

LICENSING SUB-COMMITTEE

WEDNESDAY 19 MAY 2021

(9:45 - 10:47 am)

Councillor Lesley Heap
Councillor Katrina Lidbetter
Councillor Olly Wehring (Chair)

1. APPOINTMENT OF CHAIR

Moved by Councillor Heap, seconded by Councillor Lidbetter and

Resolved, that Councillor Wehring be appointed Chair for the duration of the meeting.

2. DECLARATIONS OF INTEREST

There were no declarations.

3. MINUTES

Resolved, that the minutes of the meetings held on 13 April, 27 April and 4 May 2021 be confirmed as correct.

4. WINGSTOP, LONDON HOUSE, 105 CLARENCE STREET, KT1 1QY Appendix A

The Licensing Officer introduced the matter for determination and it was noted that the application provided for a Premises Licence for the following:

Provision Of Late Night Refreshment (indoors and outdoors),
Monday to Saturday from 23:00 to midnight, and
Sunday from 23:00 to 23:30;

Sale by Retail of Alcohol (for consumption on and off the premises),
Monday to Saturday from 10:00 to midnight, and
Sunday from 10:00 to 23:30.

Opening Hours
08.00 to midnight on Monday to Saturday, and
09.30 to 23.30 on Sunday.

The Licensing Sub-Committee also noted that Pizza Hut had held a Premises Licence for the premises until this had been surrendered in January 2021. The Applicant had not been in a position to apply for a transfer of the Pizza Hut Premises Licence to the Applicant within the required 28 day period for such transfers. The Premises Licence now applied for had the same terminal hour for licensable activities as the surrendered Premises Licence.

The Applicant had advertised the application by way of public notice displayed at the premises, and in a local newspaper. The application had also been made available on the Council's website. All Responsible Authorities received a copy of the application and the Metropolitan Police, as the Responsible Authority for the Prevention of Crime and Disorder licensing objective, and the Council's Environmental Health (Noise Pollution) Officer, as Responsible Authority for the Prevention of Public Nuisance licensing objective, raised concerns regarding the application. Following further consultation the applicant had addressed the concerns by making amendments to their operating schedule to include agreed conditions from those Responsible Authorities. These amendments were reflected in the conditions shown in Annex 3 of the report before the Licensing Sub-Committee. In light of these amendments, the representations made by Responsible Authorities had been satisfied.

In accordance with the Council's Licensing Policy, 635 residents were consulted in writing and informed that an application had been received. 3 valid representations were received from Other Persons. The 3 representations were made by Deepa Veneik (who had made written submissions in 3 different capacities, as a resident, on behalf of London House Property Management Company, and on behalf of Clarence Street Ltd). The representations included matters that relate to all four licensing objectives.

The Licensing Sub-Committee were addressed by Lana Tricker and Herman Sahota who confirmed details of the application, including their view that the application did not contravene the Council's Cumulative Impact Policy due to the 'like for like' operation proposed in the new Premises Licence. Lana Tricker and Herman Sahota also confirmed the 'family friendly' nature of the business and that a limited alcohol offer would only be served with meals for consumption on or off the premises, that extensive training of staff would be in place to ensure compliance with approved conditions of the Premises Licence particularly related to alcohol sales and litter collection, that an exclusive contract for take-away deliveries was in place with Deliveroo and these would be conducted from the designated motorcycle bay at the front of the premises, and that deliveries and waste collection would take place within 1 hour of the premises opening.

Lana Tricker and Herman Sahota then answered questions asked by the Sub-Committee.

The Licensing Sub-Committee then heard the representations of Deepa Veneik. The representations put forward that could be considered by the Licensing Sub-Committee, insofar as they related to each of the licensing objectives, included concerns that the Cumulative Impact Policy would still be an applicable consideration, public nuisance would be likely to occur to nearby residents due to the different nature of Wingstop from the previous business operated at the location and the different clientele that would frequent Wingstop, the possibility that music may be played in the future, underage drinking, inadequate protection from nuisance for local residents from take-away collection for delivery arrangements and concerns that these would take place at the back of the premises where a number of anti-social behaviour issues already exist, the need for residents to have clear contact details to be able to raise any concerns with the licence holder, and potential for increased littering. Deepa Veneik then answered questions asked by the Sub-Committee.

