

Licensing Sub-Committee

23 September 2020



Subject	Application for a new Premises Licence at 25 Church Street, Staines-Upon-Thames TW18 4EN.		
Purpose	For determination		
Report of	Deputy Chief Executive	Ward	Staines
Contact	Lucy Catlyn, Temporary Principal Licensing Officer (01784 444295)		

Description and Location	Burger Plus Group UK Limited have applied for a premises licence at their existing takeaway premises. The premises is located in Staines-Upon-Thames town centre opposite the London Stone public house and a taxi office operate in the very close vicinity. There is also another fast food takeaway business on the same road and a fish and chip shop. Plan at Appendix A .
The Application	<p>The application is to permit the provision of late night refreshment. The hours proposed for late night refreshment on the application form were 23.00 to 03.00 daily. The proposed opening hours on the application were from 11.30 to 03.00 daily.</p> <p>The applicant has agreed to reduce his opening hours and late night refreshments times to fall in line with the planning permission which is:</p> <p>Opening Hours: 11.30-01.00am Monday to Saturday and 11.30-23.30 on Sundays and Bank Holidays.</p> <p>Late night refreshment hours: 23.00-01.00am Monday to Saturday and 23.00-23.30 on Sundays and Bank Holidays.</p> <p>The application form is attached at Appendix B.</p>
Representations	<p>Relevant representations received from Other Persons.</p> <p>Letters of representation are attached at Appendix C.</p>

Options	<ol style="list-style-type: none"> 1. The Sub-Committee is requested to consider the application for the grant of a premises licence on its merits. 2. Having had regard to the representations, the Sub-Committee must decide on one or more of the following options as it considers appropriate for the promotion of the licensing objectives: <ul style="list-style-type: none"> ▪ To grant the application subject only to such conditions as are consistent with the operating schedule and the mandatory conditions; or ▪ To grant the application and modify the conditions of the licence, by alteration, addition or omission; or ▪ To exclude from the scope of the licence any of the licensable activities to which the application relates; or ▪ To reject the whole or part of the application.
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1. Background

- 1.1 The licensing agent has advised that the premises was previously called Chequex and operated as a pawnbrokers, foreign currency exchange and pay day loans. We have spoken to Burger Plus Group UK Limited and they have advised that they completed ownership of the lease on 7 May 2019 and they later then changed the planning premises use in August 2019. They opened as a takeaway shop approximately October/November 2019.

2. Application Summary

- 2.1 An application for a premises licence was submitted on 31 July 2020 by Burger Plus Group UK Limited. A copy of the application form is at **Appendix B**.
- 2.2 The application is for a fast food takeaway premises to permit late night refreshment. The times for licensable activity and opening hours have been amended from the original application following an objection from Spelthorne Borough Council's Planning Authority.
- 2.3 The proposed opening hours are: 11.30-01.00am Monday to Saturday and 11.30-23.30 on Sundays and Bank Holidays.
- 2.4 The licensable hours proposed for late night refreshment are: 23.00-01.00am Monday to Saturday and 23.00-23.30 on Sundays and Bank Holidays.
- 2.5 The Licensing Authority sent the application to the responsible authorities as required by the Licensing Act 2003 on 31 July 2020. The notice of the application was displayed at the premises during the representation period and a copy of the notice was published in the Surrey Advertiser on 7 August 2020.

3. History

- 3.1 The Licensing Authority were contacted on 21 July 2020 by a member of the public asking what Burger Plus's closing time was. They advised that the last Saturday evening/Sunday morning Burger Plus was still serving customer after 01.40am. The complainant further stated that when the staff at Burger Plus shut shop they congregate outside the shop until about 01.30am talking loudly to each other and this has woken them up on numerous occasions. When a Licensing Enforcement Officer responded to the complainant, the complainant advised that the delivery drivers do not respect neighbours when they stand around outside Burger Plus after 1.00am talking loudly to each other. They further commented that there is a refuse vehicle that comes to collect some wheelie bins at 2.00am on a Monday morning. The issue of the bin collection is for the Planning Authority.
- 3.2 The Licensing Authority contacted Mr Habib Noory from Burger Plus on 28 July 2020 to advise that it had been noted from their website that they were opening past 11pm and selling hot food and drink. He was advised that he needed to apply for a premises licence in order to sell hot food and drink after 11pm. He was also advised of the complaint received. Mr Noory was asked to speak to his staff regarding the complaint. Mr Noory responded stating he had a licence.

