

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Tuesday, 6th August, 2013, 10.00 am

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

Officers in attendance: John Dowding (Senior Licensing Officer), Terrill Wolyn (Senior Licensing Officer), Shaine Lewis (Principal Solicitor) and Francesca Smith (Senior Legal Adviser)

16 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

17 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

18 DECLARATIONS OF INTEREST

There were none.

19 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

20 MINUTES - 4TH JUNE 2013

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

21 PREMISES LICENCE REVIEW PROCEDURE

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

22 MIX GRILL - REVIEW OF PREMISES LICENCE

Applicant for Review: Bath and North East Somerset Licensing Authority, represented by Michael Dando (Licensing Enforcement Officer)

Premises Licence Holder: Jamie Brian, also known as Jamie Koc (licence holder until 2nd August 2013), Florian Batrin (licence holder from 2nd August 2013), represented by David Holley (Licensing Agent)

Other Persons: Lynda Passmore (local resident)

With the agreement of the parties, this item was taken after items 23-26.

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

The Licensing Officer summarised the application. She explained that currently the premises licence allowed the provision of late night refreshment between 23:00 and 01:00 Sundays to Thursdays and between 23:00 and 03:00 on Fridays and Saturdays. The conditions attached to the licence were listed in paragraph 4.3 of the report. An application for review had been received from Mr Michael Dando, Licensing Enforcement Officer for the Council on the following grounds:

- a history of the Police being called to the premises to deal with threats of violence and fighting
- persistent breaches in respect of the hours that the provision of late night refreshment is allowed to take place
- public nuisance caused by noxious odours
- public nuisance caused by noise

She stated that the website of the premises appeared to state that hot food was provided until 03:00 daily. Further, that representations had been received from local residents, one of whom had asked to remain anonymous, and that a notice of suspension of the licence had been served on Mr Batrin on 5th August 2013 to take effect on 8th August, because the annual renewal fee of £180 had not been received.

She said that she had received additional documents from the Applicant for Review. With the agreement of all parties, the Chair accepted these as evidence to be considered at the hearing.

Mr Dando stated the case as the Applicant for the Review. He stated that a premises licence had been granted to Mr Brian for the Mix Grill in 2007. Since then there had been a steady stream of complaints about the premises as detailed in his application. Licensing Officers had made four visits to the premises between 13 July 2012 and 16 March 2013, and on each occasion had found that the premises was providing hot food after the terminal hour. He had visited the premises on the morning of 6th August, the same day as the hearing, and had found that the premises had been open at 02:00 and had observed a member of staff cutting meat from the Doner at the rear of the shop and serving a customer with it. The premises licence holder had been sent final warning letters about providing hot food outside the permitted hours on 28 April 2009 and 10 February 2012. In addition, he had been given several verbal warnings. A statutory notice to prevent the continuation of an odorous smell nuisance (under section 80 of the Environmental Protection Act 1990) been served on the premises on 31st January 2013. There had not been any complaints about that nuisance since the service of the notice.

Ms Passmore stated her case. She stated that she had purchased a flat above the Mix Grill in September 2011. On one occasion she had sent Mr Koc an email about the strong smell originating from the Mix Grill and permeating her flat. She sent a further email about the same problem about 2 months later. A couple of months ago a friend had been staying at the flat and had telephoned her about the odour. She had then phoned Mr Koc. An argument ensued, but after he had calmed down he had stated that the extractor system would be sorted out in about six months. Later, someone had turned up to change the fan. This person had said "you don't want to

mess with Mr Koc. He has people killed.” She had not returned to premises since last year, because she felt intimidated. She stated that the flat had constantly been filled by a disgusting smell; that staff were often banging and shouting in the Mix Grill at 06:00; that a group of men associated with the premises, including relatives of Mr Koc, were often hanging about outside, and that her daughter was frightened to go there because she felt these men were staring at her. She had put the flat up for sale. In response to questions from Members she stated:

- her son, who also owned a flat in the building, was now living at home and only went to his flat to collect mail
- two prospective purchasers had come to view her flat, but had been put off by the smell from the Mix Grill
- Mr Koc had once phoned her at 02:00 in an obvious attempt to intimidate her; she had immediately rung 999
- her son had been threatened by people associated with Mix Grill and felt intimidated
- the freehold of the building was owned jointly by her and other family members; Mr Koc had failed to pay bills, and she was often visited by bailiffs because of this; he had not contributed to the cost of insurance

Mr Holley asked Ms Passmore whether she sometimes rented out her flat for hen parties. She confirmed that she did, but never for more than four people at a time.

