

TANDRIDGE DISTRICT COUNCIL

LICENSING SUB COMMITTEE

Minutes and report to Council of the meeting of the Committee held in the on the 2 August 2021 at 6.30pm

ATTENDEES:

Sub-committee members:

Councillors Groves, Stamp and Steeds

Other Councillors

Councillor Bloore and Caulcott (observers)

Council Officers:

Ian Garrod - Licensing Officer

Lidia Harrison - Head of Legal Services and Monitoring Officer

Chailey Gibb – Lead Democratic Specialist

Melanie Thompson- Head of Business Transformation and Democratic Services

Representing Surrey Police

Duncan Milne – Barrister representing Surrey Police

Ian Sandwell - Licensing Enforcement Officer

Representing Environmental Health

Barbara Moore- Environmental Health Officer

Representing the Spaghetti Tree restaurant

Maria Romano - Designated Premises Supervisor

Loredana Romano-White - Employee of the leaseholder

Sarah Le Fevre – Barrister representing the Spaghetti Tree

Objectors

Simon Bold (parish clerk representing Warlingham Parish Council)

Thomas Gravsteijn

Nigel Hardy

Sarah Tutcher

Cllr Cindy Steer (representing Warlingham Parish Council)

Alison Williams

Supporters

Neil Mallen (on behalf of Rosetta Grieco)

Kit Mylnar

Nick Robinson

Other Councillors present (remotely)

Cllr Bloore

Cllr Caulcott

1. ELECTION OF CHAIR

Councillor Stamp was elected chair of the meeting.

2. REVIEW OF THE PREMISES LICENCE FOR THE SPAGHETTI TREE, 633 LIMPSFIELD ROAD, WARLINGHAM

Ian Garrod introduced his report. This outlined the options to the sub-committee in terms of reviewing the interim steps put in place at the emergency hearing on 7 July 2021 (annex A) which were:

- leave the interim steps in place;
- modify the interim steps;
- amend the interim step.

The report also set out the options to review the premises licence under section 53C of the Licensing Act 2003 ('the Act') in relation to the premises. Which were:

- (a) take no action;
- (b) issue a formal warning to the premises supervisor and/or premises licence holder;
- (c) modify the conditions of the licence;
- (d) exclude a licensable activity from the scope of the licence;
- (e) remove the designated premises supervisor;
- (f) suspend the licence for a period not exceeding three months; or
- (g) revoke the licence.

The report was accompanied by various supporting documents, including:

- the premises licence for the Spaghetti Tree, plan and licensable area
- the police application and additional conditions requested by Surrey Police
- representations and conditions requested by Environmental Health officers at Tandridge District Council
- representation by members of the public, supporters and the Designated Premises Licence Holder.

Duncan Milne, Surrey Police's legal representative, introduced the police application and additional conditions requested i.e.

- A. The Premises Licence Holder shall not permit the Licensed Premises to be hired-out by a third party.

- B. The Premises Licence Holder shall conduct a risk assessment for any event involving licensable activity arranged by or on behalf of the management of the premises. Risk assessments shall be completed at least 48 hours before the event and retained at the premises for 12 months. Risk assessments shall be made available for inspection upon request by Surrey Police or and authorised officer of Tandridge District Council.
- C. The Premises Licence Holder shall not promote or make available pre-paid drinks packages.
- D. The sale of alcohol [for consumption on the premises] shall be to accompany substantive meals to persons who are seated in the premises and provided always that the consumption of alcohol by such persons is ancillary to taking such meals
- E. Polycarbonate drinking vessels are to be used after 20:00 hours at any event which involves any licensable activity, arranged by or on behalf of the management of the premises.
- F. Glass bottles and all other glassware shall be removed from the tables and kept in a private secure area after 20:00 hours, at any event which involves licensable activity, arranged by or on behalf of the management of the premises. Glass bottles are then only to be handled by staff to decant into a polycarbonate drinking vessel.

Barbara Moore, Environmental Health Officer at Tandridge District Council, introduced her report. This explained that the Environmental Health Team had received complaints about loud music coming from the premises. Letters had been sent to the Designated Premises Supervisor and Premises Licence Holder to take steps to reduce noise levels so that it did not impact residents. Residents had also been sent log sheets to keep a record of when they were being affected by the noise.

Environmental Health Officers had visited the Spaghetti Tree on 4 June 2021, but the noise was witnessed was not deemed to be at a level which would impact on local residents. This was followed-up with a further visit on the 2 July, and music could be heard from neighbouring properties and down the road. On this occasion, the Officer was satisfied that the noise was at such a level that it would impact on residents using their properties. Further complaints had been received from residents in Limpsfield Road and Sunnybank.

