

Minutes of the meeting of the **LICENSING SUB-COMMITTEE** held at the Council Offices, Whitfield on Tuesday, 30 October 2018 at 3.03 pm.

Present:

Sub-Committee:

Chairman: Councillor B W Butcher

Councillors: A M Napier (as substitute for Councillor P Walker)
M J Ovenden

Officers:

Contentious and Regulatory Lawyer
Public Protection Manager
Licensing Team Leader
Licensing Enforcement Officer
Technical Support Officer (Licensing)
Solicitor Apprentice
Democratic Services Officer

Persons attending in connection with the Hearing

As shown on the Notice of Determination (NOD/18/00010R).

23 APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor P Walker.

24 APPOINTMENT OF SUBSTITUTE MEMBERS

It was noted that, in accordance with Council Procedure Rule 4, Councillor A M Napier was appointed as substitute for Councillor P Walker.

25 DECLARATIONS OF INTEREST

There were no declarations of interest made by Members.

26 LICENSING ACT 2003 - REVIEW OF A PREMISES LICENCE IN RESPECT OF DEAL GRILL, 144 HIGH STREET, DEAL

The Sub-Committee considered an application from Mr B Henderson who had requested the review of a premises licence under Section 51 of the Licensing Act 2003 in respect of Deal Grill, 144 High Street, Deal. Mr Henderson called for the review on the grounds that the licensing objectives of Prevention of Crime and Disorder, Public Safety, Prevention of Public Nuisance and Protection of Children from Harm were not being promoted.

On the basis of the representations of the applicant and his representative, and the Licence Holder and his representatives, the Sub-Committee found the following facts to be established:

- (i) Deal Grill was a venue that had a premises licence for the sale of alcohol and late night refreshment. The premises licence holder and Designated Premises Supervisor was Mehmet Gurbuz.
- (ii) The hours on the premises licence for licensable activities were:

Alcohol Sales

Sunday – Thursday	10:00 – 00:01 hrs
Friday – Saturday	10:00 – 01:00 hrs

Late Night Refreshment

Sunday – Wednesday	23:00 – 01:00 hrs
Thursday – Saturday	23:00 – 02:00 hrs

The opening hours for the premises were as follows:

Sunday – Wednesday	14:00 – 01:00 hrs
Thursday	14:00 – 02:30 hrs
Friday – Saturday	14:00 – 03:00 hrs

- (iii) The premises remained open as per the opening hours in order to sell cold wraps and salad, and cold drinks. The last order for hot food was taken at 01:45 hrs.
- (iv) Following a licence review hearing on 21 July 2006 conditions were applied to the premises licence as follows:
- (a) The licence holder must ensure that the areas indicated by hatching on the attached plan shall be clear of litter, which is attributable to the licence holder’s premises, after close of business every day.
 - (b) Music played inside the premises shall have a terminal hour of 23:00 hrs.
 - (c) A sign, A3 in size, shall be clearly displayed at all the public entrances/exits to the premises requesting that customers leave the premises quietly and respect the needs of the local community.
 - (d) Notices stating the last ordering times for individual food items to be placed in the premises and in the window so that staff and customers understand that the premises will close at the terminal hour. (To prevent public nuisance.)
 - (e) An operating policy to be drawn up in consultation with the Licensing Manager and Environmental Health Officers, written in Turkish and English and attached to the Premises Licence. All staff must be aware of the existence and content of this document. This is to ensure that staff are aware of closing times and procedures. (To prevent public nuisance.)

- (f) All outside lighting, including the illuminated name sign, be switched off at the terminal hour. (To prevent public nuisance.)
- (g) Blinds to be provided for the windows, excluding the door, within six weeks of this hearing and drawn at the terminal hour in order to make it clear to customers that the premises is closed for business and to permit cleaning to be undertaken without any public admittance to the premises. (To prevent public nuisance.)

Following a subsequent review on 4 December 2007, the following conditions were added to the licence:

- (h) The licence holder MUST ensure that the area indicated by the hatching on the attached plan shall be swept clear of litter and food debris which is attributable to the licence holder's premises after the close of business every day.
 - (i) The licence holder MUST ensure that the pavement area directly in front of the premises is cleaned and left free of grease on a daily basis.
 - (j) The licence holder MUST ensure that the internal CCTV is operational during business hours and that the date and time is shown on all recordings. All tapes shall be retained for a period to be agreed with the Licensing Manager and shall be handed to him if requested.
- (v) Mr Henderson had called for the review under the licensing objectives: Prevention of Crime and Disorder; Public Safety; Prevention of Public Nuisance; and Protection of Children from Harm. He alleged that the premises was open after their terminal hour and his application also stated that there was an issue with anti-social behaviour in Deal every Friday, Saturday and nearly every Sunday.
 - (vi) Mr Henderson and Councillor Gardner had expected the police, Anti-Social Behaviour team or Environmental Health to be in attendance at the Hearing, given there had been dozens of complaints. No representations however were received from the Responsible Authorities, including the Police. No representations were received from any other persons. Councillor Gardner told the Sub-Committee that he had received telephone calls from other residents with regard to the premises but they were not prepared to make representation and that he, as ward councillor, would do so on their behalf.
 - (vii) Evidence was provided by Mr Henderson in the form of emails and some photos accompanying those emails. A total of 33 emails were included within the hearing pack having been sent between 29 May 2018 and 14 October 2018. In Mr Henderson's initial email he complained about anti-social behaviour in Deal and also stated that Deal grill was open past the terminal hour.
 - (viii) The photos provided by Mr Henderson were not date or time stamped. The emails gave the time the email was sent to the Licensing Team and Mr Henderson stated that these were the dates and times the incidents took place. The Sub-Committee's attention was drawn by Mr Henderson to a

number of the photos within the hearing pack. These photos, whilst showing at times some persons outside the shop, did not show any anti-social behaviour taking place nor that hot food was being served.

