



NORWICH
City Council

NORWICH CITY COUNCIL

NOTICE OF DETERMINATION

Date of Hearing: 12 July 2021 at 14:15 am.

Application for the grant of a premises licence under the Licensing Act 2003

Address: Lords Restaurant, 82 Upper Giles Street, Norwich NR2 1LT

Applicant: Mediterranean Fine Dining Ltd

Members of the Licensing Sub-Committee: Councillor Stutely (Chair), Councillor Maxwell and Councillor Youssef.

Other persons attending committee: Mr Nick Semper (agent for the Applicant); Mr Klodjan Xhaferrllari (proposed DPS); Ms Michelle Bartram (Norfolk Police); David Cole (objector); Counsellor Martin Schmierer (objector); Maxine Fuller Public Protection (Licensing) advisor; Norwich City Council; Sarah Moss, solicitor, nplaw; Sarah Burgess (press)

DETERMINATION

1. Apologies were received from Councillor Giles, replaced by Councillor Youssef.
2. There were no declarations of interest.
3. Ms Fuller presented the report.
4. The Chair welcomed those present and invited Mr Semper, agent for the Applicant to speak. Mr Semper explained that he was the agent acting for the Applicant, Mediterranean Fine Dining Limited. Klodjan Xhaferrllari was the sole director of the company and the only person having significant control over it. He was also the proposed Designated Premises Supervisor (DPS) and held a personal licence.
5. Mr Semper further explained that the premises had formerly been known as Three Diamonds (Durres Foods Ltd being the premises licence holder and Mr Olgert Xhaferrllari the DPS). Olgert Xhaferrllari no longer had any connection with 82 Upper St Giles Street/Mediterranean Fine Dining Limited, other than being the brother of Klodjan Xhaferrllari and an occasional visitor. Olgert Xhaferrllari was not an employee and now had a different business, as evidenced by the 'licence to occupy' submitted dated 1st February 2021

(Kessingland car wash, Lowestoft). To all effects, Olgert Xhaferrllari had 'left the building'.

6. With regard to the lease for 82 Upper St Giles Street still being in Olgert Xhaferrllari's name, Mr Semper submitted that this was not relevant to the application. Klodjan Xhaferrllari was a person intending to carry on a business involving the use of the premises for licensable activities under S16(1)(a) of the Licensing Act 2003; proprietary interests were neither mentioned in the Licensing Act, nor relevant in this situation. Also, as evidenced in the email dated 8 July 2021 from Darren Rigg, Olgert Xhaferrllari was to pay rent for the premises, but Klodjan Xhaferrllari was to undertake the licensing requirements.
7. Mr Semper submitted that it was wholly reasonable that Olgert Xhaferrllari should advertise for staff at the premises as roles often were shared. With regard to the food business registration, this had formerly been made in the name of Durres Foods Ltd, but had now been made in the Applicant's name on 6th July 2021, as evidenced. This was of no relevance in terms of the licensing objectives.
8. With regard to objections submitted in response to the application, Mr Semper stated that the licensable activities had been substantially revised (as detailed in licensing agent Tony's Clarke's email of 30 June 2021) and conditions offered, including the use of electric vehicles for home deliveries and loading these in the rear courtyard. Public Protection had withdrawn their representation accordingly and several objections had also been withdrawn. Objectors' concerns of a potential rise in crime was purely speculative. Traffic and whether there was a 'need' for premises of this kind were not relevant licensing considerations. Home deliveries were important for the Applicant in that the Applicant wished to take advantage of the business opportunities these presented, which had been proven to be a safe and successful way of operating, especially in covid times. If Members wished to put forward additional proportionate ways of addressing the representations made, the Applicant would certainly consider them.
9. Mr Semper confirmed that the Precis of the Additional Conditions offered on 30th June 2021 (submitted on 10 July 2021) contained errors and that the timings offered in Tony Clarke's email of 30th June 2021 still stood (reproduced at Appendix A attached).
10. In response to a query by the Chair, Maxine Fuller confirmed that four objectors had withdrawn their representations (Jonathan Baker, Hannah Cott, Barry Whelan and Peter Womack). No further consideration was to be given by Members to these representations.
11. The Chair stated that a number of objectors had stated that the premises had still been operating in one way or another, following the Three Diamonds licence revocation in January 2021. Klodjan Xhaferrllari confirmed that the premises had not been open to the public, or selling food. Michelle Bartram stated that a joint police and council visit to the premises had taken place on

