

DURHAM COUNTY COUNCIL

At a Meeting of **Statutory Licensing Sub-Committee** held in Committee Room 2 - County Hall, Durham on **Tuesday 4 December 2018 at 10.00 am**

Present:

Councillor L Marshall (Chair)

Members of the Committee:

Councillors D Bell, J Blakey, L Brown and D Hicks

Also Present:

H Johnson – Licensing Team Leader, DCC

K Coulson-Patel – Solicitor, DCC (present for Best Kebab One)

G Proud – Solicitor, DCC (present for Kelly's Convenience Store)

Best Kebab One

Mr S Mooney – Force Solicitor - Durham Constabulary

Sgt C Dickenson - Durham Constabulary

PC C McNaney - Durham Constabulary

DC D Haythorntwaite - Durham Constabulary

Mr Z Hussain Ahmed – Licence Holder

Kelly's Convenience Store

Mr P Burke – Applicant's Solicitor

Mrs C Heshanth (Applicant) and Mr Heshanth Theivenrarajah

1 Apology for Absence

An apology for absence was received from Councillor M Wilson.

2 Substitute Members

Councillor Blakey substituted for Councillor Bell at the hearing in respect of Kelly's Convenience Store.

3 Declarations of Interest

There were no declarations of interest.

4 Minutes of the Meetings held on 11, 15 and 25 October 2018

The Minutes of the meetings held on 11, 15 and 25 October 2018 were agreed as a correct record and were signed by the Chairman.

5 Application for the Review of a Premises - Best Kebab One, 1a Fore Bondgate, Bishop Auckland

Members: Councillor L Marshall (Chair), Councillors L Brown and D Hicks.

Prior to the commencement of the hearing, the Sub-Committee was asked to consider a request from the Licence Holder Mr Ahmed for an adjournment to allow him to obtain independent legal advice. Mr Reed, Counsel explained that he had been instructed to represent Mr Sala, the previous Licence Holder as he had understood the purpose of the hearing to be the consideration of the 'handover process'. It would be inappropriate for him to represent Mr Ahmed who was without legal representation.

The Chair asked when Mr Ahmed had been informed of the date of the meeting. Members were advised that all parties had been informed of the date at the Sub-Committee hearing on 30 October 2018. This date was agreed with Mr Ahmed who was present on 30 October 2018.

The Applicant was asked for their views. Mr Mooney, Force Solicitor on behalf of the Applicant Durham Constabulary, opposed the request. The review application had first been listed on 15 October 2018 and was adjourned as Mr Sala's Solicitor had not attended. The hearing was then re-convened on 30 October 2018 when the Sub-Committee was advised that on Friday 26 October 2018 the Premises Licence had been transferred from Mr Sala to Mr Ahmed. It was made clear at that time that the hearing would proceed on 4 December 2018.

Mr Ahmed, through his interpreter, advised that he had hoped to get better legal advice and this was why he had asked for an adjournment.

At 10.35am the Sub-Committee retired to consider the request. After re-convening at 10.40am the Chair advised that the request for an adjournment was refused. Members noted that Mr Ahmed had been informed of the date of the hearing on 30 October 2018, and considered therefore that he had been given sufficient time to seek legal advice.

The Licensing Team Leader presented the report which included a copy of the application and supporting documentation. Additional information had been received from the Applicant which had been circulated to all parties in advance of the hearing.

Mr Mooney was invited to address the Sub-Committee and advised that on becoming aware that the Premises Licence had been transferred, the Police had met with Mr Ahmed. However the Police remained concerned about the management of the premises following that meeting and sought revocation of the Premises Licence.

Durham Constabulary had made application to review the Premises Licence because of serious concerns regarding the management of the premises which undermined all 4 licensing objectives. The premises had changed hands a number of times in 12 months but the Police evidence focused on the period that Mr Sala

and Mr Raza were in control. Mr Raza was still managing the premises, and the Police believed that he and Mr Sala had both been involved with the running of the premises since 2011.

Mr Mooney outlined the main concerns of the Police. As detailed in the additional information provided by the Applicant, Mr Raza and Mr Sala had both been convicted with the offence of Obstruct Police by means of giving false names during a multi-agency visit on 16 December 2017. During the visit Mr Sala had also produced a falsified residents permit for an illegal worker. The permit was in the name of a former Licence Holder who had left the country in 2011. Even if the permit had been produced by the illegal worker himself, Mr Sala should have checked the authenticity of the document. There were 4 separate occasions where individual males had been found working on the premises without documentation, as outlined in the Police Bundle of Evidence.

