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Our ref: GS/LIC
Date: 20 March 2020

SPELTHORNE BOROUGH COUNCIL

DECISION NOTICE

In accordance with the LICENSING ACT 2003 s.23

Date of Licensing Sub-Committee: 16 March 2020
Applicant: Sadettin Guler
Premises: Fora Restaurant
13-15 High Street
Staines upon Thames
TW18 4QY

REASON(S) FOR HEARING: Relevant representations received from other parties concerning Crime and Disorder

DECISION

Granted subject to the addition of conditions

With effect from 16 March 2020

REASONS FOR DECISION

The application is for a new premises licence at Fora Restaurant, 13-15 High Street, Staines-upon-Thames, TW18 4QY.

Attendance

Six people attended the Sub-Committee hearing to make representations. They were:

- Sadettin Guler, applicant
- Marco Sebastien, Business Consultant to Mr Guler
- Sahim Koq, Restaurant Manager, Fora
- Reba Danson, Licensing Agent, Benchmark Licensing
- DOCO Victor Smith, interested party
- Lucy Catlyn, Responsible Authority, Licensing Department

Evidence

The Licensing Sub-Committee considered all of the relevant evidence made available to it at the hearing including:

- the Report of the Deputy Chief Executive outlining the matter to be considered;
- written representation and oral evidence at the hearing from a Responsible Authority (Licensing Department), an interested party and the applicant.

In considering all of this evidence, the Sub-Committee has taken into account the Regulations and National Guidance under the Licensing Act 2003 and Spelthorne Borough Council's Statement of Licensing Policy.

Application

An application had been made for a new Premises Licence to carry on a business which involved the use of the premises for licensable activities, namely the sale of alcohol, from 11.00am to 11.00pm.

The application also proposed amendments to the operating schedule and further conditions following a previous unsuccessful invalid application.

EVIDENCE

Background

The premises had a chequered history having previously been used as a nightclub, karaoke bar and had its licence revoked due to illegal drug activity.

The applicant had invested in a high quality refurbishment of the premises in order to extend his collection of restaurants.

Applicant

The Applicant by his representative asserted that Mr Guler, whilst an experienced successful restaurateur, his experience had not amounted to applications in respect of unlicensed premises. His business experience to date had been in the running of already licensed premises. In this regard he had engaged the services of an architect with whom he had a longstanding business relationship, the business of the architect also provided licensing services.

Mr Guler had paid sums of money in connection with the application, including a sum to circulate the prescribed press advertisement pursuant to S17(5) of the Licensing Act 2003. The communication regarding the flaw in process from the Licensing Department came out of the blue, Mr Guler being in the certain knowledge that he had engaged an agent to perform the specific process and further that he had expended sums for this purpose.

Notwithstanding the clear unambiguous language to remove alcohol from display and that alcohol must not been sold Mr Guler had relied on a close former business associate who was experienced in the belief that he would comply with the instruction.

Mr Guler on learning of the unauthorised sale had installed a consultant to investigate, Mr Mulayim was subsequently removed from Fora and would take no further part in management or as an employee of Fora.

Mr Guler now accepted that in terms of promotion of the Licensing objectives it was more appropriate to distinguish front of house management from his previous ideas in respect of his nephew, whose talents were in the kitchen at this time.

Mr Guler had then engaged the services of a Licensing professional who had assisted with business operation checklists and staff training.

Representations

Relevant Authority- Licensing Authority

The representation of the Relevant Authority outlined concerns over the ability of the applicant as the proposed DPS and restaurant owner, Mr Sadettin Guler, to uphold the licensing objectives in taking steps to prevent crime and disorder. Mr Guler had failed to cooperate with the Licensing Department in failing to prevent the unauthorised sale of alcohol leading to unlawful activities at the Fora Restaurant in breach of Section 136 of the Licensing Act 2003.

Pursuant to chapter 2.5 of the statutory guidance of section 182 it is the employer's responsibility to ensure managers are competent and well trained. Mr Guler acting as Director of Fora had failed to ensure compliance with the advertising requirements pursuant to s17(5) of the Licensing Act 2003 and had further failed to oversee and train staff, leading to the unlawful sale of alcohol by Mr Soner Mulougim (previous manager of Fora) following clear unambiguous instructions provided by Licensing Officers.

Interested Party

Mr Victor Norman Smith gave undisputed evidence that he had attended Fora and had been served and charged for alcohol on 15th January 2020, a time when the restaurant was not licensed in the sale of alcohol.

Findings

The Sub-Committee finds the representation made by the responsible authority centred around concern that the unsatisfactory level of management and staff competency displayed from the outset did not give them confidence that the licensing objectives, particularly in relation to the prevention of crime and disorder, would be adhered to in future.

Notwithstanding the Applicant, a Director, had appointed an agent to undertake the new Premises licence application on his behalf, the law of agency applied, meaning that he could not absolve himself of responsibility in terms of the chain of errors that had occurred.

The Sub-Committee noted National Guidance which states the authority's determination should be evidence based, justified as being appropriate for promotion of the licensing objectives and proportionate to what it is intended to achieve. In this regard, the Sub-Committee noted that the applicant had taken steps to address this and had removed the manager once his failure to adhere to rules and regulations had become apparent. Furthermore, the applicant had appointed an experienced agent and associate to assist in putting in place appropriate procedures and training for staff.

The Sub-Committee finds that the Responsible Authority rightfully brought this matter to be determined by the Sub-Committee. For the avoidance of doubt, the representation of the Responsible Authority, being the Licensing Authority, brought a relevant representation and it is accepted as was their statutory duty to do so.

The Sub-Committee had very strong concerns about the management structure and implementation of licensing procedures pursuant to the application. The Sub-Committee were persuaded that the applicant had substantially reviewed management procedures of the establishment and how implementation of licensing laws and procedure were imparted to all staff and further, that if the applicant didn't know before, he was now categorically aware of the review mechanism within the licensing legislation.

The Applicant was given credit for attempting to seek advice from the Local Authority Environmental Health Department and further accepting the chain of unfortunate events in connection with this application and taking positive steps so as to ensure compliance in going forward.

The Sub-Committee accepted that the applicant's faith in longstanding business associates had been misguided.

The advertisement complying with the legislative regime in respect of this application did not give rise to any adverse comments from members of the public. Therefore the Sub-Committee were persuaded that the applicant would do his utmost to ensure that the procedures including the measures and corrections submitted with the application would be followed. This being a mandatory obligation to ensure satisfactory operation of the business.

Decision

The Sub-Committee confirms that the application for a New Premises Licence is granted together with the applicant's proposed two additional conditions:

- Proposed condition: Mr Sonar Mulayim is prohibited from being involved, in any capacity, within the business operated at 13-15 High Street, Staines upon Thames.
- Proposed condition: A personal licence holder must be on the premises at all times that the premises is open to the public and/or licensable activities are taking place.

Conclusion

That is the decision of the Sub-Committee. A copy of this decision has been provided to all parties concerned within 5 working days of the Sub-Committee hearing.

You have the right to appeal against this decision to the Magistrates' Court within 21 days of receipt of this decision notice.

If you decide to appeal, you will need to submit your appeal to Guildford Magistrates Court. You should allow sufficient time for your payment of the relevant appeal fee to be processed. For queries, Guildford Magistrates Court can be contacted on 01483 405300.

Cllr R.W. Sider BEM - Chairman
Cllr C. Barratt
Cllr R. Chandler

Date of Decision: 16 March 2020
Date of Issue: 20 March 2020