

## **BATH AND NORTH EAST SOMERSET**

### **LICENSING (GAMBLING AND LICENSING) SUB-COMMITTEE**

Tuesday, 28th February, 2012

**Present:-** Councillors:- Douglas Nicol (Chair), Gabriel Batt and Gerry Curran

**Also in attendance:** Terrill Wolyn (Senior Licensing Officer) and Francesca Smith (Senior Legal Adviser)

#### **1 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer informed those present of the procedure.

#### **2 ELECTION OF VICE-CHAIR (IF DESIRED)**

**RESOLVED** that a Vice-Chair was not required on this occasion.

#### **3 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

#### **4 DECLARATIONS OF INTEREST**

There were none.

#### **5 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR**

There was none.

#### **6 MINUTES: 19 DECEMBER 2011 AND 5 JANUARY 2012**

These were approved as a correct record and signed by the Chair.

#### **7 LICENSING PROCEDURE**

The Chair drew attention to the licensing procedure, copies of which had been made available to those attending the meeting.

#### **8 APPLICATION TO VARY A PREMISES LICENCE FOR MR D'S, 8 ST GEORGE'S PLACE, UPPER BRISTOL ROAD, BATH BA1 3AA**

**Applicant:** Mr and Mrs Amos, represented by Keith Chebsey (Bath Law), Mr David Amos, Edward Drewe, Kevin Sargent (Manager)

**Interested Parties:** Cllr Andrew Furse (not present), Mr Walton

The parties present confirmed that they had received and understood the licensing procedure.

The Senior Legal Adviser addressed a number of procedural issues. The first was that a number of representations had been received by the Council after the relevant closing date. These, she said, could not be taken into account by the Sub-Committee. The second was that whilst it was not a problem in itself that Cllr Furse, who was an Interested Party, and Cllr Nicol, the Chair, represented the same Ward, pre-application discussions had taken place between the two Councillors. Cllr Nicol had also been contacted directly by residents about the application. She spoke on behalf of Cllr Nicol and stated that he was aware of his duty to disregard all pre-application discussions both with Cllr Furse and residents, that he would keep an open mind, and would take into account only the relevant representations made within the legal time limits and which had been circulated with the Agenda. Mr Chebsey said that the applicant appreciated that it could be difficult for elected Members in such a position, accepted these assurances, and therefore had no objection to Cllr Nicol chairing the hearing. Cllrs Curran and Batt stated that they too had been contacted by residents with late representations and stated that they would also disregard them. Cllr Batt said that he had replied to a number of emails from residents informing them that their representations were out of time.

The Licensing Officer summarised the application. The application was seeking to:

extend the current terminal hour for late night refreshment and the closing time from 01:00 to 02:00 Mondays to Wednesdays, from 01:00 to 03:00 on Thursday, from 03:00 to 04:00 on Friday and Saturday and from 23:30 to 01:00 on Sunday;

amend the opening hour from 10:00 to 09:00 daily;

remove the Annex 3 condition that:

*“Staff are to ensure that at the close of business each day, the publicly accessible areas along both sides of the A4 road between the HSS Hire Shop, 15 St George’s Place to the West of Mr D’s, and the Hotel Monmouth to the East shall be cleared of any litter associated with Mr D’s”*

and replace it by:

*“At end of night, a litter patrol is carried out in the vicinity of the premises. All associated litter is collected. This is recorded and signed. Records to be kept for three months.”*

amend the conditions relating to CCTV, packaging and the serving of soft drinks as detailed in Annex 2, to read:

*CCTV to be in operation at the premises. Recordings shall be retained for 30 days.*

*All packaging shall be of either card, paper or polystyrene.*

*All soft drinks shall be served in either plastic or paper cups, aluminium cans or plastic bottles. No alcoholic drinks to be sold at the premises.*

Two representations had been received from Interested Parties expressing concern about litter and noise nuisance.

