

**MINUTES OF THE MEETING OF THE LICENSING SUB-COMMITTEE
HELD ON WEDNESDAY, 20 NOVEMBER 2013**

COUNCILLORS

PRESENT Derek Levy, Christine Hamilton (Cabinet Member for Community Wellbeing and Public Health) and Anne-Marie Pearce

ABSENT

OFFICERS: Mark Galvayne (Principal Licensing Officer), Dina Boodhun (Legal Services Representative), Ellie Green (Principal Trading Standards Officer), PC Martyn Fisher (Police licensing officer), Jane Creer (Democratic Services)

Also Attending: Applicant - Mr Yusuf Karpuz, premises licence holder, and Barrister, and translator - Gazan Restaurant
Press representative

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WELCOME AND APOLOGIES

The Chairman welcomed all those present, introduced the Members, and explained the order of the meeting.

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DECLARATION OF INTERESTS

NOTED there were no declarations of interest.

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**GAZAN RESTAURANT, 170-172 HIGH STREET, PONDEERS END, EN3
(REPORT NO.134)**

RECEIVED application made by Mr Yusuf Karpuz for the premises known as and situated at Gazan Restaurant, 170 – 172 High Street, Ponders End, EN3 for variation of the Premises Licence.

NOTED

1. The opening statement of Mark Galvayne, Principal Licensing Officer, including the following points:
 - a. The application was to vary the existing Premises Licence at Gazan Restaurant.
 - b. At present, the premises had permission for opening hours, supply of alcohol, and late night refreshment until 00:00 (midnight) every day.

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- c. The application sought opening hours until 02:45, supply of alcohol until 01:00, and late night refreshment until 02:30 every day.
 - d. The application was subject to representations from the Licensing Authority, the Metropolitan Police, and residents of 13 separate addresses. One of the residents confirmed they were unable to attend the hearing, but none had withdrawn their representation so all 13 remained to be considered, as set out in Annex 06 of the report.
 - e. The Cumulative Impact Policy, set out on page 5 of the report, was highlighted. The premises was located in the Edmonton Cumulative Impact Policy (CIP) Area and so the policy applied. The application was outside the core hours and was therefore subject to the presumption against grant.
 - f. Where the CIP applied to an application, applicants were expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy. To date no statement or information which addressed this point had been received from the applicant.
 - g. Licensing Authority representation additional information, including details of complaints received and all officer observations and intervention since 23 October 2013, had been circulated to all parties on 13 November.
2. The opening statement of Ellie Green, Principal Trading Standards Officer, on behalf of the Licensing Authority, including the following points:
- a. The Licensing Authority had considered the variation application and made representation in objection as set out in Annex 05 of the report, and additional information circulated on 13 November.
 - b. She gave a verbal update on even more officer activity since the circulation of that additional information. Officers had visited the premises on Saturday 16 November 2013 to get the most up to date information ahead of this hearing. At 21:25 officers carried out external observations from the balconies of residential properties and the rear alley in respect of the extractor fan, and there was no noise, smoke or odour. (This was confirmed by out of hours Noise Team who also visited the premises at the same time.) On entering, six customers were seen at the premises, drinking, eating and smoking outside, including Fabien Simms of FSL Business Consultants. Officers asked to speak to Riza Demirtas, the Designated Premises Supervisor (DPS) but were told he was not on the premises. The manager, Can Botan, advised that the DPS had been there from the morning and had been there until 80 minutes ago. Officers asked to see CCTV recordings: Mr Demirtas was only identified around 18:30, eating a meal with his family. Fabien was present during the visit and stated that Mr Demirtas lived nearby, but changed this to "his kids lived nearby". Conditions 13 and 14 were checked. Officers were shown training records for five named persons, though eight members of staff were seen working that day. The training record was a copy of a test provided in LB Enfield guidance and was dated 16 November 2013; the

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same date as the visit. It was unclear who had conducted the training; there was just a list of names of people who had completed the test. It was unclear whether they were staff who had started that day or if this was refresher training. Therefore, officers were not satisfied that those conditions had been met. Fabien also showed officers a copy of the current plan of the premises, but confirmed this still needed to be passed to the Council by means of a full variation application. He was reminded of this hearing date. Officers left the premises just after 22:00.