The continuation of the lifting of the deregulation for entertainment and the condition as laid out in the interim steps was requested:

- To prohibit the playing of music in the garden (having disapplied the provisions of the Live Music Act 2021)

A number of objectors spoke about the following issues they had experienced since the opening of the Spaghetti Tree:

- Loud and overbearing music playing every Thursday to Sunday which impacted on their ability to enjoy their homes and gardens
- There seemed to be no changes to the level of music played after the interim hearing on 7 July which restricted the music that could be played
- Antisocial and dangerous parking across verges and pavements nearby

- Residents had reported that their mental health had been negatively impacted due to the ongoing problems and some were thinking of moving away because of the problems
- Littering around the venue
- Representatives from the Parish Council spoke about the issues arising from visitors parking on common land close to the premises, the blocking of access and the need for parking controls. They stressed the need for the nature of the premises to be in line with the semi-rural area around it.

Sarah Le Fevre, the legal representative for Spaghetti Tree, responded to the issues that had arisen. The premises in Warlingham is one of three Spaghetti Tree restaurants and she confirmed that no complaints had been raised in respect of the other venues. She summarised the problems into two categories. Firstly, the incident on 3 July 2021 which acted as the trigger event for the interim hearing and secondly, issues generally falling under public nuisance namely noise, parking and littering.

Sarah Le Fevre addressed the issue regarding the incident on 3 July 2021. This had been an atypical use of the premises as it was hired to a third party who had staffed and conducted their own risk assessments. The users at this event were not the normal clientele and there were no plans for them to hire the venue again. They were supportive of police conditions 'A' and 'C' as there were no plans for this type of event again. It was stated that they believed that condition 'B' was not appropriate as it was unclear what defines an 'event'.

It was acknowledged that there had been problems around the second issue of noise, parking and littering. Despite reports from the Environmental Health Officers and local residents stating otherwise, the interim step to limit music to background music only had been adhered to. It was recognised that this may still lead to problems with neighbouring properties as the sound may be amplified in certain areas. The Designated Premises Supervisor was willing to remove speakers on the boundary between the Spaghetti Tree and residential properties and explore the use of noise limiting devices.

It was acknowledged that there had been problems with parking. The Designated Premises Supervisor had taken steps to improve parking by creating a staff car pool to reduce the number of cars from staff members. She was also in discussions with Sainsbury's to allow Spaghetti Tree customers to use their car park. The manager at Sainsbury's had confirmed that this would be possible at quieter times i.e. all day on Thursday and after 6pm on Friday and Saturday. When questioned by members of the Sub-Committee, the Designated Premises Supervisor confirmed that they did not know how many spaces would be made available but that conversations were ongoing. The Designated Premises Supervisor also suggested that additional 'no parking' signs would be helpful to reduce parking problems on the surrounding grass verges.

The Designated Premises Supervisor said that she had reviewed the photographs of litter submitted and they were not from products sold at the Spaghetti Tree and therefore unlikely from Spaghetti Tree customers.

Various questions were asked about whether polycarbonate cups were deemed to be suitable by the venue. The Designated Premises Supervisor stated that these had been hard to source these and that some items were impossible to stock i.e. olive oil, champagne and prosecco bottles. They were not able to re-use the polycarbonate cups at the same level as a glass cup as they regularly bent in the heat of the dishwasher. There had also been negative comments from customers about the polycarbonate cups and it did not fit in with the high-end image that was desired.

The Designated Premises Supervisor and their legal representative expressed their wish for the Spaghetti Tree to add value to the local area and for residents to benefit from the premises. They stressed that they had created jobs within the area by recruiting over 30 local people at the Spaghetti Tree to fill the new positions.

Two supporters spoke about their positive experiences at the Spaghetti Tree in Warlingham and their previous dealings with the Designated Premises Holder.

Closing statements were heard from Duncan Milne, Barbara Moore and Sarah Le Fevre.

The hearing ended at 8.56pm at which point Councillors Stamp, Groves and Steeds began their deliberations with Lidia Harrison and Chailey Gibb and Melanie Thompson in attendance. All other attendees left the Zoom call having been advised that the Sub-Committee's decision would be communicated later in the week.

