

CENTRAL BEDFORDSHIRE COUNCIL

Record of a **LICENSING SUB-COMMITTEE** hearing convened under the Licensing Act 2003 (Hearings) Regulations 2005 and held in Room 15, Priory House, Monks Walk, Shefford on Tuesday, 29 August 2017

LS/17/8. **Licensing Sub-Committee Composition**

Cllrs: D Bowater
K M Collins
T Nicols

LS/17/9. **Election of Chairman**

Councillor T Nicols was elected Chairman for the hearing.

LS/17/10. **Introductions**

The Chairman introduced himself. The other attendees then introduced themselves.

The Chairman stressed that the councillors who formed the Sub-Committee were not legally trained and would look to the Council's legal representative for guidance on such matters. He added that, unlike a court of law, the Sub-Committee did not require full evidence in order to reach its conclusion and could do so on the balance of probability.

LS/17/11. **Apologies for Absence**

There were no apologies for absence.

LS/17/12. **Members' Interests**

There were no declarations of interest.

- **Name of Applicant**

Mr Esa Gokce.

- **Premises Address**

Amphill Fish Shop, 89 Dunstable Street, Amphill, Bedfordshire, MK45 2NG.

LS/17/8. Names of Parties in Attendance

Cllr D Bowater
Cllr K M Collins
Cllr T Nicols

Mrs M James – Principal Public Protection Officer (Licensing) (Central Bedfordshire Council)
Ms V Lloyd – Principal Lawyer (Litigation) (LGSS Law Ltd for Central Bedfordshire Council)
Mr L Manning – Committee Services Officer (Central Bedfordshire Council)

Mr D Craig – Applicant's Barrister
Mr E Gokce – Applicant
Ms E Yaldrim – Applicant's Agent (NARTS)

Cllr M Blair – Central Bedfordshire Council ward Member/member of Ampthill Town Council
Cllr P Duckett - Central Bedfordshire Council ward Member/member of Ampthill Town Council
Mrs J Harris – local resident
Cllr Mrs S Hinkin – local resident/member of Ampthill Town Council
Mr K Horton – local resident
Mr J Lawrence – local resident
Mrs M F Sheldrake - local resident

LS/17/9. Procedure for the Hearing of Applications under the Licensing Act 2003

The procedure for the hearing of applications made under the Licensing Act 2003 was noted.

The Chairman stated that he would allow a degree of cross examination between parties. He explained that it would be necessary for all attendees, with the exception of the members of the Sub-Committee and the Council's legal representative, to leave the hearing room once all the evidence had been heard in order to allow the Sub-Committee to arrive at its decision in private.

LS/17/10. The Four Licensing Objectives

The four Licensing Objectives were read out and noted.

LS/17/11. Determining Applications

Chapter 9 of the revised guidance (dated April 2017) issued under Section 182 of the Licensing Act 2003 which provided advice relating to the determination of an application for a new premises licence was noted.

LS/17/12. **Application for a Premises Licence under The Licensing Act 2003 at
Amphill Fish Shop, 89 Dunstable Street, Amphill, Beds, MK45 2NG**

The Principal Public Protection Officer (Licensing) introduced the report of the Head of Public Protection relating to an application by Mr E Gokce for a premises licence for late night refreshments. Representations had been received from Amphill Town Council and local residents who had objected to the application. A petition signed by 193 persons had been received in support of the application. A copy of the petition was made available at the hearing by the Principal Public Protection Officer (Licensing) for the Sub-Committee's examination. The applicant's legal representative advised the hearing that he had the original petition document available for examination if required.

The hearing noted that the petition was in paper format. Members were aware that it was possible to amend electronic petitions and that this could raise doubts as to their integrity.

The Principal Public Protection Officer (Licensing) confirmed that the application only related to the sale of food and soft drinks and did not include alcohol.

The Principal Lawyer (Litigation) confirmed that those persons who had submitted written representations, including the Amphill Town Councillors, were entitled to address the hearing. The applicant's legal representative raised no objection to this.

The Principal Public Protection Officer (Licensing) confirmed that there was no objection by Central Bedfordshire Council's Public Protection team to the application. The only representations received had been from the public and those that were valid had been placed before the Sub-Committee for consideration. Members were aware that, in accordance with the Licensing Act 2003 and the Council's own scheme of delegation, all applications with relevant representations had to be determined by the Sub-Committee. The applicant's legal representative confirmed this requirement and that the representations before Members were valid.