c. The Licensing Authority had read the representations made by interested parties, and had concerns that there had been further noise disturbance by customers outside or leaving at late hours or by staff taking breaks outside or leaving at late hours. There had also been mention of noise from preparation of food. These reflected Licensing Authority concerns and previous complaints.

d. Smoke and noise and odour from the extractor fan had been resolved, but this did take a long time to put right.

e. The Licensing Authority still objected to this application in its entirety.

f. Gazan Restaurant was in the Edmonton CIP Area and the hours applied for exceeded those hours permitted by the policy. Advice on the policy had been provided to Mr Karpuz and agents, and that the policy would apply to variation applications.

g. Advice had also been provided on compliance with licensing conditions, which seemed to have been ignored. Since the premises had opened in August 2013 there had been 14 alleged breaches of conditions, and two alleged breaches of hours, and use of an incorrect plan. There was a significant history of non-compliance in a short period of time. Conditions 13 and 14 remained outstanding.

h. Mr Karpuz was the Premises Licence holder, and had a history of lack of compliance with licence conditions at other similar licensed premises, and had received a criminal conviction in 2010, having been found guilty of committing s.136 offences under the Licensing Act 2003. Despite this, he still seemed ignorant of compliance with the licence and did not appear to be actively present at the restaurant as recommended at the busiest times, though this did not seem to make a difference to the operation.

i. The named DPS had not been seen once at the premises by officers visiting, day or night, and what officers were told on 16 November 2013 was not shown by the CCTV.

j. The Licensing Authority had little confidence in the effective and proper management of this premises. The impact of later hours would be more significant, especially to local residents.

k. The Licensing Authority objected to the application as it would be detrimental to the licensing objectives, particularly prevention of public nuisance, that it would exceed CIP hours, and because of the history of non-compliance and complaints.

l. The Licensing Authority objected to the application in its entirety, but if the sub-committee were minded to grant in full or in part, they recommended additional conditions as set out in Annex 05, and that the DPS be varied.

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- m. Confirmation by the Principal Licensing Officer that if the application was refused then the licence would remain as is.
3. Ellie Green responded to questions as follows:
- a. In response to the applicant's legal representative she confirmed:
 - this licence had only been in place for three months, since August 2013;
 - that Mr Karpuz had dealt with some of the issues identified at the premises, but not all of them;
 - issues in respect of the extractor fan had been significant, but of equal importance were issues of breaches of conditions and the incorrect plan.
 - Mr Karpuz had dealt satisfactorily with the extractor fan issue.
 - Mr Karpuz had satisfactorily addressed concerns about waste oil disposal.
 - On occasions when officers had visited, trading hours and smoking provisions had been compliant.
 - The training records brought to this hearing had not been shown to officers previously.
 - Officers had not observed any underage alcohol sales during visits.
 - There were other premises nearby with longer licensing hours. Pizza Hut provided late night refreshment to 00:30. Ponders End Food Centre sold alcohol to 01:00. These licences pre-dated the introduction of the CIP.
 - b. In response to the query as to whether the Licensing Authority had received an updated premises plan, Mark Galvayne advised that a new plan had not been received to date, despite advice being given over a month ago. He confirmed that no minor variation had been submitted, and could not be accepted in any case as a full variation application to change the plan was necessary, as had been advised.
4. The opening statement of PC Martyn Fisher, Metropolitan Police Service, including the following points:
- a. He would re-iterate the points made by the Licensing Authority.
 - b. The hours applied for were outside the CIP core hours.
 - c. The Police objected to the application in its entirety.
 - d. There were a number of ongoing concerns regarding this premises.
 - e. If the Sub-Committee was minded to grant the application in full or in part, the Police suggested additional conditions as set out in Annex 04.
5. In response to a question from the applicant's legal representative, PC Fisher confirmed that there had been no incidents of crime and disorder associated with this premises.
6. The opening statement of Ms Krew, Barrister, on behalf of the applicant, including the following points:
- a. She introduced Mr Yusuf Karpuz, Premises Licence Holder, and his cousin Mr Barton, acting as his translator.
 - b. She apologised for her late arrival due to public transport delay.
 - c. This application should be accepted as an exception to the CIP by reference to the Policy para 9.25 as it was a suitable premises for later