25 May 2021 and Olgert Xhaferrllari had confirmed himself to be in charge of the premises. A number of persons were in the premises having meals and it had seemed like a restaurant set-up, although it didn't appear that alcohol was being sold. Klodjan Xhaferrllari confirmed that this had been a gathering of friends and family, not customers.

12. Mr David Cole (objector) stated that he had lived next door to the premises for 25 years, over which time several restaurants had been and gone. He expressed himself to be 'puzzled' as to what had happened with the premises over the last three years in that it had been renovated several times, but never opened to the public, although he regularly saw people coming and going. He likened it to a private members club. Councillor Schmierer would speak on behalf of all the residents in the street. As landlords of the premise's lease, Mr Cole stated that the council had a responsibility towards the premises and that if a licence were to be granted, it should only be a provisional licence of 6 months.
13. Councillor Martin Schmierer (objector) stated that he lived locally to the premises and knew the area very well. Resident perceptions on noise were just as relevant as those of the public protection team. Although it was appreciated that changes had been made with regard to the operating schedule and additional conditions offered, noise was still a considerable concern for residents, especially with regard to the lateness of home deliveries. 2am was considered to be unacceptable in terms of the last home delivery and should be reduced to midnight at the latest. The area was not a late night economy zone. There was the problem of enforcing the use of electric vehicles for home delivery and the additional traffic caused by late opening hours. Consequently he could not support the application. Mr Semper responded that the Applicant had considered the need to be a 'good neighbour' and electric vehicles for home delivery was part of that. However, if 1.30/2am was too late for home deliveries, the Applicant would reconsider. Traffic was not a relevant licensing concern.
14. In response to questioning by Councillor Youseff as to what was meant by Olgert Xhaferrllari having been 'in charge' on the visit of 25th May, Mr Semper explained that Olgert Xhaferrllari had been there on the day and was 'front of house'. However, the police had not had an issue with him being there and he was now out of the restaurant business and was not to play any role as far as the Licensing Act was concerned. The brothers had looked into changing the lease into Klodjan Xhaferrllari's name but this would have cost in excess of £6,000 in legal fees alone as they would have needed to instruct separate solicitors. Therefore the lease remained in Olgert Xhaferrllari's name, but this was of no relevance to the application (Ian Stutely confirming that Members needed to establish the connection between the two brothers with the ongoing management of the premises, which was why this element was being explored).
15. Michelle Bartram confirmed that residents had contacted her in relation to their concerns about the application. They had cited concerns regarding opening hours, consequent disruption and management of the business. The

police had also had concerns as to whether the licence revocation was being circumnavigated because of the lease remaining in Olgert Xhaferrllari's name, the food business registration application being made in the name of Durres Foods Ltd and the posts advertising for staff on Olgert Xhaferrllari's FaceBook page. Consequently the police had considered it to be their duty to raise this with the licensing authorities. They had suggested that Klodjan Xhaferrllari make a TENs application prior to a premises application, to alleviate concerns as to the management of the premises, but none had been made. However, the police did not have any other concerns with regard to the prevention of crime and disorder licensing objective.

