

MINUTES OF A MEETING OF THE LICENSING ACT 2003 SUB-COMMITTEE (B) HELD IN THE COUNCIL CHAMBER, CIVIC OFFICES, ANGEL STREET, BRIDGEND ON FRIDAY, 13th MARCH 2015 AT 10.15AM

Present:

Councillor D R W Lewis - Chairperson

Councillors:

G W Davies MBE
P A Davies

Officers:

Y Witchell - Licensing and Registration Officer
F Colwell - Licensing Enforcement Officer – as representative of Responsible Authority
K Watson - Legal Officer
J Monks - Democratic Services Officer - Committees

Invitees:

R Kanal - Premises Licence Holder
G Khaldi - Independent Interpreter

South Wales Police Representatives

Sgt D Williams - South Wales Police
PC Ellis - South Wales Police
PC Rowlett - South Wales Police

1 APOLOGIES FOR ABSENCE

None

2 DECLARATIONS OF INTEREST

None.

3 LICENSING ACT 2003: SECTION 51
APPLICATION FOR REVIEW OF PREMISES LICENCE
MAESTEG CHARCOAL GRILL, 25 COMMERCIAL STREET, MAESTEG, BRIDGEND

The Chairperson opened the meeting and the appropriate introductions were made.

The Licensing and Registration Officer advised those present that the meeting was to consider an application for a Review of the Premises Licence submitted by the Chief Officer of Police, attached at Appendix A, in relation to the above premises. The Premises Licence authorises the provision of late night refreshment at the premises between 2300 and 0000 hours Sunday to Thursday and 2300 to 0200 hours Friday and Saturday.

She advised the Sub-Committee that the Premises Licence Holder is Mr Ramazan Kanal and he had requested an interpreter to be present at the meeting. She then introduced Ms Khaldi who would be an independent interpreter who was there to assist all Parties and to facilitate in the exchange of information regarding the Hearing.

The Licensing and Registration Officer confirmed that Mr Kanal had received the relevant papers and explained that the application had detailed two main issues in that Mr Kanal had employed a migrant worker who was in the UK illegally, and had not complied with the licensing objectives of the premises which are subject to both licensing and planning regulations. The current Licence only authorises the provision of hot food and drink, known as late night refreshment. Whilst the Licensing Authority had granted a licence for certain opening hours, the Premises Licence Holder has a responsibility to ensure appropriate planning provision is in force to match the licensing hours. In the case of this premise there was a difference between what was permitted by the Licensing regime and what was permitted by Planning. She informed Members that for reference purposes she had copies of planning applications that were in force at the premises, as well as the latest planning policies. However, the Planning Department had not made representations regarding this application and therefore the planning decisions could not be reviewed.

She advised that the original Premises Licence Holder was aware that he could not take advantage of the licensing hours until the appropriate planning permission was in force. In order to comply with both the licensing and planning regimes since October 2013, the premises should only remain open between 2300 hours and midnight from Sunday to Thursday and 2300 to 0100 hours on Friday and Saturday nights.

She invited the South Wales Police to present their application.

PC Ellis referred Members to the Home Office Guidance and the Licensing Policy and advised that information highlighted within the review demonstrated a systematic and deliberate failure by Mr Kanal to promote two key objectives, i.e. the prevention of crime and disorder and public nuisance. He advised that the Licensing Department in the South Wales Police was an integral part of the Community Safety Partnership (CSP). He maintained that Maesteg Charcoal Grill is a conduit for committed offences, including the employment of an illegal immigrant and highlighted for Members pages 17, 18 and 19 of the review.

