

MINUTES OF A MEETING OF THE LICENSING ACT 2003 SUB-COMMITTEE (B) HELD IN COMMITTEE ROOMS 2/3, CIVIC OFFICES ANGEL STREET BRIDGEND CF31 4WB ON TUESDAY, 20 OCTOBER 2015 AT 10.00 AM

Present

Councillor DRW Lewis – Chairperson

PA Davies

PN John

Officers:

Andrea Lee

Senior Lawyer

Yvonne Witchell

Licensing & Registration Officer

Mark Galvin

Senior Democratic Services Officer - Committees

16. APOLOGIES FOR ABSENCE

None.

17. DECLARATIONS OF INTEREST

None.

18. LICENSING ACT 2003: SECTION 17 APPLICATION FOR PREMISES LICENCE MAESTEG CHARCOAL GRILL, 25 COMMERCIAL STREET MAESTEG.

The Licensing and Registration Officer presented a report regarding an application made by Maesteg Charcoal Grill Ltd for a new Premises Licence for the above mentioned premises. The premises was described as a hot food takeaway, with the application seeking to licence the ground floor of the building.

She advised Members that just prior to the meeting, the Licensing Section had received a phone call from the Solicitors acting on behalf of the applicant Maesteg Charcoal Grill Ltd, requesting that the meeting be adjourned, due to the fact that the Solicitor due to attend the Hearing Mr Bob Shawe, was now unable to attend due to him being unwell. The Solicitors had further requested that a new date be set for the Hearing due to his absence. The Licensing and Registration Officer added that this phone call had been supplemented by a letter that had been faxed to the Licensing Section not long after the telephone conversation had taken place.

The Chairperson asked Mr Hasan, who was present acting on behalf of the applicant, if he had been aware prior to the meeting that Mr Shawe was unable to attend the meeting due to illness.

Mr Hasan replied that he had not been aware of Mr Shawe's non-attendance due to illness until just prior to the meeting. He added however, that as he could not speak English, and even though he had an interpreter present at today's meeting, he would not wish the Hearing to proceed without legal representation acting on behalf of the Company.

The Legal Officer suggested to Members that perhaps they should consider a short adjournment in order to contact King Davies and Partners in order to try and establish how long Mr Shawe was likely to be ill, and why the Company had not sent a replacement Solicitor to act on behalf of the applicant in Mr Shawe's absence.

The Chairperson agreed that the meeting stand adjourned for 10 minutes for this purpose.

Upon the meeting reconvening, the Licensing and Registration Officer advised that the Solicitor's had informed her that Mr Shawe had been taken ill last night and an alternative Solicitor was unable to attend the meeting as there was no one else available only a Conveyancer, and even if there were, they would not know the background to the application as Mr Shawe had taken the file home with him to prepare his submission before today's meeting.

The Chairperson then asked the Police representatives what observations they had in relation to the request for an adjournment.

PC Ellis advised the Sub-Committee that there had been a number of letters and emails exchanged between Mr Shawe on behalf of the applicant, and the South Wales Police, and that they felt the meeting should proceed in his absence, particularly as this particular application had been deferred previously by a Licensing Sub-Committee for the same reason ie Mr Shawe's non-attendance.

The Legal Officer confirmed that deferment would only be of detriment to the applicant, as obviously he would be losing some sort of income from the business if his application for a Premises Licence continued to be deferred.

Mr Hasan appreciated these comments, but still felt that the meeting should be adjourned to a later date to be agreed upon by all parties, in order that Maesteg Charcoal Grill Ltd could be legally represented in support of the application. The Sub-Committee then retired to consider the request for adjournment. Upon its return, it was

RESOLVED:

That the meeting be adjourned to a further date/time to be agreed by all interested parties.

The Chairperson added that as this application had now been adjourned by the Licensing Sub-Committee for a second occasion, there may be a possibility that a future Sub-Committee who considers this application may not agree to any further adjournments, and determine the application at its next meeting in the absence of any party who should attend the meeting, subsequently not attending.

The Sub-Committee further agreed at the request of the South Wales Police, for additional information from them as part of their case, to be served on all interested parties in advance of the date of the reconvened meeting.

The meeting closed at 11.15am.

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The meeting reconvened at on Thursday, 18 November 2015 at 10.00am.

Present:-

Councillor D R W Lewis - Chairperson

Councillors

P A Davies

Councillors

P N John

Officers:

Y Witchell – Licensing and Registration Officer

K Daw – Legal Officer

A Rees - Senior Democratic Services Officer Committees

Representing the applicant:

Mr B Shawe – Solicitor, Representing the applicant

Mr Nihat Hasan of Maesteg Charcoal Limited – Applicant

Mr Cem Oran – Interpreter for Mr Nihat Hasan

Representing South Wales Police:

PC S Rowlatt

PC D Barrett

The Licensing and Registration Officer reported on an application made by Maesteg Charcoal Grill Limited for a new Premises Licence for the above mentioned premises. The premises are described as a hot food takeaway, with the application seeking to licence the ground floor of the building for the provision of late night refreshment from Monday to Sunday 2300 to 0045 hours. She stated that the application had been advertised in accordance with the Regulations. The premises had previously had a premises licence which was revoked by the Licensing Authority after an application for review was made.

The Licensing and Registration Officer informed the Sub-Committee that representations to the application had been received from South Wales Police.

The Licensing and Registration Officer drew the Sub-Committee's attention to the company search details which would be referred to by the applicant's representative. She stated that South Wales Police had served additional correspondence on all parties.

PC Rowlatt informed the Sub-Committee there had been no negotiations with the applicant and that the police would proceed on the basis of a full hearing.

The applicant's representative informed the Sub-Committee that the licence being sought was in short an extension to the current operating hours that they were allowed without a licence and was effectively a yes or no situation. He stated that the application was made by the applicant Mr Hasan as sole director of the company. The previous company responsible for the premises had been put into liquidation. He stated that Mr Hasan the applicant had no relationship with the previous company which had two directors, namely Mr Kanial and a lady from London. The previous company had sold its interest in the business to Maesteg Charcoal Limited.

