

LICENSING ACT 2003

NOTICE OF DETERMINATION

Date of Hearing:	21 st August 2024
Application:	Premises Licence
Name of Premises:	Stripes Pizza
Address:	30 South Street, Exeter EX1 1EB
Licensing Sub-Committee:	Cllr M Snow (Chair), Cllr J Hussain Cllr L Haigh
Committee Legal Advisors:	Matthew Hall Max Murphy
Principal Licensing Officer:	Nigel Marston
Democratic Services Officer:	Pierre Doutreligne
The Applicant:	Huseyin Kekilli of Stripes Pizza Limited (not in attendance)
Representations:	In attendance; Mark Bertram, Jenny Codling and Roseanna Southall
Hearing Duration:	10:39 – 12:45

TAKE NOTICE:

That the Licensing Sub-Committee convened on 21st August 2024 to determine the application for a premises licence has resolved to grant the licence in part, subject to conditions in accordance with section 18 of the Licensing Act 2003.

THE SUB-COMMITTEE'S DECISION:

In determining this application, the Licensing Sub-Committee took into account all the relevant evidence and information presented to it both written and oral, and took account of all the matters it is bound to take account of, in particular the following:

- Licensing Act 2003
- Statutory Guidance
- Exeter City Council Statement of Licensing Policy
- Human Rights Act 1998
- Any equality and diversity considerations

Licensable Activities

The Application for the following licensable activities was granted.

Recorded Music (Indoors Only) - Monday to Sunday 11:00 to 23:00

Supply of Alcohol (Alcohol is supplied for consumption on the premises) - Monday to Sunday 11:00 to 23:00

The Application for the following licensable activities was refused.

Late Night Refreshment - Monday to Sunday 23:00 to 03:00

Conditions

The Application is granted in part subject to the conditions submitted by the Applicant and set out in the Application as modified by the Licensing Authority.

In addition, the following conditions were imposed by the Licensing Sub-Committee:

- The hours the premises are open to the public are 0700hrs to 2300hrs.
- The sale and supply of alcohol for consumption on the premises shall be restricted to alcohol served only to a person taking a table meal and be for consumption by such a person as ancillary to their meal.
- Noise levels from the playing of recorded music will be monitored and controlled to minimise any potential impact on local residents.
- A telephone number shall be made available and displayed in a prominent location where it can be conveniently read from the exterior of the premises for local residents to contact in the case of noise-nuisance or anti-social behaviour by persons or activities associated with the premises. The telephone number will be a direct number to the management who are in control during opening hours. A record will be kept by management of all calls received, including the time, date and information of the caller, including action taken following the call. Records will be made available for inspection and copying by an authorised officer of a responsible authority throughout the trading hours of the premises.
- No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 2300hrs and 0800hrs on the following day.
- During the hours of operation of the premises, sufficient measures will be taken to remove and prevent litter and waste arising or accumulating in the area immediately outside the premises. This area shall be swept and/or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.

REASONS FOR DECISION

The Licensing Sub-Committee considered the preliminary issue of compliance with Regulation 26(4)(b) of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 ('the Regulations'). The Licensing Sub-Committee considered the submissions received in writing and made by those present and determined that in making the application the Applicant had substantially complied with the Regulations. The use of an incorrect postcode on the advertisement notice published in the local newspaper, and on the Premises, did not cause substantial injustice or prejudice as the Premises could still be identified from the address details in the notices and all other advisement and publication requirements under the Regulations had been complied with.

The Applicant was not in attendance and had not notified the Licensing Authority whether he or a representative would attend the hearing. As the Applicant was not present, the Licensing Sub-Committee considered Regulation 20 of the Licensing Act 2003 (Hearings) Regulations 2005 and whether it was necessary in the public interest to adjourn the hearing or hold the hearing in the Applicant's absence.

The Principal Licensing Officer confirmed that he had sent an e-mail to the Applicant dated the 13th August 2024, attaching the Notice of Hearing which stated the time and date of the hearing. The Notice of Hearing requested the Applicant to confirm whether or not he would attend the hearing or if anyone would attend in his absence. No response to this e-mail was received. On the 31st July 2024 the Principal Licensing Officer sent an e-mail to the Applicant attaching all of the representations made in response to the Application. This e-mail also confirmed the hearing date of 21st August 2024. The Principal Licensing Officer confirmed that the e-mail address used was the one stated on the Application and had been responded to previously in respect of dealing with other parts of the application process. On the morning of the hearing, the Principal Licensing Officer rang the Applicant at 9am and left a message asking him to confirm whether he would be attending the hearing. A further call was made at 10am. There was no reply. Therefore the office number for the Applicant's Taxi office was contacted. The Principal Licensing Officer spoke to a member of staff at the Taxi office and stated that the Applicant had a hearing today. The member of staff advised the Applicant was not present and suggested calling the mobile number on which a message had already been left.

