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Our ref: GS/LIC  
Date: 28 September 2020

## **SPELTHORNE BOROUGH COUNCIL**

### **DECISION NOTICE**

**In accordance with the LICENSING ACT 2003 s.23**

**Date of Licensing Sub-Committee:** 23 September 2020

**Applicant:** Burger Plus Group UK Ltd

**Premises:** 25 Church Street,  
Staines-Upon-Thames,  
TW18 4EN

**REASON(S) FOR HEARING:** Relevant representations received from other parties concerning Prevention of Crime and Disorder and Prevention of Public Nuisance:-

- Potential for increase in anti-social behaviour
- Potential for increase in noise and litter

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### **DECISION**

Granted subject to conditions  
With effect from 23 September 2020

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## REASONS FOR DECISION

1. The application is for a new premises licence at 25 Church Street, Staines-Upon-Thames, TW18 4EN.

### Attendance

2. Two people attended the Sub-Committee hearing to make representations. They are:
  - Mr Habib Noory for Burger Plus Group UK Ltd, Applicant; and
  - Mr David Wilson, agent for the Applicant.

### Evidence

3. 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 with appendices, outlining the matter to be considered;
  - Written representations from four other persons;
  - Oral submissions on behalf of the Applicant;
  - Additional documents circulated prior to the hearing on behalf of the Applicant.
4. 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

5. An application for a new premises licence at 25 Church Street, Staines-Upon-Thames, TW18 4EN, was received from the Applicant on 31 July 2020. The application is for a fast food takeaway premises to permit late night refreshment.
6. The hours proposed for late night refreshment on the application form were 11.00pm to 03.00am daily. The proposed opening hours on the application were from 11.30pm to 03.00am daily.
7. The Applicant has agreed to reduce its opening hours and late night refreshments times to fall in line with the planning permission which is:
  - Opening Hours: 11.30-01.00am Monday to Saturday and 11.30-23.30 on Sundays and Bank Holidays.

- Late night refreshment hours: 23.00-01.00am Monday to Saturday and 23.00-23.30 on Sundays and Bank Holidays
8. The public was consulted in accordance with the Licensing Act 2003. The required notices were displayed and published in the Surrey Advertiser on 7 August 2020.
  9. The application generated five representations from other persons and one representation from a responsible authority, the local planning authority. One representation from other persons was withdrawn and the representation from the planning authority was also withdrawn.

## **EVIDENCE**

### **Background**

10. 25 Church Street, Staines-upon-Thames TW18 4EN is located in Staines town centre opposite the London Stone public house and a taxi office operating in the very close vicinity. There is also another fast food takeaway business on the same road and a fish and chip shop.
11. The Licensing Authority, Surrey Police and Surrey County Council liaised with the Applicant and agreed amended conditions to replace the operating schedule. They were further amended when the Applicant reduced their opening hours. The agreed conditions read as follows:
  1. The premises shall install and maintain a comprehensive CCTV system as per the following minimum requirements.
    - (a) Cameras will be sited to observe the entrance and exit doors both inside and outside.
    - (b) Cameras on the entrances will capture full frame shots of the heads and shoulders.
    - (c) Cameras viewing till areas will capture frames not less than 50% of screen.
    - (d) Cameras overlooking floor areas will be wide angled to give an overview of the premises.
    - (e) Will be capable of visually confirming the nature of the crime committed.
    - (f) Provide a linked record of the date, time and place of any image.

- (g) Provide good quality images -colour during opening times.
  - (h) Operate under existing light levels within and outside the premises.
  - (i) Have the recording device located in a secure area or locked cabinet.
  - (j) Have a monitor to review images and recorded picture quality.
  - (k) Be regularly maintained to ensure continuous quality of image capture retention.
  - (l) Have signage displayed in the customer area to advise that CCTV is in operation.
  - (m) Digital images will be kept for 31 days.
  - (n) Police will have access to images at any reasonable time.
  - (o) The equipment will have a suitable export method, e.g. CD/DVD writer so that the police can make an evidential copy of the data they require. This data should be in the native file format, to ensure that no image quality is lost when making the copy, if this format is non-standard (i.e. manufacturer proprietary) then the manufacturer should supply the replay software to ensure that the video on the CD can be replayed by the police on a standard computer. Copies will be made available to Police on request.
2. Comprehensive Training will be given to staff in relation to the conditions of the Premises Licence and in crime prevention measures. A record of each individuals training will be maintained and be available for inspection at the premises at all times by a Responsible Authority.
  3. The staff will be given training using the HSE leaflet on 'Preventing Violence to Retail Staff'.
  4. The premises will work closely with Police with regard to prevention of unsociable behaviour during late hours.
  5. Customers will not be permitted to bring alcoholic drinks into the premises.
  6. Written risk assessment to be conducted as to the need for security.
  7. The premises must subscribe to and operate and thereafter maintain any local radio scheme operating in the area.
  8. The doors and windows will be closed at the premises. The doors will have a self-closing device fitted so that they do not stay open.