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The applicant's representative informed the Sub-Committee that the previous premises licence holder Mr Kanial did not observe his obligations under the Licensing Act (hence the revocation of the licence). Since the licence had been revoked the premises had continued to trade within the hours they are allowed to without a licence. Whilst trading in this way, there had been no repetition of offences at the premises directed at the applicant since he had taken over the business. He stated that Mr Kanial did run the premises for one night in the absence of Mr Hasan on 1 May 2015 which was referenced in the letter from South Wales Police of 8 May 2015 where hot food was being sold at the premises after 2300 hours without a premises licence, this being an offence. He informed the Sub-Committee there had been no complaints since the applicant had taken over the running of the premises. He stated that Mr Kanial had misbehaved while running the premises for one night and he had been warned by the police.

The applicant's representative informed the Sub-Committee that the applicant used to work for Mr Kanial and he ensured the premises were always closed on time and he did not demonstrate misbehaviour. He stated that the applicant should not be punished for the mistakes made by the premises licence holder. Mr Hasan employed one local person at the premises in addition to the applicant.

The applicant's representative then asked the applicant a series of questions which the applicant responded to through his interpreter.

In response to a question from his representative, the applicant stated that he had been employed by Mr Kanial for no more than one year. In response to a question relating to the hours of opening at the premises when he worked for Mr Kanial, the applicant stated that the premises were open Monday to Thursday until 0000 hours and on Friday to Saturday until 0100 hours. The applicant's representative questioned whether the police ever called at the premises out of hours when the applicant was employed by Mr Kanial. The applicant stated that he was unsure of the reason why the police had called at the premises. The applicant's representative asked whether the applicant was aware at the time he purchased the business that the police had written to Mr Kanial in relation to his behaviour. The interpreter on behalf of the applicant said no.

The Legal Officer requested the interpreter translate exactly the words given in the replies by the applicant and not summarise the responses given as it appeared that dialect was taking place between the translator and the Applicant which was not being translated.

In response to a question from the applicant's representative in relation to his whereabouts in May when Mr Kanial was in charge of the premises, the applicant stated that he was on holiday. The applicant's representative questioned whether the police had reason to call at the premises since the incident on 1 May 2015. The applicant stated that there had been no reason to call at the premises since that date and he confirmed that with the exception of the time he was on holiday which was normally during May he was always present at the premises. He stated that there was also another employee working at the premises on 1 May 2015 who had subsequently left. The current employee working at the premises is named Jason Thomas and had been employed at the premises for approximately 2 ½ years. The applicant's cousin had commenced employment at the premises in the last 2 days. Despite saying that Jason Thomas had worked at the premises for 2 ½ years, the applicant was unclear as to whether Jason Thomas was working at the premises at the time he took over the business a year ago.

In response to a question from PC Rowlatt as to how long the applicant had been connected with the business, the applicant stated that he had been associated with the

business for 2 years. He stated that he commenced working at the premises as an employee and then as a manager approximately 1 year ago. He believed that he had commenced as manager at the premises in February / March 2015. The applicant had commenced employment at the premises shortly after arriving in the UK although he had worked elsewhere prior to that working for a cousin in Carmarthenshire. The applicant confirmed that he had status to work in the UK as he came from Bulgaria. The applicant commenced employment with Mr Kanial in the early part of 2014 having been alerted by a friend who worked in another kebab shop nearby that there was a vacancy at the Maesteg Charcoal Grill.

PC Rowlatt asked the applicant who owns the building in which the premises is situated. The applicant was aware that there is a landlord for the building but did not know his name; however the building was operated by a Mr Hasan Sas. The applicant stated that Mr Sas paid some of the bills whilst he also paid some bills relating to the premises. In response to a question from PC Rowlatt as to whether the applicant had a lease agreement for the premises, the applicant responded no and asked the reason why he was being asked the questions. The applicant stated that Mr Sas is not the owner of the building. The applicant's representative clarified that the building is owned by Mr Anthony Hapgood and the building was able to be sub-let. The applicant's representative was in possession of a lease for the building.

PC Rowlatt questioned what date Mr Kanial had left the premises. The applicant stated that he believed that he had left the premises earlier this year.

PC Rowlatt asked the applicant whether he was the manager of the premises when the premises licence was reviewed. The applicant stated that he had been offered the opportunity to take the business over by Mr Kanial and he started as the manager when Mr Kanial had left. PC Rowlatt questioned the applicant as to whether he was present at the review hearing on 13 March 2015. The applicant stated that he was unsure whether he was present at the review hearing. PC Rowlatt believed that the applicant was present at the review hearing. The applicant then stated that he did not attend the review hearing.

The Sub-Committee adjourned at 10.40am in order that the minutes of the review hearing of 13 March 2015 be checked and reconvened at 11.10am.

The Legal Officer advised that Mr Kanial was listed in the minutes of the meeting of 13 March 2015 as being present as Premises Licence holder and accompanied by Mr Kaldi who was acting as his interpreter. There was no record in the minutes of the applicant being present.

PC Rowlatt questioned the relationship between the applicant and Mr Kanial. The applicant stated that he saw Mr Kanial from time to time as he used to work for him. PC Barrett questioned whether Mr Kanial was still employed at the business. The applicant confirmed that Mr Kanial was not employed at the business however the applicant did call him from time to time to discuss issues relating to the running of the business. PC Barrett questioned who was running the business when the applicant was on holiday. The applicant stated that other employees worked at the premises when he was on holidays who were employed by Mr Sas. In response to a question from PC Barrett, the applicant confirmed that Mr Kanial was employed at the business when he was on holiday in May. The applicant did not think he would employ Mr Kanial at the premises in the future.