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operation as a restaurant with no take-away, and alcohol served only with a substantial meal. This premises was not a take-away and in the circumstances it was not going to have any adverse effect or increase the cumulative impact.

d. Although it was acknowledged that the premises was in the CIP area, it was right at the end of the zone.

e. As evidenced by the Police, there was no increased crime and disorder associated with this premises.

f. It was acknowledged that the hours applied for were outside the CIP core hours, but the lack of crime and disorder issues should be noted, and that this was not an off-licence or a vertical drinking establishment.

g. She confirmed that the applicant was more than happy to accept the additional conditions suggested by the Police and Licensing Authority.

h. The applicant was not offering to change the DPS.

i. The licence had been inherited. Mr Karpuz was new to the premises, from 20 July 2013, and this restaurant began operating in August 2013.

j. Mr Karpuz had been dealing with problems identified by the Licensing Authority, and had been working with them. There had been significant improvements and tackling of issues.

k. Mr Karpuz had only been there for three months and already the extractor fan issue had been dealt with through significant financial investment. This upgrade showed the seriousness of his commitment. Issues around smoking in the outside area had also been dealt with.

l. She appreciated that the issue regarding the premises plan was ongoing, but that this should be easy to sort out.

m. She had training records at the hearing, which Members and officers were welcome to examine. It had been alleged that the premises was in breach, but she had evidence that it was not. The Chair refused to accept new written evidence as it was not supplied in accordance with the hearing regulations, and noted that training records could have been produced in the previous three months before this hearing.

n. The following points were confirmed by Mr Karpuz, with interpretation where necessary:

- Mr Karpuz confirmed he was the Premises Licence Holder.
- He had been involved in restaurants and licensing for six years.
- He held a Personal Licence.
- He was present at the restaurant every day.
- He trained his staff appropriately in relation to alcohol issues and licence conditions.
- The records of the training were with him at this hearing.
- He had a DPS – Mr Riza Demirtas. He attended the restaurant every day between 15:00 and 19:00.
- If the application was granted, he did not plan or wish to serve alcohol after 00:00. He did want an extension of hours to allow customers in after 00:00 to be able to compete with other restaurants which stayed open later.

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- He was aware of objections from local residents. He had written a letter to neighbouring residents and had given them a contact number for himself.

7. The applicant and legal representative responded to questions as follows:
 - a. The Chair queried the part of the application form reproduced on page 21 of the agenda in relation to additional steps intended to be taken to promote the four licensing objectives. Section c) stated that appropriate fire safety procedures were in place and emergency exits kept clear, but this did not correspond with information provided on page 33 from the Licensing Officer from the Fire Service, that the fire exit through the kitchen was not appropriate. The applicant's legal representative advised that her instructions were that appropriate procedures were in place.
 - b. The Chair noted that section d) of the application form advised that customers leaving the premises will comply with the company's dispersal policy and queried whether this would involve anyone leaving through the kitchen. The response was that it did not, and that the allegations of people exiting through the kitchen were not accepted by the applicant. Officers had not said they witnessed customers going out that way. It was confirmed that the dispersal policy had not been appended to the application or submitted, but the conditions were attached.
 - c. The Chair also queried section a) of the application form that the standard practices including appropriate training were being maintained at all times. He also asked if there were any additional measures to be taken to promote the licensing objectives. In response, it was re-iterated that training records were available at this hearing, that conditions were being met, and that major issues in respect of the extractor fan had been remedied. The applicant stated that training records were accurate, and up-to-date records had been brought to the hearing. The officer evidence was not disputed, but the barrister's instructions were that there were four staff, not eight. Licensing Authority staff had not seen the records which had been brought to the hearing.
 - d. In response to the Chair's query regarding measures intended to be taken to address the public nuisance referred to in residents' representations, it was advised that residents could be satisfied by existing conditions. The outside space could not be used after 23:00; Mr Karpuz gave reassurance that there would not be staff outside on a break or smoking.
 - e. In response to the Chair's queries regarding the licence holder's experience, it was confirmed that Mr Karpuz had been involved with licensed premises and had six years' experience which should give Members some satisfaction. He had only been at this premises for three months and had taken significant steps.
 - f. In response to the Chair's highlighting the S80 noise abatement notice on the former owner in respect of the external extraction fan unit, it was advised that Mr Karpuz could not be responsible for events before his tenure, but on his arrival he arranged quotes for works. The works were done, but there were problems subsequently, and these were then

