

DECISION NOTICE

LICENSING ACT 2003 – TO CONSIDER AN APPLICATION FOR THE REVIEW OF A PREMISES LICENCE FOR HOT AND SPICY, 36 NEW ROAD, SPALDING, LINCS, PE11 1DN

PRESENT

Members of the Panel:
Councillor J Tyrrell (Chairman)
Councillor A C Beal
Councillor M D Seymour

Officers:
A Howlett (Democratic Services Team Leader)
C Morgan (Democratic Services Officer)
S Wolstenholme-Smy (Legal Services Manager, representing the Licensing Team)

In attendance:
Daven Naghen (Maples Solicitors) Legal Advisor to the Panel))
Rais Abbas (Premises Licence Holder)
Sgt K Enderby (Lincolnshire Police)
PC G McConville (Lincolnshire Police)
Jake Flanagan (Licensing Consultant for Premises Licence Holder)

The Panel considered the application for the review of a Premises Licence for Hot and Spicy, 36 New Road, Spalding, Lincs, PE11 1DN.

DECISION

The Panel considered the written and verbal evidence presented by all parties, in arriving at this determination.

The Panel took due notice of the Licensing Act 2003, and the Regulations made under it, in particular sections 51-53, the guidance issued under section 182 including paragraphs 2.7, and 11.16-11.28 and South Holland District Council's Statement of Licensing Policy.

An issue arose as to the service of late evidence by the Police. The position of the Police was that such was its importance that if the evidence were not to be admitted at the Hearing on 11 June they would seek an adjournment. Given its importance to the Police, the representative for the Premises Licence Holder submitted that the late service of the evidence only the day before the Hearing could prejudice the Premises Licence Holder's ability to address issues raised within the document. As such the decision of the Panel was to adjourn to a date that was suitable to all parties namely 15 June 2020 to allow more time for the Premises Licence Holder and their

representative to consider the material and their response to it. This decision was made in the interests of fairness to all parties. In addition in order to avoid further delay the Police were asked to produce in writing an explanation as to the relevance of the document so that it was clear to the Premises Licence Holder what the Police's position is with regard to the new evidence and its relevance.

The Panel felt that the CCTV condition that was originally imposed in 2005 was now out of date. An issue had arisen as to the CCTV in January 2020 and a new system installed at the end of January 2020. This issue the panel felt could be sufficiently dealt with by the imposition of conditions. The Premises indicated they would be content with a specific condition.

A test purchase by Trading Standards showed that a ham and pineapple pizza had been ordered but a turkey and pineapple pizza supplied. It was acknowledged in a letter from Trading Standards that the menus show that no ham products are sold. It was felt that this may be a training issue and that the most appropriate way to deal with this matter was by the imposition of a condition.

The most serious issue was the employing of an illegal worker. The Premises Licence Holder relied on a letter from the Home Office suggesting a right to work together with a National Insurance number and a p45 from a previous employer. The Police would suggest that insufficient follow up took place including a failure to double check with the Home Office as to whether the document was genuine or whether there had been a change of circumstances. It was of note that the Premises were paying tax and National Insurance and providing wage slips which indicated that this was not a case of exploitation by the Premises of the worker.

It is of relevance that the licence is only to supply hot food after 11pm. If the licence were revoked there would be no requirement at all to have cctv or any conditions.

The most appropriate steps to promote the licensing objectives are to impose conditions upon the licence.

A CCTV system shall be installed, recording and maintained in working order and operated at the premises to the satisfaction of Lincolnshire Police, specifically:

- a) For the outside area there shall be a minimum of one high resolution colour camera, fitted in a weatherproof housing.
- b) There shall be a minimum of one high-resolution colour camera fitted to each public entrance/exit. To provide a quality head and shoulder image for facial recognition/identification purposes of all persons entering the premises.
- c) There shall be sufficient cameras able to cope with the normal operating illumination to reasonably cover all licensed public areas.
- d) Recordings must be kept for a minimum of 31 days and endorsed with the accurate, correct time/date (BST/GMT adjusted).
- e) Police and/or Authorised Licensing Officers shall be able on attendance to view immediate playback of any incident without the necessity for download.
- f) Recordings of incidents at the premises must be provided to the police following lawful request.
- g) A member of management shall be on the premises at all times they are open to the public who is capable of operating the CCTV system and providing recordings on

request. When this is not possible recordings shall be provided within 24 hours of the original request.

h) Recording equipment shall be housed in a secure room/cabinet where access and operation is strictly limited to authorised persons.

i) In the event of a system malfunction, the Designated Premises Supervisor or the Premises Licence Holder must immediately notify Lincolnshire Police Licensing Department tel 101 or email countylicensinggroup@lincs.pnn.police.uk. Details of this malfunction must be recorded in the premises refusals/incident book.

Arrangements for its repair must be made without delay. The Licensing Authority and Police Licensing must be notified when the system is again operational.

To keep upon the premises a folder containing details of all right to work checks done on all current employees and those that have left in the past 2 years including copies of the documents, date when the documents were checked and any further checks performed with the Home Office and the date and manner of those additional checks.

A separate record of any checks leading to a refusal to employ on the grounds of lack of right to work and the reasons is to be maintained for 2 years after the date of refusal.

The folder is to be made available on request to any relevant authority.

All staff are to be trained upon the contents of products and in the event that a customer tries to order an item that is not on the menu then the customer is to be made explicitly aware of the options or products that could be provided.

A record that this training has been provided is to be kept and made available for inspection where required by any responsible authority.

All staff that directly handle or prepare the food should undertake a level 2 or equivalent standard Food Safety and Hygiene Qualification. Records of this training is to be maintained for all current relevant staff and produced on request to any responsible authority.

RIGHT OF APPEAL

Under Schedule 5 of the Licensing Act 2003 there is a right of appeal to the Magistrates Court. Any appeal must be commenced by notice of appeal given by the appellant to the Magistrates Court within 21 days beginning with the day on which the appellant was notified by the Licensing Authority of the decision appealed against.

The holder of the licence, the applicant for the review or any person who made relevant representations may appeal against the decision.

The determination does not have affect until the end of the period given for appealing against the decision, or if the decision is appealed against, until the appeal is disposed of.



Signed: Councillor J Tyrrell (Chairman of the Panel)

Date: 15 June 2020