The applicant's legal representative introduced the case in support of his client's application and included the following points and comments:

- The application was for late night refreshments only. Late night establishments were fully regulated by the Licensing Act and should standards fall short then the licence could be reviewed and, if necessary, revoked.
- There was a minor amendment to the application in that the proposed finishing time on both Friday and Saturday was now 1.00 a.m. and not 1.30 a.m. as stated in the application.
- The measures which the applicant proposed to take to promote the four Licensing Objectives were set out in section M of his application and could be incorporated into the licence.
- CCTV was a requirement if the licence was granted and if the applicant did not comply with the requirements under s36 of the Licensing Act he

- could be imprisoned for up to 6 months.
- By granting a licence the activities at the shop were brought within the regulatory regime and could therefore be closely monitored. He hoped this would address some of the concerns raised.
 - The narrative in support of the application found at the head of the petition was clear and had been signed by 193 persons. More people within the area supported the application than had objected to it.
 - The process of dealing with non-compliance with the Licensing Act 2003 was easier than the time before this legislation.
 - There had been no objections to the application by any responsible authorities including the police, who had encouraged the applicant to apply for a licence.
 - The police were the main body to comment on an application with regard to crime and disorder but they had expressed no meaningful concerns.
 - The Council's Environmental Health team had expressed no concerns regarding the prevention of public nuisance.
 - Whilst recognising that many of the representations contained clear concerns these were based on speculation that there would be an increase in nuisance and disorder although there was no evidence in support of this. If Sub-Committee decisions were based on speculation rather than evidence then all applications would be automatically refused.
 - The report of youths pushing on the window of the applicant's shop because it was closed was not something which he could be held responsible for. No fighting had taken place and there had been only one reference to this occurring.
 - It was clear that there had been issues with other licensed premises in the area but appropriate action had been taken and the problems no longer existed. These were now historical concerns.
 - Applications should be considered on their individual merits.
 - The suggested conditions were appropriate and complied with the legislative requirements.

The applicant's legal representative concluded by stating that whilst it was necessary to balance business interests with those of the public this had to be proportionate. On this basis he invited the Sub-Committee to approve the application.

The Sub-Committee had no questions for the applicant's legal representative.

The objectors to the application were invited to speak.

Councillor Duckett raised the following points:

- Whilst it was possible to grant and review a licence, experience indicated that the revocation of a licence was a lengthy and difficult process.
- The applicant had already been trading past his existing permitted hours of operation and was incapable of controlling the situation which had developed around this.
- The outside seating of the nearby Old Sun public house, when it was closed, would provide a perfect location for customers of the Fish Shop to

eat their takeaway food whilst they continued to drink and cause a disturbance to local residents who would have to deal with the consequences if the application was approved.

The Councillor referred to the submitted floor plan accompanying the application which featured an alcoholic drinks cabinet. The applicant's legal representative advised that this was an error and no alcohol would be sold.

Councillor Blair raised the following points:

- There was a reference in the Head of Public Protection's report to Members considering issues relating to the Prevention of Public Nuisance Licencing Objective but he felt that the Sub-Committee should also consider the Prevention of Crime and Disorder Licensing Objective as there was evidence that crime and disorder was occurring.
- The reference in the application to the provision of late night refreshment 'indoors' was misleading as the shop was a takeaway and food was consumed outdoors or at home.
- The applicant had offered to install evidence gathering equipment suggested that problems would arise. The presence of CCTV could be seen as impinging on the privacy of the cliental of the nearby Old Sun public house.
- The suggested display of notices to prevent or reduce incidents of public nuisance would be of no benefit.
- The provision of additional rubbish bins was not mentioned.
- There were currently relatively few problems in Ampthill because the White Hart had a good management policy which encouraged the dispersal of customers although this was not assisted because of the presence of a kebab shop nearby.

The Councillor asked the Sub-Committee to support the local residents against the problems of fighting and rubbish.

The Chairman commented that the Councillor had referred to past issues and asked if any complaints had been submitted the Public Protection team. The Councillor responded that complaints had been made directly to him and he had personally witnessed issues. He was unable to confirm that the applicant's shop had been operating beyond its opening hours but he had seen low level crime and disorder in the form of fighting, probably alcohol related, and the smashing of windows.

Town Councillor Hinkin raised the following points:

- Ampthill had suffered in the past as a result of alcohol related activity.
- The applicant's premises would act as a magnet for drinkers if open later.
- Ampthill had many clubs and restaurants and these attracted a large number of visitors to the town.
- There had recently been trouble in part of Dunstable Street and CCTV had been installed there.

The Chairman referred to the submission of the large petition in favour of the application which was contrary to the views expressed by the Town Council. Councillor Duckett suggested that the petition could have been signed by those on the way to the railway station after drinking in the town. He then warned that allowing the late night opening of the applicant's shop would provide a gathering point for late night drinkers and encourage problems.

A member of the Sub-Committee commented that the petition sheets appeared clean and unmarked by drink stains.

The Chairman asked how many rubbish bins were in the area of the applicant's shop and was informed that there was one, which was located outside the Old Sun public house. However, a local resident commented that customers ignored the bin and threw their rubbish over his fence. In response, the applicant's legal representative stated that a condition could be included in the licence requiring a bin to be placed outside the shop during opening hours and its removal when the shop closed.