Mr Holley stated the case for the premises licence holder. He suggested that this was a complex case, and could be viewed from different angles. He said that it had been decided to change the licence holder, because it had been acknowledged that things had gone wrong. He submitted that in law there was no restriction on opening hours, and that the premises could stay open 24 hours a day, but it was only allowed to provide hot refreshments between the hours specified in the licence. Mr Batrin had agreed to take on the Mix Grill and make it better. An important background factor that needed to be understood was the aggressive competition that existed between Mix Grill and Megabite; this had reached the stage where people from Megabite had turned up at Mix Grill and had made very aggressive threats. He submitted that the change of licence holder had created a new situation. There was a new team at Mix Grill, which included the girlfriend, mother and father of the new licence holder. He himself had visited the premises late the previous night, to see how things were progressing. He suggested that the Sub-Committee should consider the future rather than the past. As far as Mr Dando’s statement about happenings the previous night was concerned, his information was that three people had turned up late and had been served with food that was no longer hot, so that they would leave as quickly as possible. He also had information that Ms Passmore was letting out her flat for hen parties sometimes involving as many as ten or twelve people at a time at £90 each. There had sometimes been problems when they had returned to the flat late after a night on the town.

A Member asked about contractual arrangements between the former and current licence holder. Mr Holley explained that the agreement was that the premises would

be managed exclusively by Mr Batrin. A Member suggested that it was not very reassuring that an enforcement officer had witnessed what he believed to be a sale of hot food after the terminal hour only a couple of days after the transfer of the licence. Mr Holley replied that his information was that three people had turned up at the premises and had behaved in a somewhat menacing manner and been served with food that was no longer hot, though he had not had the opportunity to speak to staff about it to confirm the details. Staff had been focussed on ensuring that everything was in order, including the extractor fan. The Member observed that a licence attaches to the premises, not to an individual, and that the Sub-Committee had to take account of what had happened in the past. Mr Holley responded that he had already indicated that not all problems at the premises had been self-made. Another consideration was that the former licence holder had many business interests, whereas the new licence holder could be more focussed. Mr Holley put questions to Mr Batrin, who stated that he had worked at the premises for about four months; that he had not found the challenge of running the premises difficult; that he believed that he could run them in a way that did not contravene licensing law, and that he was prepared to attend appropriate training courses. Mr Holley submitted that while it was difficult to prove that things would change for the better under new management, there were many reasons, including the interest and enthusiasm of the new team, to be optimistic. In reply to questions from a Member about his experience, Mr Batrin stated that he had previously run businesses in his native Romania. He stated that a Doner remains warm for up to two hours after the heating element has been turned off.

Mr Dando asked Mr Batrin whether he had been aware of the licence compliance issues when he had been working at Mix Grill. Mr Batrin confirmed he had. He agreed with Mr Dando that his brother and his girlfriend had been present at the premises when Mr Dando had visited the previous evening and that Mr Dando had asked him why the door had not been locked at that hour. Mr Dando observed that three quarters of the new staff team had been present when what he believed to have been an unlawful sale of hot food had taken place, and asked Mr Batrin how it was possible to believe that anything had changed since he had become licence holder. Mr Batrin insisted that the three men had demanded food, though Mr Dando denied that Mr Batrin had said this when he had been cautioned at the time, and that he had not thought this was the case when he had viewed the men through the window of the premises. Mr Batrin said that the door had not been locked, because he had left the premises before the others and had forgotten to tell them to lock the door.

In response to questions from Mr Dando Mr Holley stated:

- the contract between Mr Brian/Koc had been signed on 1st July 2013
- the staff of Mix Grill may have unwisely sold hot food after the terminal hour because of competition with Megabite

Replying to Mr Dando, Mr Batrin again insisted that hot food had not been sold to the three men on the previous evening. He stated that he had told staff to shut everything down at 01:00 and had then left the premises, but the Doner had retained heat after the heating element had been switched off.

Replying to questions from Ms Passmore, Mr Batrin said that he was not a relative of Mr Koc and that he was prepared to co-operate with local residents. Replying to the Licensing Officer, Mr Batrin clarified that he had been in England for a year and had worked at Mix Grill for two months. He agreed with her that the people from Megabite might have been aggressive because they were losing business through Mix Grill sometimes selling hot food outside its permitted hours.