9. Prominent clear and legible notices displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.

10. Staff will ensure that customers waiting outside do not cause a disturbance to local residents.

11. Delivery drivers to respect the needs of local residents whilst outside the premises and to leave the premises and the area quietly.

12. The placing of litter into bins outside the premises to take place at times that will minimise disturbance to nearby premises.

13. A litter bin will be provided within the premises for customers. This will be emptied on a regular basis. Staff will check the area adjacent to the premises regularly every day to ensure any litter from the premises is promptly removed.

14. Last orders to be accepted which allow the supply of the late night refreshment to the customer prior to 01:00hrs Monday to Saturday and 23:30hrs Sunday and Bank Holidays.

15. The manager and/or owner is to be fully aware of the signs of Child Criminal Exploitation (CCE) and understands that the exploitation of a child is abuse and a crime. Training/awareness raising to be provided for each member of staff to cover The Awareness of Child Criminal Exploitation (CCE) and how to make a report if any concerns are raised for a child/children or a suspected perpetrator. A record of each individuals training will be maintained and be available for inspection upon request at the premises at all times by Responsible Authorities. Training/awareness raising of CCE to be given upon appointment and refreshed at least every 12 months. Information on training courses and available resources are contained on the Surrey CC Guidance for Premises Licence Holders and Operators found on the Surrey CC Website.

16. The premises licence holder will display appropriate signs/posters highlighting the signs of CCE and who to contact to raise concerns.

## **Applicant**

12. The Applicant's agent, Mr David Wilson, explained to the Sub-Committee that Burger Plus operates principally as a hot food takeaway, supplying pizzas, burgers and soft drinks. Mr Wilson submitted that Burger Plus have no intention to sell alcohol and therefore the likelihood of any anti-social behaviour at the premises is low.

13. Mr Wilson highlighted that Church Street is a busy and noisy street as there are various other businesses approximate to Burger Plus which provide late night refreshment, one of which provides late night refreshment until 1am from Sunday to Wednesday and until 3am from Thursday to Saturday. Mr Wilson stated that it is unlikely that the litter and noise complained of by residents was caused at the Burger Plus premises as there are a number of restaurants, pubs, call centres and taxi operating businesses along Church Street which are open late.
14. Mr Wilson explained that there are only three members of staff working at Burger Plus and two employed delivery drivers. After 9pm there is only one delivery driver and after 11pm, there are only two members of staff in the shop, one who travels home by electric scooter and the other who lives nearby, locks up and walks home. Mr Wilson asserted that it is highly unlikely that the staff at Burger Plus are loitering around the premises after working a whole shift together and leaving at different times. Therefore it is very unlikely that their staff are causing any noise disturbance. This also includes the delivery drivers who work for Uber Eats and Just Eat as they only arrive for a short period of time to pick up deliveries.
15. Mr Wilson referred to a complaint received on 21 July 2020 (representation 3) which stated that the premises had been open past 01.00am. Mr Wilson apologised for the misunderstanding on behalf of the Applicant and admitted that this was a genuine misunderstanding regarding the permitted opening times of the business. The architects who submitted the application on behalf of the Applicant were unaware of the licensing requirements. Mr Wilson stated that as soon as Mr Noory realised his mistake, he applied for a premises licence. However, he highlighted that no complaints had been received in the two months between operating in accordance with the hours allowed by the planning permission and the complaint received on 21 July 2020.
16. Mr Wilson explained that the planning authority withdrew their objection to the application once the proposed licensable hours were reduced to comply with the planning permission and no other responsible authority submitted a representation.
17. Mr Wilson asked the Sub-Committee to take into account that there is a residential premises above the London Stone pub, which is directly opposite Burger Plus. He asserted that if nuisance were attributable to Burger Plus, the residents opposite would be very well placed to object and that it was significant that they had not done so, as they are the nearest residents.
18. Mr Wilson stated that according to the Royal Mail postcode finder, it appears there are 14 properties in Aldous House and 14 properties at Riverside,

however only four representations were submitted in respect of the application. Mr Wilson, advised the Sub-Committee to treat three of the representations with caution as they did not indicate where their flats were situated. He stated the Sub-Committee were required to make an evidentially based decision and they had not provided sufficient information for the Sub-Committee to rely on them as being accurate. He queried how they would know the noise heard was from Burger Plus, as it would depend on where their flats were situated, and so it may be an assumption.

