

## **BATH AND NORTH EAST SOMERSET**

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

Monday, 10th January, 2011

**Present:-** Councillors:- Tim Warren (Chair), Bryan Chalker and Tim Ball

**Also in attendance:** Emma Stoneman (Licensing Officer), Shaine Lewis (Senior Legal Adviser) and Sean O'Neill (Democratic Services Officer)

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

The Democratic Services Officer read out 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 LICENSING PROCEDURE**

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

#### **7 APPLICATION FOR A NEW PREMISES LICENCE FOR MEGA BITE, 26 WALCOT BUILDINGS, WALCOT, BATH BA1 6AD**

Applicant: Mr Bilal Sancı, represented by Mahir Kilic (National Association of Turkish Residents)

Responsible Authority: Martin Purchase (Licensing Officer, Avon and Somerset Constabulary)

Interested Parties: Dr David Dunlop, Mr Alex Schlesinger

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

The Licensing Officer summarised the application. The applicant was seeking authority to supply alcohol for consumption on and off the premises between 17:00 and 03.00 every day. The Police had proposed five additional conditions, namely:

1. Alcohol will only be sold by way of delivery after 23.00 hours and not to customers attending at the shop premises.
2. All deliveries which include alcohol must only be received by a person aged 18 or over.
3. Photographic identity will be required for any person who appears under the age of 21.
4. A refusals register is to be maintained recording the details of any sales or deliveries that were refused. The register is to be made available for inspection to any Police Officer or authorised person at all reasonable times.
5. Alcohol will only be sold over the counter at the premises with food orders of £5 minimum.

The applicant had confirmed in writing that he agreed to the above conditions being imposed on the licence. Representations had also been received from local residents in relation to the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm.

Mr Kilic stated the case for the applicant. He began by clarifying the date on which the application had been submitted. The Licensing Officer confirmed that the statutory time limits had been complied with. Mr Kilic said that though many representations had been received to the application, no complaints had been previously received from local residents, though some of the representations referred to things that had allegedly occurred previously. He had visited the premises that morning and no litter had been visible in the immediate vicinity. There was a licence condition requiring the regular cleaning of the area immediately outside the premises; he referred to the Secretary of State's Guidance, which stated that licensees could not be held responsible for the behaviour of customers away from the premises. The applicant offered a condition that he would clean an area of litter up to 25 meters each side of the premises. In response to questions from Members, he stated

- deliveries would be made by car, not moped
- beer, wine and spirits would be sold, but not cider or alcopops
- the minimum food order of £5 would apply to orders for alcohol for delivery; it was not the applicant's intention to operate an off-licence; the average price of a meal was £3-£4.
- Mr Sancic held a personal licence, and would ensure that all staff, including drivers, would receive training on the sale and supply of alcohol

The Senior Legal Adviser clarified that the sale and supply of alcohol had to be authorised by the Designated Premises Supervisor, who had to ensure that alcohol was not sold or supplied to persons who were drunk or underage, but that delivery drivers were not required to hold personal licences.

In response to a question from the Chair, Mr Kilic explained that there was no seating in front of the takeaway counter and that customers would not have direct access to alcohol, but would have to be supplied by a member of staff.

Dr David Dunlop, an Interested Party, put questions to the applicant:

Q. Why do you wish to sell spirits? They are not refreshments.

A. The licence is to sell alcohol and the applicant does not have to justify selling a particular kind of alcohol.

Q. Will the applicant agree not to sell alcohol in glass bottles, which can be broken and pose a hazard to people and animals?

A. The applicant will sell beer in cans, but wine in bottles.

Q. (from a Member) would you agree to sell wine in corked bottles and not screw top bottles?

A. The applicant only knows the type of bottle when the product is supplied.

Mr Alex Schlesinger, an Interested Party, asked why the applicant had to sell alcohol when it was already available from a number of other outlets. The Senior Legal Adviser responded that under the Licensing Act 2003, unlike previous legislation, applicants did not have to demonstrate 'need'.

Mr Alex Schlesinger stated his case. He said that as a long-term local resident he had frequently experienced problems caused by intoxicated people on the London Road and by litter discarded by customers of takeaways. Anti-social behaviour occurred in the car park at the rear of Mega Bite. Many residents were afraid to go out at night. He feared that increased opportunities to purchase alcohol would lead to a rise in disorder in the area.

In response to a question from the Chair, Mr Kilic confirmed that there was already CCTV at the premises.

Dr David Dunlop said that there was already a worrying level of anti-social behaviour on London Road. He believed that many customers of Mega Bite had already been drinking before they visited the premises. Problems were caused by people vomiting in the street and entering the gardens of houses to relieve themselves. There was a lot of litter, which attracted rats and vermin. It was not uncommon for people to throw bottles over garden walls and he was greatly concerned about the hazards posed by broken glass. He urged the Sub-Committee to impose conditions prohibiting the sale of spirits and the sale of alcohol in glass containers and requiring the installation of CCTV. He read from a statement by Mr and Mrs Brett, Interested Parties who were unable to attend the meeting, which said that though they were opposed to the sale

of alcohol from the premises, the applicant had been open and transparent and had taken note of comments made by local residents.

A Member suggested to the applicant that wine might be available in waxed containers. Mr Kilic said that the applicant would check this.

