

Public Document Pack

Minutes of the meeting of the **LICENSING SUB-COMMITTEE** held at the Council Offices, Whitfield on Friday, 4 August 2017 at 10.15 am.

Present:

Sub-Committee:

Chairman: Councillor B W Butcher

Councillors: S F Bannister (as substitute for Councillor M Rose)
M J Ovenden

Officers:

Legal Adviser: Contentious and Regulatory Lawyer

Licensing Officer: Licensing Team Leader

Administrator: Democratic Services Officer

Persons attending in connection with the Hearing

As shown on the Notice of Determination (NOD/2017/0005A).

1 APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor M Rose.

2 APPOINTMENT OF SUBSTITUTE MEMBERS

It was noted that, in accordance with Council Procedure Rule 4, that Councillor S F Bannister was appointed as substitute for Councillor M Rose.

3 DECLARATIONS OF INTEREST

There were no declarations of interest made by Members.

4 LICENSING ACT 2003 - APPLICATION FOR THE GRANT OF A PREMISES LICENCE AT 43 BIGGIN STREET, DOVER

The sub-committee considered an application from Arsto Ltd in respect of 43 Biggin Street, Dover CT16 1DB. The application was for the grant of a premises licence for:

Supply of Alcohol (for consumption OFF the premises)

| | |
|-----------|-------------------|
| Every Day | 08:00 – 22:00 hrs |
|-----------|-------------------|

At the outset of the hearing the police sought to introduce statements that were presented as part of the Medway hearings, there was no objection from any part

and copies of the statements were provided to all present. On the basis of the representations of the applicant and the responsible authority, the sub-committee found the following facts to be established:

- (i) The location of the premises had a large number of licensed premises in the vicinity (22 other licensed premises within a 200 metre radius) and was suffering from an increase in anti-social behaviour from various groups of people, including street drinkers.
- (ii) There was no cumulative impact assessment of problems caused by the licensed premises in the area. As a result there was no special policy in respect of the location.
- (iii) Kent Police objected to the application on the grounds of Crime and Disorder, Public Nuisance and Public Safety. Based on the previous record of the applicant, Mr Donchev (Director of Arsto Ltd), the application could be detrimental to the situation in the area with regard to alcohol related crime and disorder.
- (iv) Mr Donchev was the Director of Arsto Ltd and was named as the Designated Premises Supervisor (DPS) for the proposed premises licence at 43 Biggin Street. Mr Donchev had previously been the Director of companies known as Donston Ltd and Donsto Ltd which held premises licences – at both of which Mr Donchev was named as the DPS.
- (v) The applicant (Mr Donchev) had owned a premise (Eurofoods) in the Medway area under the company name Donston Ltd which Kent Police and Public Health had requested a review of the licence. As a result of the review the premises licence was revoked on 26th July 2016 and was later upheld on appeal at Court. The decision notice stated that this was “because of the licensees’ failure to meet any Licensing Objectives in any meaningful sense and because the Licensee has displayed continuing poor standards and a failure to co-operate with Local Authority, Police or Public Health.”
- (vi) The applicant (Mr Donchev) under the company name Donsto Ltd submitted a new application for the same premises (Eurofoods) which Kent Police objected to. This was heard at a Hearing of Medway Council’s Licensing Hearing panel on Tuesday 28th March 2017 where the application was refused.
- (vii) Mr Donchev stated the reason for applying to open a shop in Dover was as he was unable to in Medway and the premise at 43 Biggin Street was previously owned by his partner. He was aware of the current problems of street drinkers in the town and would ensure his staff would be fully trained to deal with all alcohol sales and the training would be provided by Mr Donchev as had been done previously. In the absence of the DPS, Mr Donchev would expect his staff to phone the police if there were problems with customers trying to purchase alcohol.
- (viii) Mr Donchev had encountered problems with proxy sales at his previous premises in Medway. Mr Donchev stated that he had not made any under-age sales of alcohol from his premises. He had sold to different people and could not recognise if they were street drinkers; once raised with him, he then stopped selling but that did not stop the proxy purchases.

- (ix) Mr Donchev stated he was fighting a system of public officials covering their backs and that the difficulties he had in Medway should not matter here. He had not sought to hide himself and was hard working and honest. He would be happy if someone wanted to volunteer to come and stand at his door and stop street drinkers coming in. He could not afford to provide such a person.
- (x) It was the opinion of Mr Donchev that the authorities were not dealing with the street drinkers and anti-social behaviour in Medway and that it was easier to revoke his licence rather than deal with the perpetrators. Mr Donchev would regularly confront those causing the problems of crime and disorder and said that the buck could not stop with the shop owner. He said tackling street drinkers was ultimately a job for the authorities.
- (xi) Mr Donchev was not intending to sell high alcohol percentage lagers from the premises.
- (xii) Kent Police stated they had attempted to make contact with Mr Donchev to engage with him over the application. Mr Donchev denied this and showed the Hearing Panel an email from PC S Noddings in relation to his application which stated the application had been received and he would contact him in due course. Mr Donchev stated he had not received any further correspondence from the police.
- (xiii) That should the licence be granted Kent Police would seek conditions as per their objection.

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 (Duty to consider crime and disorder implications).
- (iv) The judgment in the case of Daniel Thwaites PLC V Wirral Borough Magistrates Court [2008] EWHC (admin) in which it was held that speculative representations should be disregarded unless supported by previous facts as evidence.

RESOLVED: (a) Refuse the application on the grounds of Crime and Disorder, Public Nuisance and Public Safety for the following reasons:

- (i) There is no cumulative policy and although the sub-committee accept and acknowledge that there is an anti-social and drinking issue that has not been a significant consideration. The application has been considered independent of that on its own merits.
- (ii) The applicant in this application is a limited company of which Mr Donchev is a director with another. The sub-committee has heard evidence regarding a

revocation of a licence, upheld on Appeal and a new application in Medway which was made by a different named company. Mr Donchev in his explanation to the sub-committee as to how the Medway business was operated day to day, including staffing and training by him as the operator of the business, is on his own account to be the same in the premises in Dover.

- (iii) Mr Donchev accepts that sales of alcohol did take place to street drinkers and those under the influence, as was considered in the Medway matter, be it in person or as stated by Mr Donchev, by proxy.
- (iv) Mr Donchev did not show commitment to the training process to prevent such sales and seemed to suggest the problem was caused by the lack of action on the part of others. He did not seem to recognise his responsibility as a DPS and personal licence holder to join in addressing the issue by adhering and demonstrating understanding of the licensing objectives.
- (v) The sub-committee have considered the application afresh and pursuant to Thwaites do not take into account speculative matters, however given the events in Medway and Mr Donchev's lack of practical measures and attitude to address serious aspects of promoting the licensing objectives, particularly of Crime and Disorder, Public Safety and Prevention of Public Nuisance it is concerned.
- (vi) The sub-committee have considered if the licence could be granted and instead reject the proposed DPS, however, the information provided by Mr Donchev gives the sub-committee serious concern that it is Mr Donchev who is the primary operator of the premises and it is his failure to promote the licensing objectives.

The meeting ended at 11.42 am.