

BATH AND NORTH EAST SOMERSET

LICENSING (GAMBLING AND LICENSING) SUB-COMMITTEE

Tuesday, 13th November, 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 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 MINUTES - 16th October 2012

RESOLVED that the minutes of the meeting held on Tuesday 16th October 2012 be approved as a correct record and signed by the Chair(person).

7 LICENSING PROCEDURE

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

8 Application for a Premises Licence for Pizza La Vita, 6 Cork Place, Upper Bristol Road, Bath, BA1 3BB

Applicant: Pizza La Vita, 6 Cork Place, Upper Bristol Road, Bath, BA1 3BB, Claire Burford (owner) and Yasser Ibrahim (shop manager).

The Licensing Officer summarised the application which was for a new Premises Licence. The details of the application were set out in paragraph 4.2 of the report.

The Licensing Officer confirmed that one representation had been received from a local resident regarding the prevention of public nuisance particularly, noise and

odours. She stated that additional information from the applicant had been circulated to all parties in advance of the hearing in respect of the representation.

The applicant stated her case and explained that they wished to provide late night refreshment until 1am on Friday, Saturday and Sunday evenings to improve their business. If the additional opening hours did not prove successful they would close at 12 midnight. She believed the majority of orders would be made on line at this time and therefore be delivery only. She had been operating in the premises since July with A5 planning use and said that they had had no disturbances in that period. In respect of the complaint about the noise outside from staff using mobile phones and the radio, she had spoken to them about this and they would do this inside and keep the doors shut. She stated that the premises had been inspected by the Council and fully discharged.

The interested party and councillors asked some questions of the applicant and her responses are summarised below:

- She believed orders would be placed on line and not by people on the way back from town;
- Oil in the deep fat fryers was changed twice weekly, the fryer was a small table top one with a flue;
- Staff no longer used their phones outside or the radio;
- Vehicles were used for delivery and parked at the front of the premises and they employed one driver full-time and one part-time;
- She confirmed that other nights the premises closed at 11pm.

The interested party presented her case and stated that 2 hours later opening would, she believe, attract more customers late at night on their way home from town. She did not believe that the majority of orders would be on line. Her young daughter had been disturbed by noise at the back of the premises. In respect of the odours from the fryer it was not possible for her to sit in the back yard in the summer or open her windows. She had lived in her property for 13 years and there had not been any previous problems.

The councillors and the applicant asked questions of the interested party and her responses are summarised below:

- The interested party had not contacted the Council's Environmental Health but had contacted Planning, it was suggested that she contact Environmental Health as they would investigate any problems;
- Her property was set back from the road so she was not unduly disturbed from people walking home from town, occasionally larger groups of people;
- The previous pizza business did not use a fryer;
- Cars would pull up outside for pizza mainly on Saturdays.

The Licensing Officer stated that she had informed the interested party about contacting Environmental Health about the odours from the premises. She added that the hours of opening on the planning permission for the premises were 9.00pm Monday to Saturday and 8.30pm on a Sunday and there were restrictions on the appliances to be used. She suggested that the applicant should contact Planning in respect of the planning permission for the premises.

In summing up the applicant stated that they wished to come to an agreement with the interested party and wanted to keep their neighbours happy, they only wished to extend the hours at the weekend. Her manager added that they would do whatever was asked of them and the other flat nearby was happy with the application. The interested party concluded by stating that she was not sure what agreement could be reached in respect of the odours.

Following an adjournment it was

RESOLVED to refuse the application for a premises licence for Pizza La Vita, 6 Cork Place, Upper Bristol Road, Bath BS1 3BB.

Reasons for decision

Members have today determined an application for the grant of a new premises licence for Pizza La Vita, 6 Cork Place, Upper Bristol Road, Bath.

In doing so they took into account of the Licensing Act, Human Rights Act, the Council's Policy and the Statutory Guidance.

Members were aware that the proper approach under the Licensing Act was to do only what was appropriate, necessary and proportionate to promote the licensing objectives in light of what was presented to them.

Members considered the relevant oral and written representations and took account of the evidence put before them. They were careful to balance the competing interests of the applicant, and those of the Interested Party, in reaching a decision.

Members noted that representations had been made by the Interested Party who was an adjoining neighbour to the premises, on the basis that there might be an increase in noise an anti-social behaviour, if the application was granted. She had also stated that she was disturbed by noise from employees using their mobile phones and smoking outside the premises and by customers, parked on the public highway. The issue of noise caused by customers parked on the public highway did not fall to be considered under the Licensing Act and so Members disregarded this.

The Interested Party also alleged that smell nuisance was being emitted from the premises to the extent that she could not open her windows or sit in her back yard in the summer. Members noted that no representations had been made by the Environmental Services Officer and that the Interested Party had not contacted the Officer.

Members noted the written response from the applicant on the representations that had been made. The applicant had stated that the premises were on a busy road and, in the application, that the buildings opposite were empty warehouses. The applicant also stated that it was her intention to open on a Friday, Saturday and Sunday to 01.00 the following morning and that if this did not work the premises would close at 12.00 midnight on these days. She stated that signage was displayed asking the customers to respect the neighbours and to leave quietly and she had already asked her employees to be quiet when using their mobile phones outside the

premises. She also confirmed that the premises had a full ventilation system which had been checked by the Council.

However, Members considered that the representations made regarding smell nuisance had such a negative impact on the promotion of the licensing objective of the prevention of public nuisance, that they decided to refuse to grant the application.

The meeting ended at 3.06 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services