PC Rowlatt explained that the Sub-Committee had been convened to hear the application for a new premises licence and she questioned the applicant as to his understanding of the licensing objectives. The applicant asked whether he had to

answer the question. The Chairperson stressed the importance of the applicant being conversant with licensing legislation. The applicant stated that it was his understanding of the licensing objectives that he was able to open the premises at certain times. In response to a question from PC Barrett the applicant stated that he did not know what the licensing objectives were. PC Barrett questioned the applicant as to how he intended to promote the four licensing objectives. The Legal Officer advised that as the applicant had previously acknowledged that he did not know what the licensing objectives were and so suggested that the police officers use specific examples naming licensing objectives referencing how they would be promoted. It would be noted that when asked the original open question a few times in a few different ways the Applicant had not known what the licensing objectives were so any future answer once promoted would be weighted accordingly. PC Barrett asked the applicant as to how he would prevent crime and disorder at the premises. The applicant asked what kind of crime PC Barrett was referring to. PC Barrett questioned the applicant as to how he proposed to promote the protection of children from harm licensing objective. The applicant stated that he did not understand the question put to him.

The Legal Officer again requested the interpreter translate exactly the words given in the replies by the applicant and not summarise the responses given as again there appeared to be dialect taking place between the interpreter and the applicant which was not being interpreted.

PC Barrett asked whether the applicant had completed the application for the premises licence himself. The applicant stated that he did not understand the question being put to him. The Licensing and Registration Officer reminded the applicant that he was accompanied by a female when he submitted his application.

PC Barrett asked the applicant as to how promote the prevention of public nuisance licensing objective. The Legal Officer asked the applicant's representative whether he required a brief adjournment to allow the applicant to take advice to enable him to reply to questioning on the promotion of the licensing objectives. The applicant's representative informed the Sub-Committee that he believed the applicant would not be in a position to answer the questions being put to him in relation to the promotion of the licensing objectives. The Legal Officer advised that the applicant should be aware of the licensing objectives as he had completed Section M on the application form, page 22 of the bundle of papers before the Sub-Committee. The Licensing and Registration Officer referred to the statutory guidance which outlines the steps to promote the licensing objectives.

PC Rowlatt referred to the letter from the applicant to PC Ellis of 15 July 2015 and questioned whether the applicant had written the letter. The applicant stated that his friend has written the letter and that he had signed it. PC Rowlatt questioned the applicant as to whether he knew what the contents of the letter were. The applicant confirmed that the signature on the letter was his. PC Rowlatt asked the applicant to explain the serious health and family problems which he referred to in the letter which led to him appointing someone else to manage the premises. The applicant stated that this had related to a period of 1 or 2 weeks when he was absent from the business. PC Rowlatt referred to the letter stating that the problems experienced by the applicant had been for a long time which contrasted with the applicant now stating that he was away from the premises for a few weeks.

The Sub-Committee questioned the language the applicant and Mr Kanial communicated to his staff (for example when training them or giving them instructions). The applicant stated that they communicated through the medium of Turkish. The Sub-Committee questioned how the applicant communicated with his employees namely his cousin and Jason Thomas. The applicant stated that he spoke Turkish and Bulgarian to

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his cousin and he was able to speak a limited amount of English to Jason Thomas. He did not speak a great amount to Jason Thomas as their communication was normally limited to Jason Thomas handing money over to the applicant that he received from customers. The Sub-Committee questioned how the applicant communicated with customers (for example when he would need to ask them to leave at closing) and Jason Thomas and the police. The applicant stated that Jason Thomas communicates with customers and he explains orders to him slowly. The applicant stated that he would ask Mr Sas for help when he needed to speak to the police.

The Sub-Committee questioned the applicant as to when did he take over the premises. The applicant stated that he took over as manager of the premises in February / March 2015. The Sub-Committee referred to the lease on the premises which commenced in 2002 and questioned how the applicant could have signed the lease when he only took over the premises in 2015. The applicant's representative informed the Sub-Committee that there was nothing in the lease which prohibited the premises from being sub-let which had been the case for the premises. Rent would be paid to the landlord and the lease had 15 years in which to run. The Sub-Committee questioned the applicant's business relationship with Mr Sas. The applicant's representative stated that Mr Sas is the tenant and Mr Hapgood is the leaseholder.

The Sub-Committee also questioned the applicant as to who will run the premises in the absence of the applicant. The applicant informed the Sub-Committee that his cousin who had started in employment in the last couple of days with him will run the premises in his absence. He stated that his cousin had arrived in the UK at the same time as the applicant.

In response to a question from the Sub-Committee as to the number of employed in the business, the applicant stated that he employed an additional person at weekends to take telephone orders.

The Sub-Committee questioned whether Mr Kanial was in charge of the premises when the police witnessed hot food being sold after 2300 hours on 1 May 2015. The applicant stated that when he took over the running of the premises he had no knowledge of the permitted opening hours for the premises. The applicant had appointed Mr Kanial to run the premises in his absence in May 2015 as he had knowledge of the operation of the business.

In response to a question from the Sub-Committee as to the tasks he performed at the premises, the applicant stated that he used to prepare food and serve customers.

In response to a question from the Sub-Committee the applicant stated that he was not sure whether Mr Kanial was employed at present.

The Sub-Committee questioned whether the friend who completed the application for the premises licence was the same person who had written the letter on behalf of Mr Kanial. The applicant stated that he did not know who had written the letter on behalf of Mr Kanial.

The Sub-Committee questioned whether the person running the premises in the absence of the applicant was aware of the licensing objectives. The applicant stated that longer serving staff at the premises are more conversant with the licensing objectives. He also stated that staff are brought into work at the premises from another premises.