Mr Chebsey presented the case for the applicant. He said that he believed that the applicant had submitted a clear and detailed application. He noted that Cllr Furse had stated in his representation that he was acting as a ward councillor concerned about the impact of the variation on residents in his ward. Mr Chebsey stated that there was nothing in this representation to suggest that Cllr Furse had been or would be personally affected by the operation of the premises. He noted there was a focus on the Prevention of Public Nuisance licensing objective in the representations made, and that neither Party had objected to the part of the application that proposed the removal or amendment of several existing conditions. Mr Chebsey stated that their major concern seemed to be the extended hours. He drew attention to the email from Mr Amos, in Annex E of the Agenda, giving information obtained by a Freedom of Information request to Environmental Health, namely that there had been no complaints to Environmental Health or Licensing about the premises during the last five years.

Mr Amos said that his reason for making the application was that whereas previously nightclubs and other drinking establishments used to close at 02:00, they had now extended their hours to 03.00 or later, and he was therefore losing potential business. Other takeaways in the area were staying open to take advantage of this additional trade, despite the fact that their planning conditions required an earlier closing hour. His own planning permission did not specify a terminal hour. He was not comfortable about staying open longer, but for business reasons he felt that he had to.

In response to questions from Members, Mr Amos stated

- other takeaways had applied for the extension of the opening hours allowed under their planning permissions, but their applications had been refused
- he had always tried to keep the area around the shop clean; however, the burden of having to clear the area specified in the current licence condition was onerous, because litter was carried by the wind into that area and was sometimes trapped under parked vehicles; he did not think that such a strict condition was necessary; he did want the vicinity to look clean – he had been there for over 30 years.
- he did not use polystyrene containers
- there was a notice in the premises advising customers not to cause disturbance after leaving
- he was wary of confrontations with people making noise near the premises; he feared that if he or his staff asked people to turn their car radios down, they might retaliate by turning them up
- there was a radio at the back of the shop, whose volume was controlled from upstairs

Mr Chebsey noted that though "polystyrene" was mentioned in the amended Annex 2 condition, the existing condition of the licence required the premise to use only card or paper containers. The Licensing Officer agreed that reference to polystyrene containers should be removed from the amended condition.

Mr Amos affirmed that he had no intention of ever selling alcohol.

Mr Walton stated his case. He said that Mr Amos was never at the premises to hear the volume at which the radio was played. The radio was often playing with both doors of the premises open and it could be heard all along the lane. He took exception to a sentence in a comment posted on the "This is Bath" website by Mr D's which said "We have no intention of opening any earlier than 11.30am, so you can sleep tight!". Mr Walton thought this was disrespectful to local business people, like his wife, who ran a guest house, who had to get up early to run their businesses. He stated that he had never seen Mr Amos, or anyone else from the premises, cleaning up litter from the street. Mr Walton wished to submit a petition, but was informed by the Chair, after advice from the Senior Legal Adviser, that it was out of time and could not be received by the Sub-Committee.

Mr Walton asked where the notice to customers, to which Mr Amos had referred, was located. Mr Amos replied that this was within the premises.

Mr Chebsey said that, though Mr Walton had said that he had never seen anyone from the shop clearing litter, there was a three-month log recording when litter cleaning had taken place. He asked if Mr Walton had a specific date in mind, which could be checked against the log. Mr Walton suggested that it was easy to promise to carry out litter cleaning and then to discontinue it after a short time.

Mr Chebsey asked Mr Walton whether he was sure that litter he complained of was emanating from the premises itself. Mr Walton said he was, because some litter had the Mr D's brand mark on it. He said that he also suffered nuisance from smell coming from the premises, which penetrated into his home.

In response to questions from Members Mr Walton stated:

- he had lived in the vicinity for 30 years; when he began living there the premises occupied by Mr D's had been a fish and chip shop; no one from the premises cleared up litter; there had been lots of litter nearby when he had looked out on Sunday morning
- when the radio in the shop was on and the doors open the noise could be heard all along the street, often beyond midnight when he went to bed
- the smell he had referred to as emanating from the premises was a burning smell, which was obnoxious and permeated his whole house

The parties were invited to sum up.

Mr Walton said that the application for extra hours should be rejected. The nuisance from the premises impacted adversely on his wife's business. There had been incidents at the premises to which the Police had been called. There was rubbish

outside the premises, which was never cleared up. The comment on the “This is Bath” website had been disrespectful. Mr Walton stated that Mr Amos was never at the premises, and that staff sometimes behaved badly; he had seen them going out into the street and playing football and shouting. Local residents had had enough of noise and litter. There were new flats in the area, which was therefore becoming more residential.

