

MAIDSTONE BOROUGH COUNCIL

LICENSING ACT 2003 SUB COMMITTEE

MINUTES OF THE MEETING HELD ON FRIDAY 2 OCTOBER 2020

Present: Councillors Garten, Hinder (Chairman) and Mrs Robertson

Also Present: Councillor Brindle

30. APOLOGIES FOR ABSENCE

There were no apologies for absence.

31. NOTIFICATION OF SUBSTITUTE MEMBERS

There were no Substitute Members.

32. ELECTION OF CHAIRMAN

RESOLVED: That Councillor Hinder be elected as Chairman for the duration of the Sub-Committee Meeting.

33. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members and Officers.

34. DISCLOSURES OF LOBBYING

There were no disclosures of Lobbying.

35. EXEMPT ITEMS

RESOLVED: That all items be taken in public as proposed.

36. APPLICATION FOR A PREMISES LICENCE UNDER THE LICENSING ACT 2003 FOR GERMAN DONNER KEBAB, 79-85 WEEK STREET, MAIDSTONE, KENT, ME14 1QX

The persons participating in the hearing were identified as follows:

Chairman – Councillor Hinder
Committee Member – Councillor Garten
Committee Member – Councillor Mrs Robertson

Substitute Committee Member Councillor Brindle was present as a training exercise.

Legal Advisor – Mr Robin Harris

Online Facilitator/Democratic Services Officer – Miss Oliviya Parfitt

Applicant – KDG Maidstone Ltd, Mr Gurjeet Dhillon

Objector – Ms Lisa Postiglione

All parties confirmed that they were aware of the Sub-Committee hearing procedure and had each received a copy of the hearing procedure document.

The Chairman explained that:

- The Sub-Committee would allow all parties to put their case fully and make full submissions within a reasonable time frame.
- The procedure would take the form of a discussion led by the Sub-Committee and they would usually permit cross-examination conducted within a reasonable timeframe.
- Any persons attending the hearing who behaved in a disruptive manner may be directed to leave the hearing by the Sub-Committee (including temporarily) after which, such person may submit to the Sub-Committee over the Instant Messaging facility any information which that person would have been entitled to give orally had the person not been required to leave the meeting. If this is not possible, they may be permitted to speak at the Chairman's Invitation.

The Sub-Committee confirmed that they had read all the papers.

The Chairman enquired whether any draft conditions had been agreed between the applicant and other parties; no draft conditions had been agreed.

The Legal representative summarised the premises license application, which requested indoor late-night refreshment from 23:00-03:00 seven days a week, with opening hours of 11:00-03:00. Kent Police had withdrawn their objection due to the agreed draft conditions that would be included within the license, if granted. One other party objected on the grounds of crime and disorder, public safety and nuisance and protecting children from harm. It was noted that the grounds for objection had been taken by the ordinary, rather than legislative meaning. The Legal Representative would provide clarity to the objector's argument later in the hearing.

An inconsistency within point 1a of the agreed conditions with Kent Police was highlighted, which referenced the sale and supply of alcohol, which had not been requested by the applicant. The Legal Representative clarified that if the licence were granted, the draft condition could be amended.

The applicant was invited to make their opening remarks and re-confirmed that no alcohol would be sold or supplied at the business and that CCTV was in operation. Mr Dhillon highlighted that there were several other businesses within the local area that opened late and that whilst the business had not made provision for security staff, if there were any incidents of anti-social behaviour or crime within the premises then this would be reconsidered. Staff would be trained on how to respond to anti-social behaviour and contacting the emergency services. The business could seat up to 90 people, which Mr Dhillon offered to reduce, past a certain time, if necessary.

The objector asked the applicant about their experience in the restaurant industry, dealing with anti-social behaviour and noise complaints, the use of sound controls at the premises, waste and odour management and the complaints process.

Mr Dhillon stated that he and his family had twenty years of experience, with multiple businesses that remained open until 4 or 5 a.m. with a total of 2000 employees. This comprised of in-house training, management, area managers, security and maintenance staff. Mr Dhillon confirmed that the sound control measures taken related to the extraction system fitted, which contained carbon filters to control food odours. This had been approved by the Council. It was highlighted that there were many public-use bins within the local area, but that staff would be required to walk within 100 metres of the premises to check for any of the business' packaging, to be collected and disposed of within the business' refuse bins. If any refuse was found within 100 metres, points would be deducted from the monthly audits that took place, from which staff were provided with incentives and benefits. Prior to the premises opening, the contact details for the manager and business officer would be made available.