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rectified. A total of £30,000 had been spent getting the extraction fan unit right. Given that Mr Karpuz was prepared to do that, it was asserted he was an experienced operator and able to manage this premises properly.

g. In response to the Chair's concern that the DPS was never in attendance when officer visits were made and query whether the current DPS was appropriate, it was advised that the DPS was on the premises every day. He was seen by officers on the CCTV, and this fitted the evidence that he attends between 15:00 and 19:00. The Local Authority's concerns did not arise from issues with the DPS, but were basic issues with the premises.

h. In response to Councillor Pearce's further queries about training records, it was confirmed the records had been removed briefly to be taken to the agent for photocopying, but accepted that they should be on the premises at all times.

i. In response to Councillor Hamilton's queries about how potential public nuisance and disturbance in the early hours would be managed, it was advised that staff would be asked not to have breaks in the rear outside area after 23:00; the number of smokers permitted outside at any one time could be restricted to an appropriate level, including at the front of the premises; and the rear outside area could not be used after 23:00. Signage was in place in respect of customers leaving, to the satisfaction of the Licensing Authority.

j. In response to the Chair's further queries regarding attendance by the DPS, it was advised that he was at the premises between 15:00 and 19:00, which was why he had not been seen by officers. This did not mean the operation was not properly supervised. At other times, Mr Karpuz was there and he also held a personal licence, and a manager was also employed.

k. Mark Galvayne noted that the plan indicated a potential of 90 covers and asked how many were operated as a maximum at the moment. It was confirmed that the current maximum was 50 to 60 covers.

l. In response to PC Fisher's queries regarding Mr Karpuz's intentions if the licence was granted, it was confirmed that the restaurant did not intend to sell alcohol after 00:00, but would concentrate on late night refreshment, and wished to gain additional flexibility.

m. Ellie Green queried the licence holder's representative's statement that the restaurant did not provide take-away, advising that it did, and that the application was for on and off sales of late night refreshment. Mr Karpuz confirmed that the restaurant was also a take-away.

8. The closing statement of Mark Galvayne, Principal Licensing Officer, including the following points:
 - a. Clarification that the plan submitted with the application form, as reproduced on page 14 of the agenda pack, did not reflect the current physical layout of the premises. Technically, this licence could not be used, and carrying out licensable activities at the premises was a criminal offence, until a new application for a full variation had been granted. The agent had been given advice, but no application had been made to date.

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- b. The Sub-Committee did not have to decide if the CIP applied: the policy did apply in this area. There was therefore a presumption against granting applications outside the core hours. If the Sub-Committee were not satisfied that a breach of the policy was justified, it would be appropriate to reject the application.
9. The closing statement of Ellie Green, Principal Trading Standards Officer, on behalf of the Licensing Authority, including the following points:
- Having listened to all submissions, she was still not convinced of satisfactory management of this premises.
 - Remedies to issues raised seemed simple: for example the training records could have been addressed and given to authorities within three months. Such issues caused ongoing concern.
 - Concerns remained about the lack of presence of the DPS. Officers had made afternoon visits, and still the DPS had never been seen.
10. PC Fisher advised he had nothing further to add.
11. The closing statement of Ms Krew, Barrister, on behalf of the applicant, including the following points:
- She highlighted para 9.25 of the CIP policy in respect of restaurants.
 - She asserted that the CIP was primarily related to crime and disorder. This premises was not linked to any incidents of crime and disorder.
 - Mark Galvayne advised that the CIP was technically about all four licensing objectives and referred to "crime and disorder or nuisance".
 - She maintained that that the CIP's emphasis was on alcohol-related crime and disorder and nuisance, and there had been no such incidents.
 - Since the operation began three months ago, serious steps had been taken to deal with issues, including the extractor fan and smoking.
 - The only outstanding issues were the training records and plan.
 - This premises was a restaurant and should be accepted as an exception to the CIP.
 - The intentions of the operator had been clarified: although extended hours were sought, this was primarily for provision of late night refreshment.
 - She confirmed that the applicant would adopt all additional conditions sought if the application was granted. The mooted conditions would mitigate potential issues.