As the hearing proceeded toward a conclusion, Lana Tricker and Herman Sahota then responded to some points raised by the Licensing Sub-Committee in their closing remarks and confirmed that contact details for residents would be made available.

Decision

In making their decision, the Licensing Sub-Committee considered the merits of the application and had regard to the Council's Statement of Licensing Policy and Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003. The Licensing Sub-Committee considered which steps should be taken under section 18(4) Licensing Act 2003, as would be appropriate to promote the licensing objectives. After taking account of all the relevant issues that had been raised in the application and the written and verbal representations, the Licensing Sub-Committee decided to **grant** the application for a Premises Licence, with the proposed hours of operation, and conditions extracted from the Operating Schedule, as set out in Annex 1, 2 and 3 of the report before the Licensing Sub-Committee and with additional conditions and recommendations as detailed below.

Reasoning

In considering the application, the Licensing Sub-Committee took account of the oral and written representations put forward by the applicant and his representative and the contents of the Application and Operating Schedule, along with the oral and written representations submitted by other persons. The Licensing Sub-Committee noted that the applicant had addressed the concerns of Responsible Authorities by making amendments to their Operating Schedule in agreeing the conditions the Police and Environmental Health sought. These amendments were reflected in the agreed conditions shown in Annex 3 of the report before the Licensing Sub-Committee. In light of these amendments, the representations made by Responsible Authorities had been satisfied and their representations withdrawn. This complies with the Home Office section 182 Guidance.

The Licensing Sub-Committee was required to make its decision by promoting the Licensing Objectives only (so it could only consider the prevention of crime and disorder, the prevention of public nuisance, the protection of public safety and the protection of children from harm in its decision). A Licensing Sub-Committee is subject to specific case law (*R (on the application of Bristol City Council) v Bristol Magistrates' Court* [2009] (Somerfield)) that means that it cannot consider issues outside the Licensing Objectives. Ms Veneik raised the issue of the Climate Change Emergency as an issue, but a Licensing Sub-Committee is accordingly not lawfully able to consider that issue. Similarly, the Applicant raised the issue of its investment in refitting the premises, which it could not consider.

A Licensing Sub-Committee is also making its decision by having regard to the Home Office section 182 Guidance and the Statement of Licensing Policy, balancing the interests of those parties to the meeting, having a fair hearing, and make a proportionate and appropriate decision based on the proper evidence before it (*Daniel Thwaites v Wirral Borough Magistrates' Court* (2008)). Anything outside that criteria is

not relevant and ultra vires to its role. The Licensing Sub-Committee considered this decision to be appropriate and proportionate.

A Cumulative Impact Policy provides a rebuttable presumption that new Premises Licence applications will be refused unless the Licensing Sub-Committee is convinced that there will be no increase to cumulative impact. The Council's Statement of Licensing Policy provides examples of what operation would be permitted as an exception to this rebuttable presumption. A restaurant operation replacing a bar or other restaurant operation or a 'like for like' replacement, in this case of Pizza Hut for Wingstop would not be likely to see an increase in cumulative impact, subject to suitable conditions and controls within the authorisation permitted under the Premises Licence. Primarily in view of the fact that the application has the same terminal hour for licensable activities as the surrendered Premises Licence, has various controls in the proposed/agreed Conditions and mirrors that type of operation, the Licensing Sub-Committee could not see that approval of this Premises Licence would increase cumulative impact. There was no real change to the restaurant operation proposed at this location.

