

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 13 February 2014**

AGENDA TITLE

Conduct of a hearing into an application for the VARIATION of a licence made by Mr Ayhan Dogan, in respect of Hippodrome Snax And Pizza Delivery, 2 Broad Quay, Bristol, BS1 4DA

MEMBERS PRESENT:

- 1 Councillor Jay Jethwa
- 2 Councillor Glenise Morgan (Chair)
- 3 Councillor Ron Stone

OFFICERS PRESENT:

Sally Andrews, Legal Adviser
Abigail Holman, Licensing Policy Adviser
Norman Cornthwaite, Committee Clerk

REPRESENTATIONS RECEIVED FROM:

Mark Curtis
Wayne Jones
Jonathan Derrick 3763

Applicants, responsible authorities and relevant persons

Applicant

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

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

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

**PARTIES &
REPRESENTATIVE (IF
ANY) in attendance**

Michael Parrott (Solicitor)
Ayhan Dogan (accompanied
by an interpreter)

PS Jon Derrick

Not a party to this hearing.

Not a party to this hearing.

Local Planning Authority (s.13 (4) (d))	Not a party to this hearing.
Environmental Health (Pollution Control) (s.13 (4) (e))	Mark Curtis
Social Services Authority (s.13 (4) (f))	Not a party to this hearing.
Any other relevant Licensing Authority (s.13 (4) (g))	Wayne Jones
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 a party to this hearing.
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. (a) That the application be GRANTED subject to the conditions on the licence as modified as follows:
 - (i) the alteration of conditions as to hours for licensable activities as detailed in the standard times and the non-standard timings by the substitution of the hours as to the permitted licensable activities as detailed in the standard times below

(ii) The alteration of the following conditions, the revised wording of which is set out in Annex 3 below:

- Condition 6 in Annex 2
- Condition 5 in Annex 3

The addition of conditions as detailed in Annex 3 below.
The removal of condition 7 in Annex 2.

(iii) The mandatory conditions included in the licence under section “19, 20, 21 of the Act.

(b) That to the extent that the application is inconsistent with the decisions detailed above it is rejected in part.

SUMMARY OF VARIATION APPLICATION CONSIDERED AT THIS HEARING

To add provision for late night refreshment indoors (in addition to outdoors) every day from: 23:00 to 01:00.

To remove the following conditions:

From Annex 2 Conditions consistent with the Operating Schedule submitted on 6 September 2012:

Condition no: 6 Customers shall be discouraged from eating food in or near the premises.
Condition no: 7 Late Night Refreshment - Limited to Outdoors Only

From Annex 3 Conditions attached after a hearing by the licensing authority on 21 November 2012

Avon and Somerset Constabulary:

5) The premises shall close to customers from 23:00 to 05:00 every day.

Conditions attached after this hearing by the licensing authority:

2. No orders shall be taken in person i.e. all orders must be placed by the telephone or via email/the internet.

Accordingly the licence is to be issued subject to the following

STANDARD TIMES

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

Late night refreshment

Sunday 23:00 - 02:30

Late night refreshment

Monday to Thursday 23:00 - 02:30

Late night refreshment

Friday and Saturday 23:00 - 04:00

The opening hours of the premises

Sunday	15:00 – 02:30
Monday to Thursday	10:00 – 02:30
Friday and Saturday	10:00 – 04:00

The premises shall close to customers from 01:00 – 05:00

NON STANDARD TIMINGS:

Non standard timings not applicable.

Annex 1 – Mandatory Conditions

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)

Annex 2 – Conditions consistent with the Operating Schedule

(in respect of variation applications only conditions attached to licence from previous operating schedule)

Conditions consistent with Operating Schedule submitted 06.09.2012

Conditions consistent with the operating schedule submitted on 6 September 2012

1 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 this licence. Where existing CCTV systems are to be replaced or extended the replacement or extension to the system shall be concluded by the commencement of this licence 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 licensable hours

2 Access to the premises by children is not restricted or prohibited.

3 The premises licence holder shall carry out regular risk assessments (front and back of house) on all equipment, which shall be checked professionally on a 6 monthly basis.

4 Drunk and disorderly persons shall not be served.

5 The Police shall always be contacted in matters (ie disturbances) that are beyond the control of the premises licence holder and the premises shall close for trading in the unlikely event of unruly behaviour from persistent persons.

6 Customers shall be discouraged from eating food in or near the premises.

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

Pollution Control

Odour

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

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

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

(b) 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>

Noise from plant & equipment

2) 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.

<http://www.defra.gov.uk/environment/noise/research/kitchenexhaust/pdf/kitchenreport.pdf>

Refuse, Collections and Deliveries

- 3) Activities relating to the placing of refuse, bottles and recyclable material into external receptacles shall only take place between 09.00 hours and 20.00 hours,
- 4) The collection of refuse, bottles and recyclable materials shall only take place between 07.00 hours and 20.00 hours Monday to Saturday and not at all on Sundays or Bank Holidays.

Avon and Somerset Constabulary

- 5) The premises shall close to customers from 23:00 to 05:00 every day.
- 6) Home deliveries shall be permitted: Sunday to Thursday from 23:00 to 02:30 the following day and on Friday and Saturday from 23:00 to 04:00 the following day.
- 7) There shall be only one moped on duty on any day between 23:00 and 05:00.
- 8) A bound register will be kept on the premises which will be completed daily detailing the moped used including index and the name and address of the rider. This register is to be made available to a police constable on request.
- 9) The late night refreshment licence holder shall ensure that the moped is insured, has a valid MOT certificate and that the rider has a current and valid driving licence. Details shall be kept in the bound register.

Licensing Authority

- 10) CC12 The CCTV system shall include all external areas of the premises.