He reported that UK Border Agency (UKBA) Officers visited the Maesteg Charcoal Grill in June 2014 where a total of four persons were found to be working at the premises, including Mr Kanal. He informed the Sub-Committee that there was a vast amount of information available to employers in order to assist them in avoiding immigration offences. He continued by reporting that enquiries had identified that one of those persons, a Turkish national migrant, had overstayed the terms of his UK entry visa. It was further discovered that as far back as the 29th September 2010, that person was the subject of administrative removal procedures by UKBA. He explained that job opportunities were denied to individuals who were illegally entitled to work in the UK and stated that Mr Kanal was exploiting the vulnerability of such persons. After being questioned by UKBA Officers, Mr Kanal admitted that the illegal migrant had worked at the premises for only one week. A referral notice was subsequently served on the owner by post. He advised that UKBA is able to impose a penalty amount of up to £20,000 per illegal worker to deter such criminality. He described how offences committed under the Immigration Act 1971 to remain in the UK without leave was contrary to Section 241A and carried a penalty of six months in prison, or a fine. PC Ellis alleged that the migrant had been working at the premises for 14 months prior to the investigation by UKBA and outlined some evidence in support of this, including details of 999 calls made by the migrant from the premises.

PC Ellis reported that two of the complaints received by the Police involved the premises operating outside the regulated opening hours. Another concern was the reported theft of food from the premises, which came via the 999 system, that a male was banging on the window of the premises and Police assistance was required immediately. The first recorded incident was on the 30th April 2013 and the last was in November 2013, interspersed with calls during May and June 2013.

PC Ellis reported that other offences had also taken place under the Licensing Act 2000 and the Town & Community Planning Act and Gambling Act 2005. The latter two concerned other

Licensing Authorities and the offences were committed by Mr Kanal which he reported had been, or are being addressed by those partners. He stressed the importance of noting that the restrictions on the Premises Licence which required both Licensing and Planning permission.

He continued by informing the Sub-Committee that Mr Kanal became a Licensee in 2011 and the planning restrictions had stipulated the opening hours to be Sunday to Saturday from 9.00am to midnight. In 2012 Mr Kanal successfully applied to relax the planning restrictions and open on Friday and Saturday nights until 1.00am. In 2013 his application was approved to extend the opening hours from Sunday to Thursday until 1.00am. Given the restrictions, he asked the Sub-Committee to note sub-section 8.2 of the policy which stipulates that the Authority should recognise that the hours for opening consent may differ from licensing hours and therefore the Premises Licence Holder must observe the closing times, which meant that the premises must close at midnight from Sunday to Thursday and 1.00am on Friday and Saturday nights.

He explained that the planning applications not only reinforced Mr Kanal's knowledge of the permitted opening times, but in February 2013 a Planning Contravention Notice was served on the premises which also detailed the permitted hours. However, Mr Kanal contravened the conditions imposed in 2000 when he took over the premises in 2011 by opening after midnight at that particular time. He also breached the planning timings in 2011, 2012 and 2013 as well as the Planning Contravention Notice.

PC Ellis informed the Sub-Committee that Mr Kanal's role as Premises Licence Holder dictates that he clearly knows the opening hours authorised by the Licensing Authority. Mr Kanal contravened those hours of licensing activity authorised by the Premises Licence and since 2011 he has been the subject of 15 licensing visits where Officers evidenced illegal trading. In total Mr Kanal had remained open and sold food beyond the licensed hours on 21 separate occasions. He reported that Mr Kanal had held the position of joint or sole Premises Licence Holder since 2011 and had been the subject of considerable enforcement action during that time, and was therefore solely responsible for the situation he now found himself in.

PC Ellis then went on to explain Mr Kanal's background when he first reported an incident to the Police in February 2009, which took place when he was employed as a delivery driver/chef at the premises. Mr Kanal duly made a witness statement and had indicated that he had been employed for around three months, yet his association with the premises dates back to 2008. The Licensing Department of South Wales Police developed serious concerns regarding Mr Kanal's ability to promote the licensing objectives with regard to an incident that occurred at the premises in May 2011 when he was in charge. He made another witness statement complaining that he had been assaulted by a customer and sustained facial injuries which amounted to actual bodily harm. PC Ellis detailed four alarming factors regarding that incident:

