

LICENSING SUB COMMITTEE

DECISION RECORD

HELD ON: 30 January 2014

DECISION RECORD

Licensing Act 2003 (all section references in this record are references to the Act)

LICENSING AUTHORITY FOR BRISTOL

LICENSING (HEARINGS) SUB COMMITTEE MEETING

HELD ON 30 January 2014

AGENDA TITLE

Conduct of a hearing into an application for the GRANT of a licence made by: Yunrak Kim in respect of: Dain Korea, 27 Gloucester Road, Bishopston, Bristol BS7 8AA

MEMBERS PRESENT:

1. Councillor Hance (Chair)
2. Councillor Morgan
3. Councillor Leaman

OFFICERS PRESENT

Pauline Powell, Legal Advisor
Myra McSherry, Licensing Policy Adviser
Allison Taylor, Committee Clerk

REPRESENTATIONS RECEIVED FROM:

Mark Curtis
The Bishopston Society

Applicants, responsible authorities and interested parties

Applicant

Chief Officer of Police (s.13(4)(a))

Fire Authority (s.13(4)(b))

Health and Safety Enforcing Authority (s.13(4)(c))

Local Planning Authority (s.13 (4) (d))

PARTIES & REPRESENTATIVE (IF ANY) in attendance

Dean Carr – PLT
Yunruk Kim – Applicant & DPS
Yanjin Jung - Applicant

Not a party to this hearing

Not a party to this hearing

Not a party to this hearing

Not a party to this hearing

Environmental Health (Pollution Control) (s.13 (4) (e))	Not in attendance but the Committee had regard to the representation of Mark Curtis
Social Services Authority (s.13 (4) (f))	Not a party to this hearing
Any other relevant Licensing Authority (s.13 (4) (g))	Not a party to this hearing
Weights and Measures Authority (s.13. (4) (i))	Not a party to this hearing
Relevant persons who are persons living in the vicinity of the premises (s.13 (3) (a))	Not a party to this hearing
Relevant persons who are a body representing persons living in that vicinity (s.13 (3) (b))	Not in attendance but the Committee had regard to the representation of the Bishopston Society
Relevant persons who are persons involved in a business in that vicinity (s.13 (3) (c))	Not a party to this hearing
Relevant persons who are bodies representing persons involved in such businesses (s.13 (3) (d))	Not a party to this hearing

RECORD OF HEARING:

The authority made a contemporaneous hand written (long hand) record of the hearing. Any party wishing to receive a typed transcript should contact Councillor Support Officer (Democratic Services, City Hall, College Green, Bristol) for information regarding the arrangements for transcribing and any charge levied where the authority produces the same. Set out below is a summary of the reasons for the decision, in the event of an appeal the Licensing Authority reserves the right to elaborate on the reasons.

DECISION MADE:

1. That the application be GRANTED as follows:
 - (i) The addition of conditions as detailed in Annex 3 below
 - (ii) The mandatory conditions included in the licence under section *19, *20, *21 of the Act

Accordingly the licence is to be issued subject to the following

Licensable activities authorised by the licence and the times the licence authorises the carrying on of licensable activities

STANDARD TIMES

Licensable activities authorised by the licence and the times the licence authorises the carrying out of licensable activities.
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Sale of Alcohol	Sunday to Thursday 11:30 - 23:00
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Sale of Alcohol	Friday to Saturday 11.30 – 23:30
Late Night Refreshment	Sunday to Thursday 23:00 - 23:30
Late Night Refreshment	Friday to Saturday 23:00 – 00:00

Should the licence be granted the supply of alcohol will be authorised as follows:

- 1 Supply of alcohol authorised for On and Off the premises

The opening hours of the premises	
Sunday to Thursday	11:30 – 23:30
Friday and Saturday	11:30 – 00:00

NON STANDARD TIMINGS
Non standard timings not applicable.

Annex 1 – Mandatory conditions

Conditions to be applied should the application be granted

Mandatory condition Licensing Act 2003 - Door Supervision

Where this licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, each such individual must:

- (a) be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or
- (b) be entitled to carry out that activity by virtue of section 4 of that Act.

(As required by s21 Licensing Act 2003 as amended by the Violent Crime Reduction Act)

Mandatory condition Licensing Act 2003 - Supply of Alcohol

1.No supply of alcohol may be made under the premises licence-

- (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
- (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

2. Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Mandatory Licensing Conditions - Additional conditions imposed by Policing and Crime Act 2009

Conditions numbered 1,2, and 3 shall be in force as of the 6 April 2010

Conditions 1, 2, 3 and 5 shall not apply where the premises licence authorises sale by retail or supply of alcohol only for consumption off the premises.

1. (1) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children-

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to-

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;

(d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on-

(i) the outcome of a race, competition or other event or process, or

(ii) the likelihood of anything occurring or not occurring;

(e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.

2. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

3. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

Conditions numbered 4 and 5 shall be in force as of the 1 October 2010

4.(1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

(2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

5. The responsible person shall ensure that-

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures-

(i) beer or cider: ½ pint;

(ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and

- (iii) still wine in a glass: 125 ml; and
- (b) customers are made aware of the availability of these measures.

Annex 2 – Conditions consistent with the Operating Schedule

CC01 CCTV shall be in use at the premises.

(i) Where a CCTV system is to be installed, extended or replaced, it shall be to an appropriate standard as agreed with the Licensing Authority in consultation with the Police. Where a CCTV system is to be installed it shall be fully operational by commencement of Licensable activity. Where existing CCTV systems are to be replaced or extended the replacement or extension to the system shall be concluded by commencement of Licensable activity. and the system be fully operational on that date.

(ii) The CCTV equipment shall be maintained in good working order and continually record when licensable activity takes place and for a period of two hours afterwards.

(iii) The premises licence holder shall ensure images from the CCTV are retained for a period of 31 days. This image retention period may be reviewed as appropriate by the Licensing Authority

(iv) The correct time and date will be generated onto both the recording and the real time image screen.

(v) If the CCTV equipment (Including any mobile units in use at the premises) breaks down the Premises Licence Holder shall ensure the designated premises supervisor, or in his/her absence other responsible person, verbally informs the Licensing Authority and the Police as soon as is reasonably practicable. This information shall be contemporaneously recorded in the incident report register and shall include the time, date and means this was done and to whom the information was reported. Equipment failures shall be repaired or replaced as soon as is reasonably practicable and without undue delay. The Licensing Authority and the Police shall be informed when faults are rectified.

(vi) The premises Licence holder shall ensure that there are trained members of staff available during licensable hours to be able to reproduce and download CCTV images into a removable format at the request of an authorised officer of the Licensing Authority or a constable.

(vii) There shall be clear signage indicating that CCTV equipment is in use and recording at the premises during all periods of Licensable activity.

SA01 All staff to be trained in the prevention of underage sales to a level commensurate with their duties. All such training to be updated as necessary, for instance when legislation changes, and should include training on how to deal with difficult customers. The training should be clearly documented and signed and dated by both the trainer and the member of staff receiving it. The documentation shall be available for inspection on request by an authorised officer of the Licensing Authority or a constable.

SA02 (a) An approved proof of age scheme shall be adopted, implemented and advertised within the premise such as "Challenge 25" whereby an accepted form of photographic identification shall be requested before any alcohol is sold to any person who appears to be under 25 years of age. Acceptable proof of age shall include identification bearing the customers photograph, date of birth and integral holographic mark or security measure. Suitable means of identification would include PASS approved proof of age card, photo-card driving licence and passport.

(b) Publicity materials notifying customers of the operation of the Challenge 25 scheme shall be displayed at the premises, including a Challenge 25 sign of at least A5 size at the entrance to the premises and where practicable at each point of sale.

SA03 The premises licence holder shall require the designated premises supervisor, or in his/her absence other responsible person, to keep an 'incident/refusals logbook in a bound

book in which full details of all incidents are recorded. This shall include details of any refused sales and shall give details of the persons involved, incident description, time and date, actions taken and final outcome of the situation. This shall be completed as soon as possible and in any case no later than the close of business on the day of the incident. The time and date when the report was completed, and by whom, is to form part of the entry. The logbook is to be kept on the premises at all times and shall be produced to an authorised officer of the Licensing Authority or a constable when required.

2 The DPS shall monitor the exterior of the Premises to ensure litter is kept to a minimum

Annex 3 – Conditions attached after a hearing by the licensing authority

1. NP68 Noise from plant & equipment

Noise from any ventilation, refrigeration or air conditioning plant or equipment shall not cause nuisance to the occupants of any properties in the vicinity.

Recommendation:

(a) The Rating Level of any noise from any fixed plant shall not exceed the background noise level by more than 0dB at the nearest noise sensitive property as determined by BS 4142: 1997 Method of Rating Industrial Noise Affecting Mixed Residential and Industrial Areas at any time.

(b) Anti vibration mounts should be used to isolate plant from fixed structures and a flexible connector used to connect the flue to the fan if there is a potential to transmit vibration to any noise sensitive property. Any systems will also need regular maintenance so as to reduce mechanical noise.

Guidance on the above can be gained at 'Guidance on the Control of Odour & Noise from Commercial Kitchen Exhaust System' Published electronically by Department for Environment, Food and Rural Affairs. Product Code PB10527.

2. WM10 Odour

Odour from any flue used for the dispersal of cooking smells serving the building shall not cause nuisance to the occupants of any properties in the vicinity.

