

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

### **LICENSING SUB-COMMITTEE**

Tuesday, 7th April, 2015, 10.00 am

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

**Officers in attendance:** Alan Bartlett (Public Protection Team Leader), Kirsty Morgan (Public Protection Officer) and Shaine Lewis (Principal Solicitor and Deputy Monitoring Officer)

#### **157 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the procedure.

#### **158 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

#### **159 DECLARATIONS OF INTEREST**

There were none.

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

There was none.

#### **161 MINUTES: 17 MARCH 2014**

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

#### **162 LICENSING PROCEDURE: MISCELLANEOUS**

The Chair drew attention to the procedure to be followed for the next item of business.

#### **163 APPLICATION FOR PERMISSION TO PROVIDE FACILITIES ON THE HIGHWAY FOR RECREATION/REFRESHMENT AT SEAFOODS FISH BAR, 38 KINGSMEAD STREET, BATH. BA1 2AA.**

Applicant: Ian Menzies

Objector: Mr Michael Walsh, represented by Mrs Walsh

The parties confirmed that they understood the procedure to be followed for the hearing.

The Public Protection Officer summarised the application and invited the Sub-Committee to determine it.

The Applicant stated his case. He said that he had had tables and chairs outside the premises for 10 years and had had no complaints from anyone apart from Mr and

Mrs Walsh. He said that in response to their complaints he had removed a chair from each table, at a cost to his business. The tables were monitored by CCTV and were not visible on CCTV if they were outside the designated area. He said that staff were trained to ask customers who had moved a table outside the designated area to move it back again. He himself had only had to do this 4 times in the last 10 years and his staff had told him that it happened very rarely.

Referring to Mr Walsh's letter, he had never seen bikes, bags or buggies outside the front door to Mr and Mrs Walsh's flat. The only thing he had seen block their front door was rubbish bags from the flats upstairs. There had never been any complaints from a wheelchair user or someone with a pushchair about being obstructed. The road outside the premises was marked with double yellow lines, so no one should be parking there, and it was a no-through road. Staff were trained to remove boxes or other rubbish left on tables immediately. Litter outside the premises was actually bad for business.

He referred to the photos submitted by Mr Walsh. He thought that the boxes visible on tables were there because it had not possible for staff to clear them away during a busy period. He suggested that the exact nature of the food litter in one of the photos was not clear, and might have come from anywhere. One photo seemed to show leaves, a lollipop and a bag, none of which emanated from his business. Other photos seemed to show a toilet roll, the remnants of a kebab, including lettuce and chilli peppers, and a can of strong cider, none of which could have come from his premises. He thought most of the rubbish seen around the premises came from the rubbish bags left outside on collection days by the tenants of the flats, which were often pecked at by seagulls. The tenants from the flats did not clean this litter up, but his staff did.

He gave information about the history of the disputes between himself and Mr and Mrs Walsh. On advice from the Principal Solicitor, the Chair ruled that this information was irrelevant and that he should focus solely on relevant matters, such as whether the tables and chairs constituted an obstruction on the highway.

Mr Menzies reiterated that there had never been any complaints about obstruction from members of the public.

In response to questions from Members the Applicant stated:

- there would usually be 3-4 staff on duty and rubbish left on the tables would be cleared up within a matter of minutes, though it would take slightly longer at busy periods
- customers with takeaway boxes were able to sit and eat at the tables, and, depending on the season and weather, there was service at the tables
- litter was generally present only early in the morning and was cleared up by staff regardless of its origin
- the hours sought for the tables and chairs permit were to allow the tables and chairs to be set up before the shop opened

- when there were 4 chairs at each table there had only very occasionally been problems with pedestrian access; since the number of chairs had been reduced there had been only one occasion on which someone had a problem getting past with a pushchair

Mrs Walsh stated her case. She said that Mr Menzies was not always present at the premises so would not be aware of the all the problems. For example, he was not present when the photographs were taken. Mr Menzies had claimed that the litter came from the tenants' rubbish bags. One tenant left a rubbish bag outside. Mr Walsh took all his household rubbish directly to the tip every fortnight. She and her husband wanted a peaceable solution to the issues they had with Mr Menzies, but had never found him approachable. There were frequent changes of staff and any improvements in litter control only lasted a short time. The tables were constantly messy. In reply to questions she said

- the pavement was very narrow and 3 tables with 2 chairs or 2 tables with 3 chairs would cause less obstruction than the arrangement proposed by the applicant;
- she did not want mess on her doorstep and junk left on the tables; perhaps the premises could have a bin in which customers could deposit rubbish

The parties were invited to sum up.

Mrs Walsh said that she had nothing to add to her submission.

Mr Menzies said that contrary to Mrs Walsh's assertion that there was constant turnover of staff at the premises, his manager and supervisor had both been at the premises for 10 years. The Council had originally approved 4 chairs at each table, but he had reduced this to 3 in an attempt to appease Mr and Mrs Walsh. There had been no complaints from any one else.

Following an adjournment the Sub-Committee **RESOLVED** to grant the application, subject to the standard conditions and an additional condition about the removal of rubbish.

### Decision and reasons

Members have had to determine an application to place 3 tables with appropriate seating on the highway at the front of premises at 38 Kingsmead Square. In doing so Members had regard to the Highways Act 1980 and the Human Rights Act 1998. Members balanced the representations from the objector against the applicant and took into account all relevant matters whilst disregarding the irrelevant.

The applicant stated tables and chairs have been outside the premises for 10 years. These are covered by CCTV and his staff clean this area regularly as it would not be good for business not to do so.

The objector stated there are ongoing issues with litter and it was felt was not cleared up adequately.

In reaching the decision Members noted the issue between the parties is litter. The application was granted with the attachment of the standard conditions and an additional condition as reasonable and proportionate in the circumstances.

- The pavement frontage of the premises shall be kept clear of litter and cleaned at the end of each trading day.

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

**164 LICENSING PROCEDURE: LICENSING ACT 2003**

The Chair drew attention to the procedure applicable to the next item of business.

**165 APPLICATION FOR A PREMISES LICENCE FOR MCCOLLS, 103 HIGH STREET, MIDSOMER NORTON, BA3 2DA**

Applicant: Martin McColl Ltd

Other Person: Andrew Green

Neither the Applicant nor the Other Person was present or represented.

Members had been notified before the meeting that the Other Person had withdrawn their representation.

**RESOLVED** to grant the application.

Decision and reasons

Members determined an application for a new premises licence at McColls High Street Midsomer Norton. In doing so they had regard to the Licensing Act 2003, Statutory Guidance, the Council's Policy and the Human Rights Act 1998.

Members noted the objection had been withdrawn and therefore granted the application with conditions consistent with the operating schedule.

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

The meeting ended at 11.15 am

Chair(person) .....

Date Confirmed and Signed .....

Prepared by Democratic Services