1. It occurred at 2.38am on a Sunday night, which in effect was a Saturday night, yet the premises were restricted to close at midnight at that time.
2. Notwithstanding this restriction, the Licence authorised the premises to sell food until 2.00am on a Saturday and to close at that time. Selling food after that hour contravenes all conditions of the licence and is a serious offence under Section 136.
3. There were nine conditions regarding the installation and maintenance of CCTV in order to protect staff and for the prevention of crime and the apprehension of offenders. However, the CCTV system at the time was a VHS type, yet there was no video in the player thus preventing images from being recorded. This was again a serious breach of the licensing conditions.
4. A male was arrested and his custody care plan had highlighted that he was intoxicated, argumentative and abusive at the time of his arrest. Yet Mr Kanal had been content to serve food to him in that state and after the permitted hours. The suspect was bailed pending further investigation; however Mr Kanal had subsequently withdrew his statement,

and coupled with the fact that there was no CCTV evidence available; the suspect was released without charge. PC Ellis advised that by Mr Kanal refusing to assist the Police with the investigation had impacted on the licensing objectives of the premises.

PC Ellis advised that as well as Mr Kanal receiving a visit from the Divisional Officer, he had also received three warning letters, and despite being given suitable verbal advice by Police Officers on a number of occasions, he continued to commit numerous offences by opening the premises after the restricted hours, even after being served with the review application.

In conclusion, PC Ellis advised that given his history Mr Kanal was not fit to hold the responsible role of Premises Licence Holder.

PC Rowlett reported that there was only one licensing activity authorised by the Premises Licence which was the provision of late night refreshment and the failure by Mr Kanal to promote the licensing objectives. She stated that criminal activity was associated with the premises which impacts on crime prevention and public nuisance objectives. In relation to offences under the Immigration Act by employing a person who has not been granted leave to enter or remain in the UK, she advised that for this offence alone the Sub-Committee should consider revocation of the Premises Licence. She reminded Members that offences had also been committed by Mr Kanal under the Licensing Act, the Planning Act and the Gambling Act, outlined in the application pack.

The Chairperson asked Mr Kanal if he wished to question the South Wales Police representatives.

With regard to the CCTV, Mr Kanal advised that in his defence he did have a letter from the CCTV Company regarding the repair of the system. He maintained that in 2010 the UKBA Officers visited the premises and did not find any illegal workers at that time.

The Legal Officer advised that the Police had been referring to the person who was working at the premises in 2014, but had been working somewhere else in 2010 which was not related to the Maesteg Grill.

PC Ellis explained that the UKBA Officers had indicated that the illegal migrant who was found at the premises in 2014 was the same person who had been served papers for his removal from the country in 2010 and there had been no suggestion that he was working at the Maesteg Grill at that time.

Mr Kanal produced his Premises Licence and advised that when he had shown it to Police Officers they did not stipulate that it was illegal and he did not receive a warning. The Sub-Committee were shown Mr Kanal's Premises Licence.

The Legal Officer advised that the warning letters which were sent to Mr Kanal were contained within the application pack and the police evidence was that he had been verbally warned about his restricted opening hours as well.

The Licensing and Registration Officer advised that whilst the original Premises Licence granted the opening hours until 2.00am, Mr Kanal had never been successful in obtaining planning permission to match those hours. She asked the South Wales Police representative to take Members through the events when Sgt Lewis attended the premises and Mr Kanal had signed his pocket book.

PC Ellis advised that it was common practice amongst Premises Licence Holders to deny having received warning letters. He reported that on the 4th December 2011 Sgt Lewis had been tasked with physically handing a warning letter to the Premises Licence Holder at Maesteg Grill as a result of Mr Kanal claiming he had not received any warning letters. Sgt Lewis got the Premises Licence Holder to sign his pocket book, which had contradicted Mr Kanal's statement. Furthermore, PC Ellis stated that Mr Kanal had informed him of the

licensed opening times of the premises and that he must adhere to earlier closing times in line with the Licensing Policy. He reported that the planning hours only allowed the premises to remain open until midnight at that time and that earlier time was the time he should have been closing the premises.

