

LICENSING ACT 2003 RECORD OF HEARING AND DECISION TAKEN BY THE LICENSING SUB-COMMITTEE	
DATE OF HEARING:	4 November 2013
SUB-COMMITTEE MEMBERS PRESENT:	Councillor David Elms (Chairman) Councillor Christian Gilliam Councillor Keith Taylor
OFFICERS PRESENT:	Sophie Butcher (Committee Manager) Krystelle Kamola (Licensing Compliance Officer) Bridget Peplow (Senior Solicitor)
DISCLOSURES OF INTEREST BY MEMBERS PRESENT:	None
PREMISES:	Guildford Charcoal Grill 15 Park Street Guildford Surrey, GU1 4XB
TYPE OF APPLICATION:	Review of a premises licence under Sections 51 and 52 of the Licensing Act 2003, Premises licence number GUPL0035.
DETAILS OF APPLICATION SOUGHT:	Surrey Police, a responsible authority under the Licensing Act 2003, called for a review on the grounds of prevention of crime and disorder and public safety. This followed an incident in the early hours of Tuesday 3 September 2013. A fight broke out inside the venue 15 minutes after the premises should have been closed in accordance with their authorisation. This resulted in serious assault and affray and the arrest of five members of the public.
APPLICANT:	Surrey Police (represented by DI Amy Buffoni, Sgt Helen Budd, Sgt Lynette Shanks and Colin Whitear)
PREMISES LICENCE HOLDER:	Mr Vedanet Yorulmaz
PREMISE LICENCE HOLDER REPRESENTATIVE:	Ms Emma Harris
RESPONSIBLE AUTHORITIES:	Licensing Authority (represented by Peter Muir (Licensing Compliance Officer))

OTHER INTERESTED PERSONS:	Ward Councillors Anne Meredith, David Goodwin and Caroline Reeves (not in attendance)
OTHER PERSONS IN ATTENDANCE:	Press <u>For the premises licence holder:</u> Interpreter for Premises Licence Holder Mr Ilhan Sasmaz

DETAILS OF DECISION TAKEN:

In arriving at its decision, the Sub-Committee took into account the relevant representations submitted both in writing and orally at the hearing. The Sub-Committee was also made aware that the following were relevant:

Guildford Borough Council's Statement of Licensing Policy:

- Section 5: Fundamental Principles
- Section 9: Paragraphs 9.1 – 9.8 (Prevention of Crime & Disorder)
- Section 10: Paragraphs 10.1 – 10.8 (Public Safety)
- Section 11: Paragraphs 11.1 – 11.6 (Prevention of Public Nuisance)
- Section 13: (Licensing Hours)

National Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003:

- Paragraphs 2.1 to 2.7 (Crime and Disorder)
- Paragraphs 2.8 to 2.17 (Public Safety)
- Paragraphs 2.18 to 2.24 (Public Nuisance)
- Paragraphs 9.1 to 9.41 (Determining Applications)
- Paragraph 10.1 to 10.61 (Conditions)
- Paragraph 11.1 to 11.30 (Reviews)

The Sub Committee considered the application by Surrey Police to review the premises licence. An incident occurred on Tuesday 3 September 2013 whereby a fight broke out inside the premises at approximately 03:15 hours, fifteen minutes after the premises should have been closed. On 31 October 2013, the Licensing Services team received an application to transfer the premises licence from Mr Ilhan Sasmaz to Mr Vedanet Yorulmaz with immediate effect.

Surrey Police requested permission to submit additional photographic evidence of further breaches committed since the original review application was submitted. The Senior solicitor advised the sub-committee that, in accordance with The Licensing Act 2003 (Hearings) Regulations 2005, documents could only be considered by the Sub-Committee if they had been produced before the hearing or at the hearing

with the consent of all other parties. The Licence holder's representative indicated that she had not seen the documents previously and did not consent to their production. The Sub-Committee therefore had no discretion and did not consider the additional evidence.. .

