

**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE
Council Chamber - Town Hall
11 January 2012 (2.30 - 3.55 pm)**

Present:

COUNCILLORS

Conservative Group Peter Gardner (Chairman) and Linda Trew

Labour Group Denis Breading

All decisions were taken with no votes against.

There were no declarations of interest.

The Chairman reminded Members of the action to be taken in an emergency.

1 REPORT OF THE LICENSING OFFICER

PREMISES

Sparkling Food & Wine
4 Elm Parade
St Nicholas Avenue
Hornchurch
Essex
RM12 4RH

DETAILS OF APPLICATION

Application for a premises licence under the Licensing Act 2003 (“the Act”).

APPLICANT

Mr Mehmet Ali Coktas
325 Porters Avenue
Dagenham
Essex
RM9 4LX

1. Details of requested licensable activities

An amended application was submitted at the hearing which requested the following licensable activities:

Supply of Alcohol (off sales), hours premises open to the public		
Day	Start	Finish
Monday to Sunday	08:00hrs	23:00hrs

Seasonal variations & non-standard timings:

There are no seasonal variations or non-standard timings applied for.

2. Promotion of the Licensing Objectives

The applicant completed the operating schedule, which formed part of the application to promote the four licensing objectives.

The applicant acted in accordance with regulations 25 and 26 of The Licensing Act 2003 (Premises Licences and Club Certificates) Regulations 2005 relating to the advertising of the application. The required public notice was installed in the 23 November 2011 edition of the Havering Yellow Advertiser.

Havering's Licensing Policy determines that the St Andrews ward is the subject of a special policy ("saturation policy") relating to the cumulative impact of licensed premises in the area. The Policy states:

It is the LLA's policy to refuse applications in the St Andrews ward area for pubs and bars; late night refreshment premises offering hot food and drink to take away; off licences; and premises offering facilities for music and dancing other than applications to vary hours with regard to Licensing policy 012.

This application relates to premises within the St Andrews ward.

3. Details of Representations

Valid representations may only address the four licensing objectives

There was one representation against the application from a responsible authority, namely the Metropolitan Police

Responsible Authorities

Chief Officer of Metropolitan Police ("the Police"): One

In summary, the Police Licensing Officer stated in his representation that the applicant had not satisfactorily addressed the additional steps they intended to take to promote the four licensing objectives particularly when addressing the prevention of crime and disorder and

the protection of children from harm. This in-turn was likely to lead to further public nuisance issues arising.

London Fire & Emergency Planning Authority (“LFEPA”): None.

Health & Safety Enforcing Authority: None.

Planning Control & Enforcement: None.

Public Health: None

Children & Families Service: None

Trading Standards Service: None

The Magistrates Court: None.

4. Determination of Application

Decision

Consequent upon the hearing held on 11 January 2012, the Sub-Committee’s decision regarding the application for a variation of the premises licence for Sparkling Food and Wines was as set out below, for the reasons shown:

The Sub-Committee was obliged to determine this application with a view to promoting the licensing objectives, which are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

In making its decision, the Sub-Committee also had regard to the Guidance issued under Section 182 of the Licensing Act 2003 and Havering’s Licensing Policy.

In addition, the Sub-Committee took account of its obligations under s17 of the Crime and Disorder Act 1998, and Articles 1 and 8 of the First Protocol of the Human Rights Act 1998.

The St Andrews ward is the subject of a cumulative impact policy as set out in Havering’s Licensing Policy. This will create a rebuttable presumption that applications for new premises licences that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

According to government issued Guidance, such a policy does not relieve responsible authorities or interested parties of the need to

make a relevant representation, referring to information which had been before the licensing authority when it developed its statement of licensing policy, before a licensing authority may lawfully consider giving effect to its special policy.

A special policy should never be absolute. Statements of licensing policy should always allow for the circumstances of each application to be considered properly and for licences and certificates that are unlikely to add to the cumulative impact on the licensing objectives to be granted.