Recommendation: It is recommended that any flues for the dispersal of cooking smells shall either:

(i) Terminates at least 1 metre above the ridge height of any building in the vicinity, with no obstruction of upward movement of air or:

(ii) Have a method of odour control such as activated carbon filters, electrostatic precipitation or inline oxidation.

Guidance on the above can be gained at 'Guidance on the Control of Odour & Noise from Commercial Kitchen Exhaust System' Published electronically by Department for Environment, Food and Rural Affairs. Product Code PB10527. <http://www.defra.gov.uk/environment/noise/research/kitchenexhaust/pdf/kitchenreport.pdf>

3. WM5 Litter

The premises licence holder, premises supervisor or event manager, shall ensure that

measures shall be put in place to remove litter or waste arising from customers and to prevent such litter from accumulating in the immediate vicinity of the premises or neighbouring premises.

4. WM7 (amended)

Activities relating to the on-site disposal (including placing into external receptacles) shall only take place between 09.00 hours and 20.00 hours.

5. WM8

The collection of refuse, bottles and recyclable materials shall only take place 08.00 and 20.00 Monday to Saturday and not at all on Sundays or Bank Holidays.

6. WM9

Activities relating to deliveries shall only take place between 08.00 and 20.00 Monday to Saturday and not at all on Sundays or Bank Holidays.

7. Alcohol shall only be supplied when ancillary to substantial food to be consumed on the premises or substantial food supplied as a takeaway.

Annex 4 – Plans

Plans as submitted to the Licensing Authority on 18th November 2013.

2. That the GRANT here agreed will take effect immediate effect.
3. That in accordance with Section 23 of the Act a duly authorised officer be directed to give Notice of determination to:
 - (a) Yunrak Kim
 - (b) The Chief Officer of PoliceAnd the following bodies that made representations:
 - (a) Mark Curtis
 - (b) The Bishopston Society

REASONS FOR DECISION

The following paragraphs summarise the sub-committee's reasons for granting the application and for modifying the conditions on the Licence.

The sub-committee carefully considered the representations together with the information provided for the Hearing and that received during it. The sub-committee had regard to the Secretary of State's guidance to Licensing Authorities and the Authorities own statement of licensing policy.

The committee's decision was particularly influenced by the consideration of the promotion of the licensing objectives concerning the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm.

The Committee first noted that the premises was located within an area that had been

designated under the Council's Statement of Licensing Policy as a Cumulative Impact Area. "Cumulative Impact" is defined in the National Guidance as the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. For example, the potential impact on crime and disorder or public nuisance in a town or city centre of a large concentration of licensed premises in that part of the local authority area. The effect of adopting a Cumulative Impact Policy is to create a rebuttable presumption that applications for new premises licences will normally be refused if relevant representations to that effect are received, unless it can be demonstrated by the applicant that the operation of the premises will not add to the cumulative impact already being experienced in the area.

The Committee heard that the premises was a small restaurant serving Korean and Japanese food and currently operated a BYO offer. They wished to licence the premises in order to sell traditional Japanese and Korean wines and beers. The applicant had not thought further regarding the other types of alcohol that would be available but it was likely they would include a selection of European wines and beers. They had also applied for an additional hour at the end of the day to their current licence.

The following points arose during the hearing:-

- The local Police officer had visited the premises and noted the conditions offered in the operating schedule and was content that the application promoted the licensing objectives;
- There was a comprehensive set of conditions within the operating schedule which included Challenge 25 and a refusals register. The applicant had also agreed the proposed conditions within the Pollution Control representation;
- The applicant was prepared to pull back his terminal hour for alcohol sales to 23:30 in order to allow for a drinking period of 30 minutes before closing time;
- Customers would be permitted to take away an unfinished bottle of wine after a meal;
- The Licensing Policy advisor read out, for the benefit of all parties, the reasons behind the Gloucester Road CIA. The applicant felt the premises would have no impact on Police resources;
- The Bishopston Society representation suggested a condition should the application be granted concerning alcohol being served only when ancillary to a meal. The applicant indicated acceptance of this condition.

The Committee, having carefully deliberated, agreed that the CIA policy had been triggered but the presumption to refuse had been overcome because:-

- The premises was small;
- the conditions in the operating schedule and from Pollution Control promoted the licensing objectives;
- The applicant had volunteered to pull back the terminal hours for alcohol sales by 30 minutes.

However, the Committee still had regard to the reasons for the CIA policy and supported the policy not being undermined. The Committee had concerns regarding the impact the terminal hour might have on residents sleep time and therefore agreed to pull back the terminal hours for alcohol sales by one hour Sunday to Thursday and by 30 minutes Friday and Saturday. The closing time for the premises to be 30 minutes after the terminal hour for the supply of alcohol.

SIGNED:

CHAIR

Name: Councillor Hance