

## **BATH AND NORTH EAST SOMERSET COUNCIL**

### **LICENSING SUB-COMMITTEE**

Tuesday, 3rd March, 2015, 10.00 am

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

**Officers in attendance:** Carrie-Ann Evans (Senior Legal Adviser), Enfys Hughes and Kirsty Morgan (Public Protection Officer)

#### **132 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the procedure.

#### **133 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

#### **134 DECLARATIONS OF INTEREST**

There were none.

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

There was none.

#### **136 MINUTES: 3RD FEBRUARY 2015**

**RESOLVED** that the minutes of the meeting of 3<sup>rd</sup> February 2015 be approved as a correct record and signed by the Chair(person).

#### **137 LICENSING PROCEDURE**

The Chair confirmed that the procedure to be followed for that part of the meeting had been read and understood.

#### **138 APPLICATION FOR A PREMISES LICENCE FOR SUBWAY, 31 SOUTHGATE STREET, BATH BA1 1TP**

The Sub-Committee considered the report which sought determination of an application for a new Premises Licence under section 17 of the Licensing Act 2003 in respect of Subway, 31 Southgate Street, Bath.

Those present for the applicant:-

Michael Parrott (Greg Latchams LLP) – representing the applicant  
Stuart House – Franchisee and Development Administrator  
Sue Pasco – Subway Franchisee

Those present having made representations:-

Brian Hussey – BCH Camping and Leisure and The Bryan and Christopher Hussey Partnership

Emily Luff - neighbour

The Public Protection Officer presented the report and stated that the application proposes:

Late Night Refreshment (indoors and outdoors)

Fridays - Saturdays 23:00 - 03:00 the following morning with;

Opening Hours

Mondays – Thursdays	07:00 – 23:00
Fridays – Saturdays	07:00 – 03:00 the following morning
Sundays	09:00 – 21:00.

She went on to state that representations had been received relating to public nuisance. She stated that no representations had been made from the responsible authorities.

The Chair referred to the Bath and North East Somerset (B&NES) Licensing Policy 2014, relating to the Cumulative Impact Policy, paragraph 16.8 which stated that:-

“Currently the Council’s evidence base in relation to the Cumulative Impact Area does not relate to off-sales of alcohol and late night refreshment.”

Michael Parrott put the case on behalf of the applicant. He stated that an application for the premises had been submitted to Sub-Committee previously 6 months ago. At that time the premises had not opened and the impact of hot drinks and food was the issue. Now they had been trading for 6 months and had trading figures for cold food. They were already able to serve cold food and drinks up until 03:00 hours. He pointed out that a nearby McDonalds on Southgate had a 24 hour licence and had not received any representations. He stated that an important feature of Subway was that they were a health conscious quality operation and there was a degree of interaction between staff and the customer when ordering. He referred to the letters of representation and made the following points. He stated that the freezer would not be used after 10pm; the bins were now inside, the freezer was now smaller to accommodate this; rubbish for collection was put outside and collected daily by Sita between 5.30-6.30pm; the 2 fire doors now had mag locks and soft closers; and the first floor area would not be used after 10pm except for staff members using the toilets. He stated that they had liaised with Environmental Health re units on the roof and an inspection had been made with no recommendations.

He referred to the trading figures circulated before the meeting which were from Subway Southgate and a comparable store in Montague Street Bristol in a similar location, near the bus station, residential accommodation and with night clubs in the vicinity. These were now actual figures not estimated like the last Sub-Committee. The figures demonstrated that there would be approximately 10 extra customers per hour between 12:00 and 03:00. There was already customer flow in the area at this time anyway.

He referred to the B&NES Licensing Policy relating to Cumulative Impact which had changed and re-affirmed that it did not relate to late night refreshment.

He introduced Sue Pasco the franchisee. She stated that Subway was all franchised and was a family-run company. She stated that they were part of the community, were aware of their near neighbours and were trying to be co-operative in responding to the objections raised.

