

Runnymede Borough Council

LICENSING SUB-COMMITTEE

Hearing under the Licensing Act 2003

5 January 2021 at 14:00

Members of the Sub-Committee Present: Councillors Theresa Burton, Derek Cotty and John Olorenshaw .

Mohammed Savid Fiaz (Applicant's representative), and 3 persons who had made representations also attended the meeting via a dial-in facility.

Officers present: Robert Smith, Senior Licensing Officer, Piero Ionta, Legal Advisor and Clare Pinnock, Democratic Services Officer, taking notes of the meeting.

372 ELECTION OF CHAIRMAN

Councillor Derek Cotty was elected as Chairman for the meeting.

373 PROCEDURE FOR THE CONDUCT OF BUSINESS

The Procedure for the conduct of business was duly noted by those present.

374 LICENSING ACT 2003 – APPLICATION FOR A PREMISES LICENCE- UNIT 23, TIMS BOATYARD, TIMSWAY, STAINES, TW18 3JY

Mr Smith presented his report which set out the details of the application for a licence under section 17 of the Licensing Act 2003 for the provision of late night refreshment only. The Sub-Committee noted a plan of the location and two photographs showing the entrance gates at the end of Timsway; a residential cul de sac leading to Tims Boatyard on The River Thames in Staines.

Mr Smith referred Members to representations made by local residents regarding the prevention of public nuisance and the protection of children from harm, and an objection lodged by the Council's Planning department relating to the licensing objective of the prevention of public nuisance. Members were advised that no planning permission had been obtained for the hours of operation and, with the exception of a storage facility on site, no activity was permitted after 20:00 hours.

Mr Smith drew the Sub-Committee's attention to the separation between the Planning and Licensing regimes and when asked to clarify this point he confirmed that one decision did not depend on the other being granted or refused and that each should be treated on its individual merits.

In terms of the Council's Licensing Policy and Statutory guidance, Members were asked to pay particular attention to the sections relating to public nuisance in the context of the location and nature of the business and its proximity to residential properties.

Mr Fiaz was then invited to present the case for the applicants, Mub Food Limited, operating Big3Pizza on site.

Mr Fiaz addressed the representations made by residents with regard to noise and light nuisance and the steps in mitigation that he had taken when he became aware of the concerns raised. Specifically, Mr Fiaz stressed that they employed two drivers who were required to use either hybrid or electric vehicles. They had drivers in the past who had mopeds but these were no longer allowed. To reduce the need to leave their vehicles, drivers had been issued with key fobs to operate the entrance gates. To reduce light spill, the lights did not go on after 21:00 hours and had been re-angled to point at their unit rather than the entrance gates.

Mr Fiaz stated that his drivers did not play loud music in their vehicles, nor did they speed along the road. He asserted that other users of the Boatyard may be responsible for this, including another food delivery company on site. He also referred to another operator that regularly used the boatyard after hours and into the early hours of the following morning. Mr Fiaz confirmed that most of their custom came from students and that since not being able to operate between 23:00 and 04:00 hours their business had lost approximately 50% of sales.

Mr Fiaz was asked a number of questions about the operational side of the business. He stated that between 23:00 and 03:00 hours they would have typically received between 10 and 15 orders on their busiest days (over the weekend) which their two drivers would be despatched to deliver- using their own vehicles, there being no provision for customer collection. They operated within a 4 mile radius of the boatyard, mainly to students from Royal Holloway, although they did have other regular customers, including from Timsway. With regard to advertising, Mr Fiaz considered that the third party food delivery firms on their website might be displaying out of date information as they did not take orders after 23:00 hours. These firms were not used for delivery as all deliveries made were only by those 2 drivers employed by the Applicants using their electric vehicle. When asked about business sustainability their target was naturally to increase orders but with the current pandemic there were fewer students. Mr Fiaz stated that not having a late licence would be significantly detrimental for their long term viability. In terms of staffing, Mr Fiaz confirmed that in addition to the two drivers, there were 2 to 3 kitchen staff, including himself, but they tended to car share, all living locally.

Mr Fiaz confirmed Big3Pizza had been operating since March 2020. When asked what checks he had made that the necessary licences were in place he informed the Sub-Committee that his business partner had been assured by the previous occupant that all was in order although they had not had any contact with the Licensing Section and were unfortunately unable to produce a licence. The applicant claimed to have spoken to someone in Environmental Health who they thought had advised their hours were 17:00 – 04:00 hours, Mr Smith clarified that the applicant had not spoken to the licensing section regarding this. However, after complaints had been lodged with the Council he had subsequently been advised their permitted hours were 16:00 – 23:00 hours. The applicants had believed their former operating hours were permitted and had been operating on that basis for approximately 3 – 4 months, up until September 2020.