The Sub Committee received oral evidence from Surrey Police in support of their written representation. This included:

- The fact that Surrey Police called a review of the premises Charcoal Grill in May 2012. As a result of that review, the premises licensable hours on Fridays and Saturdays were reduced from 3.30am to 3.00am. In addition the closing time was reduced to 3.00am Monday to Saturday and 1.00am on Sunday. In addition, a total of six conditions were imposed as detailed below:
 1. A CCTV system must be installed on the premises. The CCTV system installed on the premises is to be fully maintained at all times with monthly maintenance checks being undertaken and shall be operational when the premises are open.
 2. The CCTV system must cover all internal public areas and immediate exterior. At least one camera shall provide clear facial recognition of anyone entering the premises. All other cameras installed at the premises to provide identifiable images of individuals present.
 3. There must always be a member of staff on the premises able to operate the CCTV system when the premises are open.
 4. All CCTV footage to be retained for a minimum of 28 days and shall be made immediately available, either for viewing or in a format that can be downloaded to a responsible authority upon request within 24 hours.
 5. One SIA accredited door supervisor shall be employed at the premises on Friday and Saturday from 23:00 to closing.
 6. The licensee shall obtain a town link radio and staff shall be trained in its use.
- In January 2013 Surrey Police found that Charcoal Grill did not have door supervisors in attendance on either a Friday or Saturday night. The reason given by the persons managing the shop was that it was quiet in terms of trade at that time of the year and therefore an unnecessary expenditure.
- On 3 September 2013, a serious affray occurred both inside and outside the premises. At this point in the hearing, the Sub Committee agreed to Surrey Police showing the CCTV footage referred to in their application, which had been obtained from the Town Centre CCTV facility. The CCTV footage showed a male assaulting someone inside the premises. There were approximately 12-15 customers inside the premises. A female was then pulled to the floor by her hair and the employees continued to serve customers. The fight spilled out onto the street. A male is assaulted by two males who walk away when the police arrive. Customers continued to be served at 03:21 and at 03:23; a male was seen leaving the premises with a bag of food just purchased.

The Sub Committee received clarification that:

- The CCTV operator made the 999 emergency phone call about the assault happening at Charcoal Grill on 3 September. At no point did the employees at Charcoal Grill make a 999 call to report the incident.
- Customers were still leaving and entering the premises post 3am. Had the premises been closed, the incident may not have occurred.
- Surrey Police requested a copy of the CCTV footage on 4 September 2013 in the afternoon from an employee at the premises Charcoal Grill. The employee was not trained to download the footage and was therefore unable to provide it.

The Police concluded that Surrey Police worked very hard to reduce violence and related crimes in Guildford. A 30% reduction in crime in Guildford had been achieved overall by reducing the operating hours of other fast food outlets in town.

The Sub Committee also heard from the Licensing Authority that the premises licence holders repeated breaches of the licensing conditions, which had occurred over the last two years, were unacceptable. The steps taken by the management team to mitigate these breaches were not evident and had not resulted in an improvement.

In response to the application, the premises licence holder's submissions were that:

- Neither Mr Sasmaz nor Mr Yorulmaz were in the country at the time the serious affray occurred on 3 September 2013. Mr Yorulmaz had been away for two months, but this was not a regular occurrence.
- Mr Sasmaz had been the registered premises licence holder for some time, however he had limited involvement with the running of the business. Mr Yorulmaz worked at the premises for six days a week and Mr Sasmaz would ordinarily cover for Mr Yorulmaz if he was away. On 3 September, only two members of staff were present when the affray occurred. The conditions imposed as part of the Review in May 2012 did not require SIA approved staff to be in attendance on a Monday night/Tuesday morning.
- On 3 September at 2:50am, one employee attempted to staff the door whilst the other employee continued to serve customers, however customers who were rowdy and drunk overwhelmed the employee staffing the door.
- Mr Yorulmaz applied to have the premises licence transferred into his name from Mr Sasmaz on 31 October 2013, this was considered a positive step forward.
- Mr Sasmaz has brothers that could help manage the premises should both he and Mr Yorulmaz be out of the country again
- It was accepted by Mr Yorulmaz and Mr Sasmaz that nobody was able to provide the CCTV footage as requested by Surrey Police on 4 September 2013. The CCTV footage has since been provided to Surrey Police, but not within the prescribed time required.
- Mr Sasmaz and Mr Yorulmaz did not deny the breaches which had occurred but did not consider that they had taken place as frequently as suggested

- There was only one week in January when there was no door supervisor in accordance with the conditions of the licence. Surrey Police had spoken to the premises licence holder and there had been no further breaches of this condition since then. The premises were very quiet during this week and the door supervisor was sick so the management let him have time off.
- There had been insufficient staff available on the night in question which was a student night (Monday). There was no requirement to have door staff on Mondays. The management therefore proposed to employ SIA accredited door staff on a Monday night to manage the expected increase in customer footfall.
- The business makes most of its money between the hours of 1am – 3am. Charcoal Grill was a very small business, therefore any reduction in hours would hit them hard financially.
- The flash point for potentially rowdy and drunk customers was when the clubs in Guildford closed around 3am, therefore the management suggested that the premises could either close prior to 3am or would like a variation of the hours so they could close later. (The Senior Solicitor confirmed that this request for a variation in the licensable hours was not a matter which the Sub Committee could consider at the hearing and an application for variation would need to be made).