The Legal officer questioned the applicant as to how he ensured the opening hours were complied with. The applicant stated that the premises licence was displayed on the wall

which showed opening hours. The Legal Officer questioned what action the applicant took if customers stayed at the premises longer than the opening hours. The applicant stated that he will close the door of the premises to prevent people from entering the premises outside the opening hours. The Legal Officer questioned the applicant on the importance of adhering to the opening hours. The applicant stated that he understood the importance of adhering to the opening hours as there had been problems with the police which had led to the revocation of the premises licence. In response to a question from the Legal Officer in relation to the training of staff, the applicant stated that he instructed staff all the time on what they needed to do. The Legal Officer questioned whether there is a written log of procedures. The applicant stated that the opening and closing times are written on the licence. The Legal Officer questioned the applicant as to how he asked Mr Kanial for assistance with running the premises. The applicant stated that he had telephoned Mr Kanial as he lived in Swansea. The Legal Officer questioned the applicant on the frequency he asked for help in the running of the business. The applicant stated that he would call for help when desperate. In response to a question from the Legal Officer as to how many staff were employed at the premises and who out of these staff had also worked for Mr Kanial the applicant stated there were 2 members of staff with an additional member of staff working at weekends currently employed. The Legal Officer stated that the applicant had previously acknowledged Jason Thomas worked for Mr. Kanial and so the pertinent question was whether his cousin is known to Mr Kanial. The applicant stated that his cousin did not know Mr Kanial. The Legal Officer questioned the applicant in relation to the employee who answers the telephone. The applicant stated that more than one person would be working at weekends and the person answering the telephone kept changing, it was not one person.

The Legal Officer questioned the applicant in relation to the sub-letting arrangements in place with Mr Sas. The applicant informed the Sub-Committee that he did not know what the arrangements were for sub-letting other than he believed Mr Sas to be the owner and the applicant being the manager at the premises. The Licensing and Registration Officer stated that the application for the premises licence had been made by Maesteg Charcoal Limited with Mr Hasan listed as the sole director for the company and questioned the reason why Mr Hasan had described himself simply as the manager of the premises when his role was much greater. The Licensing and Registration Officer also questioned whether he just managed the business or did he keep the profits. The applicant stated that he just managed the premises.

The Sub-Committee adjourned at 11.55am in order for the applicant to receive legal advice and reconvened at 12.07pm.

The Licensing and Registration Officer informed the Sub-Committee that the proceedings were to hear an application for a premises licence and that Mr Hasan had stated that he was just the manager at the premises and questioned who is Mr Sas. The applicant stated that he did not know the difference between the role of a director and manager. The Licensing and Registration Officer stated that it was a matter of fact that the application for the premises licence had been made by Maesteg Charcoal Limited with Mr Hasan having gone through the company registration process with Companies House listing Mr Hasan as the sole director. The applicant's representative confirmed that this was the case.

The Legal Officer asked whether the owner of the business was Mr Kanial or Mr Hasan. The applicant stated that the lease was in Mr Sas' name.

The Sub-Committee questioned who was running the premises at present (whilst the applicant was present in the licensing hearing). The applicant stated that the premises were at present closed. In relation to a question from the Sub-Committee as to why Mr

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Kanial gave up such a successful business, the applicant stated he did not know the reason.

The Legal Officer questioned who completed the application for the premises licence and written the letter of 15 July 2015. The applicant informed the Sub-Committee that it had been completed by a friend named Songul who has no involvement in the business; he did not believe that his friend knows Mr Sas. The applicant's representative informed the Sub-Committee that the application had been completed on behalf of Mr Hasan.

The applicant's representative questioned the applicant in relation to the CCTV system in place at the premises. The applicant stated that the CCTV system in place at the premises is a new system and records for a month at a time and is available at all times to the police on request. The applicant's representative questioned the applicant in relation to the firefighting equipment at the premises. The applicant stated that there is a fire extinguisher and a fire blanket at the premises. The applicant's representative questioned the applicant in relation to the premises being accessible to wheelchair users. The applicant stated that there were no steps to the premises and the premises were brightly lit and there are illuminated signs at the premises which showed fire exits.

The applicant's representative asked how the applicant stopped customers from making a nuisance at the premises. The applicant stated that he would kindly ask customers who were making a nuisance to leave. He stated that most of his customers are families.

In response to a question from the applicant's representative as to how he dealt with cooking smells and litter emanating from the premises, the applicant stated that he had an extractor fan to deal with cooking smells and there are bins located inside and outside the premises.

The applicant's representative questioned the applicant whether children were allowed into the premises. The applicant stated that children were not served at the premises late at night. The applicant's representative asked the applicant in relation to the policy towards serving children under the age of 12 late at night. The applicant stated that he only served people who are over the age of 18 at the premises.

The Sub-Committee questioned the applicant in relation to the serious health and family problems he had referred to in his application. The applicant stated that he required to attend the Doctor regularly and if he was seriously ill he would not be able to work at the premises for a period of 48 hours.

PC Barrett questioned the applicant in relation to the times which the CCTV system operated and as to the model and the number of cameras. The applicant stated that he knew how the CCTV system works with there being 1 camera positioned at the front of the premises and 1 camera positioned to the rear. PC Barrett questioned the means by which the applicant would download CCTV footage for the police. The applicant stated that he would download the information on to a flash drive and if he encountered problems with the system he was able to call someone he knew to fix the problem. PC Barrett referred to the application which stated that staff would be trained in the use of the CCTV system and he questioned how the applicant would train staff. The applicant stated that staff would be able to operate the CCTV cameras. PC Barrett questioned the applicant whether staff working at the premises would have the knowledge to download the CCTV footage for the police. The Sub-Committee questioned whether the applicant would be able to call someone out at night to fix the CCTV system if it malfunctioned. The applicant stated that he knew someone who lived nearby to the premises who was able to fix the system. The applicant's representative informed the Sub-Committee that the applicant knows someone who is conversant with CCTV systems.

The Legal Officer questioned the applicant as to how he ensured customers left the premises quietly. The applicant stated that most of his customers were families and did not make noise at the premises. The Licensing and Registration Officer questioned the statement made by the applicant that his customers are families when the premises sell late night refreshments. The applicant stated that teenagers come into the shop late at night and if they made noise they were asked kindly to keep the noise down as the shop was about to close. In response to a question from the Legal Officer as to the age of the teenagers frequenting the premises, the applicant stated that they would be 18. The Legal Officer questioned how the applicant managed queues at the premises. The applicant stated that he would ask customers who was next in line to be served. He stated that he did not experience problems in managing customers queuing, but if he did encounter problems at the premises he would call the police.

PC Rowlatt commenced her submission by stating that the application for a premises licence by Maesteg Charcoal Limited on behalf of Maesteg Charcoal Grill had been made under section 17 of the Licensing Act 2003. She stated that the Licensing Department of South Wales Police is an integral part of the Community Safety Partnership and it was worth highlighting that it was extremely rare for the police to submit outright objections to any application however; it was felt necessary to do so at this takeaway. The representations made by South Wales Police were made as it of the view that if approved the application would impact on all four of the licensing objectives in relation to 3 main areas, namely:

- 1) the offending that has taken place since the premises was revoked by the Licensing authority which issued a determination on the 16th March 2015. Following the 21 days appeal period which ended on 6th April 2015, the police witnessed offending. Due to this offending, a warning letter was on the 8th May 2015 because the premises were open unlawfully beyond the hours they were allowed to trade without a licence.
- 2) the representations made in the operating schedule. This strengthens this case in relation to the failure to promote the objectives especially crime and disorder and the belief that the licensing objectives would continue to be ignored based on profit, not for the objectives.
- 3) the application and letter from Nihat Halit Hassan, both dated the 15th July. This raise queries over whether he will in fact have the day to day control of this business.

PC Rowlatt requested the Sub-Committee consider whether the correspondence of 1 September 2015 served by King Davies Solicitors who represents the applicant have been served correctly. The correspondence served referred to a company called Brixtone Limited where the previous licence holder of Maesteg Charcoal Grill, Mr Ramazan Kanial, is detailed as being the former director of the company. Mr Kanial left the premises on 20th March 2015 and Brixtone Limited was then liquidated on 30th June 2015. The police questioned who was responsible for the premises between these two material times 24th February 2015 (being the start of the new company at the Maesteg Charcoal Grill address which was appointed on the 24th February 2015) and the 20th March 2015 (being the date Brixtone was dissolved). The Solicitor representing the applicant has provided this information for the police but this had confirmed their fears that the current applicant was in control of the business and the address since the above date, which was prior to the determination or review hearing date in March 2015. Most importantly extra offences have taken place at the premises. PC Rowlatt informed the Sub-Committee that Brixtone Limited has never held the licence of Maesteg Charcoal Grill. PC Rowlatt stated that Mr Kanial was the licence holder when it was revoked in

March 2015. She also stated that it was irrelevant whether Mr Kanial has left the company or whether the company has been dissolved as Brixtone Limited employed Mr Kanial. What was relevant is who will have a controlling interest in the address and whether those persons are fit and proper to uphold the licensing objectives. The police understand Mr Hasan has worked at the premises for two to three years, when the previous offences were committed, and he is today the applicant .

PC Rowlatt gave a brief history of events at the premises as the time frames are important to note for this applicant as he was employed when the premises used to be licensed. The premises are a kebab/pizza takeaway which has planning restrictions which are different to the premises licence. She stated that 7 planning applications were made. Offending contrary to planning took place after hours and warning letters were sent. The UK Border Agency visited on 13th June 2014 and found Mr Hasan to be working there illegally as an over stayer. PC Rowlatt stated that what was significant is that both the licence holder at the time, Mr Kanial, and Mr Hasan were working at the premises during the enforcement visit. Both Mr Kanial and Mr Hason Informed UKBA officials that they resided in the flat above the premises. An application for the review of the premises licence was heard on 13th March 2015. The license remained in force during the appeal period, but this ended on 6th April 2015 and the respondent chose not to appeal the decision. Therefore as of 7th April 2015 the licence ended and there was no authorisation in place to provide hot food from 11pm onwards. Therefore the current opening timings are 09.01hours to 22.59hours.

PC Rowlatt informed the Sub-Committee that Maesteg Charcoal Limited is detailed as the proposed licence holder and on 24th February 2015 was incorporated as a private company under the Companies Act 2006. She stated that Mr Hasan is the sole director and as he has worked at the premises he would be fully conversant with both the licensing and planning restrictions, i.e. the opening hours, as these timings have been emphasised during numerous enforcement visits by the police. Additionally it was an offence to fail to display a Summary of a Premises Licence in a prominent position at the premises which details the opening hours whilst the full licence must be made available for inspection.

PC Rowlatt stated that Maesteg Charcoal Limited was formed a mere 5 weeks after South Wales Police had made an application to revoke the licence and it was the experience of the police that new companies are often created after premises are the subject of a review application in an attempt to circumvent the review or with a new application in mind should the licence be forfeited as was the case here. Since this company materialised in February 2015 and Mr Hasan became responsible for it, it was highly significant that the following offences have been committed by him, namely:

1. Operating outside the restricted planning hours of 1.00am
2. Breaching a Planning Contravention Notice which was served for contravening the planning hours.
3. Engaging in licensable activity without a licence i.e. opening from 23.00hours onward. This is the most serious offence under the Licensing Act and carries an unlimited fine and/or a term of imprisonment on summary conviction not exceeding 6 months although in this case it was not taken forward to prosecution.

PC Rowlatt informed the Sub-Committee that on a few occasions information has been received that the premises is still open and operating past 23.00 hours and on these occasions police response officers have been tasked to check as follows:

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- 1) Friday night 1st May 2015 23.45hours Investigator action PC 5414 Harding, S. Log entry: Mobile Update: Male customer being served food
- 2) Saturday morning 2nd May 2015 00.15hours (Friday night) - PC 5414 Harding, S. Log entry: Mobile Update: Maesteg Charcoal Grill still open serving food to persons inside.
- 3) Saturday morning 2nd May 2015 00.45hours (Friday night) - Investigator action PC 644 Bickerstaff, R. Log entry: Mobile Update: Maesteg Charcoal Grill - lights on and still activity inside. Premises did not close until 00.50hours.
- 4) Sunday 3rd May 2015 (Saturday night) 02.00hours - Operation Raven. Supervisor review 08/02/2015 06:16 PS 4986 Sullivan, B. Log entry: Operation Raven for Saturday Night 7/2/2015 - The Charcoal Grill was still serving food at 02.00hours.
- 5) Sunday night 3rd May 2015 23.45hours - Investigator action PC 5316 Evans, S. Log entry: Mobile Update: Maesteg Charcoal Grill - licenced until 23.00 - officers noted customers being served. Main door wide open, open sign still illuminated.

PC Rowlatt informed the Sub-Committee that visits took place on 3 consecutive days which has impacted on the Licensing and Planning regimes. During the enforcement visit at 23.45hours on Friday 1st May 2015 PC 5414 Harding took the name and date of birth of the person she spoke to who was Nihat Hasan and he informed the officer that he was the new manager of Maesteg Charcoal Grill. What was significant is that he said that the owner was Ramazan Kanial who has had a long association with the premises. PC Rowlatt informed the Sub-Committee that Mr Kanial reported an assault at the premises in 2011 which took place at 02.38hours, when the premises was only authorised to open until 01.00am at the time. She stated that the information disclosed by Mr Hasan corroborated the suspicions of the police that Mr Kanial would continue to be involved in the premises. PC Rowlatt referred to the conversation between PC 5414 Harding and Mr Hasan on 1st May 2015 whereby the officer advised him that he could not serve hot food from 23:00 hours onward but Mr Hasan was adamant that he was able to provide hot food until 01:00hours claiming an email of 20th March 2015 from the licensing authority allowed him to do so. In short he was using the same argument that had been heard many times not just by Mr Kanial at the review hearing but also by Mr Hasan in his letter of 15th July. An email was sent by the Licensing Authority to Mr Kanial which had been shared with Mr Hasan which reinforced the decision to revoke the premises licence and pointing out the licensing and planning restrictions in force. The email also informed that no appeal was made and at 12.01am on 7th April 2015 the takeaway was not authorised to open from 23.00 hours.

PC Rowlatt informed the Sub-Committee that Mr Hasan had referred to the email of 20th March 2015 when speaking with the officer and this email clearly outlined the closing times as being 23.00 hours to 00.00 hours Sunday to Thursday and 23.00 hours to 01.00 hours Friday and Saturday. She stated that even without this email, the takeaway was never permitted to open until such times as 02.38. PC Rowlatt stated that what was notable is that Mr Hasan spoke to the officer 3 weeks after the appeal period ended when opening was not authorised from 23.00hours yet he had chosen to operate outside that time on these 3 occasions. PC Rowlatt informed the Sub-Committee that what was even more unacceptable is that when customers were sold hot food at 2.00am on Sunday 3rd May 2015 it was in direct opposition to the closing times given in the very email he disclosed to the officer when he purported that he was able to remain open. PC Rowlatt stated that these matters are highly significant in respect of Mr Hasan's actions and his ability to promote the objectives.

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PC Rowlatt informed the Sub-Committee that his offending was such that on 8th May 2015 he was served with what will be his one and only warning letter for engaging in what has become standard practice at this takeaway i.e. committing offences under the Licensing and Planning Acts. She stated that the content of this letter was unusually robust as it was felt that this is the only language that the management appeared to understand. She also stated that the police wish to further inform the applicant that if the Sub-Committee approve this application and there are further offences committed there will be no more warnings and the police will immediately seek to review the licence for a single offence.

PC Rowlatt informed the Sub-Committee that it was important to note the content of Mr Hasan's letter where he continued to maintain the playing off of the planning restrictions against the licence conditions and the local authority has been blamed for informing management that they are permitted to open until 02.00am. She stated that the local authority's position is clearly detailed in Sub-Section 8.2 of the Statement of Licensing Policy which clearly says that "The licensing authority also recognises that terminal hours for planning consents may differ from licensing hours and therefore an applicant must observe the earlier closing time". The offences committed by Mr Hasan in early May were committed when the licence was revoked and he could not remain open from 23.00hours in any event. Furthermore the content of this letter would suggest that he had been involved in the management of this takeaway for some time as he had stated "I could not deal with the premises problem. Therefore I appointed someone else as manager on behalf of me to manage everything".

PC Rowlatt informed the Sub-Committee that the suspicions of the police in respect of Mr Kanial were further strengthened by a telephone call which she received, by Mrs Gul Yavuz on 15th May 2015 who was making enquiries in respect of submitting a new application on behalf of Maesteg Charcoal Grill. Mrs Yavuz informed the officer that Mr Kanial would be manager. She stated that Mr Kanial resides in a flat above the takeaway with Mr Hasan and this dwelling can be accessed directly from the premises. It was therefore highly inconceivable that a person who has had responsibility for a premises for a considerable number of years and who resides above it would walk away from it particularly when that premises does not need a licence to sell hot food before 23.00hours. PC Rowlatt stated that the business can legally operate for almost 14 continuous hours daily i.e. between 09.01hours and 22.59 hours. PC Rowlatt stated that even if Mr Kanial had left the business then the actions of Mr Hasan are such that the police feel that he is not a fit and proper person to manage this business and promote the objectives. Furthermore on 27th May 2015 a male by the name of Hasan Sas telephoned the Licensing Department and similarly made enquiries in respect of a new application. Enquiries into Mr Sas have revealed that he is the lease holder of Maesteg Charcoal Grill and not Mr Hasan. Mr Sas also holds the position of what is known as the Food Business Operator, a status he has held since 18th August 2013 when he made application to register Maesteg Charcoal Grill with the local authority as a food business establishment. Mr Sas was also served with a Planning Contravention Notice in 2013 for breaches of planning control i.e. opening outside the permitted hours. PC Rowlatt stated that if the application is approved effectively nothing will have changed and this will seriously impact on the objectives.

PC Rowlatt referred to Sections 10.2, 10.3 and 10.4 of the Guidance which relates to conditions attached to premises licences. PC Rowlatt also referred to the Operating Schedule (M - boxes a to e), the Act requires an applicant to describe any additional steps intended to be taken in order to promote all four licensing objectives. She stated that Mr Hasan has volunteered conditions however he failed to comply with the most basic of conditions of closing on time when the licence was in force and he did not observe the fact that the licence was then revoked. PC Rowlatt stated that these are recent offences which have been committed. The steps detailed in the Operating

Schedule are adopted as conditions of the Premises Licence and arguably as an attempt to negate responsible authorities from making representations in respect of the application. PC Rowlatt stated that within box a) General – All 4 objectives CCTV is proposed and in Box b) the prevention of crime and disorder the CCTV proposal is duplicated.

PC Rowlatt informed the Sub-Committee that the licensing authority appended 9 conditions to the original licence relating to the installation and maintenance of CCTV as it protects staff and assists in the detection of crime and the apprehension of offenders. These conditions were considerably more than those now proposed. She stated that the final warning letter of December 2014 was served immediately prior to the review and relates to CCTV. The warnings have been served as part of these representations. On both occasions staff did not supply CCTV images to the police thereby failing to promote the crime prevention objective, which had resulted in these warnings. In light of Mr Hasan's offending South Wales Police has no faith in him to produce CCTV images.

PC Rowlatt stated that within Box c) relates to public safety and that the local authority's "Statement of Licensing Policy" highlights that: "9.7 Applicants are not expected to offer conditions which duplicate existing legislation" and firefighting equipment has been provided. PC Rowlatt informed the Sub-Committee that these proposals are catered for under other legislation and guidelines dictate that applicants cannot duplicate regulations as proposed conditions. PC Rowlatt stated that the applicant had stated in the application that "disabled persons can access to the premises and they can evacuate safely". PC Rowlatt informed the Sub-Committee the premises are on the ground floor and it does not necessarily follow that as the takeaway is on the ground floor disabled persons can access safely. In summary, the conditions volunteered do little to add to the burdens already placed on the applicant by law.

PC Rowlatt informed the Sub-Committee that within Box d) which relates to the prevention of public nuisance the applicant had stated that the level of noise from the premises while being used for public serve shall not be cause nuisance. PC Rowlatt questioned how can that be a proposal to prevent public nuisance as it was totally unachievable. The applicant had also stated in the application that there is no emission from the premises of any offensive smells which are likely to cause nuisance. PC Rowlatt stated that this proposal is not attainable as food outlets and takeaways in particular create smells which are offensive to some members of the public. PC Rowlatt also informed the Sub-Committee that the applicant had stated in the application that it had provided an empty bin in the vicinity of the premises. PC Rowlatt stated that it must be taken that in the vicinity of to be outside and there is no mention of it being affixed to the takeaway. This in itself will compromise not only the crime prevention objective but also public nuisance as either the bin in will be kicked up the street thereby discarding any waste food within or it will be stolen or thrown somewhere.

PC Rowlatt informed the Sub-Committee that in relation to Box e) which related to the protection of children from harm the applicant had stated that no persons under the age of 12years, unless accompanied by a person over 18years, shall be permitted on the premises at any time between 23.00hours and 1.00am. PC Rowlatt stated that there is no detail as to how the applicant intends to enforce the proposal.

Having made an assessment of the schedule some of the conditions proposal are either not relevant, are catered for under other legislation, appear in duplicate or are clearly unenforceable. PC Rowlatt stated that if the schedule was disseminated the schedule then it has been padded out with proposals some of which have little substance so when they are taken out there are few proposals which promote the objectives.

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PC Rowlatt stated that notwithstanding the credibility of Mr Hasan South Wales Police are of the opinion that the licensing objectives have also not been adequately addressed in the Operating Schedule and urged the Sub-Committee to refuse the application for the premises licence as granting the licence would lead breaches of control at the premises.

The applicant's representative stated that not one of the points addressed by the police in their submission related to Mr Hasan and were a breach of the principles of natural justice. He stated that the comments made by the police were prejudicial towards the applicant who had not had a chance to respond to the points made against him and would not have been allowed in a court of law.

PC Rowlatt referred to the letter from South Wales Police to the applicant and the licensing authority of 13 August 2015 wherein objections to the application by Maesteg Charcoal Grill Limited had been made on the basis of persistent offending at the premises where it continued to trade outside the licensable hours for the premises. The police also had grave concerns regarding Mr Hasan who had been part of a group of persons involved in the management of the premises where it had failed to promote the licensing objectives. PC Rowlatt also stated that the application had been made by a limited company yet in the box detailed "capacity" this had been signed Mr Hasan. During the hearing Mr Hasan believed that being a director and the manager was the same thing.

It was confirmed that the Applicant had prior to the hearing and in good time received the papers served by the police addressing the points they had covered in their submissions.

The applicant explained that he had never experienced problems in closing the premises on time and it was only when he was away from the business in May 2015 when the business had been managed by Mr Kanial that the police had been called to the premises on one night. He stated that he would obey the law at all times in the event of the application being granted.

The Licensing and Registration Officer referred to the letter from South Wales Police of 8 May 2015 which referred to the premises being open after 2300 hours on 1 May 2015 and that Mr Hasan had been the opportunity to give his version of events. The applicant's representative stated that Mr Hasan had denied any involvement of trading after 2300 hours on 1 May 2015.

The Sub-Committee questioned whether there had been a repetition of further incidents of trading outside its permitted hours since 1 May 2015. PC Rowlatt stated that there had been no further incidents at the premises and that she believed that the premises had ceased trading beyond 2300 hours after the warning letter had been sent by the police.

The legal officer asked the applicant's representative whether he wished to have an adjournment in order to take instructions in relation to the events which had taken place at the premises on 1 May 2015. The applicant's representative stated that he did not wish to have an adjournment as Mr Hasan was on holiday on 1 May 2015.

Both parties were offered the opportunity to sum up.

The applicant's representative did not present a summing up.