Mrs Harris raised the following points:

- When he first opened his shop, the applicant had stated that he would not introduce late night opening.
- She had already asked him to provide a rubbish bin as the applicant collected rubbish but placed it in the bin outside the Old Sun public house.
- The applicant's shop was already open late and she had evidence in the form of a photograph which had been taken at half past midnight in August.
- Pub Watch had been advised of his late night opening and the police had subsequently discussed it with him.
- Problems linked to the applicant's shop had already arisen. She had been required to take action to protect her premises by staying in it after closing time. Because of these incidents such as that she intended to sell the pub and move.
- The petition had been signed by people who were on the way out of Ampthill.
- The shop's customers blocked the entrance to the pub during the day but the applicant had taken no action. When the customers had been challenged some of them had reacted in a threatening manner. A pub window had been broken.
- Customers at the applicant's shop used her outside tables to eat their food.
- The presence of CCTV would not deter bad behaviour and she referred to her own negative experience of the police response.
- The applicant did clear up the rubbish generated by his customers but some of them threw food at each other and she was concerned that this would encourage rats to appear.
- The shop's customers used the pub's toilets and banged on the windows if the pub was shut.
- Objections had been raised with Pub Watch and the police.

Mrs Sheldrake raised the following points:

- The customers should take their food home to eat. Taxis were available outside the shop.
- It was the customers and not the shop which was the problem.
- The shop should continue to close at 11.00 p.m.
- There were already rats in the area because the customers threw food in the street.

Mr Lawrence raised the following points:

- Revoking a licence was supposed to be simple but it wasn't and it had taken years for the problems caused by The White Hart and No.4 to be put right.

Mr Horton commented briefly on the application.

The Chairman invited closing submissions from attendees.

Councillor Blair stated that the residents had presented a good case against the application which was not as simple as it appeared. The shop already acted as magnet for those who were dispersed from pubs and other establishments and who created public nuisance and disorder.

Councillor Duckett stated that the shop was already trading later than it should and if the revised opening hours were already in place the Council would be reviewing them because of the issues that had arisen.

The applicant's legal representative stated that the floor plan showing a cabinet for alcoholic drinks had been sent in error and no alcohol would be on display or on sale. The cabinet would be used for soft drinks only. A revised plan had been submitted. He added that the applicant would supply a bin and CCTV and that if the shop was open later than it was currently it would result in a more even dispersal than was currently experienced. The applicant's legal representative added that only Mrs Harris had seen late opening but Mr Lawrence interjected and stated that his wife had seen it too. The applicant's legal representative stated that he had not seen Mrs Harris's photographs. He then referred to the petition and stated that the majority of the signatures were from local people. He also referred to the Licensing Act providing a mechanism to deal with any issues which might arise with a change to the opening hours and stressed that there was no hard evidence before the Sub-Committee to prevent it from approving the application before it.

There being no further statements, comments or questions the Sub-Committee adjourned at 11.31 a.m. in private to make its decision. The Council's legal representative remained with Members in the meeting room to advise as necessary. The hearing reconvened at 1.12 p.m. when the Sub-Committee had finished its deliberations and could announce its decision.

On the basis of the written and verbal representations, the Licensing Sub-Committee made the following findings of fact:

- No representations were received from the Police or from the Public Protection team of Central Bedfordshire Council.
- There was no direct evidence of breaches of the current trading hours, other than Mrs Harris indicating that it may have occurred based upon her accounts of nuisance from customers originating from the Ampthill Fish Shop.

The Sub-Committee had decided that the application by Esa Gokce of Ampthill Fish Shop for a Premises Licence should be granted subject to the following conditions necessary for the promotion of the licensing objectives:

- All measures stipulated in section M of the Licensing Application should apply at all operating times.
- The shop premises must be closed with a closed sign placed on the door and the door locked, with all customers out of the premises by 1.00 a.m. on Saturday and Sunday morning.
- A bin provided outside of the shop premises by the Applicant at all operating times.

The conditions are to encourage the dispersal of customers after 1.00 a.m. and to encourage customers to dispose of litter in the bin provided by the premises

In coming to its decision, the Sub-Committee had taken into account:

- The Licensing Act 2003.
- The Secretary of State's Guidance issued under s182 of the Licensing Act 2003.
- Central Bedfordshire Council's Licensing Policy.
- The merits of the application and the representations (including supporting information) presented by all parties.

Attendees were advised that at any stage, following the grant of a premises licence, a responsible authority, such as the police or an interested party, such as a resident living in the vicinity of the premises may ask the Licensing Authority to review the licence because of a matter arising in connection with any of the four Licensing Objectives. The review was a request for the Council to look at the existing licence and decide whether its conditions are adequate to meet the four Licensing Objectives defined under the Licensing Act 2003.

The Sub-Committee explained to the Applicant that the effect of failure to comply with any of the conditions attached to the licence or certificate was a criminal offence, which upon conviction, would result in a fine of up to £20,000 or up to six months imprisonment or both. Applicants or any person who had made a relevant representation who was dissatisfied with this decision or the imposition of any condition or restriction had the right of

appeal to the Magistrates Court within 21 days of the date on which they are notified of the decision.

(Note: The meeting commenced at 10.00 a.m. and concluded at 1.21 p.m.)