16. Mr David Cole stated that there had been a police notice attached to a post outside his house from the police for 2-3 months, seeking the address of the licence holder of the premises. No weight was attached to this by Members as it was unclear what this had related to and Michelle Bartram was unable to comment further on this either.
17. Mr Semper offered further clarification on the FaceBook posts, stating that Olgert Xhaferrllari had considerable leadership and it was reasonable for him to have advertised for staff on the FaceBook site. The reason why Klodjan Xhaferrllari had responded to the post was because he was indicating that what Olgert Xhaferrllari had posted was too wide and was querying what was meant by the post.
18. The legal adviser to the Committee asked for clarification on various items contained within the operating schedule. During discussion it was confirmed that the conditions contained in Appendix A (attached) were part of the proposed operating schedule, with Mr Semper offering on behalf of the Applicant to reduce the time for the last order for home deliveries and make them the same as the closing hours contained in the email of 30th June 2021. Mr Semper also agreed that it was acceptable for the legal adviser to make rewording amendments where necessary, without changing the intent of the conditions. During the course of discussions it was established that a training schedule (condition 9.4 of the operating schedule) was not yet in place but that Mr Semper's own licensing agency could provide training of this kind and it would be in place in time for the premises opening. Klodjan Xhaferrllari would be carrying out training reviews under condition 9.6.
19. The Chair asked for final representations from all parties. Mr Cole stated that there was a lack of trust on the part of residents and shopkeepers in relation to the premises and requested again that if a licence were granted, it should be provisional in nature. Mr Semper reiterated that the licensing objectives had been adequately addressed by the conditions offered by the Applicant and that the police had no further conditions to add. Members retired to consider the evidence and their decision.

20. Proceedings were reconvened and the installation of a CCTV camera to capture images immediately outside the front of the premises (location to be agreed with the police) was discussed between Members and Mr Semper, who confirmed his agreement to offering this as a condition. Members also invited Mr Semper to consider whether the Applicant would consider the granting of a licence for a fixed period of time (suggesting 12 months). Mr Semper retired with Klodjan Xhaferrllari to consider the matter in private, the legal adviser accompanying him at Mr Semper's request. Mr Semper explained to the legal adviser that he had reservations about agreeing to a fixed period of 12 months as effectively the licence would only last for 11 months before another application would need to be made, along with consultation. The legal adviser returned to the Council Chamber while Mr Semper took further instructions from his client. On returning to the Council Chamber, Mr Semper confirmed what had been discussed with the legal adviser and confirmed that the Applicant would be agreeable to offering to accept the grant of a premises licence for a fixed period of 13 months, for the reasons explained above.

21. The Sub-Committee retired again to consider their decision.

DECISION OF THE LICENSING SUB-COMMITTEE

The Sub-Committee approved the application for the grant of the premises licence for 13 months, as offered by the Applicant. The licence was granted with modification and addition of conditions as mentioned above, as offered by the Applicant.

REASONS FOR THE COMMITTEE'S DECISION

In coming to its decision, the Committee had regard to the Statutory Guidance published under S182 of the Licensing Act 2003, as well as the Council's own licensing policy.

The Sub-Committee gave weight to the fact that the local authority department responsible for environmental health functions, including noise, had withdrawn their representation on the basis of the reduced opening hours offered by the Applicant on 30 June 2021. The Sub-Committee also noted that aside from the police concerns with regard to the close family relationship of the proposed DPS to the former DPS of Three Diamonds and consequently the degree of input the former DPS may have with regard to the management of Lords, the police did not have concerns with regard to crime and disorder.

The Sub-Committee noted that although on the evidence of the Applicant, Lords had not been trading and open to the public since revocation of the Three Diamonds premises licence in January 2021, nonetheless on the evidence of the police following their visit to the premises on 25 May, there had been subsequent gatherings of persons, food had been served and Mr Olgert Xhaferrllari had confirmed himself to have been in charge. Neighbouring residents had also

confirmed that subsequent gatherings had taken place since revocation of the licence. Mr Olgert Xhaferllari's involvement in the recruitment of staff via FaceBook was noted and although food business registration applications had been made in the Applicant's name, Members noted that these had only been submitted very recently. However, Members were of the opinion that there was insufficient evidence to conclude that the premises had been operating illegally, or that Mr Olgert Xhaferllari would have a significant role in the management of Lords going forward. As such, Members were of the opinion that there were insufficient grounds to reject the application on this basis.