Conditions attached after this hearing by the licensing authority

1. There shall be two clear notices displayed when the premises are closed to the public. One of which is to be positioned on the window, with the other on the door.
2. No orders shall be taken in person i.e. all orders must be placed by the telephone or via email/the internet.
3. The premises shall not be permitted to solicit or tout for orders.

(Conditions attached after this hearing by the licensing authority)

1. There must be at a minimum of 1 door supervisor on duty from 23.00 until the business closes every Friday and Saturday, and on Sundays preceding Bank Holidays (DC02). This was applied at the suggestion of the Police and the Licensing

Authority.

2. Conditions WM3 and WM5 shall apply. These were applied at the suggestion of Pollution Control.
3. Condition NP65 shall apply. This was applied to discourage residents being disturbed by customers leaving the premises.
4. Condition 5 in Annex 3 shall remain, but be amended to read “The premises shall close to customers from 01.00 to 05.00 every day. No orders to be taken in person after 01.00 – only by telephone or internet.” This was applied to prevent customers still being on the premises when hot food can only be provided on a home delivery basis, thereby preventing any potential for conflict between staff and customers.
5. Condition SA05 shall apply but with the word “alcohol” changed to “takeaway food”. This was applied to ensure that litter generated by the premises is properly disposed of.
6. Condition 6 in Annex 2 to remain but to read “After 01.00 customers shall be discouraged from eating food near the premises”. This was applied to ensure that customers do not remain in the area after they have bought food and leave the premises.

Annex 4 – Plans

Plans as submitted to the Licensing Authority on 6 September 2012 Drawn by Maxwell B Grieve, Drawing Number ABS/01, Drawn June 2010, as attached.

2. That the Variation here agreed will take effect **immediately**.
3. That in accordance with Section 23 of the Act a duly authorised officer be directed to give Notice of determination to:
Mr Ayhan Dogan
The Chief Officer of Police

And the following bodies that made representations:

Mark Curtis
Wayne Jones
Jonathan Derrick 3763

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 Licensing Policy Advisor summarised the application.

Michael Parrott put the case for the applicant and answered questions highlighting the following:

- The application reflects the planning consent granted - 02.30 weekdays and 04.00 weekends with customers allowed on the premises until 01.00 for hot refreshments
- There would be home delivery after 23.00 using 1 moped
- An earlier application and appeal were rejected
- This application deserves to be an exception to the Policy
- It is a small premises that can only cater for 3 to 4 customers at a time and is closed at present as there is so little trade during the day; CCTV is already installed; the applicant wants to put the premises to good use
- The premises are located in a busy part of the City Centre with a number of adjacent premises already holding late licences - Urban Tiger until 04.00, Turtle Bay until 01.00 at weekends (granted as an exception to the Policy), as well as Subway and the Radisson Blu Hotel
- There is also a branch of Domino's Pizza in Baldwin Street, which trades until 05.00 each day and is operating without difficulties; a strong factor in granting the licence was getting the balance right between location and allowing an applicant to trade
- There have been no criticisms of the applicant or the premises
- Granting this licence would not encourage people to stay in the City Centre as there

are a large number of adjacent premises operating until a later hour

- The applicant is prepared to offer a doorman on each Sunday preceding a Bank Holiday from 23.00
- The applicant is very conscious of his responsibilities relating to litter and does not want to see any in or around his premises - bins are provided and he will clear up at the close of business

Wayne Jones summarised his Representation and stated that the application should be rejected as the premises was in the CIA and the Licensing Objectives would be undermined. If the licence was to be granted, the applicant should be required to provide a door supervisor from 23.00 every Friday and Saturday as well as the Sundays preceding a Bank Holiday (suggested Condition is DC02).

In response to a question from Wayne Jones, Michael Parrott confirmed that the applicant would like the premises to remain open to the public beyond 01.00 for the sale of cold drinks and cold food.

Jon Derrick stated that the Police Representation relates to Crime and Disorder. He noted that the applicant has agreed to a door supervisor on Sundays preceding a Bank Holiday.

Mark Curtis summarised his Representation and suggested Condition WM3.

In response Michael Parrott stated that his client would be happy to accept this Condition.

Mark Curtis, Jon Derrick, Wayne Jones and Michael Parrott summed up their cases.

DECISION

The application is a material variation. Accordingly the CIA Policy is triggered. The applicant rebutted the presumption that the application should be refused. If this application was granted it would not add significantly to the problems arising from saturation and would not harm the Licensing Objectives.

The Committee therefore decided to grant the application with the following conditions:

1. There must be at 1 door supervisor on duty from 23.00 until the business closes every Friday and Saturday, and Sundays preceding Bank Holidays (DC02). This was applied at the suggestion of the Police and the Licensing Authority.
2. Conditions WM3 and WM5 shall apply. These were applied at the suggestion of Pollution Control.
3. Condition NP65 shall apply. This was applied to discourage residents being disturbed by customers leaving the premises.
4. Condition 5 in Annex 3 shall remain, but be amended to read "The premises shall close to customers from 01.00 to 05.00 every day. No orders to be taken in person after 01.00 –

only be telephone or internet.” This was applied to prevent customers still being on the premises when hot food can only be provided on a home delivery basis, thereby preventing any potential for conflict between staff and customers.

5. Condition SA05 shall apply but with the word “alcohol” changed to “takeaway food”. This was applied to ensure that litter generated by the premises is properly disposed of.

6. Condition 6 Annex 2 to remain but to read “After 01.00 customers shall be discouraged from eating food near the premises”. This was applied to ensure that customers do not remain in the area after they have bought food and leave the premises.

SIGNED:

CHAIR
Councillor Glenise Morgan