

LICENSING SUB COMMITTEE

4 January 2023

Present: Councillor R Wenham (Chair)
Councillor G Saffery
Councillors D Allen-Williamson

Also present: Mr Wajatulh Ahmad, Applicant
Mr Mitch Henson, Environmental Health Officer, Interested
Party

Officers: Democratic Services Officer (LM)
Licensing Officer (PS)
Interim Head of Legal

4 **Committee membership/ election of a Chair**

The Democratic Services Officer confirmed that the Sub-Committee would comprise Councillors G Saffery, Wenham and Allen-Williamson.

The Sub-Committee was asked to elect a Chair for the Hearing.

RESOLVED –

that Councillor Wenham be elected Chair for this Hearing.

5 **Disclosure of interests (if any)**

There were no disclosures of interest.

6 **Application for a new premises licence - Grilled Cottage, 85 Vicarage Road Watford WD18 0EJ**

The Licensing Officer confirmed that all parties expected were present. There were several preliminary matters for members' attention:

The Licensing Officer set out the following amendments to the report.

- Paragraph 4.8 on page 6, the last line should read as “pursuant to planning policy SE22, there shall be no public/customers permitted within the

premises, and no cooking shall take place after 23:00 hours Monday – Thursday and bank holidays and after 23:30 hours Friday and Saturday.”

- On page 14, paragraph 10.6, the reference should be 1.44 not 9.44

Introduction to the application

The sub-committee received a report from the Licensing Officer, which outlined an application for a new premises licence for Grilled Cottage, 85 Vicarage Road, Watford, WD18 0EJ, under section 17 of the Licensing Act 2003 for late night refreshment.

The hours proposed were 23:00 to 01:00 Sunday to Thursday and 23:00 to 02:00 Friday to Saturday. The business intended to operate as a hot food takeaway with no access to the public from 23:00 hours.

Two representations had been received: from Environmental Health in their role as responsible authority (appendix 4) and a local resident (appendix 5). The Licensing Officer asked the Chair to note that the local resident was unable to attend the meeting but would like their representation to be considered. There had been two previous noise complaints regarding the premises in November 2020 and December 2022.

The applicant had agreed to the 11 conditions put forward by the Police during the consultation period. No representations had been made by the Police, and the conditions were included in the report.

The Licensing Officer stated that the Licensing Sub-Committee would need to consider the proposed hours of operation, the effectiveness of the operating schedule submitted by the applicant, the representations received, the right the applicant had to operate a business and balance the residents’ rights to the quiet enjoyment of private and family life.

The options available to the Sub-committee were as follows; grant the application in full or modify the proposed conditions of the licence or reject the whole or part of the application.

There were no questions from the applicant to the Licensing Officer.

There were no questions from the interested parties to the Licensing Officer.

There were no questions from the Council’s Legal Advisor to the Licensing Officer.

Representations

Mr Henson, Environmental Health Officer at Watford Borough Council, presented his concerns to the sub-committee. He believed that the application needed to be more detailed. That the noise from deliveries and the extract system after 11.00 pm would not provide residents in the area any respite during the night time. Mr Henson recommended that the sub-committee refuse the licence unless the applicant could agree to the 12 conditions he had outlined to Mr Ahmad.

Mr Henson informed the sub-committee that there had been a further noise complaint concerning the premises on 28 December 2022, in that the extractor fan had been left on overnight and doors had been slammed at 1.50 am.

There were no questions from the applicant to those making representations.

There were no questions from members to those making representations.

There were no questions from the Licensing Officer to those making representations.

There were no questions from the Council's Legal Advisor to those making representations.

Address by the Applicant

Mr Ahmad addressed the sub-committee about his application. He detailed how Covid had affected his business negatively. There had been significantly decreased daytime sales due to people working from home. There had been a move towards online ordering from customers, and he wished to build on this by an extension of his opening hours. He stated that the local resident who had made a representation was also a customer and believed he needed to ensure they were happy.

Mr Ahmad addressed the noise complaints that had been made. He had changed the duct cleaning time to 9 am from the previous 4 am on Monday. He had also changed his shift time to the evening so he could monitor the noise his staff made and had started training his staff about noise nuisance. The shutter had been fixed, so it should no longer cause a disturbance. He explained that he only used his own delivery driver to ensure that the noise to residents by idling engines, Bluetooth speakers, and music would be limited. If he used drivers from online ordering companies, he would be unable to affect their behaviour. The additional cost of using online delivery drivers compared to employed drivers was 35% of the customer's order with an additional £2 charge. This would

impact the average meal cost for the customer to over £10, which Mr Ahmad believed could lead to a reduction in customer orders. Mr Ahmad explained that he had accepted all of the Police conditions.

Mr Ahmad said that the extract system had to remain on but that a silencer would resolve the issue.