19. In relation to the other representation, Mr Wilson explained it was the same person who complained previously and that the Sub-Committee may have the impression there have been a number of complaints, but instead it is one dominant complainant. Mr Wilson also put forward that if the complainant had been asleep, how would they know what noise woke them in the first place. Mr Wilson, explained that one of the other representations had mentioned that "Church Street is already very noisy" and that this is not a surprise given the other businesses in Church Street that operate to serve the night time economy.
20. Mr Wilson referred to evidence the Applicant had submitted from Surrey Police reports demonstrating the levels of crime on Church Street this year and that even considering last years' figures, the levels are extraordinarily low for the nature of the street and its location.
21. In response to a question by the Sub-Committee, Mr Wilson confirmed that Burger Plus use Uber Eats and Just Eat who supply delivery drivers to pick up and deliver orders from the premises. As Burger Plus is a smaller business, it is likely that any delivery drivers waiting on the street are likely to be waiting for delivery confirmation from larger supplies. Mr Wilson explained that despite this, Mr Noory had contacted the area managers of Uber Eats and Just Eat following the representations and both companies had agreed to remind drivers to avoid hanging around.
22. Following a question by the Sub-Committee relating to noise from delivery drivers using mobile phones, Mr Wilson referred to the representation demonstrating images of a white car. Mr Wilson explained that it is was not one of Burger Plus's employed delivery drivers and it is very unlikely that this was a delivery driver at Burger Plus and instead more likely that the car was picking someone up in the area as the car was stationed at a time outside the operating times of Burger Plus.
23. Mr Noory responded to a question from the Sub-Committee regarding a representation which referred to a fight taking place in Church Street. Mr Noory explained that his staff would have told him and that the police would have been contacted had a fight taken place. He asserted that it could have been at the other end of the street by the closed down pub. He stated that

the George pub is open until late with youngsters drinking late. He also mentioned that there is free parking in Church Street, so people are always being picked up. He explained that the premises has CCTV and if they see anything they call the police as they want to keep their staff safe.

## **Representations**

24. Written representations were received from four other persons raising the following objections to the application under the licensing objectives:

### ***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.
- 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.
- Sleeping with windows closed due to noise and constant smell of cooking meat.

25. No other persons attended the Sub-Committee hearing.



## Findings

26. The Sub-Committee has considered the representations made on behalf of the Applicant and the written representations of the other parties and finds as follows:
27. The Applicant has demonstrated to the Sub-Committee that there are proposed procedures and conditions in place to promote the licensing objectives on the prevention of crime and disorder and public nuisance including: the provision of CCTV which will include coverage of all entrance and exit points, litter bins to be provided at the premises for customers and delivery drivers and staff will be asked to respect the area and not cause disturbance to local residents. The Applicant will also report any problems to the Police and comprehensive staff training will be carried out and a risk assessment will be conducted.
28. The Sub-Committee notes that no representation was received from Surrey Police in relation to the prevention of crime and disorder, who are the main source of advice on this licensing objective. The Sub-Committee did not find any real threat that this licensing objective would be undermined by the Applicant.
29. The Sub-Committee is satisfied that the proposed conditions are sufficient and will encourage a well-managed premises, demonstrating best practice and reflecting the legal requirements of operating a licensed premises. The Sub-Committee notes that the proposed conditions relating to CCTV and the use of town centre radio system adhere to paragraph 17.3 of the Council's Statement of Licensing Policy.
30. The Sub-Committee took into consideration that no other responsible authority had made any representations with regard to this application and there were only four representations made from other persons who did not attend the hearing.
31. The Sub-Committee finds the written representations made by the other persons, alleged noise and disturbance caused by the premises. The Sub-Committee notes there are a number of other premises in close proximity to Burger Plus and were persuaded by Mr Wilson's account of how Burger Plus operates, particularly in relation to its staff and delivery drivers.
32. The Sub-Committee has considered whether there is a very real threat of the fears described in the representations actually occurring. Due to the absence of any other persons at the hearing, the Sub-Committee is only able to attach limited weight to the representations, as the other persons' views and evidence could not be tested.

33. Consequently, the representations made failed to convince the Sub-Committee that there was a real threat of the fears described occurring. The Sub-Committee are not convinced that any disturbance had been caused by Burger Plus as there are various other businesses in the area serving the night time economy and providing late night refreshment and alcohol.
34. The Sub-Committee can only determine this application on its own merits and cannot take into account the impact that other licensed premises are having on the licensing objectives. If the operation of other premises in the vicinity are causing problems of crime and disorder or nuisance, then these should be brought to the attention of the relevant authorities, i.e. Surrey Police, Spelthorne Borough Council's Environmental Health team and Licensing team.
35. The Sub-Committee is mindful of paragraph 9.43 of the National Guidance which states that the "determination should be evidence based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve." No actual evidence has been submitted before the Sub-Committee indicating that the licensing objectives would not be upheld. The agreed conditions for the proposed licence are appropriate for the promotion of the licensing objectives and relevant to the premises.
36. The Sub-Committee finds that Mr Wilson presented a very strong case on behalf of the Applicant and that Mr Noory demonstrated himself to be a responsible person, who investigates the complaints of residents.
37. The Sub-Committee therefore considers on the basis of the evidence that it has heard and the findings of fact that it has made, that there is no need to take further action for the promotion of the licensing objectives at these premises and can see no reason why the application should not be granted.

### **Decision**

38. For the reasons stated above, the Sub-Committee confirms that the application for a premises licence be granted, subject to the agreed conditions.

### **Conclusion**

39. 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.

40. You have the right to appeal against this decision to the Magistrates' Court within 21 days of receipt of this decision notice.
41. 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 405 300.

Cllr R.W. Sider BEM - Chairman  
Cllr K. Grant  
Cllr A. Brar

Date of Decision: 23 September 2020  
Date of Issue: 28 September 2020