Other matters of concern included the general poor management of the premises and the lack of training records. The Premises Licence was not on display, the fixed seating was not included on the layout plan and the CCTV was not working for long periods. The Licence Holder had been notified of these issues but had taken a number of months to address only some of the areas of concern.

There was also anti-social behaviour connected with these premises. There had been a number of reports of anti-social behaviour between October 2017 and December 2017, including that the shop was treated more as a youth club than a takeaway. Although incidents had reduced at the end of last year, they were on the increase again. It may be that incidents had continued throughout the period but had not been reported.

When the Police were informed that Mr Ahmed had taken over the premises a meeting was set up for 12 November 2018, and on 6 November Mr Ahmed was asked to provide information which included details of his purchase of the premises, and details of staff and their immigration status. Mr Ahmed was reminded again on 19 November 2018. Mr Ahmed had produced a lease dated 2016 but had not provided a lease in his own name or any other documentation. He had admitted knowing Mr Sala for 4 years, had paid a cash deposit for the premises and had appointed Mr Raza as Manager. Mr Raza paid a weekly amount to Mr Ahmed. Mr Ahmed appeared to know very little about the business or who worked there apart from one female employee.

Mr Mooney referred Members to paragraph 11.27 of Section 182 Guidance which listed activities which should be treated particularly seriously. The list included the employment of a person disqualified from work by reason of their immigration status in the UK. The Guidance expected that in these circumstances a revocation of the Premises Licence should be seriously considered.

At 11.50am in accordance with Regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005 it was **Resolved** that everyone present should leave the hearing, with the exception of the Applicant, the Licence Holder and the Solicitor, to allow the Sub-Committee to view CCTV footage of incidents at the premises.

At 12.30pm the hearing resumed in public.

PC McNaney referred to her witness statement included in the additional information, and outlined to Members the incidents at the premises on 22 and 30 September, and 11 and 12 November 2018.

In confirming what had been said by Mr Mooney, PC McNaney added that on 26 November 2018 Mr Sala had declared that he was unemployed at court, but following his conviction had asked her to examine damage to a window at his shop, Best Kebab One. She was of the view that Mr Ahmed had nothing to do with the business which was being managed exactly as it had been for the last 20 months.

Upon questioning by Councillor Brown, PC McNaney advised that the last reported incident was on 29 November 2018. On 26 November 2018 a report was received about a young female causing damage to the premises.

Mr Quinn of the Local Safeguarding Children's Board (LSCB) was invited to make representation. He stated that the LSCB recognised that access to alcohol could make young people vulnerable and victims of crime, and that they could also become offenders themselves.

The evidence presented by the Police raised concerns for the LSCB, and in particular reports of young people drinking alcohol and engaging in anti-social behaviour, reports of dangerous health and safety conditions relating to the supply of gas to the premises where young people congregated, and reports that predominantly female young people were drawn to the premises that was also being investigated in relation to employees using false identities and having no right to work in the UK.

The LSCB supported the application by the Police for revocation of the Premises Licence.

Mr Ahmed, through his interpreter, stated that the incidents were related to individuals rather than the business itself. He apologised to PC McNaney that he had not replied to the request for information but he had 2 other businesses to run and a young family, and was 'snowed under'. He was a businessman and this was what he did; he had taken over similar premises in New Brancepeth and Gateshead and had turned them around.

He noted the lies and deception of Mr Sala and Mr Raza but this had nothing to do with him and stated that he would not lie. He had recruited new employees and could provide their details.

With regard to the congregation of young persons outside, he advised that when customers ordered food they were given 15 minutes waiting time. Best Kebab One was not the only premises in the location, there were 3 other shops in close proximity; if anti-social behaviour was a problem for one shop it affected them all. Because of his involvement with his other businesses and factory he could not ask Mr Raza to leave until January 2019 after the busy Christmas period. Mr Ahmed

informed the Sub-Committee that he wished to submit documents regarding the new lease but was informed that these should have been disclosed in advance of the hearing, and with the consent of all parties.

Mr Ahmed continued that he should not have confirmed the date of the hearing as this was his busiest time. He had not appreciated the purpose of the hearing today.