In response to a question from Mr Henson about the use of third-party delivery drivers in the future, Mr Ahmad reiterated that he had no intention to change delivery drivers as he did not believe that they would adhere to his instructions regarding honking horns and idling engines and it would not be cost effective. He said that if his business increased he would take on additional drivers. Mr Henson advised Mr Ahmad that he would need to seek advice and approval from the planning department regarding the extractor fan and that this was not a matter for this sub-committee.

Councillor Allen-Williamson had a question regarding the noise nuisance caused by delivery vehicles for the residents in the area. Mr Ahmad explained that delivery drivers would be expected to stop at the premises' rear entrance, which was some distance from the residents' homes and he would not expect this to disturb residents.

In response to a question from Councillor Saffery about food orders through third-party providers, Mr Ahmad responded that there was an option which enabled businesses to use their own drivers. Even if food orders increased, he would not use their drivers due to the costs.

Councillor Saffery asked the Environmental Health Officer whether, if planning was satisfied regarding the extractor fan, that would affect his position on his proposed condition that the extractor should be turned off at 23:00. Mr Henson responded that in that situation Environmental Health would carry out its own assessment. Mr Ahmad repeated that the extractor system had to be kept on and added that he had contacted planning in regard to the extractor.

The Chair asked Mr Ahmad if he was confident that the training and communication with staff about the noise levels had been successful. Mr Ahmad confirmed that there had been changes to staff behaviour and he believed the complaint from the local resident in December was not relevant.

The Licensing Officer asked the applicant to explain the new cleaning times that had been introduced. Mr Ahmad explained that the duct cleaning had occurred at 4 am and had changed to 9 am. Also, the deep cleaning was now on a Monday before midday. The complaint focused on the staff's general volume, and the cleaning should not be a noise nuisance for the resident.

The council's Legal Advisor asked the applicant to explain why the council should depart from policy LP2 of its Statement of Licensing Policy, set out at paragraph 8.3 of the report, which provided that restaurants/takeaways 'will generally be allowed late night refreshment sales to midnight only". Mr Ahmad said that things had changed since Covid and that businesses would not survive without more flexibility. He would provide a service by delivery only so customers would not be coming to the premises and causing problems with noise and litter.

The Sub-Committee retired to consider its decision.

Decision

RESOLVED –

The sub-Committee has decided not to grant a Premises License for Grilled Cottage, 85 Vicarage Road Watford.

The sub-committee has found that the licensing objective of the prevention of public nuisance is relevant to this application.

The Sub-Committee has read and heard all of the information before them. The Sub-Committee heard from Environmental Health and the applicant, Mr Wajatullah Ahmad and read the representations of a local resident.

The Sub-Committee is aware of and has taken into account any implications that may arise from the Human Rights Act 1998.

The Sub-Committee in reaching its decision has had due regard for its public sector equality duty under section 149 of the Equality Act 2010 and consider that in reaching their decision they have fulfilled their duty under the Equality Act 2010.

During the hearing, the Sub-Committee heard from Environmental Health that the premises were near residential premises and that if the application was granted, the noise from the extract system, deliveries and noise from the premises would not give local residents respite after 11.00 pm. In addition to the complaint referred to in the report, a further complaint had been received from a local resident that on Christmas night there had been deliveries and the door slamming until 1.50am and that the grill had been slammed shut and that on 28 December the extract fan had been left on all night and that they had had no sleep from 2.30 am.

Mr Ahmad stated that the complaints received were mainly to do with noise from his staff including music and shouting, rather than about the extract system or drivers. He had spoken to his staff he was now working at the premises in the evenings. He said that if his application was granted he would use only his own

driver so that he could direct their behaviour. With regard to the extract system he accepted that there may have been occasions when this had been left on overnight by mistake. He could not agree to the Condition suggested by Environmental Health that the extract system be switched off at 11.00 pm as it needs to remain on all the time that cooking is taking place. He also stated that some cleaning of the premises needs to be done after cooking has stopped for the day.

When asked by the Chair why the Sub – Committee should depart from policy LP2 in the Council’s Statement of Licensing Policy, that “restaurants/takeaways ‘will generally be allowed late night refreshment sales to midnight only” Mr Ahmad said that due to covid, trade during the day had reduced and that without the longer hours he was seeking the business would not survive.

In determining the application, the Sub-Committee were mindful that their concern was to be confident on the balance of probabilities that the licensing objective of the prevention of public nuisance will be safeguarded and promoted if the application was granted.

The Sub-Committee have decided to reject the application for a premises licence, to ensure the safeguarding of the prevention of public nuisance licensing objective. Their reasoning being: ongoing complaints about noise from the premises; the fact that the extract system would need to remain on after 11.00pm and cleaning would be undertaken after the end of the proposed hours and that whilst the applicant currently uses only one driver, he may in future take on additional drivers or use drivers employed by food delivery companies over whom he would have no control.

The Sub – Committee did not consider it appropriate to depart from policy LP2 in the Council’s Statement of Licensing Policy.

Chair

The Meeting started at 10.30 am
and finished at 11.44 am