Mr Koc stated his case. He said he believed that tensions between Mix Grill and Megabite did not arise because of competition between the two establishments, but because of personal issues between individuals. He explained that he did not live in Bath, and that he had Mix Grill managed on his behalf. He said that revenue from the premises had been insufficient to pay the wages. He had told staff to close the premises after the terminal hour, but they had been concerned about their job security and felt that they to stay open to make more sales. He had then told them they could stay open if they sold cold food. He had explained that to get longer hours for selling hot food he would have to apply for a variation of the licence. As far as the smell in the flats that Ms Passmore had complained about, all the necessary remedial work had been carried out. No complaints about odour had been received for the past six months. There had been no complaints because he now had good management. The shop appeared a lot cleaner and seemed to be shutting on time. Usually 25-30 delivery orders were received every night, so the premises were open till 04:30. He had been told that it was alright to process any order received half an hour before closing time. He had not been able to apply for a variation, because he was in debt. The variation he had applied for a while ago had been a mistake, and he realised now that he should not have sought to sell alcohol. He was the landlord of the premises and Mr Batrin had a ten-year lease. If the Sub-Committee revoked the licence, Mr Batrin would not wish to remain at the premises and he himself would have to sell sandwiches till 05:00 every morning to make money.

The parties were invited to sum up.

Mr Holley said that there was new hope for the premises. There was a new licence holder, and a new enthusiastic team. Happenings the previous evening reported by Mr Dando would be investigated, though he did not believe that hot food had been sold. It was possible to work with local residents as Ms Passmore had requested; he would supply her with his contact details. The annual licence renewal fee had not been paid because of the threat of losing the licence. The new management was sincere about wanting to maintain good liaison with residents and about remaining within the law.

Ms Passmore said that the activities of Mix Grill had severely impacted on her and her family's amenity. She said that it was not fair if those responsible for the premises were allowed to flout the law.

Mr Dando said that Mr Bartrin had admitted that he knew there were problems while he had been a member of staff at the premises. He believed that an unlawful sale had taken place at the premises the previous evening, which was only a few days after Mr Bartrin had become licence holder.

The Sub-Committee adjourned. The meeting was reconvened, and the Chair asked whether the licence holder would be prepared to accept two new conditions, one about staff training, the other requiring the display of a sign after the terminal hour

indicating that hot foot was no longer available and a clear indication in promotional material about the times when sales of hot food could lawfully be made. Mr Holley said that both these conditions were acceptable.

Following a further adjournment, the Sub-Committee **RESOLVED**

1. To modify the days and hours for the provision of late night refreshment as follows:

From: Sunday to Thursday 23.00-01.00 To: Sunday to Thursday 23.00-00.00 (midnight)

From: Friday and Saturday 23.00- 03.00 To: Friday and Saturday 23.00-02.00

The above modifications have effect for a temporary period of three months after which they will revert;

2. To impose the following additional conditions on the premises licence:
 - a. The premises licence holder shall submit to the Licensing Authority within 14 days of written notification of today's decision two signs clearly stating the days and hours that the premises provide hot food in accordance with those days and times decided today. Once approved by the Licensing Authority the signs shall be displayed within seven days. One sign is to be prominently displayed within clear view of customers at the entrance to the premises and the other sign is to be prominently displayed inside the premises within clear view of customers.
 - b. The premises licence holder shall ensure that all existing and new members of staff are trained in their duties and responsibilities under the Licensing Act 2003 and in the correct usage of the extraction fan.
 - c. Staff training records shall be retained for a period of two years and shall be made available to the Police and Licensing Authority on reasonable request.

All the above conditions are to have permanent effect.

The Sub-Committee delegated authority to the licensing officer to issue the licence in accordance with its decision.

REASONS

Members have today determined an application for the review of a premises licence for Mix Grill, 4 Cleveland Place East, Walcot, Bath. In doing so they have reminded themselves of the provisions of the Licensing Act 2003, Human Rights Act 1998, case law, Statutory Guidance and the Council's Statement of Licensing Policy.

Members noted that the proper approach under the Licensing Act is to determine an application on its own merits, and to be reluctant to regulate, unless there is evidence that premises may have a negative impact on the licensing objectives.