Councillor Brown asked why Mr Ahmed had decided to take over the premises. Mr Ahmed advised that he looked for shops that were not well-managed, built them up and then sold them on for a profit.

Following a further question from Councillor Brown, Sgt Dickenson advised of incidents reported in respect of other premises in the location, none of which related to anti-social behaviour. PC McNaney added that concerns had been raised about Best Kebab One at PACT meetings.

Upon questioning by Sgt Dickenson, Mr Ahmed advised that he had been given 2 opportunities to provide documentation. Sgt Dickenson clarified that Mr Ahmed had been notified by e-mail on 2 and 6 November 2018, at the meeting on 12 November 2018 and by a further follow-up e-mail on 19 November 2018. Mr Ahmed advised that he had not said to PC McNaney that the Lease he had provided was a copy of his own Lease.

Mr Mooney stated that Mr Ahmed had said that Mr Sala and Mr Raza had been causing problems and asked him to confirm that these individuals had been running the premises. Mr Ahmed confirmed that they had.

Following a further question about the businesses of Mr Ahmed and his hours of work, Mr Ahmed reiterated that November and December were his busiest months and he worked from 5 or 6am until 2pm, but sometimes made deliveries out of hours and at other times when he made financial collections.

He had visited Best Kebab One on Tuesday and Saturday of the previous week and had employed new staff, including a female employee who he hoped to appoint as Manager. She had been working at the premises for 2 years and clarified that she had contacted the Police during the incident on 26 November 2018, not a member of the public. He had told the staff that they must contact the Police if there were any incidents. He planned to close the shop in January 2019 to refurbish the premises and put the business in order.

Mr Mooney asked why Mr Raza could not be asked to leave the premises now, and was advised that this was because of his knowledge of the business. However he would ask him to leave immediately if this was requested of him.

All parties were invited to make closing submissions.

Mr Ahmed advised that he had nothing further to add.

Mr Mooney concluded that there had been numerous licensing failures associated with the premises. Youths treated the shop as a youth centre and consumed

alcohol which resulted in anti-social behaviour and disturbance. These problems had either recently re-emerged or had been continuous but had gone un-reported.

Standout issues for the Police were the deception and lies from people in control of the premises, and the employment of illegal workers. Mr Sala was still involved with the premises and Mr Raza was still the Manager, at the choice of Mr Ahmed. Mr Ahmed was 'snowed under' with his other businesses and Mr Raza would continue to run the premises as long as he paid rent. Durham Constabulary considered that revocation of the Premises Licence was the only option.

Mr Quinn of the LSCB had nothing further to add.

At 12.30pm the Sub-Committee retired to deliberate the application in private. After re-convening at 12.45pm the Chair delivered the Sub-Committee's decision. In reaching their decision the Sub-Committee had taken into account the report of the Licensing Team Leader, verbal representations of the Licence Holder and the verbal and written representations of the Applicant and LSCB. Members had also taken into account the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

Resolved:

That the Premises Licence be revoked.

The meeting adjourned until 2.30pm.

6 Application for the Grant of a Premises Licence - Kelly's Convenience Store - 2 Osborne Terrace, Ferryhill

Members: Councillor L Marshall (Chair), Councillors J Blakey and D Hicks.

The Committee considered a report of the Licensing Team Leader regarding an application for the grant of a Premises Licence in respect of Kelly's Convenience Store, 2 Osborne Terrace, Ferryhill (for copy see file of Minutes).

A copy of the application and supporting documentation had been circulated. Members were informed that the 'other persons' who had made representation had confirmed that they would not be in attendance.

Mr Burke, the Applicant's Solicitor addressed the Sub-Committee and stated that Mr and Mrs Heshanth owned other businesses in the area, including a store at Ferryhill and a petrol station, both of which were licensed and operated without issue. They had owned the petrol station for 5 years. The couple planned to move into Kelly's Convenience Store with their children.

Mr Burke addressed the objections that had been raised. The reference to other licensed premises in the area nearby was not relevant, and Kelly's Convenience Store could not be blamed for problems being experienced as a result of the purchase and consumption of alcohol by young people. The shutters had been removed in the last couple of years so could not be a cause of disturbance. One

'other person' who had made representation lived 2 doors away from the premises and had young children; the residents living next door also had young children and had not expressed concern.