If the licensing authority decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one of the licensing objectives and that necessary conditions would be ineffective in preventing the problems involved.

Agreed Facts **Facts/Issues**

Whether the granting of the premises licence would undermine the four licensing objectives.

The written representation by the Police explained that the applicant had not satisfactorily addressed the additional steps they intended to take to promote the four licensing objectives particularly when addressing the prevention of crime and disorder and the protection of children from harm. This in-turn was likely to lead to further public nuisance issues arising. The saturation policy was also raised by the Police, who added that an increase in off-licensed premises in a condensed area has the potential to encourage irresponsible drinks promotions and pricings in order for premises' to remain competitive.

At the hearing PC Fern informed the sub-committee that the local Safer neighbourhood Team (SNT) were often tasked to deal with instances of anti-social behaviour in the Elm Park area. He stated that the area was under stress in terms of youths drinking, and crime and disorder. He also referred to the possibility of youths obtaining alcohol by theft and proxy sales.

PC Fern advised that the application only covered some of the licensing objectives however the Police would have liked to have seen the inclusion of a Challenge 25 policy, a refusal register kept at the premises and the installation of a fully compliant CCTV system.

PC Fern also advised that Police would also like an assurance from the applicant ensuring that at least one personal licence holder would be working on the premises at all times alcohol was on display for sale.

Applicant's response:

The applicant, represented by Mr Dadds, his agent, sought to address the concerns raised by PC Fern.

Mr Dadds advised the sub-committee that although the premises were situated on the outskirts of the St Andrews ward which under Havering's Licensing Policy was subject to a saturation policy with regards to premises licensed to supply alcohol, no cumulative impact would be felt by the granting of a licence for this premises.

Mr Dadds referred to paragraph 1.15 of Guidance issued under section 182 of the Licensing Act 2003 which states that each application had to be heard on its own merits, and submitted that the saturation policy was not absolute. He also submitted that the policy was designed to prevent the increase of pubs and clubs situated in the town centre rather than stand-alone off licenses located on the outskirts of the town centre. He also referred to paragraph 13.33 of the Guidance which states that cumulative impact policies will not normally apply to off-licences. Mr Dadds explained that the reason being is that these policies were aimed at stopping the simultaneous dispersal of patrons from on-licensed premises.

Mr Dadds submitted that there would still need to be good reasons for refusal in spite of the saturation policy, and that it shouldn't be a blanket cover for the whole day, it would still need to be demonstrated that there was in fact some cumulative impact.

As a side-note Mr Dadds advised that a licensed premises situated nearby to the applicants premises had recently closed. He also stated that in terms of supply and demand, people would be able to get alcohol in the area regardless of the applicant's premises.

The sub-committee was advised that no evidence of any anti-social behaviour had been provided by the Police that could be attributed to the applicant's premises.

Mr Dadds advised that the condition put forward by the Police, that a Designated Licence Holder (DPS) or a personal holder had to be on the premises at all times was restrictive and not necessary to the efficient running of the business.

Mr Dadds concluded by advising that he saw no reason why the licence should not be granted to 23.00hrs or in the worst case scenario until at least 22.00hrs.

In response PC Fern advised that the Police wished to see somebody responsible on the premises at all times and then perhaps reviewed at a later date. PC Fern advised that when test purchase initiatives were carried out one in three premises failed usually due to a responsible person not being on the premises at the time of the test.

In reply Mr Dadds queried the facts provided by PC Fern as no specific evidence had been provided to the sub-committee.

Mr Dadds continued by confirming that the applicant was agreeable to the conditions that the Police had suggested with regards to the Challenge 25 policy, introduction of a compliant CCTV system and the introduction of a refusals register.

During a brief question and answer session members of the sub-committee sought to clarify staffing and training levels.

Mr Dadds advised that all members of staff would be trained to be in receipt of a BIIAB Level 1, or equivalent, in basic alcohol retailing.