The application was made by the Licensing Authority for the Council on the grounds of two of the four licensing objectives, contained in the Act, of the prevention of crime and disorder and the prevention of public nuisance. The grounds of the application were based on the fact that there had been incidents of crime and disorder, directly associated with the premises, when hot food had been provided.

Evidence of smell nuisance associated with the operation of the premises had been submitted, for which an Abatement Notice had been served in January of this year. No records of smell nuisance after the issue of the Notice had been submitted.

Evidence in the form of advertisements for the premises had also been provided.

Representations had been made by other persons in respect of the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance.

Members noted the oral and written representations made by the parties and disregarded those representations which fell outside of the Licensing Act. These included issues based on traffic management in the area, insurance matters in respect of the building, the built environment and ownership issues.

The evidence presented by the applicant came from a number of sources.

Firstly the applicant had appended Police records to the application which were dated between 2009 and 2012 which showed that two incidents of crime and disorder had occurred which could be directly attributable to the licensable activity of the provision of hot food at the premises. The Police records showed that provision had taken place both within the hours permitted by the licence but also outside the permission. The evidence pointed to 11 occasions when incidents of crime and disorder had occurred and two occasions when hot food had been provided outside hours but no crime and disorder had been reported.

However, they noted that there was no evidence of any individual having been charged or convicted of any of the alleged offences and that criminal matters fall to be dealt with under Police powers in any event. The Members noted that the Police had not made a relevant representation to the application.

Secondly, evidence was provided from the licensing authority's own records between 2008 and 2013. The evidence pointed to the provision of hot food outside of the licensable hours on seven occasions, but there were no records of any crime and disorder or public nuisance linked to the premises at the same time that provision was taking place. The applicant provided additional information which consisted of a witness statement submitted by himself with regard to the alleged provision of hot food at 3.00 am on the morning of the hearing today. He also informed Members that

the licence has been suspended on 5 August due to the non-payment of fees to take effect on 8 August.

Thirdly evidence was provided from an Environmental Health Officer for the Council in the form of correspondence, a statement and an Abatement Notice served in January of this year. The Notice referred to the existence and likely reoccurrence of nuisance arising from cooking odours and required that the nuisance be abated.

Members noted that statutory nuisance is a matter that falls under the Environmental Protection Act 1990, which provides a separate statutory regime to the Licensing Act 2003. They acknowledged that if the Notice was breached, there were inbuilt provisions to deal with this in the 1990 Act and that no duplication of statutory regimes should occur when a decision is taken on which steps to take on review.

Members noted that a relevant representation to the application had not been made by the Environmental Health Officer.

They considered the representations made by the Other Persons which were based on historical odour nuisance, and noted that since that time the Abatement Notice had been issued. It was noted that allegations had been made about harassment by the licensee, but there was no corroboration of this from Police records.

Fourthly, the applicant had presented advertisements purporting to be from the premises, some of which stated that the premises were open to 03.00 am, seven days a week, but these records did not state that hot food was for sale until this time. They noted that licence permitted the provision of hot food on Fridays and Saturdays to 03.00am in any event.

Members have sought to find a link between the provision of hot food at the premises and crime and disorder. The last date of the Police records noting the link between the provision of hot food and crime and disorder was in October 2011, which was nearly two years ago. They considered that these records were historical and attached some weight to them.

They also noted the Officers' evidence which pointed to the provision of hot food otherwise than in accordance with the licence had taken place, but that no crime and disorder had been evidenced. They took the view that as these incidents related to breaches of the premises licence the Council had enforcement and prosecution powers conferred by the Act. However, they took a very dim view of the alleged unauthorised provision that took place in the early hours of the same day of the hearing, as the premises licence holder knew that the application for the review had been made.

Members noted that whilst some of the evidence was historical, they were not convinced by the new licensee being able to demonstrate a significant improvement to the problems that had been admitted to by the agent. They looked carefully at all the options available to them, and at one point considered revocation. However, they decided that this would be a punitive and draconian step to take. They decided that to issue a warning was not appropriate, as two final warning letters had been issued.

They considered that the modification of the hours for the provision of hot food would enable the new premises licence holder to implement staff training and the operation of the premises in a more positive way than has been the case. The imposition of the conditions will ensure that there is clarity for both the premises licence holder and the public as to the operation of the premises.