The Licensing and Registration Officer asked how many complaints of noise nuisance and public nuisance had been received since 2011.

PC Ellis advised that although there had been incidents of disorder at the premises they were few and there were no incidents of litter. He reported that the vast number of incidents related to the premises opening outside the licensed hours and breaches of the licensing conditions.

The Licensing Enforcement Officer stated that she supported the review application made by South Wales Police due to concerns regarding the management of the premises. There had been a number of complaints received by the Licensing Authority since 2011 and the most recent complaint was in February 2015, in that the premises was serving hot food passed the restricted licensing hours. The complaint made was that the location was generating a great deal of noise as well as litter. She reported that there was video footage evidence submitted by the complainant showing that the premises was still open at 00.20 hours; however the video did not show the sale of hot food at that time.

She advised that Mr Kanal had been known to her since 2011, with sole responsibility as Premises Licence Holder since 2013. A range of complaints had been reported concerning opening hours of takeaway premises in Commercial Street where the premises is situated.

The Licensing Enforcement Officer reported that in May 2012 her department received a complaint via the South Wales Police that a gaming machine was sited at the premises. A warning letter was then sent to Mr Kanal and his partner in June 2012 advising them that the premises was not licensed for a gaming machine and requested that the machine be removed immediately. On the 8th October 2013 during an enforcement visit by herself and colleagues, a Category B gaming machine was found to be available for use at the premises and a verbal warning was issued, followed by a warning letter which was sent on the 10th October 2013. The letter advised that it was an offence for gaming machines of any category which are not exempt from regulations to be sited at non-gambling premises such as fish and chip shops, takeaways and taxi offices. A further inspection of the premises on the 27th March 2014 again found an illegal gaming machine was available for use at the premises. A further verbal warning was given followed by a further warning letter sent on the 7th April 2014.

In light of the above breaches of the Gambling Act, the Licensing Enforcement Officer advised that she had no confidence in Mr Kanal promoting the licensing objectives. She concluded by saying that it also showed Mr Kanal's disregard to any correspondence from the Licensing Authority, or any regulations currently in force.

The Chairperson asked whether Mr Kanal had any questions for the Licensing Enforcement Officer. He replied that he did not.

The Sub-Committee adjourned at 12.30pm and reconvened at 1.15pm.

4 EXCLUSION OF THE PUBLIC

RESOLVED: That under section 100A(4) of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007, the public be excluded from the meeting during consideration of the following items of business as they contain exempt information as defined in Paragraphs 12 of Part 4 and Paragraph 21 of Part 5 of Schedule 12A of the Act.

Following the application of the public interest test it was resolved that pursuant to the Act referred to above to consider the following items in private, with the public excluded from the meeting, as it was considered that in all the circumstances relating to the items, the public interest in maintaining the exemption outweighed the public interest in disclosing the information, because the information would be prejudicial to the applicants.

<u>Minute No:</u>	<u>Summary of Item:</u>
5	Licensing Act 2003: Section 51 Application for Review of Premises Licence

6. The press and public were then readmitted.

The Chairperson then invited the Premises Licence Holder to present his case.

He explained that UKBA Officers visited his premises and found a person who was illegally in the UK. He claimed that he did not know that the person was illegal as he had applied for a visa in Anchora in Turkey and Mr Kanal thought that business agreement was legal and therefore believed that the man could work at the premises, which was why he had made that mistake. He advised that only he had received a Penalty and the illegal migrant did not receive a fine and was not deported to Turkey. He claimed that he had made a mistake and appealed against the fine imposed on him. He further claimed that his accountant had sent the letter of appeal to a different department at the Home Office and the period when he could appeal had elapsed, which was why he now had to pay the fine. He explained that he was experiencing family problems at the time and had asked the man, who was a friend of his and who lived in London, to look after his shop whilst he was away. He advised that he did not pay him, which he had explained to the UKBA Officers and did not believe they had listened to him properly.