The Chairman asked Mr Dhillon for further clarification as to why the application stated that there were no residents within 30 metres of the premises, when residents were found to live above it. Mr Dhillon responded that this was a clerical error and that if there were any public nuisance concerns, actions would be taken to mitigate these.

In response to questions from the panel, Mr Dhillon stated that he did not expect the business to attract an increased footfall into the area. The applicant had opened GDK Franchise stores in Leicester and Cheltenham, had a year's experience with the franchiser and had signed up to open 25 stores nationally and held the rights for the south-east region.

The Legal Representative was asked to clarify whether food delivery was a licensable activity, to which it was confirmed that the only licensable activity within the application was for late night refreshment. The applicant confirmed that GDK do not have a platform that enabled customers to order online. Online orders would have to occur through a separate agency which would be responsible for delivering the food orders.

The objector was invited to make their opening remarks and referenced the licensing objectives. Concern was expressed that the late-night opening hours would exacerbate the existing levels of crime and anti-social behaviour, with reference to the drug use witnessed in Brenchley Gardens. Several other businesses were open in the early hours of Friday and Saturday nights as opposed to nightly. The importance of CCTV was noted.

The objector stated that their quality of life would be negatively impacted due to their shift-work. In considering public safety, the venues capacity for 90 people was too high. Particular attention was drawn to the potential littering from customers, under public nuisance, which was an existing problem for the area. The protection of children was referenced with regard to the existing fast-food establishments in the area.

The legal representative stated that the public safety objective related to the safety of any person on the premises. In the current climate 90 people was likely too high, but this would be an issue for Public Health rather than Licensing. With regards to public nuisance, the licensee is only responsible for the individuals on and in the immediate vicinity of their premises. The protection of children from harm was intended to prevent children from having access to alcohol and sexual entertainment, of which neither were requested within the application.

The objector reiterated that their quality of life would be affected and questioned how the applicant would guarantee sufficient staff training.

The panel reiterated that the business did not expect to increase the footfall into the High Street, with the objector asked how this affected their representations. Ms Postiglione stated that litter was frequently seen on the High street and that she objected to the late-night hours opening hours requested. Written confirmation of staff members' responsibility to clean immediately outside the premises would be preferred, in response to a question from the panel.

In response to questions from the Legal Advisor, the applicant confirmed that the premises capacity would be reduced to 30 people whilst social distancing measures were in force and that between Sunday-Wednesday the business was unlikely to remain open until 3a.m. The applicant had applied for these hours to allow the business to remain open for events, such as sporting events, that would attract customers. It was noted that the applicant was a leaseholder for the premises and that the landlord owned the residential properties above, with the landlord's management agent in weekly contact with the applicant. Within the lease there was a covenant that required the leaseholder not to cause disturbance to the neighbours, which could result in the lease being forfeited if not adhered to.

The applicant stated that they were happy to accept a written condition on staff training requirements, and noted that the franchiser required franchisees to provide a training module to staff on how to manage any

issues arising from late night openings, to be signed, documented and retained on site.

The Legal Advisor questioned the objectors concerns as a perceived rather than evidenced issue against the premises. The objector argued that the existing levels of crime, anti-social behaviour and drunk and disorderly conduct would be worsened if the licence was granted. The legal advisor highlighted that the only licensable activity under consideration was for the four hours requested, that the business would not be serving alcohol and that it was not yet operating. The objector felt that by providing food the premises would attract drunken individuals.

The objector was invited to make their closing statement, in which they appealed to the sub-committee to consider the residents living above the premises.

The applicant was invited to make their closing statement, in which they referenced the staff training provisions, refuse collection, likely weekend opening hours and that contact details would be provided to local residents and businesses when the premises opened.

The Chairman advised that the Sub-Committee would retire for deliberation and requested that the Legal advisor be in attendance.

The sub-committee returned and invited the legal officer to read out the decision. The licence was to be granted as applied for, with the last line of police condition 1a to be removed to correlate with the business's activities. It was confirmed that the written decision would be provided within 5 working days.

Parties were reminded of the right to review a premises licence and the right of appeal to the Magistrates Court.

The meeting closed at 4.09 p.m.

RESOLVED: That the Sub-Committee's decision and reasons be provided within the Notice of Determination attached as an Appendix to the Minutes.