The parties present who had made representations were invited to comment on the prospect of an adjournment and stated that they wanted the matter to be heard today having taken time off work and rearranged appointments to be able attend to make their representations.

The Licensing Sub-Committee noted that the Application submitted in writing was clear as to the Applicant's intentions concerning the proposed business and conditions set out in the operating schedule. The Representations received had been provided to the Applicant to consider in good time before the hearing. No response had been received from the Applicant to the Licensing Authority or to any of the parties making representations. The Licensing Sub-Committee acknowledged that the notice of hearing was served within 7 and not 10 working days but considered this did not prejudice the Applicant who had been given ample opportunity to respond and confirm whether he was attending the hearing. The Applicant had instigated the process by submitting the Application and the onus was on him to attend to make any further representation in support of the Application or in response to the representations. The Licensing Sub-Committee did not consider it necessary in the public interest to adjourn the hearing and decided to proceed in the Applicants absence. The hearing commenced at 10.39am.

The Licensing Sub-Committee turned to the Application submitted and carefully considered all the written and oral Representations. When considering the Licensing Objective of the Prevention of Crime and Disorder the Licensing Sub-Committee were mindful that the Licensing Authority should look to the Police as the main source of advice and no representations had been made by Devon and Cornwall Police. In respect of the Licensing Objective of the Protection of Children from Harm no representations had been received from the responsible authorities. It was noted that the Application did not cover any licensable activities outside of the Premises and there was a separate statutory regime which covered Pavement Licenses should the Applicant be minded to apply for one.

The Licensing Sub-Committee noted that the Premises was located directly below four residential flats and had previously operated as a café that closed at 5pm. The Licensing Sub-Committee considered that operating the Premises late at night and early in the morning every day of the week would cause unreasonable disturbance to residents particularly in respect of patrons and delivery drivers waiting for food, smoking outside, entering and leaving and the noise and odour caused by the Premises extractor fan. The Licensing Sub-

Committee also had regard to its Statement of Licensing Policy which states at paragraph 9.2 that “*residents have a reasonable expectation that their sleep will not be unduly disturbed between the hours of 23:00 and 07:00*” and considered that there were no conditions that could be applied to promote the Licensing Objective of Prevention of Public Nuisance. The Licensing Sub-Committee therefore refused to grant the application for late night refreshment and restricted the opening hours of the Premises from 0700hrs to 2300hrs.

When considering the supply of alcohol at the Premises the Licensing Sub-Committee noted that the Premises was within the Cumulative Impact Zone but on balance were satisfied that the supply of alcohol until 2300hrs subject to conditions would not have a negative impact on the Licensing Objectives. The conditions imposed required alcohol to be served at tables with meals as stated in Section 5 of the Application and addressed concerns regarding the disposal of waste.

Representations raised in respect of leasehold covenants that the Applicant had to comply with at the Premises were considered irrelevant to the promotion of the Licensing Objectives and therefore not given any weight by the Licensing Sub-Committee in making its determination.

When considering the playing of recorded music the Licensing Sub-Committee had regard to the concerns raised regarding noise and the speakers within the ceiling adjoining the upstairs flat however it considered that provided the volume was monitored the playing of recorded music within the Premises as background music would promote the Licensing Objective of the Prevention of Public Nuisance. An additional condition to provide a point of contact for residents in the event any issues should arise was also added.

The Licensing Sub-Committee were unanimously satisfied that granting the application in part with the imposition of conditions struck a balance between the benefit to the community of a licensed venue and the concerns of the residents.

In concluding, the Licensing Sub-Committee acknowledged that this was a new licence and at any stage, a responsible authority or any other person may ask the Licensing Authority to review the licence or certificate because of a matter arising at the Premises in connection with any of the four licensing objectives; the Prevention of Crime and Disorder, Public Safety, the Prevention of Public Nuisance and the Protection of Children from Harm.

RIGHT OF APPEAL

All parties are reminded of their right to appeal against this decision to the Magistrates’ Court by virtue of Section 181 and Schedule 5 Part 1 of the Licensing Act 2003. Any appeal must be made within the period of 21 days beginning with the date on which you are notified of the decision.

Any Appeal is commenced by a notice addressed to:

The Clerk to the Justices, North and East Devon Magistrates’ Court Office, Southernhay Gardens, Exeter, EX1 1UH Telephone 01392 415300.

Parties are advised to contact the court office to check the form of notice required and the fee payable.

The Chair of Licensing Sub Committee



Councillor Martyn Snow