Mr Dadds confirmed that Mr Coktas was himself a personal licence holder and would be on the premises most of the time the premises were open to the public. Mr Dadds also confirmed that the premises were currently open and had been so for a couple of months.

In reply to a question from PC Fern, Mr Dadds confirmed that three members of staff would be on the premises whilst trading was taking place and that the applicant would be managing the premises.

In reply to a question from a member of the sub-committee, Mr Dadds confirmed that the applicant would

use a “No ID-No Sale” refusal register which was industry approved.

Having considered the written representations and oral responses, the Sub-Committee decided the application as follows:

The sub-committee listened to all of the points raised, and heard no evidence that the granting of a licence to the premises would undermine the promotion of any of the licensing objectives. The application was for an off-licence closing at 23.00hrs. The sub-committee could not see that such a licence would have an effect on cumulative impact, provided certain conditions were adhered to, and therefore was prepared to grant the licence subject to the following conditions being implemented.

CD1 All staff shall be suitably trained for their job function for the premise. The training shall be written into a programme, ongoing and under constant review, and must be available to a relevant Responsible Authority when called upon.

CDGPG3 Prominent clear notices shall be displayed at the point of entry to the premises and in a suitable location at any points of sale, advising customers that they may be asked to produce evidence of their age.

CDGPG11 All members of staff at the premises shall seek “credible photographic proof of age evidence” from any person who appears to be under the age of 18 years and who is seeking to purchase alcohol. Such credible evidence, which shall include a photograph of the customer, will include a passport, photographic driving licence, or Proof of Age card carrying a “PASS” logo.

CDGPG12 All occasions when persons have been refused service shall be recorded in writing and kept at the premises for six months.

CDGPG13 Prominent, clear notices shall be displayed at the premises about the supply of alcohol to minors and the relevant offences involved.

CD15 A properly specified and fully operational CCTV system shall be installed or the existing system maintained to a satisfactory standard. The system will incorporate a camera covering each of the entrance doors and be capable of providing an image which is regarded as ‘identification standard’ of all persons entering and/or leaving the premises. All other areas of risk identified in the Operational Requirement shall have coverage appropriate to the risk.

CD16 The installation or upgrading of any CCTV system shall comply with current best practice. In addition the documentation listed below shall be included in a 'System File' which should be readily available for inspection by the relevant authority;

- Site plan showing position of cameras and their field of view.
- Code of Practice.
- Performance specification e.g. storage capacity, image file size, IPS for each camera and purpose of each camera position
- Operational requirement.
- Incident log.
- Maintenance records including weekly visual checks.

CD17 To obtain a clear head and shoulders image of every person entering the premises on the CCTV system, persons entering the premises should be asked to remove headwear, unless worn as part of religious observance.

CD18 The CCTV system shall incorporate a recording facility and all recordings shall be securely stored for a minimum of one calendar month. A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained. The system will comply with other essential legislation, and all signs as required will be clearly displayed. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity. For premises using a video recording system, the cassette tapes shall be used on no more than 12 occasions to maintain the quality of the recorded image.

CD19 The positions of all CCTV cameras shall be clearly shown on a set of plans which should form part of the 'System File'. Any alteration to the system should only be carried out after consultation with and written approval of Havering Police and the Licensing Authority.

CD21 A staff member from the premises who can operate the CCTV system shall be on the premises at all times when the premise is open to the public. This staff member shall be able to show Police recent data or footage with the absolute minimum of delay when requested.

That the premises should adopt a Challenge 25 policy. This means that the premises would challenge anybody who attempted to buy an alcoholic drink who appeared to be under the age of 25 and would not sell to such a person unless they can prove they are over 18 by a passport or photographic driving licence.

Licensing Sub-Committee, 11 January
2012

The Sub-Committee stated that in arriving at this decision, it took into consideration the licensing objectives as contained in the Licensing Act 2003, the Licensing Guidelines as well as Havering Council's Licensing Policy.

Chairman