- 3.3 When challenged that he was operating without a premises licence, Mr Noory believed that he had a licence and sent over his planning permission. He was advised he needed to obtain a premises licence. The Licensing Authority have not objected to the application due to the premises operating without a licence as a licence was applied for within good time.
- 3.4 Since the application was submitted the applicant's agent has applied for Temporary Event Notices (TENs). The Licensing Act 2003 specifies that only Environmental Health and Police can object to a TEN. It should be noted that planning is independent of licensing, however the times applied for fall outside of the planning permission granted. The details of the TENs are as follows:
- Late TEN from 7 August 2020 to 12 August 2020 for the provision of late night refreshment from 23.00 to 03.00 every day.
 - Late TEN from 19 August 2020 to 25 August 2020 for the provision of late night refreshment from 23.00 to 03.00 every day.
 - Late TEN from 9 September 2020 to 16 September 2020 for the provision of late night refreshment from 23.00-03.00 every day.
- 3.5 The Licensing Authority were contacted by a complainant on 23 August 2020 in respect of the TENs that relate to 19 August 2020 to 25 August 2020.
- 3.6 Following the complaint the Licensing Authority contacted Mr Noory. In reply Mr Noory felt there was confusion with drivers who work for Uber or Just Eat who are operating in the same road. Mr Noory stated that he has well trained drivers and enclosed a copy of the code and conduct agreement made with their drivers. The complainant had advised that Mr Noory's delivery driver was honking his horn at 3.34am on 23 August 2020. This is disputed by Mr Noory. Mr Noory supplied CCTV footage however the Licensing Department were unable to view it due to technological issues. A copy of the email exchange with Mr Noory is attached at **Appendix D**. A copy of the Driver Code of Conduct for drivers that Mr Noory refers to in the email exchange is attached at **Appendix E**.

The Licensing Department has not visited the premises to view CCTV footage and note that the licensing agent wishes to submit CCTV in evidence for the Committee.

4. Environmental Health

- 4.1 Environmental Health were contacted by a complainant on 27 August 2020 in respect of noise from the premises. The complaint relates to patrons coming out, screaming and shouting and delivery drivers turning up to pick up food and using their horn.
- 4.2 Environmental Health have not objected to this application, however they emailed the Licensing Authority on 27 August 2020 to advise that they did have concerns regarding the request for the premises to open as late as 3.00am, due to the impact of noise from customers and takeaway deliveries on nearby residents.

5. Promotion of the Licensing Objectives

- 5.1 The Licensing Objectives together with examples from Government Guidance are set out below for information:

Prevention of crime and disorder

- Criminal behaviour on, or directly attributable to, the premises.
- Under age sales
- Anti-social behaviour on, or directly attributable to, the premises.

Public safety

- E.g. overcrowding, fire safety, emergency exits and anything related to the safety of the public within the premises.

Prevention of public nuisance

- Noise/light or odour nuisance
- Litter

Protection of children from harm

- In relation to off sales of alcohol, the most relevant issue under this licensing objective is the prevention of sales of alcohol to under 18s

5.2 Section 18 of the application form, at **Appendix B**, details the proposed steps to be taken to promote the licensing objectives. The Licensing Authority together with Surrey Police and Surrey County Council agreed amended conditions to replace this operating schedule. These were further amended when the applicant reduced their licensable hours and opening hours. A copy of the correspondence together with the operating schedule is attached at **Appendix F**. Should the licence be granted, these conditions will be attached to the licence

5.3 The applicant's agent has subsequently written to both the Local Planning Authority and to all 'other persons,' to explain that the applicant has amended its application to reduce both the opening hours and hours for the provision of late night refreshment, and to invite them to withdraw their representations. The amended operating schedule was also included in the letters.

6. Representations

6.1 i) Representations from Responsible Authorities

A representation from Spelthorne Borough Council's Planning Authority has been withdrawn following the amended application reducing the hours to replicate those permitted by the planning permission dated 22 May 2020.

ii) Representations from 'other persons'

Five relevant representations were received from other persons, one of these has been withdrawn as a result of the amended application. The remaining four representations are attached at **Appendix C**.

6.2 No further representations had been withdrawn prior to the publication of this report.

6.3 The grounds for objection are summarised below in relation to each Licensing Objective.

Prevention of crime and disorder

- Anti social behaviour.

- Some of the staff have been involved in fights that have taken place in Church Street. Allegedly staff witnessed a fight and did not contact police.

Prevention of public nuisance

- Noise complaints have been made to premises in relation to very loud music played from cars of their delivery drivers and customers.
- The delivery drivers have no consideration arriving and departing with their car radios volume being excessively loud.
- After the premises closes the employees hang around outside the shop and sometimes across the road speaking loudly to each other.
- Constant procession of delivery drivers outside, revving their engines, shouting to each other and honking horns. Talking loudly on mobile phone late at night.
- Every Friday and some other nights the noise and social disorder has reached unacceptable levels again.
- Increase in noise, litter, broken bottles, vomit and inevitable fighting outside the door.
- Public concerns were raised during the planning consultation period about the nuisance and disruption that extended hours would cause, particularly in respect of nearby residential accommodation and through negotiation with the applicant revised hours were agreed.
- Large groups congregating outside Burger Plus which can be heard late at night.
- Increase in noise levels since Burger Plus opened and a concern how noise levels will increase once a very close by premises reopens to full business.
- Sleeping with windows closed due to noise and constant smell of cooking meat.

6.4 Issues which are not relevant to the licensing objectives and cannot be taken into account by a Licensing Sub-Committee:

- Objections on the basis of need, or lack of need, for premises to sell alcohol
- Parking, or other issues relating to general amenity rather than licensing objectives

7. Licensing Policy

7.1 The Sub-Committee must have regard to the Council's Statement of Licensing Policy 2019- 2024. The following sections of the Council's Licensing Policy are relevant to this application and are attached at **Appendix G**

- 3.0 LICENSING OBJECTIVES & LICENSABLE ACTIVITIES
- 8.0 CONDITIONS
- 9.0 ADMINISTRATION & DECISION MAKING

- 11.0 FUNDAMENTAL PRINCIPLES
- 17.0 LICENSING HOURS
- 25.0 CRIME & DISORDER
- 25.7 PUBLIC NUISANCE

8. National Guidance

8.1 The Sub-Committee must also have regard to the National Guidance issued in April 2018 by the Secretary of State under section 182 of the Licensing Act 2003. The following sections are relevant to this application and are attached at **Appendix H**:

- Paragraphs 2.1 – 2.6 (Crime and disorder)
- Paragraphs 2.15 – 2.21 (Public nuisance)
- Paragraphs 3.12 – 3.20 (Late night refreshment)
- Chapter 9 (Determining applications) and in particular paragraphs 9.31 – 9.41 (Hearings) and paragraphs 9.42 – 9.44 (Determining actions that are appropriate for the promotion of the licensing objectives)
- Chapter 10 (Conditions attached to premises licences).

9. Making a decision

9.1 In making its decision the Sub-Committee must promote the licensing objectives only, taking into account National Guidance and Spelthorne's Statement of Licensing Policy.

9.2 The Sub-Committee must give reasons for its decision.

9.3 It is only where additional and supplementary measures are appropriate to promote the licensing objectives that there will be a requirement for appropriate, proportionate conditions to be attached.

9.4 Conditions on licences must:

- be precise and enforceable;
- be unambiguous;
- not duplicate other statutory provisions;
- be clear in what they intend to achieve; and,
- be appropriate, proportionate and justifiable.

9.5 It is important in considering the promotion of the licensing objective on prevention of public nuisance, that the Sub-Committee focuses on any disproportionate or unreasonable effect the licensable activities at the premises, have on persons living and working in the area around the premises.

9.6 In determining the application, the Sub-Committee will need to consider whether there is actual evidence of problems in relation to the licensing objectives at this premises. Where the representations are unable to provide

evidence of observed problems, as in the case of a new licence application, the Sub-Committee should be convinced that there is a very real threat of the fears or the dangers described in the representations actually occurring, before applying any conditions to address such fears or dangers.

- 9.7 The decision made by the Sub-Committee will be subject to appeal rights to the Magistrates' Court as detailed in section 181 and Schedule 5 of the Licensing Act 2003.

Appendices:

Appendix A – Location Plan

Appendix B – Application

Appendix C – Representations from other persons

Appendix D– Email exchange between the Licensing team and the Applicant

Appendix E– Driver Code of Conduct submitted by Applicant

Appendix F- Letter from Agent detailing reduced hours and amended operating schedule

Appendix G – Relevant sections of Spelthorne Borough Council's Statement of Licensing Policy 2019 – 2024, sections 3, 8, 9, 11, 17, 25, and 25,7

Appendix H - Relevant sections of the National Guidance issued under section 182 of the Licensing Act 2003, paragraphs 2.1 – 2.6, 2.15 – 2.21, paragraphs 3.12 – 3.20, chapter 9 and chapter 10