The Sub-Committee took account of the representations submitted by objectors prior to the hearing and evidence given by Mr Cole and Councillor Martin Schmierer at the hearing itself. The large number of concerns from local residents with regard to the late opening hours, particularly with regard to home delivery and the potential for subsequent noise nuisance, were noted by the Sub-Committee. Weight was given to the fact that the Applicant's premises were located very close to residential properties, and residents therefore had reasonable concerns as to possible noise nuisance and anti-social behaviour. Note was also taken of repeated resident concerns that the Applicant may be attempting to circumnavigate revocation of the Three Diamonds licence, by applying for a premises licence under a new premises name and DPS.

In the circumstances, the Sub-Committee were of the opinion that insufficient grounds had been shown that granting the licence would fail to promote the licensing objectives. In offering revised opening hours (including reducing the home delivery hours) and other conditions (including installing CCTV within and directly outside the premises), sensible controls had been offered by the Applicant in respect of noise and prevention of crime and anti-social behaviour and the licensing objectives of public nuisance and the prevention of crime and disorder had been upheld accordingly. The offer by the Applicant to accept a 13 month licence also offered further protection to residents by allowing the future management of the premises and the adequacy of controls to be monitored. The application for the grant of the premises licence was to be granted accordingly, for a period of 13 months.

RIGHT OF A PARTY TO APPEAL AGAINST THE DECISION OF THE LICENSING SUB-COMMITTEE

The Applicant and any person who has submitted a relevant representation may appeal this decision at the Magistrates Court within 21 days of the date on which they are notified in writing of this decision in accordance with the following appeal provisions under Schedule 5 of the Licensing Act 2003: –

- (a) that the licence ought not to have been granted, or
- (b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of section 18,

they may appeal against the decision.

Dated 04 August 2021

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line and a cursive 'h'.

Signed: (Chair, Licensing Sub-Committee)

APPENDIX A

Application for the grant of a premises licence under the Licensing Act 2003

Lords Restaurant, 82 Upper Giles Street, Norwich NR2 1LT

OPERATING SCHEDULE, SECTIONS I, J AND L

Overview of Supply of Alcohol/Late Night Refreshment/Public Opening Hours

Sunday - Thursday

Late night Refreshment:

Restaurant (for consumption 'ON' the premises):

Last food orders: 22:00

Takeaway (for consumption 'OFF' the premises):

Last food orders: 22:00

Home delivery (for consumption 'OFF' the premises):

Last food orders: 10.30

Last food delivery: 23.00 (amended as offered by Applicant)

Sale of Alcohol:

Restaurant (for consumption 'ON' the premises):

Last alcohol order: 22.30

Takeaway (for consumption 'OFF' the premises):

Last alcohol order: 22.00

Home delivery (for consumption 'OFF' the premises):

Last alcohol order: 10.30

Last alcohol delivery: 23:00 (amended as offered by Applicant)

Friday and Saturday

Late Night Refreshment:

Restaurant (for consumption 'ON' the premises):

Last food orders: 23:00

Takeaway (for consumption 'OFF' the premises):

Last food orders: 22:00

Home delivery (for consumption 'OFF' the premises):

Last food orders: 23.30

Last food delivery: 00.00 (amended as offered by Applicant)

Sale of Alcohol:

Restaurant (for consumption 'ON' the premises):

Last alcohol order: 23.30

Takeaway (for consumption 'OFF' the premises):

Last alcohol order: 22.00

Home delivery (for consumption 'OFF' the premises):

Last alcohol order: 23.30

Last alcohol delivery: 00:00 (amended as offered by the Applicant)

New Years Eve

Late Night Refreshment:

Restaurant (for consumption 'ON' the premises):

Last food orders: 00:00

Takeaway (for consumption 'OFF' the premises):

Last food orders: 22:00

Home delivery (for consumption 'OFF' the premises):

Last food orders: 12.30

Last food delivery: 01:00 (amended as offered by Applicant)

Sale of Alcohol:

Restaurant (for consumption 'ON' the premises):

Last alcohol order: 00.30

Takeaway (for consumption 'OFF' the premises):

Last alcohol order: 22.00

Home delivery (for consumption 'OFF' the premises):

Last alcohol order: 12.30

Last alcohol delivery: 01:00 (amended as offered by Applicant)