The Sub Committee requested clarification on the following points:

- In May 2012, as a result of a review requested by Surrey Police, a number of conditions were imposed, the majority of which had evidently not been adhered to by the management. The Sub Committee therefore asked what assurances the premises licence holder could give that SIA accredited door staff would be employed on a Monday night when the condition requiring door staff had been disregarded in January 2013.
- The premises licence holder reiterated that it was only for one week in January when SIA door staff were not present. SIA accredited staff were now in place and had been present on Monday nights for the last three weeks.
- The Sub Committee was also concerned that the employees placed no emergency call on the night of the affray on 3 September.
- The Sub Committee was informed that as the employees did not speak English fluently they were not minded to call the Police as they would have been asked detailed questions, which they would not have been able to respond to. The Police clarified that the premises was installed with a radio link, which would have placed an emergency call without requiring the employees to answer detailed questions.
- The Sub Committee heard that the door staff operated the radio link but as they were not required on a Monday night, nobody was available to operate it.

Having considered all the written and oral representations, the Sub-Committee,

RESOLVED: That the premises licence GUPL0035 be revoked for the reasons detailed below:

REASON FOR DECISION:

Having considered both written and oral representations from the police and the Licensing Authority, written representations from the Ward Councillors and oral representations from the premises licence holder, the Licensing Sub Committee considered that the premises management's approach towards upholding the licensing objectives had shown a significant level of complacency. Given the history of the premises and the fact that this was the second review hearing required by Surrey Police, the Sub Committee was not confident that the management were willing or able to undertake any improvements to ensure that the premises was effectively managed to prevent serious affrays such as occurred on 3 September 2013 and to protect the public from harm.

The Sub-Committee was extremely concerned to note that the premises licence holder had failed to comply with 4 of the 6 conditions imposed on the licence following the previous review and had provided no adequate explanation for their lack of compliance. The Sub-Committee noted that many of the issues raised in this review had been raised at the time of the previous review, namely operating beyond their licensed hours, failure to employ door staff and failure to operate the CCTV system. The Sub-Committee also noted that the premises licence holder had given the same reason for the problems occurring at the time of the last review, namely that he was on holiday when incidents occurred. It was clear to the Sub-Committee that the management were not committed to operating in accordance with the conditions of the licence and appeared to put financial considerations above the prevention of crime and disorder and public safety by failing to ensure that the premises were staffed appropriately and that the staff were adequately trained. The Sub-Committee considered whether a further variation in the licensing hours and/or the imposition of additional conditions would remedy the problems.

The Sub Committee agreed that changing the licensable hours for late night refreshments at Charcoal Grill would not assist the Police in managing crime and disorder in Guildford. The hours had already been reduced from 3:30am to 3:00am as part of the Review held in May 2012 and these hours had not been effectively managed and adhered to. The Sub-Committee were not confident that additional conditions would be complied with. The management had failed to plan ahead to ensure that the premises was sufficiently staffed and that staff were appropriately trained when key members of management were taking significant periods of time off work to go on holiday. The management had failed to train staff in the operation of the CCTV equipment and radio link facility and had failed to ensure SIA accredited door staff were at the premises for one week in January 2013. The management had only recently started to take action to address the failures in complying with four of the six conditions as imposed following the Review in May 2012. This was some two months after the serious assault had taken place on 3 September 2013. The Sub-Committee had not been reassured by the management that they had learnt lessons from the previous review and were committed to operating the premises in accordance with the terms of the licence and to upholding the licensing objectives. The Sub-Committee noted that the Home Office guidance (paragraph 11.25) stated that where premises were trading irresponsibly the licensing authority should not hesitate, where appropriate, to take tough action to tackle the problems and where other measures are deemed insufficient, to revoke the licence. As lesser measures had already been tried and had failed to deal with the problems, the Sub Committee considered it appropriate therefore to revoke the premises late night refreshments licence so that the premises would not be able to trade after 11pm Monday – Sunday.

Signature of Chairman:

Dated: