

WEST LINDSEY DISTRICT COUNCIL

MINUTES of the Meeting of the Licensing Sub Committee held virtually on 17 December 2020 commencing at 1.30 pm.

Present: Councillor Mrs Angela Lawrence
Councillor Mrs Jessie Milne
Councillor Timothy Davies

In Attendance:

Tracy Gavins	Licensing Enforcement Officer
Katie Storr	Senior Democratic & Civic Officer
James Welbourn	Democratic and Civic Officer
Martha Rees	Legal Advisor
Andy Gray	Housing and Enforcement Manager

Kim Enderby	Lincolnshire Police
Jonathan Jones	Lincolnshire Police
Simon Harrison	Lincolnshire Police

Ramazan Ozcan	Gainsborough Grill
Durul Gur	Language Line Interpreters

1 TO ELECT A CHAIRMAN FOR THIS MEETING ONLY

The Democratic and Civic Officer opened the meeting and asked for nominations for Chairman and it was

RESOLVED that Councillor Milne be elected Chairman of the Licensing Sub-Committee for this meeting.

Councillor Milne took the Chair for the remainder of the meeting and round the table introductions were made.

2 MEMBERS' DECLARATIONS OF INTEREST

Councillor Tim Davies declared that he had used the premises previously, but this did not preclude him from voting on, or taking part in the item.

3 PROCEDURE

The legal representative for West Lindsey District Council outlined the procedure to those present, as set out in the agenda pack.

4 LICENCE HEARING

Licence Number: 32UHB01805

Hearing Type: Review of a Premises Licence

Applicant: Lincolnshire Police

Premises: Gainsborough Grill, 168 Trinity Street, Gainsborough DN21 1JW

Premises Licence Holder: Mr Ramazan Ozcan

The Licensing Enforcement Officer outlined that Gainsborough Grill held a premises licence for late night refreshment from 11pm-2am 7 days a week. Details of the review were contained within the report pack and no other representations had been received in the statutory timescale.

Following this introduction, Sgt Kim Enderby from Lincolnshire Police (the applicants), outlined their case. The following points were expressed:

- The UK was in the midst of a global pandemic affecting all businesses;
- Coronavirus restrictions in place had the sole purpose of protecting the public, saving lives and preventing further spread of the virus;
- Following an additional national lockdown in March 2020 takeaway venues such as Gainsborough Grill were classed as essential and allowed to continue trading; however, for this continuation in trading a risk assessment was required and the business had to be operating in a Covid safe way to ensure the safety of customers and the staff employed at the premises;
- The need for this risk assessment was extremely well publicised on a number of different media formats;
- Lincolnshire Police believed it was impossible for a business not to know what it was required to do to be Covid-safe;
- The three month national lockdown initially proved effective but by September 2020 the disease was spreading at an alarming rate, leading to a further intervention being put in place by the Government;
- On Thursday 24 September new regulations came into force. For a takeaway venue the new legislation required that all serving staff and customers where some sort of face covering within the premises and that counter sales cease at 10pm. Takeaways could continue after this time but only by delivery;
- Although this had been the first legal restriction placed on venues of this type since the start of the pandemic, takeaway venues had been operating throughout the month of September so it wasn't anticipated that they would have a problem adapting to the new rules;
- On Saturday September 26, a Gainsborough Police Officer, drove past Gainsborough Grill at approximately 11pm;
- Sgt Enderby then referred to the statement in the pack made by PC Vickers;