Mr Chebsey submitted that the application had been well thought out and that there had been no objection to the variation of the conditions. It was vital that conditions should be practicable and enforceable. He submitted that the content of the representations was general and non-specific and that nothing in them could be connected directly with the premises. Although Mr Walton had said that the area was becoming more residential, there had been no objection from the local agents selling the new homes.

The Sub-Committee adjourned and then reconvened to seek clarification from the applicant about the litter condition. Mr Chebsey agreed with a suggestion by a Member that, to avoid ambiguity, the condition be amended to state that a record of litter cleaning would be “kept and retained” for a period of three months. Asked by the Chair of the meaning of “vicinity” in the condition, Mr Amos said that he thought it would be reasonable to limit it to the frontage of the houses on either side of the premises, but not to include the opposite side of the road. Reminded by the Senior Legal Adviser that a condition needed to be specific to be enforceable, Mr Amos offered to specify a distance of 25 metres on the same side of the road either side of the premises.

The Sub-Committee adjourned again, and after reconvening **RESOLVED** to grant the licence as applied for, together with the conditions as amended and agreed to by the applicant, namely:

1. At the end of the night a litter patrol will be carried out 25 metres on the same side of the road either side of the premises and all associated litter collected. A signed record of these patrols will be kept and retained for three months.
2. All packages shall be of either card or paper.

They also imposed the conditions consistent with the Operating Schedule in addition to those already on the Premises Licence

Authority was delegated to the Licensing Officer to issue the licence accordingly.

## **REASONS**

Members have today determined an application for the variation of a Premises Licence for Mr D’s, 8 St George’s Place, Upper Bristol Road, Bath.

In doing so they have reminded themselves of the Licensing Act 2003, Statutory Guidance, the Council’s Statement of Licensing 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 evidence and must only do what is necessary and proportionate to promote the licensing objectives based on the evidence before them.

Members took account all of the relevant oral and written representations from the applicant and Interested Parties and were careful to balance their competing interests.

Several Interested Parties had sent representations direct to the Members and Licensing Officers outside the time limits within which such representations should be received.

Members noted that paragraph 22 (1) (b) of The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 stipulates that a relevant representation must be made by an Interested Party at any time during a period of 28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant.

Furthermore Members had regard to the case of *Albert Court Residents' Association and others v Westminster City Council* [2011] EWCA Civ 430 where it was ruled that a licensing authority does not have discretion to accept late representations in respect of applications under the Licensing Act 2003.

Members therefore disregarded these representations.

Members noted that the relevant representations made by the Interested Parties related to existing nuisance in the form of noise emanating from customers outside the premises, music from the premises, litter which appeared not to be controlled by the current provision of bins and smell nuisance.

Members also noted that the premises already had signage asking customers to refrain from making excess noise when leaving the premises. They heard representations from the applicant that noise was made by passers-by in the street and not necessarily by customers of Mr D's.

Members were aware that once persons were away from the premises they were no longer in the control of the applicant and that problems such as this could be controlled by other means such as informing the Police with regard to anti-social behaviour.

Members noted the representations made with regard to the condition imposed by the Magistrates with respect to the collection of litter. The applicant stated that this was unworkable as the wind could blow rubbish into the delineated area.

With regard to the representation made with regard to smell nuisance the applicant stated that he had not received any complaints about this either from residents or the Council.

Representations had also been made with regard to nuisance arising from customers parking their cars outside the premises, playing car radios at a loud volume and the slamming of car doors.

The applicant stated that, as the cars were parked on the public highway it could not be proved that they always belonged to customers of Mr D's and that this type of nuisance was outside of the control of the premises licence holder.

The Members also considered that the Upper Bristol Road was a busy main road in the city of Bath in any event.

Members noted that no representations to the application had been made by the Police or Environmental Health Officer.

They considered that the relevant representations did not carry enough weight to modify or refuse the application.

The meeting ended at 11.55 am

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**

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