

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Tuesday, 5th August, 2014, 10.00 am

Councillors: Manda Rigby (Chair), Roger Symonds and Anthony Clarke

Officers in attendance: Alan Bartlett (Principal Public Protection Officer), John Dowding (Senior Public Protection Officer), Andrew Tapper (Public Protection Officer), Kirsty Morgan (Public Protection Officer) and Shaine Lewis (Principal Solicitor)

49 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

50 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

51 DECLARATIONS OF INTEREST

There were none.

52 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

53 LICENSING PROCEDURE - HACKNEY CARRIAGE (TAXI) AND PRIVATE HIRE DRIVER APPLICATION

Members noted the procedure to be followed for the next two items of business.

54 EXCLUSION OF THE PUBLIC

RESOLVED that, having been satisfied that the public interest would be better served by not disclosing relevant information, in accordance with the provisions of Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item(s) of business because of the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Part 1 of Schedule 12A of the Act, as amended.

55 CONSIDERATION OF MEDICAL CONDITION - BTG

The Sub-Committee considered the report, which sought consideration of Mr BTG's medical condition.

Mr BTG was present. He confirmed that he understood the procedure for the hearing.

The Senior Public Protection Officer presented the report and then circulated a hospital report on Mr BT G and a statement of support from his GP. Members took time to study these.

Mr BTG put his case and was questioned. He also made a closing statement.

Following an adjournment it was

RESOLVED that Mr BT G's combined Hackney Carriage/Private Hire Driver's licence be revoked.

The Chair reminded Mr BTG that his licence had been due for renewal in February 2015, and noted that he was scheduled to have a further medical examination in December this year. She advised him that if the medical examination showed that his eyesight had improved sufficiently, he could make a licence application then and did not have to wait until February 2015.

Decision and reasons

Members have had to determine whether to take any action against a licensee having disclosed a medical condition during the duration of his licence. In doing so they have taken account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, Council's Policy, case law and the DVLA current medical guidelines for professional drivers.

Members listened carefully to the representations from the licensee who said he was fine to drive a private vehicle and his insurance is happy to insure him at no extra cost for driving his taxi. He stated the TIA was a minor incident, his physical fitness was fine and the vision in his right eye was improving. He considered the DVLA guidance could be disregarded because a lot of taxi driver's time is spent waiting to pick up fares rather than driving like bus or lorry drivers.

Members noted a letter from his GP raised issues of personal circumstances. Members were, however, careful to disregard personal circumstance as these must only be taken into account in exceptional circumstances but in any event must not override the protection of the public. In reaching a determination therefore Members had regard to relevant representations and disregarded irrelevant representations. Accordingly, Members noted the licensee informed the office on 30 May 2014 that he had suffered a TIA or "mini stroke." The effect of this was a loss of vision in his right eye with a diagnosis of right central retinal occlusion and bilateral open angle glaucoma. Members therefore had regard to the DVLA's guidance which stated a "licence should be revoked for 1 year following a stroke (TIA) and that an application for a licence should be reconsidered at the expiry of this period provided there was no residual impairment affecting safe driving. Members also had regard to an ophthalmic consultant's report which stated the licensee did not meet the criteria required by the DVLA.

Members found the matter fell within the DVLA's guidance and considered the licensee presented a serious risk to the fare paying public and other road users should he continue to be licensed due to his eyesight issues. Accordingly, and whilst there is discretion whether to follow the DVLA guidance, Members had heard nothing

to persuade them not to follow the guidance and therefore revoke the licence with immediate effect.

56 APPLICATION FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE - W H

The Sub-Committee considered the report, which sought determination of Mr WH's application for the grant of a combined Hackney Carriage/Private Hire Driver's licence.

Mr WH was present. He confirmed that he understood the procedure for the hearing.

The Senior Public Protection Officer presented the report and stated that as part of the application process a Disclosure and Barring Service check had been undertaken, which had revealed previous convictions and a caution. He circulated the Disclosure and Barring Service check and references for Mr WH and his personal statement. The applicant and Senior Public Protection Officer withdrew from the meeting while Members took time to consider these documents.

Mr WH put his case and was questioned. He also made a closing statement.

Following an adjournment it was

RESOLVED that Mr WH be granted a combined Hackney Carriage/Private Hire Driver's licence.

Decision and reasons

Members have had to determine an application for a combined licence to drive hackney carriages and private hire vehicles. In doing so they took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council's Policy.

In making a determination Members took account of the applicant's representations, reference, statement and balanced these against the information provided by the Disclosure and Barring Service.

Members noted the applicant had accepted he had made mistakes and noted that the offences had been committed against the background of a personal tragedy. Having found the applicant had put those incidents behind him, moved on in his life and had the responsibility of a young family Members considered him a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's licence.