- (ix) On 1 June 2018, the Licensing Enforcement officer Paul James made an initial visit to Deal Grill in response to the complaint dated 29 May 2018 and made subsequent visits. Mr Gurbuz was reminded of the conditions attached to his licence and the importance of these. As a result of visits carried out on 1 June 2018, 19 June 2018, 26 June 2018, 29 June 2018, 18 July 2018, 30 August 2018 and 30 September 2018, the following was established as summarised below:
- Mr Gurbuz stated he stayed open past his licensed hours to serve salads, cold wraps and cold drinks. He did not serve hot food or beverages.
 - Mr Gurbuz did not know how to work the CCTV at the premises but his son did.
 - There was no condition which stated how long the CCTV footage should be retained. The system could show recordings for 8 days and during one of his visits the Licensing Enforcement officer asked for this to be increased.
 - There was no CCTV covering the microwave oven, which was located at the rear of the shop.
 - There was no evidence of hot food being served. The CCTV showed the kebab rotisserie had been turned off by the terminal hour on the dates and times of the checks (specified in the statement within the report) and were off when an evening enforcement visit was carried out.
 - The deep fat fryers were not covered by CCTV. Having observed footage, the Enforcement officer did not think staff spent much time in that area of the kitchen.
 - Signage had been put in place and corrected (per conditions).
 - During the evening enforcement visit, the external light was off and the blind was closed at 01:55 hrs.
- (x) The external light was shown to be left on in the photos provided by Mr Henderson. There was no evidence to prove this was past the terminal hour. The light was turned off when the evening enforcement visits took place.
- (xi) Mr Henderson believed that hot food was being served from the premises beyond its licensed hours, possibly using the microwave. During visits carried out by the Licensing Enforcement officer, the rotisserie and hot plates were turned off and there was no evidence of hot food being served. The CCTV footage viewed by the officer showed that staff were not seen to be using the deep fat fryers and although the CCTV cameras did not cover the microwave at the rear of the shop no staff were seen to be spending any time in that area.
- (xii) Councillor Gardner asked that a condition be added to the licence to increase the CCTV retention period to the standard 28 days and that the CCTV cameras should cover the microwave ovens to provide assurance that no food was being reheated past the terminal hour. Mr Hopkins would be happy to accept this condition.

- (xiii) There was a condition on the licence which stated the blinds should be drawn at the terminal hour. Mr Hopkins stated that the condition did not state how far the blinds should be drawn and confirmed that the blind had been removed to be cleaned.
- (xiv) Mr Henderson was of the opinion that people were drawn to that end of town late at night as the premises was open past the closing time of the pubs and clubs. Mr Henderson stated that every Friday, Saturday and Sunday night drunk people would go to the premises and he would be woken by shouting, the banging of car doors and car engines. People had also vomited on his steps. Mr Henderson stated that there were often issues with anti-social behaviour however this behaviour could not be said to be attributed to the premises.
- (xv) Temporary Event Notices were in place for 24, 25, 26, 27, 28 and 29 July 2018 for the provision of late night refreshment from 23:00 to 05:00 hrs.

In reaching its findings the Sub-Committee took into account the following:

- (i) Dover District Council's Licensing Policy.
- (ii) The Licensing Act 2003 and the guidance given under Section 182 of the Act.
- (iii) Section 17 of the Crime and Disorder Act 1998.
- (iv) Article 6 of the Human Rights Act (Right to a fair trial).

RESOLVED:

Taking into account the above facts, the Sub-Committee were satisfied that the evidence provided did not prove sufficient to conclude that the licensable activities being carried out undermined the licensing objectives, nor was there sufficient evidence to conclude that any anti-social behaviour could be affiliated to or caused by the licensed premises. Whilst there had been some lack of compliance with the conditions placed on the licence in 2006 and 2007, these had now been addressed by the premises licence holder.

Whilst both the applicant for the review and the premises licence holder suggested that there were others who supported their respective view, the Sub-Committee was conscious that no others had made representation, including the Responsible Authorities.

The Sub-Committee decided not to alter the hours and the hours remain as per the licence, but to vary the conditions as follows:

- (a) The licence holder must ensure that the area indicated by hatching on the attached plan shall be clear of litter, which is attributable to the licence holder's premises, after close of business every day.
- (b) Music played inside the premises shall have a terminal hour of 23:00 hours.

- (c) A sign, A3 in size, shall be clearly displayed at all the public entrances/exits to the premises requesting that customers leave the premises quietly and respect the needs of the local community.
- (d) Notices stating the last ordering times for individual food items to be placed in the premises and in the window so that staff and customers understand that the premises will close at the terminal hour.
- (e) All outside lighting, including the illuminated name sign, be switched off at the terminal hour.
- (f) Blind on the front window to be drawn fully down to the base of the window at the terminal hour in order to make it clear to customers that the premises is closed for hot food business and to permit cleaning to be undertaken without any public admittance to the premises.
- (g) The licence holder **MUST** ensure that the pavement area directly in front of the premises is cleaned and left free of grease on a daily basis.
- (h) The licence holder **MUST** ensure that the internal CCTV is operational during business hours and that the date and time is shown on all recordings. All tapes shall be retained for a period of 28 days and be produced to an officer upon request. The CCTV cameras to cover the cooking areas namely where the grill, rotisserie and microwave are located **and** the front serving counter. A log to be completed and retained by the licence holder showing that weekly CCTV checks have been carried out.
- (i) Last order for hot food to be taken no later than 15 minutes before the terminal hour.

The meeting ended at 4.47 pm.