- Having driven past Gainsborough Grill at approximately 11pm there were a number of people within the premises. The police vehicle was turned around and drove past again – PC Vickers stated it was the presence of the police vehicle that led to customers being ushered out at this point. The door to the premises had been open on both occasions and the signage at the front of the store was lit;
 - At 1210am the car drove past the premises again; there were two members of the public present within, and approximately six at the front door. PC Vickers again turned the police car around and a male member of staff ushered people out of the premises;
 - On stopping at the premises, a male identifying as the manager confirmed to the police that he was aware of the restrictions, but as the staff didn't speak English they were not aware. Once the manager was informed that breaches would be dealt with the manager then shouted at the members of the public that 'it was their fault'. PC Vickers then drove away to get instructions on a fixed penalty. On speaking a second time to the manager, the male then claimed that he was not the manager and was unwilling to give his details to the police; PC Vickers described this male as being extremely obstructive, and wanted the Police to concentrate their efforts on the customers rather than him;
 - PC Vickers went onto state that false details were submitted, but luckily she had had previous discussions with this male, who was identified as Mr Ozcan, the premises licence holder;
 - Mr Ozcan again stated that his staff were not aware that restrictions had changed, and then offered several explanations as to why the doors were open;
 - PC Vickers then proceeded to issue a Fixed Penalty Notice (FPN), at which point Mr Ozcan swore and said 'take me to court'. PC Vickers advised of the full process to be followed and then stated again that in her opinion Mr Ozcan remained obstructive and was trying to give false details;
 - Mr Ozcan at this point stated he was aware of the new legislation and what should be in place and believed that the fact staff were wearing face masks meant they had some understanding;
- PC Vickers had found Gainsborough Grill open at approximately 11pm and then again after midnight. The licence holder was present in the premises as serious breaches were taking place, and apparently doing nothing to make sure the business was trading safely or legally;
 - The behaviour of the licence holder throughout was not what was expected of someone in charge of the business and promoting the licensing objectives. Lincolnshire Police that this was not a misinterpretation of the legislation, but a takeaway business deliberately trading beyond a 10pm closure time;
 - Mr Ozcan had been issued with a FPN as he had been open and trading. Any reasonable business owner would be expected at this point to make their business Covid compliant and operating within the law;
 - In October 2020 Sgt Enderby and another officer attended Gainsborough Grill to carry out a compliance check, to make sure the business was operating as per its licence.

The below information was contained within Sgt Enderby's statement:

- Sgt Enderby visited the premises on 2 October at 510pm and Mr Ozcan was present;
 - Mr Ozcan could offer no real explanation as to why he had been open in September. It was explained to him that a review of the CCTV system was required. No review could take place because the CCTV was not working, and had not been for approximately a month. There were specific conditions on the licence about the CCTV being in working order, which had been breached with the system not working;
 - Mr Ozcan was advised that the premises should only be used for deliveries beyond 11pm if the CCTV was working; his response was to say it would be fixed as soon as possible.
- After this visit checks were made on the Police crime system, and there were two entries from 9 July 2020 and 8 August 2019. The first of these entries related to criminal damage at Gainsborough Grill, and this entry detailed that there was no working CCTV within the shop. The second entry was regarding a lost credit card, and again the investigating officer detailed that the recording function on the CCTV was not functioning. The lack of functioning CCTV meant that the investigations stalled and no more could be done;
 - The lack of a working CCTV system breaches the conditions of the Licensing Act;
 - Since the initial national lockdown in March 2020 Sgt Enderby and his team were performing patrols across Lincolnshire, and checking that businesses who should be closed, are, and that other businesses were operating lawfully and safely. One of these patrols in November 2020 involved driving past Gainsborough Grill, and there appeared to be a male stood inside the premises eating a takeaway. Mr Ozcan confirmed that this male was his brother. PC Jones informed Mr Ozcan that this was not allowed, who in turn explained that he wasn't aware of the legislation.

Current government restrictions were explained, and PC Jones asked for a risk assessment. It was stated by Mr Ozcan that he did not know where to find a risk assessment, or what one was. It was again noted that the CCTV system wasn't working; however it was explained that the system had been seized as it was subject to a separate investigation.

Note: The hearing was adjourned at 1440, and reconvened at 1441.

- It was the view of the Police that Mr Ozcan should ensure that every time he is open and trading he should be 'Covid-compliant'. The Panel were asked to look at the evidence Mr Ozcan had provided on complying with restrictions and the Licensing Act and question whether he was operating in a safe way and promoting the Licensing objectives. The Police didn't believe that he was doing either of these.

Following the outlining of their case, the licence holder and Members of the Panel asked questions of the applicants. Further information was provided:

- The Police did not agree with Mr Ozcan that the shop was being visited every Friday, but did say that they did pass the shop whilst on patrol;

- Normally the licence holder would be expected to provide any footage required by the Police; however the circumstances related to the seizure of the CCTV hard drive meant that Police officers wanted to examine the footage. However, as the hard drive was not working it was of no help to that particular investigation.