The Chairperson asked Mr Kanal whether he had known the man in 2010, and if so he would have known him to be an illegal migrant.

Mr Kanal replied that he thought the man was in the country legally through a business visa and did not think there would be a problem for him to look after the shop.

A member asked Mr Kanal how long the man was employed by him without wages.

Mr Kanal replied that he looked after the shop for eight days and repeated that he had not paid him.

Another Member advised that the evidence had shown that the UKBA Officers were satisfied that the man who was an illegal migrant had been living in Maesteg at Mr Kanal's premises for some time.

Mr Kanal explained that the man sometimes visited him at the premises and he used to come over as a visitor. Mr Kanal denied that the man had been living at the premises since 2010.

The Legal Officer asked Mr Kanal whether he accepted that the man was at his premises from April 2013.

Mr Kanal replied that he was unsure.

The Legal Officer asked why the man had been making phone calls to the Police and if so, whether he accepted that the man was employed at the premises when the incident was reported.

Mr Kanal denied that the man was employed at the premises and advised that he only visited to eat food with him.

He claimed that when he received his Licence in November he had abided by the opening hours.

The Chairperson asked if the Licence had stipulated that the premises should close at 1.00am and the Planning Department had stipulated that he should close at 1.00am then at what time did he close.

Mr Kanal advised that he had followed the times stipulated on his Licence.

The Chairperson asked Mr Kanal whether he always followed the details of his Licence, as opposed to an instruction from the Planning Department.

Mr Kanal stated that he believed that he had received the Licence after the instruction by the Planning Department.

A Member asked Mr Kanal how many times the Police had informed him that the premises should close at 1.00am and that they had explained to him the difference between the planning and licensing details.

Mr Kanal explained that when he had shown his Licence to the Police they had confirmed that it was correct and left the premises. One week later the Police returned to check and he again showed them his Licence and they had told him there was not a problem. He advised that the Police had visited him around four or five times and every time he showed them his Licence as well as the Planning Licence.

A Member asked Mr Kanal why he thought the Police kept coming back.

Mr Kanal advised that he thought someone had made a complaint against him and the Police had reminded him of the time he should close the premises. He explained that he now understood the difference between Licensing and Planning, but did not understand before today.

In response to a question from the Sub-Committee, Mr Kanal advised that he had phoned the Licensing Department to clarify the opening times and was told that if his Licence stated 2.00am he was entitled to open until that time.

The Licensing and Registration Officer advised that there was no record of a phone call from Mr Kanal which was relevant to that matter. She confirmed that her Officers had been aware since 2011 that there was a difference between the Planning and Licencing restrictions.

Mr Kanal advised that he worked with the Police regarding those people who were intoxicated. He had lived in Maesteg since 2008. He explained that in 2014 British Gas had accused him of breaking the gas meter and of stealing gas. The company had complained about him to the Police and he was spoken to at the Police Station, after which the case went to Court. He claimed that the case was stopped as he was found not guilty.

A Member asked Mr Kanal whether his CCTV was now in operation.

Mr Kanal advised that it was as it had been repaired.

The Chairperson asked Mr Kanal whether the CCTV was regularly maintained.

Mr Kanal advised that he recently purchased a new CCTV and therefore had no regular maintenance carried out, only when there was a problem.

The Chairperson referred to the illegal gaming machine.

Mr Kanal advised that one machine was legal, but the other was illegal and the Licensing Enforcement Officer had advised him to replace the illegal one with the other.

The Licensing Enforcement Officer confirmed that was correct. She explained that she was called to the premises in October 2013 and Mr Kanal had since changed the machine.

The Chairperson then invited the South Wales Police representatives to give their summing up.

