

BATH AND NORTH EAST SOMERSET

LICENSING (TAXIS, STREET TRADING AND MISCELLANEOUS) SUB-COMMITTEE

Thursday, 23rd August, 2012

Present:- Councillors Sarah Bevan (Chair), Bryan Chalker and Tim Warren

Also in attendance: John Dowding (Senior Licensing Officer), Enfys Hughes and Francesca Smith (Senior Legal Adviser)

10 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer drew attention to the emergency evacuation procedure set out on the agenda.

11 APOLOGIES FOR ABSENCE

Councillor Gabriel Batt sent his apologies, Councillor Tim Warren was his substitute.

12 DECLARATIONS OF INTEREST

There were none.

13 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR(PERSON)

There was none.

14 MINUTES - 1ST MAY 2012

RESOLVED that the minutes of the meeting of Tuesday 1st May 2012 be confirmed as a correct record and be signed by the Chair(person).

15 MINUTES - 7TH JUNE 2012

RESOLVED that the minutes of the meeting of Tuesday 7th June 2012 be confirmed as a correct record and be signed by the Chair(person).

16 LICENSING PROCEDURE - APPLICATIONS FOR LICENCES, PERMITS AND CONSENTS

RESOLVED that the procedure for this part of the meeting be noted.

17 APPLICATION FOR PERMISSION TO PROVIDE FACILITIES ON THE HIGHWAY FOR RECREATION/REFRESHMENT AT NO 5 BISTRO, 5 ARGYLE STREET, BATHWICK, BATH.

The Sub-Committee considered the report which sought permission to provide facilities on the highway in respect of No. 5 Bistro, 5 Argyle Street, Bathwick, Bath.

The applicant had appointed a representative/agent who was present, David Holley. The applicant himself was not present. The representative confirmed he had read and understood the procedure. Several of the objectors were also present.

The Licensing Officer presented the report. The application was for 4 tables with appropriate seating. He explained that the normal consultation process had taken place including the police, highways, development control, ward councillors and local residents. He had received objections from the ward councillor, local residents and two late objections from highways and another local resident and his doctor. He confirmed that the applicant had seen the late objections and the application had been reduced in order to address the concerns. He reported that in light of the reduction to the application the highways objection had been withdrawn.

At that point Councillor Webber informed the meeting that he could not hear people speaking and the objector added that he could not hear the proceedings either. The Chair reminded everyone present to speak clearly and use their microphones. The earlier part of the meeting was repeated.

The Legal Adviser gave some advice in respect of the late representations and read out the judgement relating to a case *Miss Behavin' Limited versus Belfast City Council*.

"It would be very strange if such a provision (that there is a deadline for the receipt of objections) designed to allow the council to carry on its business in an orderly and expeditious manner, had the effect of shutting its eyes to facts which it considered relevant to its decision.

- It would therefore be unrealistic and unjust if a council were effectively precluded from taking into account late objections.
- If an objection which revealed to a Council, for the first time, certain highly relevant information was received one day late it would be little short of absurd if it could not be taken into account.
- In such cases it would be contrary to the purpose of the general public interest if the council was obliged to ignore the information.
- If a council received significant relevant information in a late objection there could be circumstances in which its failure to take it into account would itself be judicially reviewable.
- A council officer, charged with the duty to open and read the letter etc., which contained new and important information, would be in an impossible position if he was effectively precluded from communicating it to council members.
- A late objection could be disregarded if it was sent intentionally last minute or if it was received so late so as to mean that the applicant had not had sufficient time to consider it, or cause disruption to the council's business.

- Fairness obviously requires that the terms of any representations, which the Council proposes to consider, should be communicated to the applicant in good time so that he may have an opportunity to comment upon them.
- A late objection is therefore governed by general administrative law principles; it is matter for the council whether to take it into account and the court will not interfere with its decision unless the decision took into account relevant factors or was a decision which no reasonable council could, in all the circumstances, have made.”

Members of the Sub-Committee took some time to consider the legal advice and agreed to admit the late representations which were then circulated to the meeting.