Martin Purchase, Police Licensing Officer, confirmed that the applicant had agreed to the additional conditions proposed by the Police. He said that he would be in favour of wine being supplied in non-glass containers, but he believed that there was only limited availability of these at present. Responding to a question from the Chair, he said that there were many discarded beer cans in London Road and that he thought most wine sales would be orders for delivery. He noted that the applicant had included CCTV in the operating schedule.

The parties were invited to sum up.

Dr David Dunlop said that the problem of litter had been exacerbated by the Council removing litter bins from London Road. He wondered whether Mega Bite would be prepared to sponsor some public litter bins. Mr Kilic responded that Mega Bite already had waste containers in the car park and would consider placing a bin outside the premises.

Mr Schlesinger said that London Road was an area in which every property was residential or partly residential. There was a significant problem with litter from food wrappings and with broken glass. If litter was reported to the Council, it was sometimes removed quickly, but often remained for weeks. He submitted that greater availability of alcohol would give rise to an increase in problems for local residents.

Mr Kilic summed up for the applicant. He said that if there were problems in the area, residents should report them to the proper authorities. He submitted that the conditions offered by the applicant were sufficient to minimise any problems that might emanate from the premises.

Following an adjournment, the Sub-Committee **RESOLVED** to grant the application as applied for, subject to the mandatory conditions, the conditions agreed between the applicant and the Police, as offered by the applicant during the meeting and with the following additional conditions:

1. There shall be no display of alcohol on the premises after 23:00 hours.
3. Beer must not be sold in glass bottles.
4. Staff will clear the area of litter up to 25 meters each side of the premises to include the rear of the premises.
5. Wine shall not be sold in screw tops

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

## REASONS

Members have determined an application to vary a Premises Licence at Mega Bite, Walcot Buildings, 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 2003 is to be reluctant to regulate in the absence of real evidence. Further, they must only do what is necessary and proportionate to promote the licensing objectives in light of what is presented to them.

Members listened carefully to the Applicant, took account of the representations from the Interested Parties, the Responsible Authority and noted the applicant's written acceptance of the conditions suggested by the Police. Members were also careful to balance the competing interests of all the parties in reaching their decision.

The Interested Parties feared that if the application was granted it would result in increased noise, litter and anti social behaviour in what is an area already suffering major problems with litter, late night noise and disturbance. The Applicant stated that alcohol served after 23:00 hours will be by delivery only and further when it is served it would only be served with a food order over a £5 minimum. The Applicant stated he had been in consultation with the Police and was happy to agree conditions they suggested. Further, the Applicant offered a number of additional conditions in an attempt to address the fears of Interested Parties, namely the display of alcohol would be removed after 23:00 hrs, beer would not be sold in glass bottles and staff would clean litter from an area of 25 meters around the premises.

In determining the application Members found the premises is situated on the busy London Road with passing vehicular and pedestrian traffic. Further, the premises are located in an area with a number of other fast food outlets, shops, convenience stores, a supermarket and petrol filling station and that noise and litter could only be attributed to the premises in part. Members placed considerable weight on the representation of the Police who were content for the premises to sell alcohol with the attachment of the suggested conditions. Members consider therefore that the premises would not have a detrimental effect on the licensing objectives in all the circumstances and in the context of the London Road and therefore grant the licence as applied for with conditions consistent with the Operating Schedule, as suggested by the Police, offered by the Applicant and additional conditions imposed by the Committee as necessary and proportionate to promote the licensing objectives.

### **8 APPLICATION TO VARY A PREMISES LICENCE FOR BATH PIZZA, TRADING AS DOMINO'S PIZZA, LONG ACRE, LONDON ROAD, WALCOT BATH, BA1 5NL**

Applicant: Bath Pizza Ltd T/A Domino's Pizza, represented by Jonathan Smith (Poppleston Allen Solicitors), Sigurd Wilberg (Franchisee), Daniel Barbatu (Store Manager)

Mr Smith stated the case for the applicant.

A Member noted that the operating schedule provided that delivery vehicles would be parked in the bay at the front of the store on London Road after 01.00 on Mondays to Saturdays and 23.30 on Sundays to reduce potential nuisance to residents, and asked Mr Smith whether this was not in fact on the public footpath. When Mr Smith replied that this area was outside the area demarcated by double yellow lines, the Senior Legal Adviser explained that the public highway was deemed to run from curtilage to curtilage and so included the public footpath. Mr Smith requested a short adjournment to consult with his client. This was granted by the Chair, and when the hearing resumed, Mr Smith requested that the hearing be deferred to allow the applicant time to clarify the arrangements for the parking of delivery vehicles after the specified hours. He undertook to provide this information to all the parties in advance of the next hearing and undertook not to take issue should those having already made representations wish to make further comment. The Chair asked the other parties whether they were content for the hearing to be deferred, and after discussion they indicated they were content.

The Sub-Committee **RESOLVED** that it would be in the public interest to defer the hearing of this application to enable the applicant to provide further information to Members and Interested Parties on the arrangements for parking delivery vehicles after 01.00 Mondays to Saturdays and 23.30 on Sundays. The matter was therefore deferred to a future meeting.

The meeting ended at 1.04 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**