One of the objectors to the application was the owner of a licensed premises nearby.

There were no representations from Responsible Authorities.

With regard to representations made regarding the hours for the sale of alcohol, Mr Burke advised that many people worked shifts, finishing work at 6am and may for example want to purchase a bottle of wine to have with a meal after work.

Concerns had also been expressed with regard to an increase in vehicles, including delivery vehicles. The works to the shop had now been completed and the number of vans should reduce in volume.

There were no plans for major external lighting, which in any event would need planning permission.

The hours requested for the supply of alcohol and opening times had both been amended to 22:00 hours.

Mr Burke then referred to the case of *Thwaites PLC v Wirral Borough Magistrates Court* which established that conditions should only be attached which were necessary to promote the licensing objectives, and must be based on real evidence. The letters of representation were speculative in content and if the Sub-Committee gave weight to these, would fail to follow the provisions of Section 182 Guidance and the Council's Statement of Licensing Policy.

There was no evidence to show that the licensing objectives would not be promoted, and of 2000 residents living within the immediate vicinity, only 3 had made representation.

Following a question from Solicitor Gill Proud, Mr Burke confirmed that there were no plans to install external lighting. Councillor Blakey sought an assurance that images from the CCTV camera to the front of the premises would be clear without external lighting, and was advised by Mr Heshanth that the CCTV system was of good quality.

In his closing statement Mr Burke emphasised that the Applicants were experienced, had a number of businesses, one of which was a petrol station that was open 24 hours and which they had owned for 5 years. The staff in the store were experienced, 1 having worked there for 10 years and another for 13. Both employees knew the customers, and the store already handled other age-restricted products. Mr and Mrs Heshanth had simply improved an existing business.

At 2.20pm the Sub-Committee **Resolved** to retire to deliberate the application in private. After re-convening at 2.25pm the Chair delivered the Sub-Committee's decision. In reaching their decision the Sub-Committee had considered the report of

the Licensing Team Leader, the written representations of 'other persons' and the verbal representations of the Applicant's Solicitor. Members had also taken into account the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

Resolved:

That the Premises Licence be granted as follows:

Licensable Activities	Days & Hours Requested
Supply of alcohol (consumption off the premises)	Monday – Sunday 07:00 – 22:00 hrs
Opening Hours	Monday – Sunday 05:00 – 22:00 hrs

The Sub-Committee determined that the following mediated conditions agreed by the Applicant and Durham Constabulary and Durham Local Safeguarding Children From Harm Board would be added to the premises licence:

A. General

We will hold the 4 objectives in high regard and will strive to keep staff fully trained on all of our policies and procedures. All training records will be made available to officers when requested.

B. The prevention of crime and disorder

- No serving of alcohol to any person who appears to be drunk.
- Full initial staff training to be carried out by the DPS to ensure no alcohol is sold to anyone underage and refresher training to be carried out every 6 months.
- Training records to be kept for every member of staff and endorsed after every training session. The records will be made available to officers and responsible authorities when requested to do so.
- CCTV will be provided in the form of a recordable system, capable of providing pictures particularly facial recognition. Cameras shall encompass all entrances and exists to the premise, where the sale/supply of alcohol occurs.
- The majority of staff will be trained to operate the CCTV system; this is to include viewing and downloading of the system. Regular refresher training will also be undertaken. Training records can be

made available for inspection upon reasonable request by police or other relevant officers of a responsible authority.

- All footage will be kept on the system for at least 28 days and will be made available to officers and responsible authorities when requested to do so.

C. Public Safety

- An incident log will be kept at all times.

D. The prevention of public nuisance

- Groups of people will be discouraged from congregating outside the premises.
- Signage will be displayed encouraging customers to leave quietly.
- At the end of business, staff will ensure that litter is collected from the front of the premises and the immediate vicinity.

E. The protection of children from harm

- A challenge 25 policy will be operated at the premise, acceptable forms of identification are a passport, photocard driving licence and PASS accredited identification card i.e. ID4U.
- A refusal register will be kept and endorsed after every sale refused. This should be maintained and will be produced to a relevant officer of the police or other relevant officer of a responsible authority upon request. This is also to include over 18s purchasing alcohol and passing it on to under 18s (proxy sale).

The Sub-Committee considered the mediated conditions and believed it was necessary and proportionate to impose those conditions upon the licence, together with the standard licensing conditions.