Councillor Webber asked whether the application should be considered today or re-submitted as it had been changed and some of the other objectors would not be aware of this. The Legal Adviser stated that it was quite common for applications to be amended in light of objections and as long as there was a reduction not an increase this was acceptable. Mr Holley would address the application as amended.

The applicant’s agent put the case and was questioned. In summary he stated that No 5 had been taken over and had a huge make over. They had also applied for a new alcohol licence and made a planning application. Having received the objections to this application it had been agreed to reduce the application to 2 tables with appropriate seating in front of the window furthest away from the corner of Argyle Street and Grove Street. He stated that to place tables and chairs outside a premises, was a valuable way of advertising the business within. The Licensing Officer had no comment to make.

The two objectors present put their case and were questioned. The Chair reminded the objectors they had to consider each application on its merits and could not take account of other premises, planning issues and the previous history of the premises involved. In summary the issues of concern were those of pedestrian safety and that tables and chairs outside attracted seagulls and other vermin. Councillor Webber in his statement said that he would not have objected to the amended proposal. The Legal Adviser obtained confirmation from Councillor Webber that he had withdrawn his objection.

The applicant’s agent and the one objector made a closing statement.

Following an adjournment it was

RESOLVED that the application for permission to provide facilities on the highway in respect of No. 5 Bistro, 5 Argyle Street, Bathwick, Bath be granted as follows subject to the standard conditions:

2 tables with appropriate seating as outline on the amended plan
Every day from 10:00 to 22:00 hours.

Reasons for decision

Members have determined an application for permission to place tables and chairs on the highway at No 5 Bistro, 5 Argyle Street, Bathwick, Bath.

In doing so they took into account the Local Government (Miscellaneous Provisions) Act 1982, Part VIIA Highways Act 1980 and the Human Rights Act 1998.

Members noted that two objections to the application had been submitted to the Council after the statutory consultation period had closed. The representations were from Highways and a local resident and his doctor, and were based on highway safety. The objections had been sent to the applicant in advance of the hearing.

The applicant's representative, Mr Holley, advised that the application was to be amended and the Licensing Officer advised that the Highways objection had been withdrawn. One of the other objections had also been withdrawn on the basis of the amended application.

Members were advised that the case of *Miss Behavin' Ltd v Belfast City Council* [2007] 3 All ER 1007 was of guidance to them when considering the matter of late representations.

The Members decided to take into account the late objection, from the resident and his doctor, as it contained highly relevant information and, if they effectively closed their eyes to facts which they considered relevant to their decision, it would not allow the council to carry on its business in an orderly and expeditious manner or be in the public interest.

The objection had not been sent to the Council intentionally last minute or received so late so as to mean that the applicant had not had sufficient time to consider it, and they decided that it would not cause disruption to the Council's business. The objection had also been sent to the applicant in good time so that he may have an opportunity to comment upon it

Members therefore considered the amended application, the late representation from the resident and his doctor, took into account all of the objections and listened carefully to all of the relevant oral representations. They balanced the interests of the applicant, the objectors and the general public.

Members noted that objections had been made by the public on the basis that the premises are situated at the junction of Grove Road and Argyle Street which is a busy junction, that the pavement in that area is an essential refuge for pedestrians and that the corner is obstructed by hanging poles and traffic signs all of which already narrow the pavement. In addition, if the permission was granted, it would have the effect of narrowing the area even further and cause danger to pedestrians who would then have to step into the road.

The resident's late objection was based on highway safety issues and that, if the permission was granted, it would lead to further obstacles on the pavement which would be difficult to negotiate. This was supported by the resident's doctor who stated that the resident had severe balance problems and that further obstructions would impede his passage along the pavement.

Members did not take into account the comments made on the former premises, on planning matters, on other premises, nor generally on litter and vermin as this application was to be determined on its own merits.

Members listened carefully to what the applicant said as regards the amended application which they considered addressed the objections raised especially in relation to the junction at Grove Road and Argyle Street and were satisfied that as to how the permission would operate. They therefore decided to grant the amended application and authorised that the Licensing officer issue the permission.

The meeting ended at 11.20 am

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services