Members therefore did only what was appropriate and proportionate to promote the licensing objectives in light of the representations made to them today.

23 LICENSING PROCEDURE - HACKNEY CARRIAGE (TAXI) AND PRIVATE HIRE DRIVERS HEARING

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

24 EXCLUSION OF THE PUBLIC

RESOLVED that “having been satisfied that the public interest would be better served by not disclosing relevant information, in accordance with the provisions of section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following two items of business because of the likely disclosure of exempt information as defined in paragraphs 1, 2 and 3 of part 1 of Schedule 12A of the Act, as amended.”

25 APPLICATION FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE - MR MM M

The Sub-Committee considered the report, which sought determination of an application by Mr MM M for the grant of a combined hackney carriage/private hire driver's licence.

The applicant was present. He confirmed that he had read and understood the procedure for the meeting.

The Licensing Officer presented the report and stated that as part of the application process a Disclosure and Barring Service check was undertaken, which had revealed a number of previous convictions. He circulated the Disclosure and Barring Service check, personal statement and references for Mr MM M. The applicant and officer withdrew from the meeting while Members took time to consider these documents.

Mr MM M put his case and was questioned. Mr MM M then made a closing statement.

Following an adjournment it was

RESOLVED to refuse Mr MM M a hackney carriage/private hire driver's licence.

REASONS

Members have had to determine Mr MM M's application for a combined licence to drive hackney carriage and private hire vehicles. In doing so they took account of the

Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council's Policy. Members had to consider whether Mr M.M. M was a fit and proper person and therefore asked themselves whether they would allow their son, daughter, spouse, partner of any one they cared about to travel alone in a vehicle driven by the applicant.

To assist them in making a determination Members listened to the applicant's oral representations and took account of his written references, statement and balanced this against the information provided by the Disclosure and Barring Service (D&BS) which disclosed two convictions for violence against the person and a public order matter. Whilst, noting that the information provided by the D&BS was at odds with Mr MM M's statement he was asked to confirm whether or not the D&BS information was accurate to which he replied the D&BS was correct. Accordingly, Members sought an explanation as to the Norwich Crown Court matter, however, no further information was offered than already contained in his written statement. With regard to the matters dealt with at Bath Magistrate's Court Mr MM M suggested, after some questioning, that it may have resulted from the breakdown of his business. However, he repeatedly stated that 'it all happened a long time ago' and he 'had no clue.'

Given Mr MM M's reluctance to volunteer an explanation for his offending behaviour, despite being given repeated opportunities to do so, Members were left with no alternative other than to conclude Mr MM M was not a fit and proper person to hold a licence having been offered nothing to satisfy them that their friends, family or loved ones would be safe in a licensed vehicle driven by Mr MM M Accordingly, and given Members primary concern is the protection of the public, the application was refused.

26 APPLICATION FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE - MR DA P

The Sub-Committee considered the report, which sought determination of an application by Mr DA P for the grant of a combined hackney carriage/private hire driver's licence.

The applicant was present. He confirmed that he had read and understood the procedure for the meeting.

The Licensing Officer presented the report and stated that as part of the application process a Disclosure and Barring Service check was undertaken, which had revealed a number of previous convictions. He circulated the Disclosure and Barring Service check, personal statement and references for Mr DA P. The applicant and officer withdrew from the meeting while Members took time to consider these documents.

Mr DA P put his case and was questioned. Mr DA P then made a closing statement.

Following an adjournment it was

RESOLVED that a hackney carriage/private hire driver's licence be granted in respect of Mr DA P, subject to the standard terms and conditions.

REASONS

Members have had to determine Mr DA P’s application for a combined licence to drive hackney carriage and private hire vehicles. In doing so they took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council’s Policy. Members had to consider whether Mr DA P was a fit and proper person and therefore asked themselves whether they would allow their son, daughter, spouse, partner or any one they cared about to travel alone in a vehicle driven by the applicant.

To assist them in making a determination Members took account of the applicant’s oral representations, written references, written statement and balanced this against the information provided by the Disclosure and Barring Service which showed the application had a previous conviction and a police caution.

Members found the offences disclosed were historic, the applicant had a long and solid employment record and had a good familial support network. Members were convinced that he had turned his life around for the better and accordingly was a fit and proper person to hold a combined hackney carriage/private hire driver’s licence.

The meeting ended at 3.20 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services