Mr House was responsible for the day-to-day operation. He added that there were usually two staff working at night. He had met Mr Byrd in the shop to have a discussion as there had also been an invitation to neighbours to come to the premises to discuss any issues. They had put in place measures to address some of his issues.

During questions the following points were made:-

- Toilets were upstairs, this area would be open until 10pm after which time only staff could use the toilets;
- The bins were inside the back door and there was a waste receptacle at the front of the premises;
- Mr House stated staff should clear up the litter and that could be a condition on the licence;
- Their trade was predominantly (70%) at lunch time;
- To have hot food late at night could attract those late night drinkers to stay in the city for longer;
- Not all night time revellers had drunk a lot of alcohol and customers were passing the shop anyway;
- The main issue was hot food and drink and opening hours would remain the same;
- If only 10 more customers were attracted to the shop with 2 staff would the operation be worthwhile;
- Many people would switch from cold food to hot (80%) and some would make a purchase as opposed to walking out when there was not hot food;
- Environmental health has visited the premises and made no recommendations therefore the only issues were from neighbours;
- Would the previous problems actually stop when the remedial measures were implemented?

#### Representations – Mr Bryan Hussey

Mr Hussey explained his background, he owned the shop next door and the flats and maisonette. He had nothing in principle against Subway but was a landlord and had responsibilities to his tenants who were disturbed and needed their sleep. They expected to hear hustle and bustle living in a city but during reasonable hours. In the early hours sound was amplified. The premises attracted people who had consumed alcohol and were often louder than usual. His properties had windows over the street which were affected more so in summer time. He had received complaints from his tenants since Subway had opened. He had enquired whether the shop could be open until this time for cold food and had been informed that it could.

### Miss Emily Luff

She stated she endorsed the comments made by Mr Hussey. She felt it was disingenuous to state that they were a local sandwich shop with a discerning customer when in reality in the early hours the customer was likely to have drunk a lot and want a 'hot meatball sub'. This created noise and nuisance and they already had that when cold food was served. They did not want the situation to get worse as it was difficult to live life normally with the disturbance.

During questions the following points were made:-

- Yes the situation would be worse with hot food as there would be more noise and litter. Mr Hussey did not respond to the invite to the premises as he felt they could not address the problem of customer noise;
- The noise would get worse as people would be attracted to the hot food;
- Miss Luff explained that their living room was above the freezer room, with bedroom above that, their bathroom was above the stairwell and the noise seemed to travel up the internal walls;
- Mr Hussey confirmed his properties were in the adjoining terrace.

The people making representations did not wish to sum up but the applicant did. Michael Parrot stated that the increase in customers would be modest and the figures backed this up. Some of the existing customers would choose hot food instead of cold. People were already in the area passing through to the bus station. CCTV was available. To remove the litter around the premises could be added as a condition.

**RESOLVED** that the application for a new premises licence at Subway, 31 Southgate Street, Bath be granted subject to the standard terms and conditions as follows:-

Late Night Refreshment (indoors and outdoors)

Fridays - Saturdays            23:00 - 00:00 the following morning.

Opening hours as in the report.

With an amendment to the CCTV condition, see below.

### Reasons for decision

Members have today determined an application for a new premises licence for Subway 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 were 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 appropriate and proportionate in the promotion of the licensing objectives based on the information put before them.

Members were careful to take account of the relevant written and oral representations made and were careful to balance their competing interests. Members were however careful to disregard irrelevant matters.

Members noted that there had been no representations from Responsible Authorities.

### **Applicant**

The application was for the provision of late night refreshment on Friday and Saturday night from 23:00-03:00. It was stated that the store had been operating providing cold food late into the night since August.