LICENSING AUTHORITY: MAIDSTONE BOROUGH COUNCIL

**LICENSING ACT 2003
LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005**

NOTICE OF DETERMINATION

Application Ref No: 20/01813/LAPRE

Applicant: KDG Maidstone Ltd

Regarding German Donner Kebab 79-85 Week Street Maidstone kent ME14 1QX

Date(s) of hearing: 2nd October 2020

Date of determination: 2nd October 2020

Committee Members: [Chairman]: Councillor Hinder (B)
Councillor Garten
Councillor Robertson

Legal Advisor in attendance at hearing(s): Robin Harris, Team Leader (Contentious), MKLS

Democratic Services Officer in attendance at hearing: Oliviya Parfitt

Senior Licensing Officer for application: Lorraine Neale

This was an application for:

- Variation Grant
 Provisional Statement Review Other

for a

- Premises Licence Club Premises Certificate Personal Licence
 Temporary Event Notice

A: Representations, evidence and submissions:

The Committee considered the representations, evidence and submissions of the following parties:

Applicant

- Name: Mr Gurjeet Dhillon
- Legal or other representative: N/A

Responsible Authorities

Kent Police (Made a representation which was subsequently withdrawn following proposed conditions being agreed and added to the operating schedule.)

Other Persons

Name: Ms Lisa Postiglione

Witnesses and legal representatives in support of interested parties

N/A

Representations considered in the absence of a party to the hearing:

N/A

B: Consideration of the Licensing Act 2003, the Guidance under s. 182 of the Act and the Statement of Licensing Policy of Maidstone Borough Council

The Committee has taken into account the following provisions of the Licensing Act 2003 and the Regulations thereto:

Section 4 which relates to the licensing objectives
Section 13 which relates to responsible authorities;
Section 16-24 which relate to the grant of a premises licence;
Schedule 1 which relates to Regulated Entertainment

The Committee has taken into account the following provisions of the Guidance under section 182 of the Act:

Chapter 2 which relates to the licensing objectives
Chapter 8 & 9 which relates to premises licences & determinations
Chapter 10 which relates to conditions attached to licences;

The Committee has taken into account the following provisions of its Statement of Licensing Policy:

Chapter 17 which relates to the 4 licensing objectives;
Chapter 17.9 – 17.15 which relates to the prevention of crime and disorder;
Chapter 17.16 – 17.18 which relates to public safety
Chapter 17.19 – 17.22 which relates to the prevention of nuisance;
Chapter 17.23 – 17.26 which relates to the prevention of children from harm;

The Committee has decided to depart from the guidance under section 182 of the Act and or the statement of licensing policy for the following reasons:

N/A

C: Determination:

The Committee has decided to:

- Grant the application as applied for. (For clarity, this includes the conditions that were agreed with the Police prior to the hearing subject to the amendment of condition 1a to remove the reference to the sale and supply of alcohol which is not relevant to this application.)

Reasons for determination:

■ **Prevention of Crime and Disorder**

Reasons (state in full):

The Sub-Committee noted that there were conditions agreed with Kent Police, but that a CCTV condition related to the sale/supply of alcohol, which was not relevant to this application. The Sub-Committee had regard to the written and oral submissions from Ms Postiglione, but were satisfied that the operating schedule, with Police conditions, amended for accuracy, was sufficient to promote this licensing objective.

■ **Public Safety**

Reasons (state in full):

The Sub-Committee was satisfied that the operating schedule provided by the applicant was appropriate and proportionate to promote this licensing objective and noted that the Covid Secure capacity of the premises was closer to 30 people rather than 90. The Sub-Committee had regard to the representations made by Ms Postiglione, but felt that they were outside the definition of public safety within the meaning of the Licensing Act 2003.

■ **Prevention of nuisance**

Reasons (state in full):

The Sub-Committee had regard to the written representations received and the statements made during the hearing in relation to this licensing objective. The representations in as far as they were relevant, were predominantly concerned with noise from the premises and the disruption that this could cause to local residents and with the waste (litter) generated by the premises.

The applicant confirmed that they have substantial experience of managing late night food premises and their staff are well trained to deal with patrons that frequent these premises. The applicant further advised that there are bins immediately outside the premises and their operating model (franchise) requires them to litter pick in the immediate vicinity of the premises every day before the shop opens.

The applicant confirmed that as a business they were always open to the concerns of local residents who were welcome to contact them directly with any concerns. The applicant also advised the Sub-Committee that as a leaseholder, as well as the licensing objective they had obligations in their lease that protected the neighbours from causing a nuisance.

Taking into account all of the above, the Sub-Committee were satisfied that the operating schedule was sufficient to promote this licensing objective.

■ **Protection of children from harm**

Reasons (state in full):

The Sub-Committee noted that the representations made under this licensing objective related to public health, rather than alcohol or sexual entertainment, none of which feature in this application. As such, the Sub-Committee was satisfied that the operating schedule provided by the applicant was sufficient to promote this licensing objective.

PRINT NAME (CHAIRMAN): C Councillor Bob Hinder

Signed [Chairman]:

A copy of the original document is held on file

Date: 5th October 2020