PC Rowlatt in her summing up referred to Section 9 of the Guidance which relates to Determining Applications and to Sub-section 9.12 in their role as a responsible authority,

the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regard to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

PC Rowlatt stated that there are a number of individuals involved with the management of this takeaway who are referred to in these representations. However the submissions of South Wales Police are that if this application is approved then Nihat Hasan will behave no differently from the 3 previous licence holders and other staff members who have committed serious contraventions of the conditions of the licence including offences of opening outside the restricted licensing hours as well as trading outside the limited planning hours. Similarly Nihat Hasan, is the sole Director of the company which proposes to be the new licence holder and he too has demonstrated a failure to promote the objectives by committing the most serious offence under the Licensing Act of engaging in licensable activity without authorisation as the licence was revoked. Such offending warrants the severest of penalties and whilst his offending took place within a month of the appeal period ending when no appeal was made.

However; he has also: -

1. Operated outside the restricted planning hours of 1.00am
2. Breached a Planning Contravention Notice which was served for contravening the planning hours.
3. Attempted to deceive officers who attended at the premises in May 2015 by opening when the Premises Licence had been revoked.

South Wales Police therefore has no faith in the applicant's ability to promote the objectives due to his recent offending which mirrors the antecedent and indeed the recent history of the takeaway coupled with the fact that the same persons will be involved in its management. South Wales Police therefore strongly urged the Sub-Committee to refuse the application.

The Sub-Committee adjourned at 13.10pm and reconvened at 15.43pm and on their return it was:

RESOLVED: That the Sub-Committee has considered the application for the grant of a new license for Maesteg Charcoal Grill. The Sub-Committee has noted that this is currently a running business that operates without the need for a license (i.e. it operates solely to supply hot food before 11pm). The Company that runs the business, namely Maesteg Charcoal Limited, have made the application for a new license to allow the business to trade by selling hot food between 11pm and 00.45am, this being a licensable activity.

The Sub-Committee has considered the representations made by Mr Hasan (through his interpreter) as well as his representative, Mr Shawe. Mr Hasan is the sole Director of the Applicant Company. The Sub-Committee has further noted the representations made by the Police. The Sub-Committee has considered the steps that are appropriate to promote the licencing objectives as well as the statutory guidance and the licensing policy.

The Police object to the application on the basis that granting it will undermine the licensing objectives of:

1. Crime and disorder
2. Public nuisance
3. Public safety
4. Protection of children from harm

The Sub-Committee will deal with each of these in turn, but first, in considering this application and the steps that are appropriate to promote the licencing objectives, and has borne particular attention to the following:

1. The relationship between Mr Kanial and Mr Hasan remains unclear. It is accepted that they used to work together at Maesteg Charcoal Grill when the business was run by Mr Kanial. It was accepted that at this time the business opened contrary to planning and licensing conditions and employed an illegal immigrant. As such, the police made an application to review the license which resulted in the license being revoked. Mr Hasan still asks Mr Kanial for advice when he needs assistance and cannot give any indication as to the frequency of these requests. He says this has happened 5-10 or maybe more occasions since he took over in March 2015. Given the failings and criminal activity that took place when Mr Kanial was running the business the committee are concerned about his ongoing involvement, especially given that he is approached for advice when Mr Hasan has difficulties.
2. When asked, the Applicant was not aware of the licensing objectives. Given that he was working at the premises at a time when the license was revoked for breaches of the License, and given the statutory Guidance regarding the duties of License Holders to promote the Licensable activities, this raises concerns. Although when questioned further Mr Hasan was able to explain some steps to meet the licensing objectives, these were in the most repeating the overarching legal requirements already in place and did not deal with the issues previously experienced at the premises, whilst Mr Hasan was working there, and which led to the revocation of the license.
3. The Applicant did not have provisions in place regarding the training of staff or how to arrange cover for holidays. This followed a lot of uncertainty regarding staff, those who currently are employed or who would be employed in the future. Other than

Mr Hasan's cousin who has started in the last week or two, the only other permanent staff member is a gentleman by the name of Jason Thomas. Jason Thomas also worked for Mr Kanial and this continuity of staff is concerning. There appear to be no formal training records as to how to deal with closing times or to show why the situation would be different if the license was granted today as opposed to how it was under the previous license with (in the majority) the same staff. Even though Mr Hasan assures the Sub-Committee he would ensure staff do not open beyond the closing time, there do not appear to be any formal arrangements for appropriate cover when Mr Hasan is on leave.

4. There is uncertainty regarding who completed the forms and who is assisting Mr Hasan with running the business and in meeting the legal requirements necessary to comply with the license and promote the licensing objectives. The Sub-Committee were very concerned about the number of questions posed by the Police that Mr Hasan was not able to answer. Taking into account these points and turning to consider the Licensing Objectives, the Sub-Committee make the following comments:

Crime and Disorder:

The Sub-Committee note that the planning and licensing functions of a local authority are separate and it accepts that a license can be granted with hours separate to those contained in planning permission. The Sub-Committee is however concerned by the approach of the Applicant that, since the change of ownership in March 2015, the business has continued to open in breach of planning therefore committing a criminal offence. In furtherance of this, the Sub-Committee note the occasions that the premises opened past 11pm without a licence despite notifications by both licensing and the police. The Sub-Committee note the Applicant Company says this happened when Mr Hasan was on holiday and Mr Kanial was covering in his absence. The Sub-Committee further note that the Police have stated the Mr Husan was present. It was however agreed by both parties that this happened whilst the Applicant Company was running the business and it is not clear what arrangements have been put in place to prevent this happening again.

Public Nuisance:

The Sub-Committee is concerned that the Applicant does not have adequate measures to prevent individuals causing a nuisance when entering and exiting the premises or when waiting for food.

Public Safety and Protection of Children from Harm:

The Sub-Committee is pleased that the Applicant volunteered conditions such as "no children to be allowed entry" but is concerned that there was no clear procedure to establish the ages of those attending or those accompanying

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children. The Sub-Committee is further concerned by the comments about teenagers attending the business and the lack of arrangements in place to deal with customers who may need to queue or wait for food.

Taking into account all of the above the Sub-Committee considered that for the promotion of the licensing objectives aforementioned it is appropriate to refuse the licence.

The Licensing and Registration Officer advised of the right of appeal against the decision within 21 days of the decision notice.

The meeting closed at 3.46 pm