The Licensing Sub-Committee considered the issues that required further condition or controls within the Premises Licence. These were as follows:

- The Licensing Sub-Committee noted Ms Veneik's concerns regarding the potential for noise arising from take-away delivery collections from the premises and have added a condition that clear signage shall be prominently displayed at the exit of the premises and in the window facing Clarence Street so as to be visible from the outside, requesting that drivers collecting orders for home deliveries switch off their vehicles whilst collecting the orders and refrain from loitering or smoking outside the premises so as not to disturb nearby residents; from 21.00 to closing time, external checks shall take place every 30 minutes to ensure that delivery drivers behave in an orderly and neighbourly fashion; and the Licence Holder will bring this signage to the attention of any food delivery company that is engaged to provide delivery services at or from the premises.
- The Licensing Sub-Committee noted Ms Veneik's concerns regarding the potential for noise arising from deliveries and waste collections (in respect of the Licensing Objective of the protection of Public Nuisance). The Licensing Sub-Committee have also included a condition limiting waste collection and deliveries to the premises so that they do not take place before 08.00 and not after 22.00.
- The Licensing Sub-Committee noted Ms Veneik's concerns regarding a contact number for the manager to be able to immediately address excessive noise if it is occurring. Notwithstanding that Mr Sahota observed that acoustic measures had been undertaken or would be undertaken with the refit of the premises, a further condition was imposed by the Licensing Sub-Committee requiring the premises to provide a dedicated telephone number, for a member of management at the premises, for residents to be able to raise any concerns regarding the operation of the premises. The Licensing Sub-Committee noted that in the event of any future concerns, residents should discuss these in the first instance with the Premises Licence holder and that should this course of action not address these concerns, then a complaint could be made to the Licensing team or the Noise Pollution team for investigation and enforcement action if that proves necessary. Ultimately a resident could make an application for Review of the Premises Licence to the

Licensing Sub-Committee for further consideration of the Premises Licence provided proper evidence is included with the Application for Review (Thwaites).

- The Licensing Sub-Committee noted the applicant's approach, referred to during the hearing, to monitor every 30 minutes and if necessary to collect any litter immediately outside the premises originating from the premises. In deliberations, the Licensing Sub-Committee was aware of the Luminar Leisure Ltd (Appellant) v Wakefield Magistrates' Court (Respondent) & Brooke Leisure Ltd, Classic Properties Ltd, Wakefield MDC (Interested Party) (2008) case in imposing this condition.
- The Licensing Sub-Committee accepted the applicant's offer made during the hearing to have a 20 minute alcohol 'drinking-up' time period at the end of licensable activities.

The evidential issues Ms Veneik raised regarding the previous Pizza Hut operation were noted to inform the Licensing Sub-Committee of issues that may be of concern with the replacement operation envisaged in this Premises Licence application and the controls that the Licensing Sub-Committee may consider it had to address.

Resolved, that the application from Herman Sahota - Lemon Pepper Holdings in respect of Wingstop, 105 Clarence Street, Kingston upon Thames, KT1 1QY be granted as set out below:-

Licensable Activities and Hours of Operation

Provision Of Late Night Refreshment (indoors and outdoors),
Monday to Saturday from 23:00 to midnight, and
Sunday from 23:00 to 23:30;

Sale by Retail of Alcohol (for consumption on and off the premises),
Monday to Saturday from 10:00 to midnight, and
Sunday from 10:00 to 23:30.

Opening Hours
08.00 to midnight on Monday to Saturday, and
09.30 to 23.30 on Sunday.

Conditions arising from applicant's Operating Schedule

The prevention of crime & disorder

Non-alcoholic drink / food

1. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.

Alcohol, restrictions on sale

2. The sale of alcohol for consumption on the premises shall only be to a person purchasing a table meal and as ancillary to that meal, which is to be eaten seated at a table or counter in the premises.

3. All sales of alcohol for consumption off the premises shall be in sealed containers and ancillary to a takeaway meal only, and shall not be consumed on the premises.

4. There shall be no self-service of alcohol.

5. No beer, lagers, ciders or spirit mixtures with an alcohol by volume (ABV) content of 5.5% or above shall be sold at the premises.