Mr Fiaz confirmed that the lights pointing towards the entrance gates now pointed to their unit, the gates themselves being electronically operated.

A resident, Mr James, asked Mr Fiaz if they had been operating after 23:00 hours recently, to which Mr Fiaz said they had not, despite what another website said. If they were on site it was for food prep for the following day. Mr Fiaz considered that other movements on site in the early hours were other users of the Boatyard.

Mr Sharma, another resident, asked about anticipated future business and Mr Fiaz replied that if business improved as they hoped it would, the same precautionary measures with regard to reducing noise and other potential nuisance would be in place so that no issues would arise.

The two residents that had registered to speak were invited to present their case.

Mr Sharma emphasised that Timsway was (or had been when he moved in) a quiet residential cul de sac, a narrow road with limited on street parking, but that since the arrival of Big3Pizza, there had been more vehicular movement and this made it unsafe for children to play and ride their bicycles. He felt that there was no restful period now and that Timsway was no longer the peaceful place he and neighbours had hitherto enjoyed. He had been advised by neighbours that the loud music and speeding vehicles was attributable to Big3Pizza; on visiting other units in the Boatyard this information had been substantiated.

Mr James, the second resident speaking at the meeting, confirmed in answer to questions from the Sub-Committee that the Boatyard had been there since Victorian times and still in use when they moved to Timsway some 40 years ago. He also stated that Timsway comprised 16 detached dwellings, 27 business units in the former boatyard and a number of houseboats. The entrance gates to the boatyard had not been in use as frequently as they were now owing to the number of business units.

Mr James was then invited to state his case, being made on behalf of a number of the residents. Mr James had first become aware of the increased traffic in June 2020. In September, he had raised the issue with a local Councillor and in turn Environmental Health who had confirmed that Big3Pizza did not have a late night refreshment licence and had then been advised to cease trading at 23:00 hours. An application was then made, and the notice displayed within the boatyard.

Mr James considered that if the licence was granted the road would be much noisier. This was because the existing pattern of usage by residents and users of the Boatyard, including the houseboat dwellers would be altered; he speculated that adjoining residential roads might also be affected.

Mr James referred to the objection lodged by the Planning department regarding loss of amenity. He also considered it relevant to mention another business on site that had operated out of hours and subsequently been conditioned to have restricted opening hours to protect residential amenities. With regard to Big3Pizza's recent operations, he suggested that up until very recently they had still been making deliveries up until 02:00 hours. Another business had possibly been operating on a Sunday. He confirmed that their objection rested with the change to the pattern of usage to remove the quieter early hours during the week and weekend periods. When asked, Mr James did say that he had not heard any of the mopeds recently.

Mr Fiaz, when invited, asked if residents had undertaken any research to establish who was responsible for increased traffic, noise and out of hours use of the Boatyard. They replied they had not but had been reliably informed by neighbours and other users of the Boatyard. Mr Fiaz suggested that other businesses were to blame, referring to two in particular, one of which was similar to their own, and he was disappointed that residents had not approached them direct so that if it was Big3Pizza their concerns could have been addressed. Mr Fiaz stated that Unit 23 had allocated parking spaces, so had no reason to park in Timsway; it was other people working at other units who took up the limited on street parking. This point was accepted but residents still thought that there were unresolved issues with drivers but were reluctant to approach them.

Each party was then invited to make a closing statement. Mr Fiaz opted to make his first, while residents conferred with another present at the hearing but who had not registered to speak (the Chairman's offer to adjourn was not felt necessary).

Mr Fiaz repeated his assurance that the Big3Pizza drivers were not causing a nuisance to the residents and their business had taken all steps to reduce any potential noise or other public nuisance. He was surprised that the other late night units had not been subject to scrutiny. The applicants were keen to have a positive relationship with the community and preserve the environment through the measures they took and would take if the licence was granted.

Mr Sharma and Mr James restated their concerns and clarified that the other resident referred to above had confirmed she had seen speeding vehicles in the road.

Mr Smith confirmed that he had no further comments other than to thank those persons attending the meeting.

The Chairman thanked everyone for their contributions and explained that once a decision had been made, those present would receive an email summarising their findings within five working days of the meeting and that the formal decision notice would be issued in due course.

Members then moved and seconded to exclude press and public from the meeting, in accordance with the agreed procedure.

The public part of the meeting ended at 15:30.

On 5 January 2021 at 16:05, the legal advisor to the Sub-Committee issued the following decision, made with due consideration of all the facts and submissions made at the meeting to promote the Licensing Objectives.

RESOLVED that-

The application for a premises licence in respect of Unit 23, Tims Boatyard, Timsway, Staines TW18 3JY be refused for the reasons to be set out in the decision notice.

The meeting ended at 16:08

Chairman