The licence holder, Mr Ozcan then outlined his case and observations to the Panel:

- Times had been difficult, due to Covid-19, and it had been hard to find delivery drivers. It was a scary time for family and friends;
- It was ensured that Mr Ozcan himself and staff wore masks and washed hands regularly. There was also a curtain at the front of the shop to reduce contact with customers;
- Mr Ozcan had previously left another man in charge of the shop, who was no longer working there. When returning from a delivery, he witnessed a group of teenagers in front of the shop enter. Staff were asked why they had been allowed to enter the shop, but they contended that they could not do anything as the teenagers were asking for free chips; these are sometimes issued to protect the shop against vandalism. These teenagers were asked to leave the shop but two remained. 2 to 3 minutes later the Police arrived, and did not believe Mr Ozcan's version of events;
- The teenagers then left the shop and started kicking the door of another business in the immediate area – the Police saw this but did not do anything. Mr Ozcan subsequently received, and paid a fine;
- The CCTV hard drive developed a failure and was unavailable for two weeks. Unfortunately it couldn't be fixed any quicker due to Covid-19. However, one of the drivers for the shop replaced the batteries in the CCTV and it started working. Lincolnshire Police were informed of this but nobody came to check;
- The premises was very busy on a Friday between 5pm and 7pm; when the Police visited for the second time and asked questions inside the shop they were asked to visit later or on another day. They instructed Mr Ozcan to shut the shop and show the CCTV's hard drive and paperwork;
- On Tuesday 15 December an officer from West Lindsey District Council (WLDC) visited the premises and asked for paperwork, which was shared;
- The male referred to by the Police as standing inside the shop when they visited in November 2020 was a relative of Mr Ozcan who has subsequently been fired;
- Mr Ozcan was not currently in possession of the CCTV hard drive as the Police have it. Another hard drive has been purchased but does not work. The Police have been asked to return the seized hard drive;
- There were four drivers for the premises and they would, one by one, enter the shop after 10pm;

- Mr Ozcan can only understand a little English, and asks his wife, a translator or an accountant to explain English documents to himself. All papers are held by him and are in order. The translator would be asked to notify Mr Ozcan if there were any law changes;
- The instance of credit card loss mentioned by the Police occurred because of the cancellation of credit card payments via telephone. Currently money was paid for orders at the door.

Following the outlining of licence holder's case, the Police and Members of the Panel asked questions of him. Further information was provided:

- On the Police's visit on 27 November Mr Ozcan did not have time to talk to the Police. It was unknown when the risk assessment and other documents had been completed as these were completed by Mr Ozcan's wife and his translator, however they were now up to date;
- The Senior Licensing Officer confirmed that the lady helping Mr Ozcan contacted WLDC on 24 November and then supplied a list of items that she had discussed with Mr Ozcan on 3 December. It was believed that the Police had been copied into some of this correspondence;

Note: The hearing was adjourned at 1550, and restarted at 1558.

- The CCTV had been working since July but unfortunately had not worked for two weeks and couldn't be repaired quicker due to Covid;
- Papers were not being surrendered to the Police when they visited as Mr Ozcan was extremely busy and under stress; a visit before 4pm would have been preferable;
- There was now a risk assessment document being displayed within the premises.

Note: The hearing was adjourned at 1614, and restarted at 1619.

- Mr Ozcan summed up by apologising, and re-stated that he would be more than happy to help with access to documents, and the best time to visit would be before 4pm.

The applicants (Police) summarised as follows:

- The Panel could accept the sworn Police statements over Covid compliance or accept the alternative version of events in which the licence holder appeared to accept no responsibility;
- The date on one piece of documentation was 9 December which was clearly after the Police visit on 27 November. This meant that it had taken over two months to finish a risk assessment that should have been completed in March;

- The risk assessment presented was totally generic and was not tailored for the premises. All evidence presented showed that Mr Ozcan knew the legislation and knew what should be done, but chose to continue operating in an incorrect way;
- Following the issuing of a Fixed Penalty Notice (FPN) by PC Vickers, there had been an opportunity to turn things around, but Mr Ozcan had failed to do so. There was a second opportunity following the visit of Sgt Enderby to address issues, but again this opportunity had not been taken. Finally, someone had been hired to make changes and complete required paperwork, but this person would not be in charge of the premises;
- By breaching conditions Mr Ozcan had breached the licensing objectives and committed offences;
- Other businesses were following this legislation in a responsible manner;
- Revocation of the licence sends the ultimate message; follow the legislation, promote objectives and protect the public otherwise you face the ultimate sanction.

The Chairman of the Panel then drew the hearing to a close.

The licence-holder was subsequently advised in writing that the Sub-Committee had

RESOLVED that having considered all of the representations and information before the Hearing and giving due weight to the evidence presented the Committee were unanimous in their decision that the licence be revoked, for the reasons outlined to the licence holder in his decision notice.

There is a right to appeal which must be made within 21 days of being notified of this decision, under the provisions of sections 52 and 59 of the Local Government (Miscellaneous Provisions) Act 1976.

The meeting concluded at 4.38 pm.

Chairman