Opening Hours

Sunday to Thursday: 09.00 - 23.00

Friday and Saturday: 09.00 - 00.00

New Year's Eve: 09.00 - 01.00

OPERATING SCHEDULE, SECTION M (amended as offered by the Applicant)

1.CCTV

1.1 (Unchanged)

1.2 CCTV recordings will be retained for a minimum period of 28 days and shall be provided to the police or officers of the licensing authority upon reasonable request

1.3 The CCTV system shall be capable of obtaining clear facial recognition images and a clear head and shoulders image. CCTV cameras shall be located at each exit and entrance point of the premises to capture the image of every person entering or leaving the premises and also at appropriate locations within the public areas of the premises. A CCTV camera shall be installed at the front of the premises to capture images immediately outside the front of the premises, the exact location of the camera to be agreed with the police.

1.4 The CCTV system shall be maintained in good working order and a CCTV log completed every week to record maintenance checks made on the system. All recordings shall be date and time stamped.

1.5 Only nominated staff shall be trained in the operation of the CCTV system to ensure rapid data retrieval.

1.6 CCTV shall be continually recording at all times that the premises are being used for a licensable activity.

1.7 (Unchanged)

2. ALCOHOL

2.1 No alcohol will be sold unless a food order amounting to no less than £5 is placed at the same time, whether the alcohol is sold for consumption on or off the premises or in relation to a home delivery.

2.2 (Unchanged)

2.3 No person under the age of 18 will be served alcohol for consumption on or off the premises.

3. INCIDENT LOG

3.1 An incident log must be kept at the premises. Log records will be retained for a period of 12 months from the date that an incident described at paragraphs (a) and (b) below occurs. The incident log will be made immediately available on request to the police or an 'authorised person' (as defined by section 13 of the Licensing Act 2003) and shall record the following:

- (a) All crimes reported as having occurred at the premises (where relevant to the licensing objectives)
- (b) Any other incidents of crime and disorder witnessed during home deliveries.

4. REFUSALS

4.1 Refusals Book

The refusals book will be retained by the premises and will be used to record all refusals of the sale of alcohol. The details to be recorded shall be as follows:

- i. Time, day and date of refusal
- ii. Item refused
- iii. Name and address of customer (if given)
- iv. Description of customer
- v. Details of i.d. offered (if shown)

4.2 (Unchanged)

5 When the DPS is not on duty, their contact telephone number will be available at all times

6 The home deliveries driver will always carry with him/her the following compliance log books:

- a) Incident log
- b) ID signature, delivery and customer refusal log

7 (Unchanged)

8. NOISE/NUISANCE CONTROL

8.1 (Unchanged)

8.2 (Unchanged)

8.3 The manager and staff will use their best endeavours to disperse any of their customers who appear to be loitering outside the immediate area of the restaurant. The police will be called immediately to the premises in the event that any circumstances occur outside the immediate area of the restaurant, which the manager and staff believe to be beyond their control for reasons of personal safety.

8.4 Notices will be displayed in a prominent position to remind customers to leave the area quickly and quietly, refrain from slamming car doors and the revving of engines and to respect local residents.

8.5 The tables situated in the rear courtyard of the premises will be closed at 21:00 hours for the consumption of food and alcohol.

8. Only an electric car or bicycle (electric or otherwise) will be used for home deliveries of food and alcohol.

8.6 Loading of food and alcohol for home deliveries will only take place in the courtyard at the rear of the premises.

9. TRAINING

9.1 (Unchanged)

9.2 (Unchanged)

9.3 (Unchanged)

9.4 A documented training programme shall be introduced for all staff in a position to sell, deliver and serve alcohol. This training will include information on preventing the sale of alcohol to persons who appear to be drunk or underage or purchasing on behalf of another who appears to be drunk or underage at the point of sale.

9.5 (Unchanged)

9.6 (Unchanged)

9.7 (Unchanged)

9.8 All customers when ordering food with alcohol for home delivery will be informed that: (remainder of condition 9.8 remains unchanged)