57 RETURN TO OPEN SESSION

The Sub-Committee returned to open session.

58 LICENSING PROCEDURE - APPLICATIONS FOR MISCELLANEOUS LICENSES, PERMITS, CONSENTS

The Sub-Committee noted the procedure to be followed for the next item of business.

59 APPLICATION FOR A STREET TRADING CONSENT - PROPOSED EVENING HOT FOOD VENDOR, FIRST AVENUE, WESTFIELD TRADING ESTATE, RADSTOCK (MAHMUT YURT).

Applicant: Mahmut Yurt

Other Persons: Cllr Eddie Newman (Westfield Parish Council)

Responsible Authority: Avon and Somerset Police, represented by Sergeant Geoff Cannon.

The parties confirmed that they understood the licensing procedure.

The Public Protection Officer presented the report.

The Applicant stated his case. He said that he ran a similar business elsewhere in partnership with his brother. A Member noted that the pitch on which he intended to operate was on an industrial estate where most of the units closed between 5 and 6pm and that there were no residences nearby. Where would his customers come from? Mr Yurt replied people would come to his van once it was known that he was trading there. He had previously run a successful business in similar circumstances.

Cllr Newman stated his case. He said that he knew the area very well. He believed that young people in fast cars would be drawn to the site as soon as it was known that a burger van was trading there. He foresaw problems of disorder, and in his view the police were already dreadfully overstretched.

Sergeant Cannon stated the case for the Police. He submitted that as there would be no people working or residing in the immediate vicinity during most of the time the Applicant would be trading, the clientele would be people from outside the area attracted by the presence of a van serving food. He suspected many of them would be young people in cars, who would sometimes drive recklessly. There was no CCTV cover in the vicinity. There were problems of anti-social behaviour and disorder nearby and he believed these would migrate to the vicinity of the van. He did not see the need for another hot food outlet, as there was already a chip shop and fast venues not far away.

The parties made their closing statements.

Cllr Newman said the van would be an attraction for young people. He did not believe that there were enough police to cover both ends of the town at the same time.

Sergeant Cannon said that the Police had worked very hard for a long time to reduce crime and disorder on the industrial estate. He believed that it was likely to increase again if the van started trading there.

The Applicant thanked the Sub-Committee for allowing him to state his case.

After an adjournment it was **RESOLVED** to refuse the application.

Decision and reasons

Members have had to determine an application for a Street Trading Consent at First Avenue Radstock. The application proposes an increase in the number of hours for the operation of the pitch between 4pm and 11pm daily. In determining the application members have taken into account the Local Government (Miscellaneous Provisions) Act 1982, the Council's Policy on Street Trading and the Human Rights Act 1998.

The applicant stated he would like to work in this area as he works elsewhere in the area with his brother. He was aware that the site would be closed but he had found with his previous business that over a period of time people start to come but that he would need to be patient.

Members heard from the objectors who feared the application if granted would cause a security risk to business and lead to anti-social behaviour and vehicle crime on the estate. These problems would then spread to other areas of the town as more and more customers would be attracted to the area later at night.

In reaching a determination Members were careful to take account of relevant matters, disregard irrelevant matters and balance the competing interests of the application and objectors. In all the circumstances, and whilst having had regard to the Council's policy on Street Trading, Members departed from their policy and refused the application. Members considered that if the application was granted and the pitch operated in the evenings it was likely to cause nuisance and attract vehicle crime and anti-social behaviour back to an area that had been vulnerable in the past but that the police and locals had worked to reduce so successfully.

60 LICENSING PROCEDURE - PROCEDURE FOR HEARING AN APPLICATION FOR A NEW PREMISES LICENCE OR FOR A VARIATION OF A PREMISES LICENCE

Members noted the procedure to be followed for the next item of business.

61 APPLICATION FOR A PREMISES LICENCE FOR SUBWAY, 31 SOUTHGATE STREET, BATH BA1 1TP

Applicant: Stores Extra LLP, represented by Michael Parrott (Greg Latchams LLP) and Stuart House (Subway Franchisee and Development Administrator)

Other Parties: Daniel Byrd and Amber Dawkins

The Chair explained the procedure to be followed for this item.

The Public Protection Officer presented the report and invited the Sub-Committee to determine the application.

The Chair advised the Applicant's representatives that the Sub-Committee would expect them to address the issue of cumulative impact.