RESOLVED that

- In accordance with the principles of Section 100(A) of the Local Government Act 1972 to exclude the press and public from the meeting for this item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 7 of Part 1 of Schedule 12A to the Act.

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The Licensing Sub-Committee retired, with the legal representative and committee administrator, to consider the application further and then the meeting reconvened in public.

2. The Licensing Sub-Committee RESOLVED that the application be refused.
3. The Chairman made the following statement:

“The Licensing Sub-Committee (LSC), having considered all the written and oral submissions presented to us, has resolved that it is appropriate for the promotion of the licensing objectives, to reject the application.

The panel was not persuaded that the applicant had demonstrated an understanding either of the policy, or how it impacted on their application. We were told by the representative for the applicant that the Cumulative Impact Policy is only about alcohol related crime and disorder.

The panel was further told, at the very outset of its submission, that the case for the applicant relied on the fact that Gazan is a restaurant and not a takeaway establishment – citing 9.25 of the Council’s Licensing Policy and therefore that the application should be considered as an exception to the CIP.

However, under questioning, it was made apparent that the premises does offer and is seeking extended hours for takeaway food as well as for sit-down meals.

The LSC was asked to consider that no incidents of crime and disorder were found or reported during the tenure of Mr Karpuz as Premises Licence Holder. And yet, despite much advice and guidance issued during numerous officer visits to Gazan, the applicant and representative (who had been advised similarly) had failed to properly address or deliver appropriately with regard to the plan of premises on the licence not reflecting the current physical layout and use of the restaurant.

We were expressly told by the Principal Licensing Officer in response to a question from the Chairman, that this in itself is a criminal offence, by which no licensable activities should or could be carried out currently, even within the existing hours on the licence.

Additionally, within the submissions we heard, the applicant failed to address any of the issues of public nuisance, raised particularly by the interested parties, or indeed public safety upon which the Borough fire

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officer had raised concern. The panel felt it must give weight to these concerns.

The LSC was not satisfied that the premises have been or are being properly and efficiently managed, there having been repetitive alleged breach of conditions even since the application to vary was first made – some alleged breaches even as late as the Saturday preceding the hearing.

We were seriously concerned by the evidence as to the function of Designated Premises Supervisor (DPS) being exercised in accordance with the statutory guidance (Section 182), and that the submissions from the applicant and answers to Members' questions ran counter to the detailed evidence from the licensing authority that the DPS had not been present on at least nine of visits made to the premises, noting that such visits were normally made during the busiest operating hours of the restaurant, when a DPS would normally be expected to be present and in control of the premises.

Guidance suggests that one of the key roles of a DPS is to provide an essential point of contact for police, fire officers, or licensing authority officers; so that problems can be dealt with swiftly.

This had not been the case with Gazan; further, on several occasions, Mr Karpuz himself only made himself available when called to the premises by other managers.

The Licensing Authority and Metropolitan Police Service both revealed lack of confidence in the owner and staff, something which the LSC shared as a result of the answers to its own questions at the hearing.

Although some measures had been taken to mitigate the impact of the restaurant on the immediate vicinity, this had taken far longer than appropriate, and the Licensing Authority seems to have endured lack of co-operation from the Premises Licence Holder, who failed to adhere to regular advice being offered to support effective operation of the licence.

According to the Council's CIP, the LSC needs to be persuaded that the applicant can demonstrate no negative cumulative impact on any of the licensing objectives. In fact, the LSC has concerns about these four objectives being actively promoted at present; so it is not satisfied that sufficient additional steps are being made to justify extending hours in the Edmonton Cumulative Impact Policy (CIP) zone.

Therefore, given insufficient evidence that the application should be treated as an exception to the CIP, or confidence in the management to

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properly promote the licensing objectives in extended hours, the LSC has determined that rejecting the application is appropriate.”