Michael Parrott, Susan Pasco and Stuart House in support of the application noted that Subway, Bath have been trading for some months now and have the benefit of trading figures. Reference was made to the place of Subway in the market and positive public health considerations that they, as a business, have regard to. In relation to noise, Mr Parrott addressed representations that had been received and stated that there is no need for the freezer to be used beyond 10.00pm. In terms of the use of bins there should be no issue with them being moved about beyond approximately 8.30pm. Addressing representations in relation to tables and chairs being moved about on the upstairs seating area of the premises, it was indicated that these areas should not be used by the public or staff beyond 10.00pm, save for staff accessing the toilets.

Based on the trading figures submitted with the application Subway anticipates an additional 10 customers over an hour in terms of impact on licensing objectives. It is anticipated that the customers will be primarily students heading to the bus station who would be in the area in any event.

It was made clear by the chair that the Council's Cumulative Impact Policy does not apply in respect of this application for the provision of late night refreshment.

Mrs Pasco stated that Subway Bath are very aware of their neighbours and have made a special area in the rear of the premises to store rubbish and reduced the size of the freezers in order to accommodate the bins. Following a question from members Mrs Pasco indicated that 70% of trade related to lunchtime but the applicants would like to extend their offering to the consumer. She does not anticipate consumers lingering on the premises and noted that they have to engage with staff in order to place an order.

Mr House explained the trading figures submitted and explained that they have identified what they consider to be a comparable Subway premises in Bristol. He indicated that staff should not be at the back of store they should be at the front of the store serving customers. He went on to explain to Members that the 3.00am termination time for provision of late night refreshment was informed by discussions with the police.

It is anticipated that there would be an increase in sales but they have found that customers have been coming in and leaving because they cannot purchase hot food or drinks. It is expected that 80% of customers will migrate to hot food and some additional customers will make purchases of hot food.

The applicants indicated that they would agree to a condition that staff should go outside and clear up litter.

### **Interested Parties**

The Interested parties objected under the prevention of public nuisance objective.

Mr Hussey stated that he has no objection in principle to Subway but he referred to his written representations. His concern as a landlord related predominantly (90%) to noise disturbance to his tenants in the early hours of the morning from inebriated customers and felt that this problem would only be exacerbated in the summer. He did note there was an issue relating to litter. Whilst he was thankful to Subway for the steps that had been taken and the notices displayed within the premises which had been circulated as part of the application, he expressed reservations about whether these would be adhered to. Mr Hussey noted that Subway can open until 3.00am to serve cold food but asked that issues with public nuisance are not made worse by the granting of this licence and stated that if the hours sought for the provision of late night refreshment was until say, midnight, he did not think he would be objecting.

Miss Luff endorsed the representations made by Mr Hussey.

### **Members**

Members considered the premises were likely to have an effect on the licensing objective of public nuisance however they felt that between 23:00 and midnight conditions would be effective in the prevention of public nuisance. However beyond midnight they felt that customers would more likely be inebriated night revellers who were highly likely to cause public nuisance in on and around the premises which is a highly residential area. Members considered that conditions would not be effective in the prevention of public nuisance beyond midnight.

Accordingly members resolved to approve the application subject to conditions consistent with the operating schedule and the mandatory conditions save for the following amendments to proposed hours for the licensable activity and a condition:

### **Late Night Refreshment**

Fridays and Saturdays 23:00 to 00:00

### **Condition:**

CCTV system to be installed and maintained *throughout the premises including the staff areas* in good working order at all times. Images to be retained for a period of 30 days. The correct time and date to be generated on recorded and real time images.

Members made those amendments on the basis that they were appropriate and proportionate and promoted the licensing objective of preventing public nuisance.

Members noted that the applicants had confirmed their agreement to a condition relating to litter however such a condition had in fact already been offered as part of the application.

Members further noted from oral submissions on by the applicants that there are 10 CCTV cameras throughout the premises which includes a camera located at the rear in the freezer area.

Authority was delegated to the Public Protection Officer to issue the licence accordingly.

The meeting ended at 12.24 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**

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