In summing up PC Rowlett advised that there was only one licensable activity at the premises authorised by the Licence, which was for the provision of late night refreshment. The grounds for the review were based on promoting the licensing objectives and it had been demonstrated in the application that there had been a failure by Mr Kanal to promote those objectives and an unwillingness to remedy the situation. She referred the Sub-Committee to paragraph 11.18, Section 11 of the Home Office Guidance, which gives Responsible Officer guidance in relation to warnings which have already been issued. The paragraph states that further warnings after that would be inappropriate. Paragraph 11.19 of the Guidance outlines the steps which should be taken to promote the licensing objectives. She took Members through the steps in relation to the four licensing objectives:

- To take no action – South Wales Police do not believe this to be relevant;
- To notify the conditions – Mr Kanal was afforded the opportunity to address the issues of offending and enforcement letters, but continued to fail to promote the licensing objectives. She advised that there did not seem any point in adding to the conditions when the current ones were not being complied with;
- To exclude a licensable activity – In essence there was only one licensable activity at the premises which was the sale of late night refreshments.
- To suspend a Licence for a period not exceeding three months – South Wales Police believed that this would only be a short term fix
- To revoke a Licence – South Wales Police believe that the representations today supported that action.

PC Rowlett clarified the reason the Police wanted the license to be revoked by referring to paragraph 11.28 of the Home Office Guidance, which made it clear that a licence could be revoked when the crime prevention objective was being undermined. Furthermore, paragraph 11.8 clearly stated that this could be considered even in the first instance. She advised that this was an area of the guidance where there was little room for manoeuvre.

She informed the Sub-Committee that there had been previous enforcements on the premises by four separate authorities, which the Police believe had been ineffective. She advised that the Police were of the opinion that the offences committed were either due to ignorance on Mr Kanal's part or consistent and determined over a long period. She stated that the situation would not change and the offending committed to date encompassed several different Acts. The Police therefore believe that revocation of the licence would be the correct decision to be made.

She advised that even if a decision to revoke the licence stands, the premises would still be able to operate under the Planning Guidance and the respondent would still be able to sell hot food between the hours of 9.00am and 23.00pm, which amounted to 14 hours per day.

The Chairperson asked Mr Kanal if he wished to sum up. He replied that he did not.

The Chairperson thanked Ms Khaldi for interpreting on behalf of all parties.

RESOLVED: That the Sub-Committee heard the evidence from the Police in support of their application, which related to employment of an illegal immigrant and breaches of the Licensing Act and Gambling Act.

The Premises Licence Holder confirmed in the hearing that an illegal immigrant had been caught working at the Maesteg Charcoal Grill. He also confirmed that he had accepted he was the employer of this worker. The Premises Licence Holder did not provide any evidence that he had checked the worker's entitlement to work in the UK and therefore the Sub Committee did not accept his assertion that he was unaware of the worker's status. The Sub-Committee's view was that the burden of establishing a worker's ability to work falls on the employer.

The Sub-Committee also heard that the Premises Licence Holder had received numerous warnings from the South Wales Police and the Planning Department in relation to contraventions of the Licensing Act. The Sub-Committee accepted the evidence of the Police that there had been a number of breaches of the opening hours. The Sub-Committee did not accept that the Premises Licence Holder was not aware of his opening hours, as there was evidence of a number of warnings, both verbal and written. If the Premises Licence Holder was uncertain, he could also have contacted the Licensing Authority for clarity.

The Sub-Committee considered the Home Office Guidance and gave particular consideration to Section 11.27 and Section 11.28.

The Sub-Committee concluded that the Premises Licence Holder had continually breached the conditions and this had failed to promote the licensing objectives.

The Sub-Committee also felt that employing an illegal immigrant was a serious criminal activity which undermines the crime prevention objective.

Given the ongoing breaches and the seriousness of the offence, the Sub-Committee determined to revoke the licence, and therefore no licensable activity can take place at the premises after 11.00pm.

The meeting closed at 3.10pm.