In accordance with Section 53D of the of the Licensing Act 2003 ('the Act'), the Sub-Committee must review consider whether the interim steps imposed under Section 53B of the Act on 7th July 2021 were appropriate for the promotion of the licensing objectives and consider any relevant representations and determine whether to withdraw or modify the interim steps taken.

At the hearing on 7th July 2021 the Sub-Committee imposed the following interim steps:

- (i) to prohibit the playing of music in the garden area (having disapplied the provisions of the Live Music Act 2012);
- (ii) to prohibit the use of glassware in the garden area for serving drinks; and
- (iii) to restrict the sale of alcohol to accompany meals.

The Sub-Committee noted under Section 53D(3) it had the power to take any of the following interim steps (following a review of the previous steps imposed on 7th July 2021):-

- (a) The modifications of the conditions on the premises licence
- (b) The exclusion of the sale of alcohol by retail from the scope of the licence
- (c) The removal of the designated premises supervisor from the licence
- (d) The suspension of the licence

The Sub-Committee considered all the information at the hearing and the representations made by the Police and the Premises Licence Holder in relation to the review of the interim steps.

DECISION REGARDING THE INTERIM STEPS

The Sub-Committee decided to impose the following modifications to the interim steps under Section 53D of the Act:

- (i) to prohibit the playing of music in the garden area (having disapplied the provisions of the Live Music Act 2012) by:
 - a. restricting live music to inside the building only;
 - b. moving the speaker for incidental background music inside the building; and
 - c. the acceptable noise level to be monitored with Environmental Health.
- (ii) to restrict the sale of alcohol to accompany meals after 9pm.

REASONS FOR DECISION

The Sub-Committee was concerned that there should be control of the premises pending the expiry of the appeal period or any appeal and considered that the interim steps were an appropriate and proportionate safeguard.

FULL REVIEW HEARING

The Sub-Committee considered an application to review a Premises Licence under Section 53C of the Act in relation to the Premises.

The Sub-Committee noted, under Section 53C of the Act, it must hold a hearing to consider the application for review and any relevant representations and to take such steps as set out in the following paragraph (if any) as it considers appropriate to promote the licensing objectives.

The steps were:

- (a) The modifications of the conditions on the premises licence
- (b) The exclusion of the sale of alcohol by retail from the scope of the licence
- (c) The removal of the designated premises supervisor from the licence
- (d) The suspension of the licence

The Sub-Committee carefully considered: the review on its own merits; the application for review; the report and appendices; and the representations. It considered relevant parts of the Government Guidance issued under Section 182 of the Act ("the Guidance"), the Council's Statement of Licensing Policy ("the Policy") and the licensing objectives set out in the Act, namely in this case, the promotion of:

- public safety, and
- prevention of crime and disorder

In particular, the Sub-Committee attached the appropriate weight to Guidance point 9.12, namely that the Police should be the Licensing Authority's main source of advice on matters relating to the promotion of the crime and disorder objective. It was noted that 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.

The Sub-Committee noted the position of Surrey Police and considered the conditions that would meet their concerns.

DECISION ARISING FROM THE FULL HEARING

The Sub-Committee, after considering the representations made by both parties and noting that both had reached agreement on the imposition of some additional conditions on the premises licence, therefore decided that it is appropriate to modify the conditions on the licence and imposed the following additional licensing conditions.

- (i) To prohibit the playing of music in the garden area (having disapplied the provisions of the Live Music Act 2012) by:
 - a. restricting live music to inside the building only;
 - b. moving the speaker for incidental background music inside the building; and
 - c. the acceptable noise level to be monitored with Environmental Health.

- (ii) To restrict the sale of alcohol to accompany meals after 9pm.
- (iii) The premises licence holder shall not permit the licenced premises to be hired-out by a third party.
- (iv) The Premises Licence Holder shall conduct a risk assessment for any event involving licensable activity arranged by or on behalf of the managements of the premises. Risk assessments shall be completed at least 48 hours before the event and retained at the premises for 12 months. Risk assessments shall be made available for inspection upon request by Surrey Police or an authorised officer of Tandridge District Council.
- (v) The premises licence holder shall not promote or make available pre-paid drinks packages.

The Sub-Committee considered that the measures described above are necessary to ensure compliance with the four licensing objectives and are a proportionate response to the concerns raised in the application. They also felt the measures would avoid any further detriment to the public and the prevention of crime and disorder and public safety.

The Sub-Committee decided not to make any restrictions on the parking but will encourage the Premise Licence Holder to enter discussions and negotiations with the Parish Council and any other measures to alleviate parking problems.