Closed-circuit television

6. A comprehensive closed-circuit television system (CCTV) shall be installed and maintained at the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available immediately upon request of Police or authorised officer of any responsible authority.

7. The digital CCTV system will cover all areas to where public have access to consume alcohol and where licensable activities are undertaken.

8. The CCTV system will be recording at all times when the premises is open, and the recordings will be of evidential quality in all lighting conditions and be of a sufficient quality to produce in court.

9. All images downloaded from the CCTV must be provided in a format which can be viewed on regularly available equipment without the need for specialist software.

Incident log

10. An incident log shall be maintained at the premises and made available on request to an authorised officer of the Local Authority or Police. The log shall record the following:

- a) All crimes reported to the venue;
- b) All ejections of patrons;
- c) Any complaints received concerning crime and disorder;
- d) Any incidents of disorder;
- e) All seizures of drugs or offensive weapons;
- f) Any faults in the CCTV system or searching equipment or scanning equipment;
- g) Any refusal of the sale of alcohol;
- h) Any visit by a relevant authority or emergency service.

Staff training

11. All staff responsible for selling alcohol shall receive regular training, as a minimum every 12 months, in the Licensing Act 2003 in terms of the licensing objectives, offences committed under the Act and conditions of the Premises Licence.

12. Written records of staff training in relation to the Licensing Act 2003 shall be retained and made available to the Police and authorised officers of the Licensing Authority on request.

The prevention of public nuisance

Dispersal policy

13. The premises licence holder shall display appropriate signage requesting customers to leave the premises quietly.

Litter

14. The licence holder or his representative shall ensure that litter, comprised of food materials and wrappings etc. provided by them to customers that have been deposited in the street between the premises frontage and pavement edge within 25 metres of the licensed premises is collected after closing each day.

The protection of children from harm

Age verification - Challenge 21 policy

15. A challenge 21 scheme shall be operated at the premises.

- a) A refusals register will be maintained at the premises.
- b) The register will document the date and time of the refused sale and name of the member of staff who refused the sale.
- c) The record shall be available for inspection at the premises by the Police or an authorised officer of the Local Authority, at all times when the premises are open.

Alcohol, supplied with takeaway service

16. Before an online or phone order is accepted, a declaration will be required by the third party partner, from the person placing the order to confirm that they are over 18 years of age.

17. It shall be a term of any contract or agreement, between the premises licence holder and any delivery company, that the delivery company shall require ID verification when orders are delivered. A Challenge 25 proof of age scheme shall be operated where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.

Additional conditions imposed by the Licensing Sub-Committee

1. Clear signage shall be prominently displayed at the exit of the premises and in the window facing Clarence Street so as to be visible from the outside, requesting that drivers collecting orders for home deliveries switch off their vehicles whilst collecting the orders and refrain from loitering or smoking outside the premises so as not to disturb nearby residents.

The Licence Holder will bring this signage to the attention of any food delivery company that is engaged to provide delivery services at or from the premises.

From 21.00 to closing time, external checks shall take place every 30 minutes to ensure that delivery drivers behave in an orderly and neighbourly fashion.

2. Waste collection and deliveries to the premises shall not take place after 22.00 and before 08.00 the day following.

3. The premises operator shall provide a dedicated telephone number, for a member of management at the premises, so that residents are able to raise any concerns regarding the operation of the premises.

Additional recommendations of the Licensing Sub-Committee

The Licensing Sub-Committee would also recommend that the applicant's offer made during the hearing to monitor and collect any outside litter originating from the premises every 30 minutes be applied and that a 20 minute alcohol 'drinking-up' time period be applied at the end of business each day.

5. URGENT ITEMS AUTHORISED BY THE CHAIR

There were no urgent items.

6. EXCLUSION OF THE PRESS AND PUBLIC

The motion to exclude press and public was not required.

Signed.....Date.....
Chair