Mr Parrott stated the case for the Applicant. He said that the application was for late-night refreshment only between the hours of 23.00 and 03.00 the following morning seven days a week. The premises would be able legally to provide cold food and

drink during those hours without a licence; this was done at some Subway outlets, for example in Bristol. Although the application was to provide late-night refreshment seven days a week, in practice it would only be provided in a more limited way. Since the premises were located near the bus station, it was anticipated that much of the late-night trade would come from people heading towards the bus station to catch late-night buses. The provision of late-night refreshment would therefore probably be limited to weekends in University term time. He drew attention to the absence of representations from the Responsible Authorities and the fact that the nearby McDonald's had a 24-hour licence. He said that Subway was an international brand with 760 stores in the UK. Subway had plenty of experience of operating premises in sensitive locations, such as Queen's Road in the Bristol cumulative impact area. At the Southgate shop rubbish was stored at the back and was collected at least five times a week. He apologised that there had been noise from the building work recently completed at the premises. He said that the intention was to close the door leading to the upper floors at 21.00 hours and that the first and second floors of the premises were not part of this application. Their closure in the evening should reduce the transmission of noise. Experience in Bristol suggested that there would be about 20-30 sales per hour if hot food was served late, which would be reduced to 10-15 if only cold food was served. This, he submitted, was a very small addition to cumulative impact. Since McDonald's had a 24-hour licence, there was already a certain amount of late-night activity in the vicinity. He said that Subway always endeavoured to be a good neighbour.

Mr House said that he hope the shop would be a good neighbour. The first and second floors would not be open after 21.00 and rubbish would be collected between 04.00 and 06.00. Waste consisted mainly of cardboard and packaging; there was very little food waste. There was no staff or customer parking at the rear of the premises.

A Member referred to problems with waste at McDonald's. Mr House said that his premises were much smaller than McDonald's and that his waste was collected five times a week. He would be happy to work with local residents to minimise nuisance. In reply to further questions from Members he stated:

- bread was baked in the morning, with a second bake at 14.00; only a microwave would be used during the hours of late-night refreshment, which should minimise nuisance from smell
- the Subway store in Westgate Street sold hot food late at night
- he did not think there was a risk of people congregating outside the store late at night; he thought that most people would stop off to buy food and then move on to the bus station

Mr Byrd put questions to the representatives of the Applicant:

Q: why stay open late at night if there would only be a few customers?

A: he estimated he could make £300-400 during late-night trading; rent, rates and other costs had to be paid anyway

Q: people cannot take hot food on buses or in taxis

A: there is seating in the premises

Mr Byrd stated his case. He said that he and his partner lived behind the premises. It was a quiet residential neighbourhood. There was a Chinese restaurant nearby, other flats and a large student hostel. He said that if the premises traded between 07.00 and 03.00 every day, if preparation and clearing up were taken to account, it would mean that there would be activity at the premises 24 hours a day. There would be doors slamming and rubbish being moved and noise from customers. The building work had been extremely noisy. There had been building work at night. In any case he found it impossible to go to bed before 23.00 because of ambient noise in the vicinity. It was reasonable to expect that there would be quiet by midnight. He had found Subway waste bins outside his home. An independent business might care about its impact on the neighbourhood, but Subway was a large corporation with a high turnover of staff. For every member of staff who considered residents, there were many who did not. Many drunken people patronised McDonald's, which had security staff on the door at night. He was concerned about the safety of people crossing the road near the premises, because cars often came around the corner at excessive speed and drivers not infrequently ignored the traffic lights. He was concerned about the impact of late-night activity on the value of his house.

Ms Dawkins said that she felt that residents had not been consulted about this application. The building work had been very noisy. Subway vehicles parked in front of her garage. The vehicles either had the Subway logo on them or had a piece of paper under the windscreen wipers advising people to contact the store if there were problems with where they were parked. The builders had parked in spaces for which residents paid. In her flat two of the three bedrooms faced out onto the road and did not have double glazing, so people talking in the street were clearly audible. The Chair asked the Other Persons what specific problems they feared arising from the sale of hot food in the early hours. Mr Byrd said that he thought there would be additional problems, because hot food would be what would attract extra custom. Young people, in varying states of sobriety, would be particularly attracted, and they would be at risk from speeding drivers. He also feared there would be more noise. Ms Dawkins said that hot food would attract people who had been drinking and would be more likely to be noisy. Mr Byrd said that noise from customers was not the only problem; there was a great deal of operational noise from the extractor fan, doors being open and closed, cars and bins being moved. He said there was a lot of noise emanating from the back yard. He was unable to go to bed before the noise had ceased.

