from Mary Gray was made as an individual rather than as a representative of all the occupants of Stafford House.

In its deliberations the Sub Committee considered what decision would be appropriate and proportionate from the options outlined in para. 8.1 of the Report.

Decision

The Sub Committee resolved to grant the licence, with the modified hours and conditions as agreed with Sussex Police, with the minor exception as outlined above

Reasons for decision

The Sub Committee were satisfied that with the modified hours and conditions the premises would not undermine the licensing objectives. The Members in their deliberations noted the proactive approach of the applicant, as outlined on the application and at the hearing, and their willingness to engage with and contribute to the local community. It also noted their willingness to engage with the Council and other relevant agencies. In making this decision the Sub Committee took into account that the provision of alcohol was intended to only be a small part of the business, that it would only be provided in conjunction with the sale of food and that it was reasonably expected that the majority of the provision of late night refreshment would be by delivery rather than service at the premises. The Sub Committee noted that the provision of alcohol was licenced until 23:00, for both service to customers at the premises and for deliveries, and therefore alcohol would not be available late at night as those making representations had believed.

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 is 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.