A Member asked about contact with the management of the premises. Ms Dawkins said that she had been invited to a meeting with them, but had been unable to attend because of work commitments. She had not understood the purpose of the meeting. Mr Byrd said that he was not interested in attending the meeting. He had previously spoken to Subway's regional manager and had made a number of complaints to the premises, without effect. He had not wished to attend the meeting and have to pretend that he was happy with the operation of the premises. Ms Dawkins said that there never seemed to be anyone to speak to at the premises when there were problems. Mr Byrd agreed and said that no one at the premises seemed interested when complaints were made.

Mr Parrott asked whether the provision to residents of a number on which to contact the premises when there were problems would be useful. Mr Byrd thought it would not; there would be no point in speaking to a junior member of staff.

The Principal Solicitor advised that a number of issues raised by the Other Persons in their submissions, such as traffic, did not relate to the licensing objectives, and should be disregarded. Anti-social behaviour, which had not been raised previously by those making oral representations, should also be disregarded. He advised the Sub-Committee to focus on the issue of public nuisance.

The parties were invited to sum up.

Mr Byrd said that because of the disturbance in the vicinity he felt like leaving Bath altogether. Ms Dawkins said that she feared an increase in noise if hot food was served.

Mr House said that staff were recruited locally. He explained that the reason why the premises were not opening late at night at the moment, was that he had not wanted the premises to acquire the reputation of not serving hot food after 23.00. However, if the licence were refused, he would begin opening late to sell cold food.

Mr Parrott underlined that there had been no representations from the Responsible Authorities. He submitted that the addition to cumulative impact of granting the licence would very small. He said that if the Sub-Committee imposed a condition requiring door staff, the premises would of course comply with it.

Following an adjournment it was **RESOLVED** to refuse the application.

Decision and reasons

Members have today determined an application for a new premises licence at 31 Southgate Street, Bath. In doing so they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's Policy and the Human Rights Act 1998.

Members are aware that the proper approach under the Licensing Act is to be reluctant to regulate in the absence of information and must only do what is appropriate and proportionate in the promotion of the licensing objectives based on the information put before them. In this case, however, Members noted the premises are situated in the Cumulative Impact Area and as the Council has a Cumulative Impact Policy a rebuttable presumption is raised that applications for new premises licences should be refused unless the applicant demonstrates that the application if granted will not undermine the licensing objectives and add to the Cumulative Impact experienced.

Members were careful to take account of all relevant representations and were careful to balance the competing interests of the applicant and objectors. Members were however careful to disregard irrelevant matters which included property values, noise from building works, parking issues and people crossing the highway near the bus station. Moreover, the additional objections raised this morning on grounds of crime and disorder and public safety were disregarded although written representations received raising these grounds were taken into account.

The applicant stated the provision of late night refreshment from 23:00-03:00 daily was to give flexibility although it was pointed out that the store could still provide cold food late into the night if it chose to do so. The applicant said it was likely that the late hours would only be used on Friday and Saturday in term-time and would focus on those heading towards and at the bus station. With regard to rubbish the applicant said rubbish was very limited with their operation and that plans were in place to keep bins indoors at the rear of the store rather than outside and that a pest control firm had been employed to deal with any pest issues. So far as noise was concerned when the store opened late it was suggested that closing the door to the first floor at 9pm would reduce noise by preventing access to the first and second floor by staff and customers. Regarding cumulative impact it was stated that as an international brand Subway are experienced in operating at sensitive locations. It was said that in any event there will be a degree of customer flow given the store's location and proximity to the bus station and as Subway could trade in cold food until 3am disturbance would be minimal as the addition of hot food would only give rise to an additional 20-30 people per hour. It was stated that Subway wanted to be good neighbours and is willing to work to ensure that they do not adversely impact on its neighbours in terms of noise and waste and if it was deemed appropriate providing security at the premises would not be a problem.

The Interested parties appearing objected under the prevention of public nuisance objective. They stated they live in a quiet residential area and feared the premises would cause late night disturbance. It was stated the licence if granted would cause nuisance from the extraction equipment and from noisy customers attracted to the premises on their way home from a night out. They stated they would also be affected by the additional litter and rubbish that would increase in the area. It was however stated that whilst they are presently disturbed by the general operational noise of the premises this no more than an annoyance.

Members had regard to the Cumulative Impact policy and considered the premises were likely to have a significant detrimental effect on the licensing objectives of public nuisance and crime and disorder. This was because the application if granted would attract 20 - 30 people per hour to the premises up until 3am. Members considered that these would predominantly be night revellers stopped on their way home who may be drunk and highly likely to cause public nuisance in and around the premises which are situated in an highly residential area. Whilst Members considered the conditions offered by the applicant during the meeting they did not believe these or any others would be effective in the promotion of the public nuisance and crime and disorder licensing objectives. It was therefore resolved to refuse the application.

The meeting ended at 1.46 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services